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ALASKA
JUDICIAL COUNCIL

Alaska Judicial Council Application for Judicial Appointment

Position(s) for which you wish to be considered:
Juneau Superior Court

Date: March 14, 2007

I. Public Information (Questions 1-24)

Personal

1. (a) State full name* Robert Francis Meachum

Name as it should appear on bar survey: Robert F. Meachum

* Unless otherwise specified, this is how your name will appear on the bar survey.

(b) Have you ever used or been known by any other name? If so, please identify

2. How long have you been a resident of the State of Alaska immediately preceding the date of this application? ** 27 years 8 months

Total years months

3. How long have you been engaged in the active practice of law immediately preceding the date of this application? ** years months

Total 20 years 8 months

Nonlegal Education

4. State names and dates of attendance of all colleges and professional schools (other than law schools) ever attended and degrees and dates conferred. List any honors.

University of Michigan, 1973-1977; B.A., 1978, Political Science, Journalism.

** See AS 22.10.090; see also 1984 Inf. Op. Atty. Gen. (July 19; 366- 624-84).

Legal Education

5. List all law schools, dates attended and degrees conferred. If you did not receive a degree from any law school, please indicate.

Northeastern University School of Law, 1978-1981; J.D., May 1981.

6. (a) Did you receive any honors in law school or belong to any honorary societies or groups?
 Yes No If yes, please give details.

Commencement speaker.

- (b) Have you taken any CLE (continuing legal education) courses during the past five years?
 Yes No

Please describe or list. Please do not attach individual certificates of attendance.

Annual Public Defender Agency training conferences.

Military

7. Have you served in the armed forces (reserves or otherwise)? Yes No

If so, please provide the following information:

- (a) Dates of service: _____
(b) Branch of service: _____
(c) Rank at time of discharge: _____
(d) Type of military discharge: _____
(e) Awards or citations:

- (f) Have you ever been refused admission to or released from any of the armed services for reasons other than honorable discharge? Yes No If so, state the details.

Nonlegal Employment

8. Describe major nonlegal working experience. If you had a business or association that has been discontinued, please note whether there are unpaid debts or claims pending litigation.

State of Alaska, Department of Revenue; investigator; 1985-86.
Tlingit and Haida Regional Housing Authority; 1984-85.
Tallahassee Democrat; staff writer; 1977-78.
Detroit Free Press; staff writer; 1977.
Kansas City Star; staff writer; 1976.

Legal Experience

9. Describe chronologically your legal employment since admission to law school. **Please provide dates, name of employer, name of supervisor or person who can verify employment, addresses, the reason you left the position, and a brief description of type of practice (i.e., insurance defense, criminal, appellate, general, litigation, etc.) for each position listed below.**

The Council will ask for comments from your current and former employers about your employment and your judicial qualifications. You may choose to list other persons as character and professional references in response to Question 20 of this application.

If the supervisor or contact person asks (in writing) that the letter be shared with the governor, the Council will send designated letters for each nominee. The applicant should not request a copy of the letter from the reference. References or letters not solicited by the Council are considered public (with few exceptions) and will be sent to the governor for all nominees.

Current Employer: Public Defender Agency, Juneau

Supervisor or name of contact person who can verify employment: David M. Seid

Current address of this person: P. O. Box 110216

City Juneau State Alaska Zip 99811-0216

Dates of Employment: From August 1986 To current

Description: Defense of felonies and misdemeanors; juvenile delinquency; child in need of aid; involuntary mental health commitments. Current traveling calendar is Hoonah and Yakutat.

Previous Employers: *(In chronological order, most recent first)*

Employer: Public Defender Agency, Anchorage

Supervisor or name of contact person who can verify employment: Justice Dana Fabe

Current address of this person: 303 - K Street, Fifth Floor

City Anchorage State Alaska Zip 99501

Dates of Employment: From May 1981 To November 1981

Description: Misdemeanor caseload.

Reason for Leaving: Permit terminated because I did not pass the July 1981 bar exam.

Employer: Mintz, Levin, Cohn, Glovsky, Ferris, & Popeo

Supervisor or name of contact person who can verify employment: John R. Regier

Current address of this person: One Financial Center

City Boston State MA Zip 02111

Dates of Employment: From March 1981 To May 1981

Description: Law clerk. General civil litigation.

Reason for Leaving: Temporary job during law school.

Previous Employers (continued)

Employer: Carpeneti & Council

Supervisor or name of contact person who can verify employment: Justice Walter L. Carpeneti

Current address of this person: P.O. Box 114100, Juneau 99811; Wm. T. Council, 2295 Sorbus Wy

City Anchorage State Alaska Zip 99808

Dates of Employment: From June 1, 1980 To August 31, 1980

Description: Law clerk. General civil litigation.

Reason for Leaving: Temporary job during law school.

Employer: Wickwire, Lewis, Goldmark, & Schorr (Seattle)

Supervisor or name of contact person who can verify employment: David C. Crosby

Current address of this person: 5280 Thane Road

City Juneau State Alaska Zip 99801

Dates of Employment: From March 10, 1980 To May 27, 1980

Description: Law clerk. General civil litigation, some criminal.

Reason for Leaving: Temporary job during law school.

Employer: Public Defender Agency, Anchorage

Supervisor or name of contact person who can verify employment: James D. Oswald

Current address of this person: 100 - So. King Street, Suite 560

City Seattle State WA Zip 98104-3844

Dates of Employment: From September 4, 1979 To November 23, 1979

Description: Legal intern. Mostly misdemeanor arraignments and bail hearings.

Reason for Leaving: Temporary job during law school.

Employer:

Supervisor or name of contact person who can verify employment:

Current address of this person:

City State Zip

Dates of Employment: From To

Description:

Reason for Leaving:

Employer:

Supervisor or name of contact person who can verify employment:

Current address of this person:

City State Zip

Dates of Employment: From To

Description:

Reason for Leaving:

10. For the past five years, please indicate (approximately) the following:

(a) Percent of your practice that was: Civil _____
Criminal 50
Other 50
= 100%

Comment: Other: Child in Need of Aid & Mental Health Commitment cases

(b) Percent: State 100
Federal _____
Other _____
= 100%

Comment: _____

(c) Of practice in state courts, percent: Supreme Court _____
Court of Appeals _____
Superior Court 85
District Court 15
= 100%

Comment: _____

(d) Frequency of appearance in court:
 Regularly Occasionally Infrequently Not at All

Comment: _____

(e) Number of trials (by court or jury) you conducted in the past 5 years:
 None 1- 5 6-15 16-30 31 or more

Comment: _____

(f) Percent of these trials which were: Jury 5 Non-Jury 95

Comment: _____

(g) Approximate number of appellate matters handled: 1

Comment: CINA appeal

(h) Approximate number of arbitrations or administrative hearings:
 None 1-5 6-15 16-30 31 or more

Briefly describe type of matters heard:

(i) Have you undertaken any *pro bono* work through a *pro bono* legal service provider (e.g. Alaska Legal Services, Alaska Network on Domestic Violence and Sexual Assault, etc.) during this period? Yes No

Describe:

11. List all the courts and administrative tribunals in the United States or elsewhere to which you are or have been admitted to practice, and the dates of admission.

U.S. District Court, Alaska; November 1986.

Public Service

12. List bar associations, and sections and committees of which you are or have been a member or officer.

Alaska Bar Association.

13. List legal publications, if any (give title, subject and date of publications).

14. Have you ever applied for a judgeship? Yes No

Please list dates and judgeships applied for, as well as whether you were nominated by the Judicial Council and appointed.

Judgeship	Date	Nominated By Council (Y/N)	Appointed By Governor (Y/N)

15. Have you ever held public or political office, elective or appointive? Yes No
If so, state office, manner selected, and when and where held.

16. Please provide the Council with information that you would like the Council to consider about other legal and nonlegal organizations and clubs of which you are a member, including civic, charitable, religious, educational, social and fraternal organizations. Please indicate whether you participate in the organization's activities, or simply hold a membership. Your involvement in the community is one of the criteria the Council uses in its evaluations. The Council does not use affiliation with a particular group as a criterion except to the extent that it might raise questions of conflict of interest or would affect an applicant's ability to impartially apply the law.

Yaakoosge Daakahidi Alternative High School Site Council
Johnson Youth Center Advisory Committee

17. Indicate (Yes or No) whether you have ever:
- (a) been arrested, charged with, pled guilty or *nolo contendere* to, or been convicted of the violation of any law or ordinance, or been requested to appear before any prosecuting or investigative agency in connection with any matter in any jurisdiction, including all traffic offenses, unless the fine was less than \$50 and there were no other sanctions?
 Yes No
 - (b) failed to answer any summons or other legal process served upon you personally at any time? Yes No
 - (c) as a member of any armed forces, been the subject of any charges which may have resulted in disciplinary action or court martial? Yes No

- (d) had any proceedings brought to have you declared a ward of any court or adjudged an incompetent? Yes No

If your answer is "yes" to any part of this question, state the facts in detail. Give the name and place of the court or agency, dates of the beginning and end of any action or proceeding, case numbers, and the judgment or other disposition.

Juneau District Court. Case No. 1JU-91-1351 Cr. September 3, 1991 charged with DWI. November 1, 1991 convicted and sentenced for Reckless Driving.

18. (a) Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? Yes No

In particular, have you been the subject of any proceeding, criminal or civil, initiated against you by the Internal Revenue Service or a State Tax Office? Yes No

If so, give particulars, including case numbers.

- (b) Have you ever been sued by a client? Yes No

If so, give particulars, including case numbers.

- (c) Have you ever been a party in any other legal proceeding? Yes No

If so, give the particulars. Include all legal proceedings in which you were a party in interest, including petitioner or respondent in dissolution or divorce proceedings; a material witness; a named co-conspirator or correspondent; and subject or witness in any grand jury proceedings. Do not list proceedings in which you were sued only in a representative capacity (e.g. guardian ad litem, or as Commissioner of Natural Resources).

19. State the nature and disposition of any of the following actions which apply to you:

- (a) Are there any unsatisfied judgments against you? Yes No
Have you ever defaulted in the performance of any court-imposed obligation, including payment of alimony or child support or compliance with another court order or decree?

Yes No

In each case, list the name and address of the creditor, the court which rendered the judgment, the case number, the date, the amount of the judgment, and the circumstances on which such claim was based.

Has property owned by you been either judicially or non-judicially foreclosed?

Yes No

Please state the circumstances and outcome of any such unsatisfied or default judgment, or of any foreclosure.

- (b) Have you ever made an assignment for the benefit of creditors? Yes No

Have you ever filed any petition in bankruptcy?

Yes No

If so, state the circumstances, case number, and the outcome.

References and Counsel Questionnaires*

- * **Please Note:** Letters of reference from these persons are confidential and will not be given to the applicant. If the reference asks (in writing) that the letter be shared with the governor, the Council will send designated letters and counsel questionnaires for each nominee. The applicant should not request a copy of the letter from the reference. (You **should not** list the Chief Justice of the Alaska Supreme Court.)

References or letters not solicited by the Council are considered public (with few exceptions) and will be sent to the governor for all nominees.

20. (a) List the names, addresses, **including zip codes**, and **phone numbers** of two persons whom the Judicial Council may contact who can discuss your general character and background.

Name: Susan B. Phillips
Address: 1760 - Evergreen Ave.
City/State/Zip: Juneau, Alaska 99801 Phone: 463-2695

Name: Gary Kidd
Address: P. O. Box 357
City/State/Zip: Pontotoc, MS 38863 Phone: (662) 489-3087

- (b) List the names, addresses, **including zip codes**, and **phone numbers** of three other persons whom the Judicial Council may contact who can discuss your professional competence and qualifications for a judicial position.

Name: Judge Larry Weeks
Address: P. O. Box 114100
City/State/Zip: Juneau, Alaska 99811 Phone: (907) 463-4742

Name: Judge Patricia Collins
Address: P. O. Box 114100
City/State/Zip: Juneau, Alaska 99811 Phone: (907) 463-4741

Name: Brad J. Brinkman
Address: 2400 Douglas Hwy. #1
City/State/Zip: Juneau, Alaska 99801 Phone: (907) 586-2080

References and Counsel Questionnaires (continued)

(c) List the names, addresses, including zip codes, and suite numbers where applicable, and phone numbers of each attorney involved in your three most recent cases that have gone to trial. Please do not list cases pending in the trial courts. (Applicants who are currently judges should list the three most recent trials they presided over.) List only those cases which have gone to trial within the past three years. Please include the judge's name and case names and numbers. (Attach additional pages if necessary.)

Case Number 1

Case Name: State of Alaska **Case Number:** 1YA-S06-54 Cr.
v. Jonathan Jessee **Judge Name:** Keith Levy

Attorneys Involved:

Name: <u>Jenna Rohr Conley</u>	Name: _____
Address: <u>P. O. Box 110300</u>	Address: _____
City, State, Zip: <u>Juneau, Alaska 99811</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 2

Case Name: State of Alaska **Case Number:** 1JU-S04-1017 Cr.
v. Lyle Brown **Judge Name:** Patricia Collins

Attorneys Involved:

Name: <u>Patrick J. Gullufsen</u>	Name: _____
Address: <u>P. O. Box 110300</u>	Address: _____
City, State, Zip: <u>Juneau, Alaska 99811</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 3

Case Name: ITMO: J.L., A.L., & I.L. **Case Number:** 1JU-03-83A, 84A, & 85A CP.
v. _____ **Judge Name:** Patricia Collins

Attorneys Involved:

Name: <u>Johanna Sebold</u>	Name: _____
Address: <u>P. O. Box 110300</u>	Address: _____
City, State, Zip: <u>Juneau, Alaska 99811</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

References and Counsel Questionnaires (continued)

(d) List the names, addresses, including zip codes, and suite numbers where applicable, and phone numbers of each attorney involved in your three most recent cases that did not go to trial but in which you did significant work. Please do not list cases pending in the trial courts. (Applicants who are currently judges should list the three most recent cases they presided over that did not go to trial but in which they did significant work.) Please include the judge's name and case names and numbers. (Attach additional pages if necessary.)

Case Number 1

Case Name: In re: M. D. **Case Number:** 1JU-06-75 CP.
v. _____ **Judge Name:** Patricia Collins

Attorneys Involved:

Name: <u>Douglas Gardner</u>	Name: _____
Address: <u>P. O. Box 110300</u>	Address: _____
City, State, Zip: <u>Juneau, Alaska 99811</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 2

Case Name: State of Alaska **Case Number:** 1JU-S05-149 Cr.
v. Richard E. Lundy, Jr. **Judge Name:** Larry Weeks

Attorneys Involved:

Name: <u>Douglas Gardner</u>	Name: <u>Marilyn Kamun</u>
Address: <u>P. O. Box 110300</u>	Address: <u>P. O. Box 110300</u>
City, State, Zip: <u>Juneau, Alaska 99811</u>	City, State, Zip: <u>Juneau, Alaska 99811</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 3

Case Name: In re: W. N. **Case Number:** 1JU-06-101 CP.
v. _____ **Judge Name:** Larry Weeks

Attorneys Involved:

Name: <u>Jack Schmidt</u>	Name: _____
Address: <u>P. O. Box 110300</u>	Address: _____
City, State, Zip: <u>Juneau, Alaska 99811</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Writing Sample

21. Attach one example of a brief, memorandum of law, or legal opinion or similar example of legal writing (10-20 pages in length; 15-25 pages for appellate positions) prepared solely by you within the last five years. Please choose a sample that reflects your ability to do legal research and analysis. If you do not have a good sample of this length, include an excerpt from a longer writing. Make sure the sample contains sufficient facts to make it understandable. (Some reply briefs may not meet these requirements.)

Please do not submit: (a) coauthored writing samples, (b) samples with confidential information unless redacted to remove such information, (c) longer writing samples.

22. Has any **public** sanction been imposed against you in response to a complaint, charge or grievance brought against you as an attorney or a judge? Yes No
- Have formal grievance procedures been brought against you? Yes No
- See Bar Rule 22(b) & (e) concerning public grievance procedures against attorneys, and AS 22.30.011(b) and .060(b)(3) concerning public grievance procedures against judges.
- Have you ever been held in contempt of court? Yes No
- In each case, state in detail the circumstances and the outcome.

Additional Comments (Non-Confidential)

23. Please make any additional comments that you wish to bring to the Council's attention about your experience and suitability for this judgeship.

I am the 2006-2007 recipient of the Alaska Public Defender Agency David B. Snyder Award "in recognition of outstanding contributions to clients, community, and colleagues."

Additional Comments (Continued)

24. Please indicate whether you prefer to be interviewed in public session or in private session. Your choice of a public or private interview has no bearing on the Council’s determination of your qualifications or on the questions the Council may ask. You may change your request in writing at any time before the interview starts.

Public Interview

Private Interview

25. Please prepare a brief biographical statement (***limited to 150 words***) about your background, legal education, and legal experience. Please do not list personal information about minor children. Your picture and a copy of this statement will be scanned and posted on the Council’s website after the application deadline. In its Bar survey, the Council will invite attorneys to review the information if they wish to become more familiar with your background and experience. Use the form on the following page for your biographical statement. Please leave the box at the top empty. The Council will use this space for your scanned picture. ***To be fair to all applicants, the Council will strictly enforce the 150 word limit.***

If you object to the posting of your picture on the Council’s website, please indicate your objection below. If you object, we will not post your picture, although you still must submit twelve photographs of yourself with your application.

- If you check this box we will not post your picture on the website.

Biographical Statement

Name Robert F. Meachum

Position(s) for which you wish to be considered:

Juneau Superior Court

Date: March 14, 2007

I grew up in Detroit. I first came to Alaska in 1979 as a second year law student at Northeastern University School of Law. I came for the adventure as much as anything else; I was hiking at Polychrome Pass in Denali Park within days of landing in Anchorage!

I came to Juneau in 1980. I have been a defense lawyer for my entire career. I have had a very active practice covering the full range of criminal cases. My current caseload focuses on matters involving juvenile delinquency, child neglect, and mental health. My current misdemeanor traveling calendar includes Hoonah and Yakutat, although I have covered Wrangell, Petersburg, Haines, and Skagway in the past.

I am married and have four children.

Certification and Waiver

I hereby certify that, to the best of my knowledge, the information provided on this application is true and complete; and that I am a citizen of the United States and of the State, and will be eligible to be licensed to practice law in Alaska at the time of expected appointment (Ak. Const. Art IV; § 4).

I waive any privilege of confidentiality I may have with respect to information concerning my qualifications for judicial office that the Judicial Council may desire to obtain. I specifically authorize the Council to obtain and examine my personnel files from current and past employers, including all files maintained by the Alaska Court System, and to obtain information, records and documents regarding me from any credit reporting agency, any law enforcement agency, any bar association, any occupational licensing board, any educational institution, and any disciplinary body, including specifically the Alaska Bar Association and the Alaska Judicial Conduct Commission. I further authorize these institutions, organizations, and individuals, and any other institutions, organizations and individuals to make available to the Council all confidential and non-confidential documents, records and information concerning me that the Council may request.


Signature of Applicant

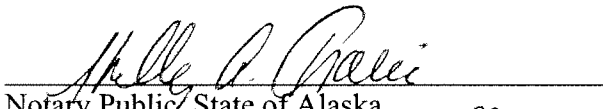
Robert Francis Meachum

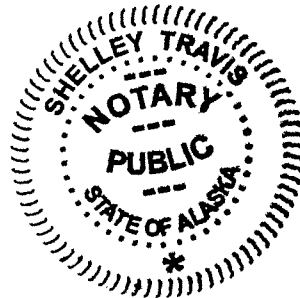
Typed Name

3/14/17

Date

Subscribed and sworn to before me this 14 day of March, 2017.


Notary Public, State of Alaska
My Commission expires: with office



WRITING SAMPLE



Appendix A

Writing Sample
(see question 21)

IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA, DHSS,)
Appellant,)
vs.)
M. L. L.,)
Appellee.)

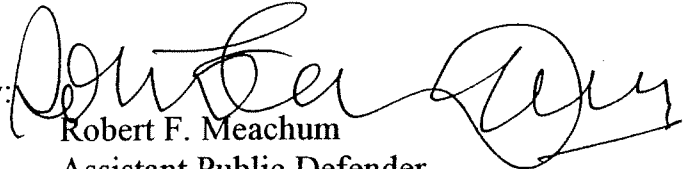
No. S-10450

Superior Court No. 1JU-97-65 & 66A CP

APPEAL FROM THE SUPERIOR COURT, STATE OF ALASKA, FIRST
JUDICIAL DISTRICT AT JUNEAU, THE HONORABLE LARRY R. WEEKS,
PRESIDING

APPELLEE'S BRIEF

BARBARA K. BRINK
PUBLIC DEFENDER

By: 
Robert F. Meachum
Assistant Public Defender
Alaska Bar No. 8511181
State of Alaska
Public Defender Agency
P. O. Box 110216
Juneau, Alaska 99811-0216
(907) 465-4911

Filed in the Supreme Court
This 15th day of July, 2002.

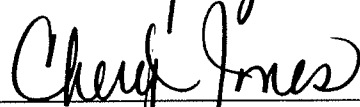
By: 
Deputy Clerk

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TABLE OF CASES AND STATUTES

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STATE STATUTE

AS 47.10.088.....iv, 4, 6

AUTHORITIES RELIED ON

UNITED STATES CODE

25 U.S.C. s 1901. Congressional Findings. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

...

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 U.S.C. s 1912 (f). Parental rights termination orders; evidence; determination of damage to child. No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

42 U.S.C. s 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title [25 U.S.C. s 1911-1923], the State or Federal court shall apply the State or Federal standard.

STATE STATUTE

AS 47.10.088. Termination of parental rights and responsibilities. (a) Except as provided in AS 47.10.088 (o), the rights and responsibilities of the parent regarding the child may be terminated for purposes of freeing a child for adoption or other permanent placement if the court finds

(1) by clear and convincing evidence that

(A) the child has been subjected to conduct or conditions described in AS 47.10.011; and

(B) the parent

(i) has not remedied the conduct or conditions in the home that place the child at substantial risk of harm; or

(ii) has failed, within a reasonable time, to remedy the conduct or conditions in the home that place the child in substantial risk so that returning the child to the parent would place the child at substantial risk of physical or mental injury; and

(2) by preponderance of the evidence that the department has complied with the provisions of AS 47.10.086 concerning reasonable efforts.

(b) In making a determination under (a) (1) (B) of this section, the court may consider any fact relating to the best interests of the child, including

(1) the likelihood of returning the child to the parent within a reasonable time based on the child's age or needs;

(2) the amount of effort by the parent to remedy the conduct or conditions in the home;

(3) the harm caused to the child;

(4) the likelihood that the harmful conduct will continue; and

(5) the history of conduct by or conditions created by the parent.

....

STANDARD OF REVIEW

Superior court finds of fact will be upheld unless clearly erroneous. A. H. vs. State, 10 P.3d 1156, 1160 (Alaska 2000) “Factual findings are clearly erroneous if a review of the entire record leaves us ‘with a definite and firm conviction that a mistake has been made.’” A. B. vs. State, 7 P.3d 946, 950 (Alaska 2000). It is a question of law, that the court reviews *de novo*, whether the trial court’s factual findings comport with state and federal law. D. M. vs. State, 995 P.2d 205, 207 (Alaska 2000)

Statement of Facts and Procedural Background:

This case first proceeded to termination on July 15-22, 1999. The children had previously been determined to be in need of aid in September 1997, and custody was granted to the State of Alaska for two years beginning in February 1998. The court terminated the father's parental rights, a decision that was upheld in A. H. vs. State, 10 P.3d 1156 (Alaska 2000). The court did not terminate the mother's parental rights in 1999:

(G)iven [Ms. Lewis'] current situation, this court can not find beyond a reasonable doubt under 25 U.S.C. s1912(f) that serious emotional or physical damage to the child would result were the children placed with their mother. [Ms. Lewis] has her substance abuse under control, she currently lives with a supportive man who does not drink, and she is making more intelligent decisions including avoiding the father, [Arnold Hanson].¹

[Exc 44-55.] The court also did not find that it was in the best interests of the children to terminate Ms. Lewis' parental rights. [Exc 43.]

The State of Alaska did not appeal the trial court's first termination decision as to Ms. Lewis.

Additionally, there was a lengthy visitation and placement hearing subsequent to the trial court's termination decision, on September 23-24 and 28, 1999. The court ordered visitation between the children and their mother and grandparents in Angoon, as well as visitation between the girls and their

¹ In fact, Dr. Mander testified at the second termination trial that Ron Lewis "is a very positive influence" who "helps the situation tremendously." [Tr 1097.]

grandparents, including visits in Angoon and Sitka, and telephone contact on special days. Placement was to remain with Ms. Randall. [Exc 44-55.]²

Meanwhile, Lewis attended all meetings and case plan reviews. She worked her case plan. [Tr 1326] The social worker's unannounced home visits revealed a very clean, three-bedroom apartment in the Lemon Creek area. There was no evidence of alcohol use. [Tr 1324-1325.] Lewis continued to be active in her church. [Tr 1317-1318.] The social worker had no concerns that Ms. Lewis had fallen into old ways. [Tr 1325.] She visits with the girls and maintains a very active interest in their welfare and the course of the case.

Dr. Anthony Mander confirmed Ms. Lewis' stable lifestyle during his testimony and in his psychological evaluation dated April 25, 2001. [Tr 1100.] Ms. Lewis is capable of participating in treatment, he said. [Tr 1096.] Dr. Mander could not say beyond a reasonable doubt that the girls were likely to be harmed by Ms. Lewis. [Exc 104.] Among his conclusions and recommendations were the following:

- 1. The good news in this case is that Ms. Lawson has extricated herself from an abusive relationship and has formed a relationship with a sober individual who appears to provide stability in her life.*

² The court allowed for visitation between the girls and Ms. Lewis while in Angoon with the grandparents. [Exc. 54.] That visitation was "hampered by the foster mother and that visitation must be improved," the court ordered when it denied the State's second petition to terminate Ms. Lewis' parental rights. [Exc. 104.] The State's brief is inaccurate when it says that this placement decision was not challenged in court again. [Appellant's Brief, p.8, fn. 10.] Ms. Lewis disputed the court's placement decision at every hearing held in this matter, including at the second termination trial. [Exc 104.]

3. Her problems are likely to be life-long and she is particularly unable to care for special needs children. She would likely have on-going lapses of judgment and impulsive behavior and show an apparent lack of understanding about proper parenting for her children. *This is not to say that she could not play a greater role in her children's lives, but only that she independently would not be able to safely provide for her children's needs. It is appropriate for her to have contact with the children and it may be possible in the future for her to have brief periods of unsupervised contact in a structured context.*

This would require that Ms. Lawson demonstrate stability in emotional functioning in stress management, improved judgment in parenting skills, a stable lifestyle, continuing sobriety, and a willingness to accept services and input from agencies and individuals that are available to assist her. The services which would be required in order for Ms. Lawson to have an increased (sic) in contact with her children would include (1) on-going mental health care, including psychiatric assessment and treatment as needed; (2) personal counseling with a focus on learning to regulate her emotions and express feelings appropriately. Counseling efforts should also include social skills training and some assistance in decision-making and rational-thinking skills. She should also learn stress management techniques. (3) Ms. Lawson would need to continue her sobriety and attend AA meetings, NFS meetings, or other substance abuse treatment as necessary. (4) Ms. Lawson would need to cooperate fully with all agencies and resources in the community in an effort to provide care for her children, even if on a limited basis, such as during visitation. It appears that Ralph Lawson has had a positive influence on Maria and is a stabilizing factor. His parenting skills, personal strengths, and personal problems are unknown. As such, his impact on the situation is uncertain at this time.

[Exc 87 (emphasis supplied).]

The matter again came before the court for termination trial on October 29-31, 2001. Unlike after the first trial, the court concluded that it would be in the best interest of the girls to terminate their mother's parental rights. But like the first trial, the court affirmed that it could not conclude, beyond a reasonable doubt,

that the girls would likely suffer serious emotional or physical damage if returned to Ms. Lewis. [Exc 103-104.]

Argument:

The court cannot grant a petition to terminate unless

the court finds by clear and convincing evidence that the [girls have] been subjected to conduct or conditions described in AS 47.10.011; and the [mother] has not remedied the conduct or conditions in the home that place the child[ren] at substantial risk of harm; or [that the mother] has failed, within a reasonable time, to remedy the conduct or conditions in the home that place the child[ren] in substantial risk so that returning the child[ren] to the parent would place the child[ren] at substantial risk of physical or mental injury.

AS 47.10.088. Additionally, the girls are Indian children and no termination of parental rights may be ordered unless the court determines beyond a reasonable doubt that custody by the mother would likely result in serious emotional or physical damage to them.³ 25 USCS section 1912 (f).

The State must also prove that the girls are children in need of aid at this time. It is not sufficient for it to rely upon a finding made in 1997 based upon conditions that then existed; it must establish a present potential for harm sufficient to warrant continued intervention. V. D. vs. State, 991 P.2d 214 (Alaska 1999). The court cannot terminate the mother's parental rights if she has

³ This is an Indian Child Welfare Act case because the girls are Tlingit and eligible for membership in the Angoon Community Association, which participated in both trials and placement hearings. [Exc 103-104, Tr 1478-1479, 1364-1367.] This was not questioned during the first trial and there is no support for the argument that the court's finding is clearly erroneous. [Appellant's brief, p. 16.]

remedied the conduct that originally placed the girls in harm's way and she does not pose an appreciable risk to them at this time. V. D. vs. State, 991 P.2d at 217.

The State first argues that the trial court did not understand the relationship between the Adoption and Safe Family Act (ASFA) and the Indian Child Welfare Act (ICWA); that any improvement in Lewis' conditions is not enough to defeat a termination petition; and that even if the parent of an Indian child gets extra time to remedy the conduct, Lewis is incapable of remedying all of the conduct that caused the girls to become children in need of aid.

Ms. Lewis had remedied much of the conduct by the time of the first trial, and that became more evident by the time of the second trial. [Tr 1479.] She had a period of sobriety before the first trial and extended it through the second trial. She terminated her relationship with Arnold Hansen. The record does not reflect domestic violence between the Lewis'.⁴ "While it may not be true of all, some parents are capable of changing and overcoming the problems" that brought them to the court's attention—and Ms. Lewis appears to be one of those few. See: Rita T. vs. State, 623 P.2d 344, 347 (Alaska 1981).

The court is obligated to take into account the amount of effort by the parent to remedy the conduct or conditions in the home and the likelihood that the

⁴ There was no indication of domestic violence in the home, according to the social worker. [Tr 1239, 1308.] The incidents involving Lewis' son happened at night when the Lewis' were asleep. [Tr 1316.] Neither incident was their fault and they did the appropriate thing by calling the police. [Tr 1316.] In fact, Ms.

harmful conduct will continue when considering the children's best interest. AS 47.10.088 (b) (2) & (3). The trial court's factual findings in this regard are favorable to Ms. Lewis.

The conduct that the State argues cannot be remedied is Lewis' low level of life skills functioning and judgment arising out of her mental health status.

But mental illness on its own cannot form the basis for termination. A. H. vs. State, 10 P.3d 1156, 1162 (Alaska 2000), citing: J. P. W. vs. State, 921 P.2d 604, 608 (Alaska 1996).

Dr. Mander diagnosed Ms. Lewis with dysthymia. [Tr 1102.] He treats other parents with this diagnosis and such a diagnosis does not rule them out for parenthood. [Tr 1102.] Likewise for mental retardation. [Tr 1102.] Parents with these diagnoses can be managed with treatment services. [Tr 1102-1103.] Ms. Lewis is capable of participating in treatment. [Tr 1096.]

Ms. Lewis' problems were exacerbated when she abused alcohol and drugs and was in an abusive relationship. [Tr 1101-1108.] Now that she has been sober and married to a supportive man, there has been significant improvement. [Tr 1101.] In fact, the trial court found that she is more capable now than perhaps she was in 1999. [Tr 1479.]

That is why Dr. Mander recommended expanded visitation between the girls and their mother, including unsupervised visits. [Exc 87, Tr 1103.] Dr.

Lewis obtained a protective order preventing contact between her son and Mr. and Ms. Lewis. [Tr 1315.]

Sheila Clarson also believed that contact between mother and daughters would be helpful and should be frequent. [Exc 101.] If either of these two expert witnesses had felt the situation was so dire and that serious emotional or physical harm would likely come to the girls if they were returned to their mother, they would have so testified and the trial court then might have had sufficient basis to terminate Ms. Lewis' parental rights. Instead, they recommended frequent ongoing visitation, with possible unsupervised visitation, and the court could not find beyond a reasonable doubt, given all of the circumstances and testimony, that the children would likely suffer serious physical and/or emotional damage if returned to Ms. Lewis. In fact, it can be argued that based upon the expert testimony that it would be damaging to the girls and not in their best interest to terminate all meaningful contact with their biological mother and grandparents.

The State's second argument is that the trial court did not consider the negative impacts on the girls if they were returned to Ms. Lewis and how that relates to the ICWA. The court clearly considered the bonding issue.

First, the court found that it was in the children's best interest to grant the termination petition. That is because the children are thriving in their foster placement and to remove them would be emotionally disruptive. [Tr 1099-100, Exc 99.] The court placed great emphasis on the Clarson report and her testimony regarding the harmful effects that would result if the bond were broken between the girls and Ms. Randall. [Exc 104.] But the question of what is in a child's best

interest is one question with a different burden of proof than what is necessary to be proved per the ICWA.

The court also considered the expert testimony regarding treatment of the girls if they were removed from the Randall household. There are professionals that can treat issues of grief, sadness, and depression associated with reunification under these circumstances, according to Drs. Mander and Clarson. Dr. Mander:

People have trauma in their lives, and there are things that we can do, that trained professionals can do to try to help them with. I'm sure that's certainly true, and this is a bonding issue, which is, you know, something that there's a lot of research about with young children and, you know, it really sort of goes to the particular kids and their situation in this case, and so I'm a little uncomfortable getting into that, since I don't really know the children.

[Tr 1105-1106.]

Dr. Clarson, though, evaluated the girls in various settings in Sitka, Juneau, and Angoon.⁵

⁵ The visit between the girls and their mother that was observed by Dr. Clarson was appropriate. [Exc 96, Tr 1355.] What is noteworthy about the visit, though, is what happened when Ms. Lewis referred to the children by their given names, as opposed to the names given to them by the foster mother, Ms. Randall. (See: fn. 6, p. 10.) The girls did not respond to their given names. Ms. Lewis "then sometimes combined the names calling the girls [T-C] and [K-C] and at other times simply called them by their new names. [Ms. Lewis] was positive, encouraging and reinforcing to the girls throughout the visit." [Exc 96.] Ms. Lewis adjusted well in a difficult situation that she was confronted with and, by exercising good judgment, met the children's needs appropriately. [Tr 1356-1357.] It was an example of Ms. Lewis' "observation and sensitivity to children's needs, knowing when to respond and how to respond and how not to overreact." [Tr 1342.]

If that were to happen, I believe that the girls would each need an individual therapist long term to deal with – to help them deal with their feelings, there would need to be intensive home based intervention to help with the family adjustment, and then you know, ongoing, I think, monitoring of how it's going and opportunities to increase the services even more if necessary and certainly decrease them if they're not needed.

[Tr 1360.] That could be accomplished “more or less successfully, yes.” [Tr 1360.] “Sometimes successfully, sometimes not. We certainly don't have any magic answers,” she said. [Tr 1360.]

That testimony does not support the notion that, beyond a reasonable doubt, the girls would suffer future ongoing severe trauma and serious emotional damage if removed from the Randall foster placement. So in addition to the evidence about Ms. Lewis' successful remedial efforts and resulting stability, the court certainly could have relied on this testimony when coming to the conclusion that any disruption caused by removal from the Randall foster placement would not likely result in emotional damage beyond a reasonable doubt since effective remedial measures to deal with such impacts are available.

The State placed a great deal of emphasis on the harm that would come to the girls if they were removed from their foster placement. They are bonded to Ms. Randall. Yet this is a situation they helped create. Ms. Lewis maintained visitation in Juneau with the girls after removal. [Tr. 461 in A. H. vs. State, 10 P.3d 1156 (Alaska 2000).] Suddenly the girls were placed in Sitka in December 1997, even though the “official” plan was reunification—though termination had been discussed by social workers as early as July 1997. [Tr 462-463 in A. H. vs.

State, 10 P.3d 1156 (Alaska 2000).] Visitation that was regular in Juneau suddenly became problematic when the girls were sent off to Sitka, and Ms. Lewis saw her children once or twice in Sitka before visitation was terminated by the DFYS. [Tr 461 in A. H. vs. State, 10 P.3d 1156 (Alaska 2000).] Visitation is back to being appropriate, even if hampered by the foster mother. Therefore, moving the girls to Sitka was a *de facto*, extrajudicial termination by DFYS, since termination had been discussed as early as five months before they went to Sitka. The State cannot now wield the bonding issue as a sword against Ms. Lewis since she was not able to maintain a meaningful long distance relationship with her children.

Even so, Congress has placed a great deal of emphasis on preserving Indian families and, thereby, Indian culture.

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(3) *that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children* and the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) *that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and*

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 USCS s 1901 (emphasis supplied). Some disruption was probably contemplated given the strong nature of that language. However, the State's expert witnesses testified that there are trained professionals who can help to mitigate any trauma. The ongoing visitation and contact between the girls and their biological family will cease if the trial court's decision is reversed.⁶

The trial court recognized the importance and necessity of the Indian Child Welfare Act. In many respects, the circumstances of this case reflect what concerned Congress when it enacted this legislation. Because ICWA "looks to likely future harm to the child," the trial court properly focused "on the risk of future harm . . . rather than on the infliction of past injury." L. G. vs. State, 14 P.3d 946, 950 (Alaska 2000); citing: In re J. R. B. & T. W. G., 715 P.2d 1170, 1172 (Alaska 1986), E. M. vs. State, 959 P.2d 766, 771 (Alaska 1998). That necessarily included Ms. Lewis' successful remedial efforts. It might also have included the fact that children become more independent as they grow older and their parenting

name—by the time of the second trial—the foster parent effectively has promised "that they will be"⁶ There was testimony from the social worker, and the trial court agreed, that the foster mother had impeded court-ordered visitation. Another indication of the foster mother's intentions regarding ongoing contact and cultural identity if there is a reversal of the trial court is that fact that the foster mother inappropriately changed the children's names. "I think that it's unfortunate and problematic. Absolutely," according to Dr. Clarson. [Tr 1349.] So if the girls "have been kind of in a limbo situation," as the State suggests, it is because of the mixed messages they have gotten inappropriately from the foster mother. [Tr 1348.] By inappropriately changing their first names—by the time of the first trial—and then their last name—by the time of the second trial—the foster parent

needs change as a result. [Tr 1106-1107.] Expert testimony that a parent should play a greater role in their children's lives is usually not an issue in a termination case.

Whenever federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than state law, then the court must apply the higher federal standard. 42 U.S.C. s 1921; J. R. B. & T. W. G. vs. State, 715 P.2d 1170, 1172 (Alaska 1986). In this sense, state law—best interest of the children—might not always be reconcilable with federal law, hence the seemingly inconsistent findings.

Conclusion:

The trial court heard many, many days of testimony over the past five years. Its factual findings regarding Ms. Lewis' stability were sound and its application of the facts and circumstances and the testimony to the requirements of the ICWA was correct as a matter of law. For these reasons, the judgment of the trial court should be affirmed.

DATED this first day of August, 2002, in Juneau, Alaska.

BARBARA K. BRINK
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effectively has promised "that they will be with her forever." [Tr. 1146, Appellant's brief p. 49-50.]