

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
REFERRAL BY THE COMMISSIONER OF THE DEPARTMENT OF REVENUE**

In the Matter of City of Valdez' )	
Objection to Assessment of )	
Crowley Marine Services' Property )	OAH No. 06-0250-TAX
_____ )	Informal Conf. Dec. No. 05-56-A2

**ORDER DENYING REQUEST TO VACATE REASSIGNMENT**

On April 26, 2006, the Tax Division, by and through counsel<sup>1</sup> fax-filed an “Objection to Notice of Change of Judge and Request to Vacate Reassignment of Judge.” The request is denied for the following reasons:

1. AS 44.64.070(c) entitles each side in a case to change the assigned administrative law judge once without cause if that right is exercised in a timely fashion.
2. AS 44.64.070(c) does not require a party exercising that right to disclose the relationship between the case at hand and another pending case. The only conditions on the exercise of this right are that it be exercised within five days after notice of the assignment is given and before the party has participated in a proceeding or conference on the case.
3. The City of Valdez’ “Notice of Change of Judge” was timely. It was fax-filed on April 12, 2006, seven days after the Notice of Assignment was mailed from Juneau to the parties’ counsel in Anchorage. AS 44.64.070(c)’s five-day time period runs from the date on which “notice [of assignment] is given ....” The Office of Administrative Hearings (OAH) considers the notice of assignment to have been given three days after mailing, unless a duplicate is also hand delivered or faxed (which was not the case here).<sup>2</sup>

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<sup>1</sup> The document (like the division’s counsel’s entry of appearance and its motion for stay) erroneously characterized the party filing it as the “State of Alaska, Department of Revenue.” Though the Tax Division is a subunit of the Department of Revenue, counsel appearing in this matter to defend against an appeal of the Tax Division’s informal conference decision represent the division, not the department. The Commissioner of the Department of Revenue is the impartial, final decisionmaker on whose behalf the Office of Administrative Hearings hears the appeal. To avoid creating the misperception that counsel advocating the division’s position are doing so on behalf of the impartial decisionmaker, henceforth the division’s filings should be identified as filings of the Tax Division.

<sup>2</sup> See proposed 2 AAC 64.900(b). Though OAH’s proposed regulations are still in the Department of Law review process and thus have not yet taken effect, OAH applies the three-days-added-for-mail-service rule. To do otherwise would risk cutting off a party’s statutory right to a change of administrative law judge because the mail takes up too much of the five-day period for the party to receive adequate notice and act on it.

4. AS 44.64.070(c) does not give OAH the discretion to deny a party's exercise of its right to change the administrative law judge to achieve economy of process or consistency in decisionmaking.

The division's concerns about economy of process and consistency in decisionmaking are not taken lightly. These concerns can be addressed in many ways without depriving a party of its AS 44.64.070(c) right. The division's motion to stay proceedings in this case will be taken up in due course, as indicated in the April 25, 2006 Scheduling Notice. At that time, the parties are free to raise other points about economy of process.

DATED this 28<sup>th</sup> day of April, 2006.

By: Signed  
Terry L. Thurbon  
Chief Administrative Law Judge

The undersigned certifies that on April \_\_, 2006, this order was distributed to the following parties: William Walker, counsel for City of Valdez; Bonnie Harris & Jonathan Iversen, Assistant Attorneys General. A courtesy copy was distributed to Leon Vance, counsel for Crowley Marine Services.

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Kim Rechin

[This document has been modified to conform to the technical standards for publication.]