

In the Supreme Court of the State of Alaska

Lady Donna Dutchess,)	
)	Supreme Court No. S-16148
Petitioner,)	
v.)	Order
)	Petition for Review
Jason Dutch,)	
)	
<u>Respondent.</u>)	Date of Order: March 18, 2016
Trial Court Case # 3AN-15-08063CI)	

Before: Stowers, Chief Justice, Fabe, Winfree, Maassen, and Bolger, Justices

In her petition for review, Lady Donna Dutchess argues that she did not waive her right to a peremptory challenge when she participated in a status hearing conducted by Superior Court Judge Pro Tem Pamela Washington. She alleges that she did not receive a copy of the administrative order of reassignment before the status hearing. Jason Dutch has not responded to the petition.

Civil Rule 42(c)(4) provides that “[a] party waives the right to change as a matter of right a judge who has been permanently assigned to the case by knowingly participating before that judge” in a listed proceeding. A knowledgeable waiver requires that a party participate in the listed proceeding only “after the party is informed that the judge before whom he or she is appearing is the judge permanently assigned to hear the case or is assigned for trial.” *Tunley v. Municipality of Anchorage School Dist.*, 631 P.2d 67, 73 (Alaska 1980).

Following our review, we conclude that the record does not establish that Dutchess received adequate notice that Judge Washington had been permanently

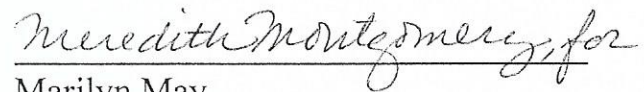
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assigned to the case. At the October 27, 2015 status hearing, Judge Washington informed the parties that she was “taking over the caseload from Judge Suddock” because “[h]e’s on the court of appeals now, *temporarily*.” (Emphasis added.) This statement did not provide sufficient notice that Judge Washington was “permanently assigned to hear the case.” And Dutchess filed her peremptory challenge prior to the October 30, 2015 deadline specified in the administrative order.

We therefore GRANT the petition for review, and REVERSE the presiding judge’s order denying the peremptory challenge of Judge Washington. On remand, this case must be assigned to another superior court judge.

Entered by direction of the court.

Clerk of the Appellate Courts


Marilyn May

cc: Supreme Court Justices
Judge Washington
Trial Court Clerk - Anchorage

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