

Article 4

Section 8. Judicial Council.

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

NOTES TO DECISIONS

Merit selection system held constitutional. - As long interpreted by the federal courts, the Equal Protection Clause does not preclude Alaska from choosing to use a merit system in selecting its judges. The lawyer members of the Judicial Council who are appointed by the bar association's governing body must be either popularly elected or appointed by an elected official; moreover, the ultimate power to appoint judges is with the Governor. *Kirk v. Carpeneti*, 623 F.3d 889 (9th Cir. 2010).

"Term". - With the exception of Alaska Const., [art. IV, 4](#) and [13](#), wherever "term" or "service at the pleasure of " appears in the constitutional text originally adopted, the reference is to a period of service for a particular office. *Buckalew v. Holloway*, [604 P.2d 240](#) (Alaska 1979).

Meaning of phrase "position of profit". - See Begich v. Jefferson, [441 P.2d 27](#) (Alaska 1968).

And its intent. - The term "position of profit" was intended to prohibit all other salaried non-temporary employment under the United States or the State of Alaska. Begich v. Jefferson, [441 P.2d 27](#) (Alaska 1968).

Applied in Acevedo v. City of N. Pole, [672 P.2d 130](#) (Alaska 1983).

Quoted in Delahay v. State, [476 P.2d 908](#) (Alaska 1970).

Cited in Division of Elections v. Johnstone, [669 P.2d 537](#) (Alaska 1983); Abood v. Gorsuch, [703 P.2d 1158](#) (Alaska 1985).

Section 9. Additional Duties.

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

NOTES TO DECISIONS

Declaration of candidacy. - Judicial council's purpose for the communications to two judges who were up for retention was most obviously to satisfy the council's own constitutional and statutory obligations; nothing implied a purpose of satisfying the candidates' obligations to the Division of Election to submit their declarations of candidacy. State v. Jeffery, [170 P.3d 226](#) (Alaska 2007).

Section 10. 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 state courts; three members who have practiced law in this state for ten 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 persons 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. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

Cross references. For provisions on the powers and duties of the Commission on Judicial Conduct, see AS [22.30.011](#); for proceedings when a successful candidate for judicial retention or the campaign treasurer or deputy campaign treasurer of such a candidate has been convicted of a violation of the state election campaign laws, see AS [15.13.380\(i\)\(4\)](#).

Effect of amendments. The amendment effective October 11, 1968 (5th Legislature's 2d FCCS SCS CSHJR 74 (1968)) rewrote this section to establish the commission and provide for "disqualification" of judges. Formerly, this section dealt only with incapacity and retirement of judges.

The amendment, effective December 24, 1982 (12th Legislature's CSHJR 32 (Jud) am S (1981)), substituted "Conduct" for "Qualifications" following "Commission on Judicial," substituted "three persons who are justices or judges of the state courts" for "one justice of the supreme court" preceding "elected by the justices," substituted "and judges of the state courts" for "of the supreme 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" following "elected by the justices," substituted "three" for "two" preceding "members who have practiced law," added "governor from nominations made by the" preceding "governing body of the organized bar," added "and subject to confirmation by a majority of the members of the

legislature in joint session" following "governing body of the organized bar" and substituted "three" for "two" preceding "persons who are not judges."

NOTES TO DECISIONS

Basis of 1968 amendment. - The Alaska Commission on Judicial Qualifications (now Commission on Judicial Conduct) was created by a constitutional amendment which became effective in 1968. This amendment is based on a 1966 revision of the judicial article of the California Constitution. In re Hanson, [532 P.2d 303](#) (Alaska 1975).

Scope of commission's powers. - This section only empowers the commission to recommend sanctions to the Alaska Supreme Court. Granting the commission the authority to impose sanctions is not permitted. In re Inquiry Concerning A Judge, [762 P.2d 1292](#) (Alaska 1988).

Ultimate authority vested in supreme court. - This section vests in the supreme court the ultimate authority in disciplinary matters affecting the judiciary. In re Hanson, [532 P.2d 303](#) (Alaska 1975).

This section and AS [22.30.070\(c\)](#) unambiguously establish the supreme court of Alaska as the body entrusted with the ultimate dispositive decision in a judicial qualifications matter. In re Hanson, [532 P.2d 303](#) (Alaska 1975).

Power of supreme court to sanction judge under this section. - Concerning the subject of sanctions this section and AS [22.30.070\(c\)\(2\)](#) provide that upon recommendation of the Commission on Judicial Conduct the supreme court of Alaska may suspend, remove, retire or censure a judge. In re Robson, [500 P.2d 657](#) (Alaska 1972).

Supreme court is to exercise independent judgment. - Normally considerable weight will be accorded to a given recommendation from the Commission on Judicial Qualifications (now Commission on Judicial Conduct), if supported by an adequate factual basis. Nevertheless, both this section and AS [22.30.070\(c\)\(2\)](#) clearly establish that the supreme court of Alaska is to exercise its independent judgment in determining an appropriate sanction, if any, as to any recommendation made by the commission. In re Robson, [500 P.2d 657](#) (Alaska 1972).

The supreme court's scope of review in a judicial qualifications proceeding should be that of an independent evaluation of the evidence. In re Hanson, [532 P.2d 303](#) (Alaska 1975).

And cannot adopt commission's sanction recommendations automatically. - It would be tantamount to an abdication of its constitutional and statutory obligations if the supreme court were to adopt the sanction recommendations of the Commission on Judicial Qualifications (now Commission on Judicial Conduct) automatically. In re Robson, [500 P.2d 657](#) (Alaska 1972).

Substantial evidence test employed in reviewing commission's findings of fact. - Regarding the scope of review which the supreme court should exercise in reviewing findings of fact of the Commission on Judicial Qualifications (now Commission on Judicial Conduct), there is no reason to depart from the substantial evidence test which has heretofore been employed in reviewing matters coming to the supreme court from administrative agencies and other governmental bodies. In re Robson, [500 P.2d 657](#) (Alaska 1972).

Review of commission's recommendation is broader than substantial evidence criterion. - Under the discretionary grant of power to the supreme court under this section and AS [22.30.070\(c\)\(2\)](#), supreme court review of a particular recommendation by the commission is necessarily broader than the substantial evidence criterion adopted for review of findings of fact made by the commission. In re Robson, [500 P.2d 657](#) (Alaska 1972).

Duties of supreme court in cases concerning punishment of judge. - In every case concerning the suspension, removal, retirement, or censorship of a judge, the supreme court must insure that procedural due process has been accorded the judicial officer proceeded against and that requisite findings of fact have been made and are supported by substantial evidence. The supreme court is further obligated to decide whether the commission's recommended sanction is justified by the record and is in accord with the objectives of the commission as reflected in the relevant constitutional and statutory provisions. In re Robson, [500 P.2d 657](#) (Alaska 1972).

Imposition of more serious sanction than censure. - Where judicial conduct which had been prejudicial to the administration of justice and had brought the judicial office into disrepute, was weighed against the relative judicial inexperience of petitioner at the time, the supreme court concluded that imposition of a more serious sanction than censure would be inappropriate. In re Robson, [500 P.2d 657](#) (Alaska 1972).

Supreme court sanction decision made part of public record. - Where the actions of a judge were serious enough infractions to justify its following the censure recommendation of the Commission on Judicial Qualifications (now Commission on Judicial Conduct), the supreme court was of the opinion that given the necessity for the creation of such a commission and the

need for enforcement of standards of judicial conduct and canons of judicial ethics, these ends were more fully served by making of record its sanction decision. By making its sanction part of the public record, the supreme court believed that the public's confidence would be maintained, both in the workings of the commission and in the ability of the judicial branch of government to insure its continued integrity. In re Robson, [500 P.2d 657](#) (Alaska 1972).

Applied in Buckalew v. Holloway, [604 P.2d 240](#) (Alaska 1979).

Quoted in Delahay v. State, [476 P.2d 908](#) (Alaska 1970).

Cited in Abood v. Gorsuch, [703 P.2d 1158](#) (Alaska 1985); In re Johnstone, [2 P.3d 1226](#) (Alaska 2000).

Collateral references. 46 Am.Jur.2d, Judges, 16 to 20.

48A C.J.S., Judges, 100, 101.

Confidentiality of proceedings or reports of judicial inquiry board or commission. 5 ALR4th 730.