

Joe Hayes

From: Senate State Affairs
Subject: FW: Written Testimony - Resolution 13.
Attachments: In re Cummings.rtf

From: Betty Jo Moore 

Chair/Senator Kawasaki and Committee Member Senators,

I'm Betty Jo Moore, resident of Anchorage representing myself. I'm Alaska Native. I worked as a legal secretary, paralegal and Associate Tribal Judge during my years of work history. Because of a family medical appointment I cannot join the committee hearing at 3:30 today so I'm submitting a written testimony in support of Resolution 13 with an amendment to include sections 8 and 10 of Article IV.

Alaska absolutely needs judicial reform. Our selection of judges should never be controlled by a political party or the Alaska Bar Association. The American legal system needs to work for all Alaskans. As former AG Taylor points out in an article in [MUST READ ALASKA - Treg Taylor: The rule of law doesn't work unless it applies to all of us](#) is spot on. Every Alaskan needs to have a fair trial based on the written law, rules, canons, sworn undisputed testimony one's exhibits, etc. There should be no flaws within our judicial system. Justice should be afforded to all Alaskans.

January 22, 2021 Senator Shower introduced SB 14 Sponsor Statement. Selection and Review of Judges. *"An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct, and relating to retention or rejection of a judicial officer."*

SB 14 died in Finance without being acted on. See Alaska State Legislature Uniform Rule 24 (a) "A committee acts on all bills referred to it and reports its actions and recommendations to the house as soon as practicable...".

January 13, 2023 Senator Shower introduced SB 31 Sponsor Statement. Selection and Review of Judges. *"An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct, and relating to retention or rejection of a judicial officer."*

Chief Justice Bolger and Justices Winfree, Maassen and Carney all sign on this letter to Fellow Alaskans. <https://courts.alaska.gov/media/docs/sc-2020-stmt.pdf>.

The Justices point out flaws in our judicial system that are very true but to date haven't been corrected.

Chair/Judge Mead points to the only example of a judge being removed. Deputy AG Svobodny filed a complaint with the ACJC in 2011 regarding Judge Cummings.

What has happened to the other numerous complaints filed with the ACJC over the years?

I'm Betty Jo Moore, resident of Anchorage representing myself. Alaska needs JUDICIAL REFORM.

SB 31 addresses corrections and the selection review process of judges. Not all Alaska judges follow the laws, constitutional right to due process, a fair trial, best interest of our children and families. The violations of our constitutional rights, laws, compact agreement with some of the 229 Tribes, etc., have resulted in judicial corruption throughout many courtrooms and government departments. Our selection of judges should never be controlled by a political party or the Alaska Bar.

The people of Alaska need their ELECTED REPRESENTATIVES to bring about change to the selection and review of judges. Alaska needs judges who will protect Alaskans against such absurd injustices that many have and are facing.

In 2020 Chief Justice Bolger and Justices Winfree, Maassen and Carey released a statement to Fellow Alaskans. "We recognize that too often African-Americans, Alaska Natives, and other people of color are not treated with the same dignity and respect as white members of our communities. And we recognize that as community members, lawyers, and especially as judicial officers, we must do more to change this reality." I want to add another group of people who are not treated fairly with the same dignity and respect in our communities, and that is the people who do not have the education and/or the financial means, OR necessary political connections to protect their constitutional rights, their right to a fair trial and/or their right to protect their children from the State's OCS foster care system.

What about individuals who were or are in prison for crimes they did not committed? Did they get a fair trial?

Chief Justice Bolger and the Justices statement goes on to read, "And our courts are tasked with putting that principle into action by allowing people to seek redress for their grievances with the assurance that they will be heard and treated fairly."

Several weeks ago all Senators and Representatives were mailed information about the Kenai Grand Jury investigation regarding Marla Greenstein, Alaska's only Judge Investigator, about the process and judicial corruption. In the same mailing you also received letters to Governor Dunleavy, Judge William Morse, and an email to Ms. Greenstein from David Ignell.

December 24, 2021 I wrote Chief Justice Winfree about the wrongful and inaccurate facts in an ORDER that a superior court judge wrote. I wrote AG Taylor a letter October 31, 2021 about the imbalance of the judicial system. SCO 1993 is wrong. Chief Justice Winfree didn't improve changes, he violated our Alaska Constitutional right to go before a grand jury.

In 1985 the grand jury investigated Governor Sheffield and his staff. Today, each of you and we-the-people have the documented information to prove that many Alaska judges are corrupt and need to be impeached. We are not sore losers. We are not town criers. We-the-people need YOUR full assistance to STOP judicial corruption. Corruption breeds corruption.

Where does the remedy exist? Our ELECTED REPRESENTATIVES need to protect our constitutional rights and the selection of judges. SCO 1993 severed our right to appear before a grand jury. SB 31 needs to become law. Our ELECTED REPRESENTATIVES need to call for a special Alaska Constitutional Convention.

Thank you Senator Shower for SB 31.

Thank you. Betty Jo Moore

292 P.3d 187
Supreme Court of Alaska.

In re **Dennis CUMMINGS**, Judge of the District Court, Fourth Judicial District at Bethel,
Alaska.

No. S-14692.
|
Jan. 18, 2013.

Synopsis

Background: Judicial disciplinary proceedings were commenced against district court judge. The Commission on Judicial Conduct determined that judge had committed misconduct and recommended removal.

[Holding:] The Supreme Court, **Winfree**, J., held that removal was the appropriate sanction for judge's improper ex parte communications.

Removal ordered.

West Headnotes (12)

[1]	Judges Jurisdiction or authority to remove or discipline
	The jurisdiction of the Commission on Judicial Conduct extends to a retired judge if the judge's alleged misconduct occurred and the investigation began before the judge retired.

[2]	Judges In general; constitutional and statutory provisions
	A primary purpose of judicial discipline is to protect the public rather than to punish the judge.

[3]	Judges In general; constitutional and statutory
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	<p>The Supreme Court has the final authority in proceedings related to judicial conduct in the state.</p> <p>1 Case that cites this headnote</p>

[8]	<p>JudgesReference and review</p>
	<p>In judicial disciplinary proceedings, the Supreme Court conducts a de novo review of both the alleged judicial misconduct and the recommended sanction.</p> <p>3 Cases that cite this headnote</p>

[9]	<p>JudgesEvidence</p>
	<p>In a judicial disciplinary proceeding, judicial misconduct must be established by clear and convincing evidence.</p> <p>2 Cases that cite this headnote</p>

[10]	<p>JudgesReference and review</p>
	<p>Although the Supreme Court has final authority over judicial conduct proceedings and reviews the evidence de novo, the Court gives some weight to the factual determinations of the Commission on Judicial Conduct involving witness credibility, since the Commission is able to hear witnesses testify and can evaluate their demeanor.</p>

[11]	<p>JudgesStandards, canons, or codes of conduct, in general</p>
	<p>District court judge's improper ex parte communications with assistant district attorney by alerting attorney to Court of</p>

WINFREE, Justice.

I. INTRODUCTION

In early April 2012 the Alaska Commission on Judicial Conduct (Commission) referred to us its unanimous recommendation for removal of Judge Dennis Cummings, a district court judge in Bethel. However in December 2011, Judge Cummings had announced his retirement and he retired shortly after we received the Commission's recommendation. Judge Cummings has not participated in this matter before us. Despite Judge Cummings's retirement, we consider this matter a live controversy—a judge's retirement does not extinguish the Commission's and this court's jurisdiction to complete disciplinary proceedings, and there are important policy reasons to do so. After independently reviewing the record and the Commission's recommendation to remove Judge Cummings, we accept the Commission's recommendation for removal.

II. COMMISSION JURISDICTION AND WHY WE CONSIDER THIS MATTER

Article IV, section 10 of Alaska's Constitution creates the Commission.¹ [Alaska Statute 22.30.011\(a\)](#) authorizes the Commission to investigate alleged judicial misconduct, including violations of Alaska's Code of Judicial Conduct.² Upon finding probable cause that misconduct occurred, the Commission must hold a formal hearing.³ After the hearing the Commission must either exonerate the judge or make a disciplinary recommendation and refer the matter to the Alaska Supreme Court.⁴

^[1] The Commission's jurisdiction extends to a retired judge if the alleged misconduct occurred and the investigation began before the judge retired.⁵ We have explained that the plain meaning of [AS 22.30.011\(a\)\(3\)](#) "authorizes the [C]ommission to retain jurisdiction over a retired judge whose alleged misconduct occurs during a period of active judicial service and who remained an active judge when the [C]ommission began its investigation."⁶

^[2] ^[3] ^[4] ^[5] ^[6] We also have explained "that a primary purpose of judicial discipline in Alaska is to protect the public rather than to punish *189 the judge." Judicial discipline keeps the public "informed of judicial transgressions and their consequences, so that it knows that its government actively investigates allegations of judicial misconduct and takes appropriate action when these allegations are proved. Judicial discipline thus protects the public by fostering public confidence in the integrity of a self-policing judicial system."⁷ Additionally a judge who voluntarily retires may immediately seek and receive future appointment as a judge or supreme court justice,⁸ but "[a] judge removed by the supreme court is ineligible for judicial office for a period of three years."⁹ A decision to remove a judge would therefore protect the public by barring reappointment to judicial office for at least three years. Finally, punishing a retired judge's misconduct provides guidance for the judiciary as a whole, highlights the importance of judicial ethics, and protects persons interested in employing retired judges by ensuring past misconduct is known to the public.¹⁰

For these reasons we consider the Commission's recommendation in this case.

III. COMMISSION PROCEEDINGS

In June 2011 the Commission received a complaint from Deputy Attorney General Richard Svobodny alleging that Judge Cummings had engaged in improper ex parte communications with Bethel Assistant District Attorney Ben Wohlfeil. The Commission's Executive Director investigated the allegation and conducted a telephonic interview with Judge Cummings. After finding probable cause that Judge Cummings had violated his ethical duty, the Commission entered formal charges and held an evidentiary hearing in March 2012.

Wohlfeil testified that on June 1 and 2, 2011, he was alone in a courtroom with Judge Cummings and the in-court clerk. On both days Judge Cummings told him that he should read the court of appeals' memorandum opinions (MO & Js) issued on

hear witnesses testify and can evaluate their demeanor.”²⁴

V. ACCEPTANCE OF THE COMMISSION’S RECOMMENDATION

^[11] ^[12] We have independently reviewed the record. Taking the Commission’s credibility determination into account, we accept and agree with the Commission’s factual findings by clear and convincing evidence. We conclude that Judge Cummings engaged in improper ex parte communications with Wohlfeil on June 1 and 2, 2011. The ex parte communications were violations of [AS 22.30.011\(a\)\(3\)\(E\)](#) and Canons 1, 2A, 3B(5), and 3B(7) of Alaska’s Code of Judicial Conduct. Judge Cummings’s mental state was intentional and his behavior during the commission disciplinary process was deceptive. His repeated ex parte communications demonstrate bias for the prosecution; we previously sanctioned Judge Cummings for a similar ex parte communication with the prosecution. Judge Cummings harmed the public when violating his ethical duty to the legal system and creating the appearance of impropriety. In light of the foregoing, we conclude that removal is appropriate.

VI. ORDER FOR REMOVAL

Judge Cummings is REMOVED as a district court judge for the State of Alaska.

All Citations

292 P.3d 187

Footnotes	
1	Article IV, be establis
2	The prearr
3	AS 22.30.0
4	AS 22.30.0
5	<i>In re John</i> . it merely b
6	<i>Id.</i> at 1234
7	<i>Id.</i> at 123. element of
8	<i>Id.</i> at 1234

25	<i>Johnstone</i> P.2d 591,

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