

**ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS
NOVEMBER 1, 2018**

HOUSE SUBCOMMITTEE

1. Call the Meeting to Order

Chair Dennis "Skip" Cook called the meeting to order at 11:42 a.m.

Roll Call

Dennis "Skip" Cook
Joyce Anderson
Deb Fancher
Lee Holmes
Conner Thomas
Representative Chris Tuck

Others

Jerry Anderson
Jacqui Yeagle

2. Approval of Agenda

Conner Thomas made a motion to approve the agenda. No objections. The agenda was approved.

3. Public Comment

No public comment.

4. Public Hearing Related to Complaint 17-03 Continued

Chair Dennis "Skip" Cook noted that on July 17 [2018], committee reached a decision in the matter, it was published, and the decision was adopted. At the request of the subject of the complaint and in accordance with the

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rules of the committee, the House Subcommittee would now put that decision on record.

Chair Cook announced that with the exception of Representative Colleen Sullivan Leonard, who provided a sealed envelope that indicated how she voted on the matter and how she would vote if she were voting today.

Chair Cook called for a roll call vote on that decision.

Tim Petumenos asked to address the subcommittee. Petumenos asked if the committee members were aware of motions filed in July of this year.

Chair Cook responded affirmatively.

Tim Petumenos requested the committee address the motion regarding ex parte contact, which are expressly prohibited by rule of the committee, between members of the committee and the prosecuting attorney. Petumenos stated that he believed those communications could have the potential of vitiating the entire July 17 hearing, that was held under Article 1, Section 7 of the Alaska Constitution.

Tim Petumenos stated that he had attempted to learn the substance of those communications. Petumenos added that the prosecuting attorney, Kevin Fitzgerald, had responded that he [Fitzgerald] was invoking attorney-client privilege about the communications that had occurred. Petumenos added that the only proper response to the question would have been that there were no communications.

Petumenos strongly encouraged the committee to take the matter under consideration and make sure that you know the facts regarding any ex parte communications. Petumenos contends that Representative Eastman has a right to know the substance of the communications.

Chair Cook stated that the committee was taking the motions in order. The committee would take a vote, which would take care of one of the motions [to take the vote publicly], and then address the matter of the motion regarding the alleged communications.

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Tim Petumenos asserted that the committee had it out of order; the hearing may not have been constitutionally engaged, and members of the committee may not wish to proceed with a constitutionally defective hearing. Petumenos added that before voting on the matter, the committee may wish to caucus with regard to whether or not there should be actions taken before someone is subjected to an adverse vote if the matter is problematic. Petumenos added that if the committee does go into executive session, he reminded the committee that Administrator Jerry Anderson is a material witness and should not participate in the executive session.

Chair Cook explained the executive session was included on the agenda as a possibility, the committee had not planned to undertake the motion in executive session. The plan was to conduct a vote as it would have been conducted in the public hearing and then take up the other motion.

Tim Petumenos stated that it is Representative Eastman's request that this matter be handled before the vote is taken because it is a serious challenge to the fairness of the proceedings.

Chair Cook replied that he was amenable to adjusting the order in which the motions were addressed. Cook noted that there is one person who voted that is not in attendance. Cook added that the rules require the committee to reflect the vote on the public record.

Tim Petumenos replied that the vote is not final until this hearing, so the committee can [consider] any material information that it has before the vote. Petumenos added that it would be appropriate to discuss in executive session any concerns that individual committee members might have.

Tim Petumenos reminded the committee that Representative Eastman contends that the committee had recommended punishment before the hearing took place, an action he believes is in violation of the process. If there was serious ex parte communication during the hearing, it is a constitutional problem.

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Chair Cook directed the committee to take up the matter of ex parte communications. Cook stated that as far as he was able to determine, there were no substantive ex parte communications made by staff or the committee to counsel. Chair Cook asked Tim Petumenos if he examples that suggest otherwise that the committee would be happy to hear them.

Tim Petumenos said he asked for Mr. Fitzgerald's notes. Mr. Fitzgerald had replied that the communications he has he regards as privileged. Petumenos asked how he would be able to give you examples if he is unable to learn what was said.

Chair Cook said he would speak to the two communications that he had with counsel.

Conner Thomas asked what advice had been given to the committee by the committee's attorney.

Chair Cook said that he understood the attorney to say if there were no substantive communications, that should be made a matter of record. Cook added that he does not mind disclosing the nature of his communications with counsel during the hearing.

Chair Cook said that he had had two non-substantive communications with counsel during the hearing.

Chair Cook asked Conner Thomas if he was suggesting that the committee confer with counsel or if he had any objection to Cook stating on the record the content of the communications he had had with counsel.

Conner Thomas replied no, had no objection.

Chair Cook outlined his communications with counsel. Cook stated that he had communicated with counsel that the committee was ready to proceed when there was a question about whether the hearing would go forward. Cook said he had also had a communication with counsel just before the attorneys left the room to confer. Cook said, at the committee's request, he asked counsel whether a particular document would be put into evidence and asked counsel to

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address the question during the conversation between the attorneys.

Chair Cook asked Jerry to account for his communications with counsel.

Jerry Anderson stated that he had one communication with committee members after he was contacted to make comment on an administrative order by a member of the media. This administrative order was entered by the hearing officer and subsequently released to the media by Representative Eastman. Because it was potentially dispositive, it was important that the committee be made aware of the situation in case they were contacted by the media.

Jerry Anderson then proceeded to read the text of the email he sent to committee members on June 20, 2018.

Tim Petumenos asked what contact Jerry Anderson had had with Kevin Fitzgerald.

Chair Cook asked Jerry Anderson if had had any substantive communications with Mr. Fitzgerald.

Jerry Anderson replied that he had had discussed with Mr. Fitzgerald about the unavailability of a witness and how they would address that issue. Jerry Anderson stated he did not view that communication as substantive.

Chair Cook clarified that he wanted to know if Jerry Anderson had had substantive communication with Mr. Fitzgerald.

Jerry Anderson explained there had been procedural communications but no substantive communications with counsel.

Chair Cook noted that none of the communications were substantive. Cook asked the committee if they were ready to vote on the matter.

Jerry Anderson noted for the record that the committee would vote on whether to adopt the July 17, 2018 decision.

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Jerry Anderson conducted a roll call vote.

Roll Call Vote:

Conner Thomas Y

Joyce Anderson Y

Deb Fancher N

Lee Holmes Y

Rep Chris Tuck Y

Skip Cook Y

Rep Colleen Sullivan Leonard Y (as read by Chair Cook)

Jerry Anderson stated that the committee had adopted the decision 6-1.

Chair Cook announced that the decision was confirmed.

Chair Cook entertained a motion to adjourn the House Subcommittee meeting.

Conner Thomas moved to adjourn the subcommittee meeting.

No objection.

Chair Cook adjourned the meeting.