

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 24, 2017

1:32 p.m.

**MEMBERS PRESENT**

Representative Matt Claman, Chair  
Representative Zach Fansler, Vice Chair  
Representative Jonathan Kreiss-Tomkins  
Representative Gabrielle LeDoux  
Representative David Eastman  
Representative Chuck Kopp

**MEMBERS ABSENT**

Representative Lora Reinbold  
Representative Charisse Millett (alternate)  
Representative Louise Stutes (alternate)

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S) :

Commission on Judicial Conduct

Donald McClintock - Anchorage

- CONFIRMATION(S) ADVANCED

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

DONALD WILLIAM MCCLINTOCK, Attorney  
Anchorage, Alaska

**POSITION STATEMENT:** As appointee to the position of the Commission on Judicial Conduct, discussed his qualifications and answered questions.

**ACTION NARRATIVE**

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**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 1:32 p.m. Representatives Kopp, Eastman, Fansler, and Claman were present at the call to order. Representatives Kreiss-Tomkins and LeDoux arrived as the meeting was in progress.

**CONFIRMATION HEARING(S):**  
**COMMISSION ON JUDICIAL CONDUCT**

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CHAIR CLAMAN announced that the only order of business would be the confirmation hearing on the Commission on Judicial Conduct, Donald William McClintock.

CHAIR CLAMAN opened invited testimony.

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DONALD WILLIAM McCLINTOCK stated he is an Anchorage attorney in private practice, and advised that he submitted his application for a seat on the Commission on Judicial Conduct due to his fairly long history of involvement in the Alaska Court System. He noted that he considers the Alaska judiciary as one of the bright lights of this state in terms of delivering fair and impartial justice. Mr. McClintock explained that his skills and talent are based upon his prior work history on the Alaska Bar Association (ABA) in terms of handling discipline matters and also being familiar with the operation of the court system. He described this opportunity as a form of public service in serving the State of Alaska, and that his training as a lawyer taught him that sometimes it is better to say less than more, and he was available for questions.

CHAIR CLAMAN noted the committee has a copy of Mr. McClintock's conflict of interest statement, resume, and other documents. He then closed invited testimony and opened the committee up for questions.

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MR. McCLINTOCK, in response to Representative Kopp, advised that the commission was constitutionally created with a number of components such that it is educational, it is a resource that provides, sometimes with oversight from the council members themselves, guidance to judges with some of the close calls that "we all have to make in our lives," and the disciplinary role is

monitoring complaints to the commission. He said he sees that role as serving two goals, one of which is the paramount protection of the public, and protection of the integrity and reputation of the court system to keep the Alaska type of justice administered held in high esteem, which requires judgment calls. He remarked that he does have the training to participate as an adjudicator and that he would weigh the evidence and make recommendations as to whether it should move into a disciplinary matter. Also, he explained, there is general education for the public and outreach to educate communities on judicial ethics and the role of judges in the community.

REPRESENTATIVE FANSLER thanked Mr. McClintock for his public service and his desire to assist this state.

REPRESENTATIVE LEDOUX echoed Representative Fansler's comments with respect to thanking Mr. McClintock for his public service and willingness to serve.

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REPRESENTATIVE EASTMAN asked about the tools the commission has at its discretion in the case of a valid complaint being brought before the commission.

MR. McCLINTOCK advised that most proceedings are confidential. Essentially, he said, a complaint comes in, the staff proceeds with the initial screening process and in the event the complaint is valid and jurisdictional, it would move to a formal investigation. In the event it moved on to a disciplinary matter, typically, a special prosecutor would be retained and the judge would be given an opportunity to respond to the complaint. He explained that it would then go through a formal process of discovery and subsequently an adjudicative hearing with recommendations as to whether discipline was appropriate. The range of discipline can be minor slips such as, inadvertent failure to render a decision timely.

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REPRESENTATIVE EASTMAN asked the greater sanctions available to the commission.

MR. McCLINTOCK responded that if it is a formal disciplinary proceeding, the commission itself only has the role of making findings and making recommendations to the Alaska Supreme Court,

of which has the power to impose formal disciplinary action. He opined that there have been public reprimands, but he could not recall discipline that has gone further than that. He reiterated that commission itself makes the findings of the nature of the breach of the standard of conduct.

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REPRESENTATIVE EASTMAN offered a scenario of the commission receiving a severe complaint and asked whether he would be reluctant to recommend removal from the judiciary.

MR. McCLINTOCK answered "No," and reiterated his reasons to serve, such that if there is a judge not meeting his/her judicial standards required for his/her conduct on the bench, he has no problem making that recommendation, and he also feels strongly about protection of the integrity of the court. It is a reputation that is hard won but easily lost and it is important to prove to the public that the system works and it can police itself.

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REPRESENTATIVE EASTMAN offered a scenario of a complaint being brought against a sitting member of the judiciary for marital infidelity, and after investigation found that it had occurred, how would he respond to that type of complaint.

MR. McCLINTOCK related that he would first refer to the canons of judicial conduct, and opined that most of the conduct subject to discipline would be behavior reflecting on the judge's ability to discharge his/her duties on the bench, as well as maintain their standing in the community. Frankly, he said, on that question he would certainly look to past precedent and the application of the canons.

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REPRESENTATIVE offered a scenario of a complaint against a judge for making an intentionally misleading statement in the public eye, and asked how he would deal with that complaint after it was found that the complaint was valid.

MR. McCLINTOCK reiterated that he would turn to the canons of judicial conduct, it would depend upon the nature of the statement and the nature of its public import. He commented that this scenario reflects a statement made outside of the

courtroom, as a public person, but intentionally false. He reiterated he would turn to the canons of judicial conduct and past precedent to see if it invokes some of the concerns about protecting the integrity of the courts, and whether there would be sanctions. He related that he would have to educate himself on that issue.

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REPRESENTATIVE EASTMAN said he understands the value of consistency and precedence, and asked him to speak more on how he would approach that personally,

CHAIR CLAMAN pointed out that Mr. McClintock is applying as a member of the Judicial Conduct Commission and it is not appropriate to ask how he would approach that as a person. Mr. McClintock answered the questions about how he would address that on this commission.

CHAIR CLAMAN ruled that question out of order.

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REPRESENTATIVE EASTMAN asked Chair Claman if he could ask if there was a particular reason why that complaint would be worthy of the commission's time, what about that type of complaint would make it worthy.

CHAIR CLAMAN repeated that that is not an appropriate question, Mr. McClintock answered the questions about how he would respond to that type of complaint, and he answered that he would follow the guidance of the canons of judicial conduct and precedent.

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REPRESENTATIVE KOPP suggested the committee remember the most recent cases with which the Judicial Conduct Commission has dealt. He informed the committee that practically speaking, a judge signed off on a work contract indicating work was completed and eligibility for pay, when the work was not completed. Also, he related, sending notes to a district attorney or defense attorney suggesting that a new line of questioning might be more advantageous. In looking at Mr. McClintock's resume, there is no doubt he will be well suited to address those situations, he said.

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REPRESENTATIVE FANSLER thanked Mr. McClintock for his willingness to serve and in looking at his resume and hearing his answers to questions, he agrees that Mr. McClintock will be a fine candidate for this position.

CHAIR CLAMAN noted that he has known Mr. McClintock for many years, and that he has long impressive record of public service in a diverse number of ways displaying not only real integrity in the community but a dedication to continuing to serve.

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REPRESENTATIVE FANSLER said the House Judiciary Standing Committee reviewed the qualification of the governor's appointee and recommends that the name, Donald William McClintock, Judicial Conduct Commission, be forwarded to a joint session of the Senate and House of Representatives for consideration. This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:53 p.m.