

Original sponsor(s): Judiciary Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 268 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Commission on Judicial Con-
7 duct and to the Alaska Supreme Court's power to
8 discipline judges."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 15.58.050 is amended to read:

11 Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS ON JUDICIAL
12 OFFICERS. No later than August 7 of the year in which the state
13 general election will be held, the judicial council shall file with
14 the lieutenant governor a statement including information about each
15 supreme court justice, court of appeals judge, superior court judge,
16 and district court judge who will be subject to a retention election.
17 The statement shall reflect the evaluation of each justice or judge
18 conducted by the judicial council according to law and shall contain a
19 brief statement describing each public reprimand, public censure, or
20 suspension received by the judge under AS 22.30.011(d) [(3) OR (4)]
21 during the period covered in the evaluation. A statement may not
22 exceed 600 words.

23 * Sec. 2. AS 22.30.010 is amended to read:

24 Sec. 22.30.010. COMMISSION ON JUDICIAL CONDUCT. The Commission
25 on Judicial Conduct shall consist of nine members as follows: three
26 persons who are justices or judges of state courts, elected by the
27 justices and judges of the state courts; three members who have prac-
28 ticed law in this state for 10 years, appointed by the governor from
29 nominations made by the governing body of the organized bar and

1 subject to confirmation by a majority of the members of the legisla-
2 ture in joint session; and three citizens who are not judges, retired
3 judges, or members of the state bar, appointed by the governor and
4 subject to confirmation by a majority of the members of the legisla-
5 ture in joint session. Commission membership terminates if a member
6 ceases to hold the position that qualified that person for appoint-
7 ment. A person may not serve on the commission and on the judicial
8 council simultaneously. A quorum of the commission must include at
9 least one person who is a justice or judge, at least one person ap-
10 pointed by the governor who has practiced law in the state for 10
11 years, and at least one citizen member who is not a justice, judge, or
12 member of the state bar. The commission shall elect one of its mem-
13 bers to serve as chairman for a term prescribed by the commission. A
14 vacancy shall be filled by the appointing power for the remainder of
15 the term.

16 * Sec. 3. AS 22.30.011(a) is amended to read:

17 (a) The commission shall on its own motion or on receipt of a
18 written complaint inquire into an allegation that a judge

19 (1) has been convicted of a crime punishable as a felony
20 under state or federal law or convicted of a crime that involves moral
21 turpitude under state or federal law;

22 (2) suffers from a disability that seriously interferes
23 with the performance of judicial duties and that is or may become
24 permanent;

25 (3) within a period of not more than six years before the
26 filing of the complaint or before the beginning of the commission's
27 inquiry based on its own motion [START OF THE CURRENT TERM], committed
28 an act or acts that constitute

29 (A) wilful misconduct in office;

- 1 (B) wilful and persistent failure to perform judicial
2 duties;
- 3 (C) conduct prejudicial to the administration of
4 justice;
- 5 (D) conduct that brings the judicial office into
6 disrepute; or
- 7 (E) conduct in violation of the code of judicial
8 conduct; or
- 9 (4) is habitually intemperate.

10 * Sec. 4. AS 22.30.011(b) is amended to read:

11 (b) After preliminary informal consideration of an allegation,
12 the commission may exonerate the judge, informally and privately
13 admonish the judge, or recommend counseling. Upon a finding of proba-
14 ble cause, the commission shall [MAY] hold a formal hearing on the
15 [AN] allegation [UNDER (a) OF THIS SECTION]. A hearing under this
16 subsection [SECTION] is public. Proceedings and records pertaining to
17 proceedings that occur before the commission holds a public hearing on
18 an allegation are confidential, subject to the provisions of
19 AS 22.30.060(b) [A HEARING UNDER AS 44.62.310(d) AND IS PRIVATE UNLESS
20 A PUBLIC HEARING IS REQUESTED BY THE JUDGE].

21 * Sec. 5. AS 22.30.011(d) is amended to read:

- 22 (d) The commission shall [MAY], after a hearing held under (b)
23 of this section,
- 24 (1) exonerate the judge of the charges; or
- 25 (2) [INFORMALLY AND PRIVATELY ADMONISH THE JUDGE OR RECOM-
26 MEND COUNSELING;
- 27 (3) REPRIMAND THE JUDGE PUBLICLY OR PRIVATELY;
- 28 (4)] refer the matter to the supreme court with a recommen-
29 dation that the judge be reprimanded, suspended, removed, or retired

1 from office or publicly or privately censured by the supreme court.

2 * Sec. 6. AS 22.30.060(b) is amended to read:

3 (b) All proceedings, records, files, and reports of the commis-
4 sion are confidential and disclosure may not be made except

5 (1) upon waiver in writing by the judge at any stage of the
6 proceedings;

7 (2) if the subject matter or the fact of the filing of
8 charges has become public, in which case the commission may issue a
9 statement in order to confirm the pendency of the investigation, to
10 clarify the procedural aspects of the proceedings, to explain the
11 right of the judge to a fair hearing, or to state that the judge
12 denies the allegations; or

13 (3) upon filing of formal charges, in which case only the
14 charges, the subsequent formal hearing, and the commission's ultimate
15 decision and minority report, if any, are [SHALL BECOME] public; even
16 after formal charges are filed, the deliberations of the commission
17 concerning the case are confidential.

18 * Sec. 7. AS 22.30 is amended by adding a new section to read:

19 Sec. 22.30.068. MINORITY REPORTS. A member of the commission
20 who believes that the commission failed to impose an appropriate
21 disciplinary measure after a hearing under AS 22.30.011(b) may submit
22 a report recommending a different disciplinary measure. The report
23 shall accompany the majority report and may be submitted by the member
24 to the chief justice of the supreme court, the attorney general, and
25 the chair of the senate and house judiciary committees.

26 * Sec. 8. AS 22.30.070(b) is amended to read:

27 (b) On recommendation of the commission [OR AFTER AN APPEAL
28 UNDER AS 22.30.011(e)], the supreme court may reprimand, publicly or
29 privately censure, or suspend a judge from office without salary when

1 in the United States the judge pleads guilty or no contest or is found
2 guilty of a crime punishable as a felony under state or federal law or
3 of a crime that involves moral turpitude under state or federal law.
4 If the conviction is reversed, suspension terminates, and the judge
5 shall be paid the judge's salary for the period of suspension. If the
6 judge is suspended and the conviction becomes final, the supreme court
7 shall remove the judge from office.

8 * Sec. 9. AS 22.30.070(c) is amended to read:

9 (c) On recommendation of the commission [OR AFTER AN APPEAL
10 UNDER AS 22.30.011(e)], the supreme court may (1) retire a judge for
11 disability that seriously interferes with the performance of duties
12 and that is or may become permanent, and (2) reprimand, publicly or
13 privately censure, or remove a judge for action occurring not more
14 than six years before the commencement of the judge's current term
15 which constitutes wilful misconduct in the office, wilful and persis-
16 tent failure to perform duties, habitual intemperance, conduct preju-
17 dicial to the administration of justice, or conduct that brings the
18 judicial office into disrepute. The effective date of retirement
19 under (1) of this subsection is the first day of the month coinciding
20 with or after the date that the supreme court files written notice
21 with the commissioner of administration that the judge was retired for
22 disability. A duplicate copy of the notice shall be filed with the
23 judicial council.

24 * Sec. 10. AS 22.30.080(2) is amended to read:

25 (2) "judge" means a justice of the supreme court, a judge
26 of the court of appeals, a judge of the superior court, or a judge of
27 the district court who is the subject of an investigation or proceed-
28 ing under sec. 10, art. IV, Constitution of the State of Alaska and
29 this chapter, including a justice or judge who is serving in a full-

- 1 time, part-time, permanent, or temporary position.
- 2 * Sec. 11. AS 22.30.011(e) and 22.30.011(f) are repealed.