

ALASKA
COMM. ON
JUDICIAL
CONDUCT



Commission on Judicial
Conduct

303 K STREET
ANCHORAGE, ALASKA 99501
264-0528

LETTER OF TRANSMITTAL

TO: Honorable William Sheffield
Governor of the State of Alaska

Honorable Don Bennett
President of the Alaska Senate

Honorable Ben F. Grussendorf
Speaker of the Alaska House of Representatives

Honorable Jay A. Rabinowitz
Chief Justice
Alaska Supreme Court

Harry Branson
President, Alaska Bar Association

This 1985 Report of the Commission on Judicial Conduct is presented to you for your consideration and review. This report is tendered pursuant to Rule 25 of the Commission on Judicial Conduct.

DATED this 7th day of March, 1986.

COMMISSION ON JUDICIAL CONDUCT

FRANK FLAVIN
EXECUTIVE DIRECTOR

STATE OF ALASKA
COMMISSION ON JUDICIAL CONDUCT
1985 ANNUAL REPORT

Michael M. Holmes, Juneau, Clairperson
Attorney Member

S.J. Buckalew, Anchorage, Superior Court Judge
Judge Member

Milton Souter, Anchorage, Superior Court Judge
Judge Member

Elaine M. Andrews, Anchorage, District Court Judge
Judge Member

Bruce A. Bookman, Anchorage
Attorney Member

Marcus R. Clapp, Fairbanks
Attorney Member

Rev. Charles Dargan, Anchorage
Public Member

Georgianna Lincoln, Fairbanks
Public Member

Charles D. Weiler, Clear
Public Member

TABLE OF CONTENTS

Introduction	1
I. Jurisdiction of the Commission on Judicial Conduct	2
II. Commission Procedures	4
III. 1985 Activities	7
IV. Budget	12
V. 1986 Activities	15
Appendix A: Rules of Procedure for the Commission on Judicial Conduct	16

INTRODUCTION

Complaints from the public about the conduct of judges in Alaska are handled by the constitutionally created Alaska Commission on Judicial Conduct. The Commission provides an open channel for any individual who feels he or she has a legitimate complaint about the conduct of any state judge in Alaska.

In addition to reviewing complaints against judges, the commission helps promote compliance with established codes of conduct for judges. The Commission consists of nine members:

Three justices or judges of state courts elected by fellow justices and judges.

Three attorneys who have practiced law in Alaska at least 10 years. The attorneys are appointed by the Governor from nominations made by the Alaska Bar Association. The appointments must be confirmed by a majority of both houses of the state legislature meeting in joint session.

Three members of the public who are not attorneys, judges or retired judges. The public members are appointed by the governor and must be confirmed by a majority of both houses of the state legislature meeting in joint session.

I. JURISDICTION OF THE COMMISSION ON JUDICIAL CONDUCT

A. Judges Subject to Commission Jurisdiction

An accusation can be filed by a member of the public against a justice of the supreme court, a judge of the court of appeals, a superior court judge, or a district court judge.

Complaints against magistrates can be filed with Magistrate Services, Alaska Court System, 310 K Street, 2nd floor, Anchorage, Alaska 99501. These complaints will be referred to the presiding superior court judge for the applicable judicial district for investigation.

B. Types of Complaints Handled

MISCONDUCT: Alleged judicial misconduct can include but is not limited to:

Improper Courtroom Decorum:

- Improper consideration and treatment of attorneys, witnesses, and others
- Improper or eccentric bench conduct, such as sleeping or drunkenness.
- Persistent failure or refusal to dispose of judicial business promptly, enter orders, or cooperate in court administration.

Improper or Illegal Influence:

- Allowing family, social or political relationships to influence any judicial decision, making appointments or other matters relating to the administration of justice, such as transferring cases or reducing charges.
- Conflict of interest.
- Giving or receiving gifts, bribes, loans or favors.

Impropriety Off the Bench

- Misappropriation or misuse of public employees, property or funds
- Improper comments, accusations, associations, or connections.
- Interference with or influence on a pending or impending lawsuit.
- Lewd or corrupt personal life.
- Use of judicial position to extort or embezzle private funds.

Other Improper or Illegal Activities

- Conducting proceedings or engaging in discussions involving one side or in the interest of one party only.
- Interfering with the attorney-client relationship.
- Improper use of judicial authority.
- Bias.
- Improper campaign activities involving the judge or any political candidate.
- Abusing the prestige of the judicial office.

-Obstruction of justice, perjury, filing a false document.

-Criminal behavior.

-Failure to disqualify self.

-Ticket fixing.

PHYSICAL OR MENTAL DISABILITY: Physical or mental disability can include, but is not limited to:

-Alcohol or drug abuse

-Senility

-Serious physical illness

-Mental illness

II. COMMISSION PROCEDURES

A. Filing a Complaint

To file a complaint, persons may contact the Commission in person, by telephone (collect if long distance), or in writing at:

Alaska Commission on Judicial Conduct
Boney Memorial Court Building
303 K Street, Room 241
Anchorage, Alaska 99501
(907) 264-0528

B. Complaint Investigation

The Commission will review the accusation, a step which usually involves an interview by Commission staff with the person who filed the complaint. The person who has alleged misconduct must submit facts surrounding the incident to the Commission. No accusation will be decided solely on the basis of claims made by the complainant. All allegations will be thoroughly investigated.

The Commission has the authority to initiate its own inquiry into possible judicial misconduct.

After the initial inquiry, the Commission may dismiss the accusation or conduct a full investigation, including formal hearings. An accusation against a judge may be dismissed by the Commission at any time during the investigation, if the charge is found to be without merit.

Accusations filed with the Commission and all Commission inquiries, investigations and hearings are statutorily confidential. If the Commission finds that probable cause exists that a judge has committed an act or acts of misconduct a formal statement of charges is issued. The statement of charges is public information. The results of a Commission proceeding become public when Commission recommendations are announced by the Supreme Court or the Commission issues a public reprimand.

The Commission only has the power to investigate charges of judicial misconduct or disability. After a formal hearing, the Commission may by statute:

- Exonerate the judge of the charge or charges.
- Admonish the judge privately.
- Reprimand the judge publicly or privately.
- Recommend that the Supreme Court take one of the following actions against the judge:

Suspension
Removal
Retirement
Public Censure
Private Censure

The Commission does not have the authority to hear an appeal for judicial error, mistake, or other legal reasons for appeals; that being the role of the state's appellate courts.

The Commission cannot supervise any local court administration, and has no authority to evaluate judges for retention elections.

The Commission may not issue advisory opinions.

III. 1985 ACTIVITIES

A. Summary of Complaints

1. Complaint Filings

1985 Informational Requests	49
1985 Accusations Filed	89
1985 Total Inquiries	138
1984 Accusations Held Over	28
1983 Accusations Held Over	9
1985 Accusations Closed in 1985	50
1984 Accusations Closed in 1985	23
1983 Accusations Closed in 1985	5
Total Accusations Closed in 1985	78
1985 Accusations Pending 12/31/85	39
1984 Accusations Pending 12/31/85	5
1983 Accusations Pending 12/31/85	4
Total Accusations Pending 12/31/85	48
Accusations Pending 01/01/85	37
Accusations Received during 1985	89
Total Accusations Pending during 1985	126

2. Complaint Disposition

Breakdown of Closed Complaints

Not within Commission Jurisdiction	32
Appealable	15
Magistrate/Master	1
Attorney	12
Judge's conduct as an attorney	2
Other (court employee, corrections, etc)	10
Jurisdictional Complaints	
Complainant did not provide further information or withdrew complaint	6
Dismissed after brief investigation	10
Investigated more extensively, then dismissed	27
Judge informally counselled short of Admonishment	1
Judge resigned before/after formal charges filed	0
Judge retired before/after formal charges filed	1
Dismissed after formal hearing	0
Judge died before disposition made	0
Judge privately reprimanded by Commission	1
Judge publicly reprimanded by Commission	1

Judge privately censured by Supreme Court	0
Judge privately admonished by Commission	0
Judge publicly censured by Supreme Court	0
Judge suspended without pay as final sanction	0
Judge fined	0
Judge involuntarily retired	0
Judge removed from office	0
Dismissed after probable cause hearing	0
Dismissed because outside statute of limitations	1
Other	0

3. Comparison with Previous Years

Total Complaints Filed	
1985	89
1984	109
1983	69
1982	88
1981	17
1980	18
1979	11
1978	13
1977	8
1976	8
1975	11

Total Complaints Closed

1985	78
1984	96
1983	76
1982	55
1981	17

4. Analysis

Complaint filings were 89, down from 109 in 1984. This resulted in part from a difference in the way the Commission handled informational inquiries. The majority of these were jurisdictional requiring analysis and investigation. The Commission offices were closed to the receipt of complaints from late March through May 1985 due to the exhaustion of budgeted funds. If the Commission offices had not been closed, the complaint filings for 1985 would have been higher.

Additionally, two accusations in 1985 proceeded to formal status, requiring a great deal of staff time in both of those cases.

B. Commission Meetings

The Commission conducted quarterly meetings in Anchorage (twice) and Juneau (once). The usual quarterly meeting scheduled in Fairbanks for July was not held, as the Commission met in late June in Anchorage to consider formal charges concerning a judge.

1985 Quarterly Meeting Locations

January 1985	Anchorage
April 1985	Juneau
June 1985	Anchorage
September 1985	Anchorage

C. Outreach

The Commission utilizes regular radio and television public service announcements, brochures and posters to notify the public of its existence and functioning.

During November 1985, the Commission's Executive Director met with complainants in Fairbanks by appointment following publication of his visit there.

The Commission's Executive Director met with the statewide judicial conference to discuss the functioning of the Commission.

D. Formal Proceedings

The Commission filed formal charges against two judges during 1985. The Commission issued a private reprimand in one case, and a public reprimand in the other.

E. Rules of Procedure

In 1985 the Commission amended its Rules of Procedure. The new rules are more informative and streamlined than the old rules. The Commission's Rules of Procedure are attached as Appendix A to this report.

F. Staffing and Office Hours

The Commission does not employ a full-time staff. Executive Director and legal assistant services are provided on a contractual basis by attorney and former Ombudsman Frank Flavin. Commission offices are staffed by legal assistant Jane Rosenquist from 9:00 a.m. until 12 noon on Mondays, Wednesdays and Fridays. The Commission accepts collect long-distance telephone calls.

IV. BUDGET

A. Budgetary Projections

It has proven difficult to project the budgetary needs of the Commission for two primary reasons:

1. The expanding public knowledge of the Commission's existence and functioning with commensurate increases in workload.
2. The impossibility of predicting when serious complaints requiring full disciplinary hearings and a large expenditure of funds may arise.

Until 1982, the existence and function of the Commission was unknown to most of the public. The Commission maintained a low profile and received and processed only a dozen or so complaints each year.

Since 1982, the number and seriousness of complaint filings has increased, demanding greater and greater expenditures to investigate accusations.

It is also impossible to predict when a complaint requiring a full disciplinary hearing may arise. When this occurs, procedural due process requires that the Commission retain an independent attorney to prosecute the case at the disciplinary hearing and potentially before the Supreme Court. As the Commission's budget is small (less than \$100,000 annually) the expense of proceeding with formal charges could conceivably exceed 50% of the Commission's entire budget.

To date, the Commission has operated on a total budget less than that required for a full-time experienced staff attorney. This situation cannot continue given the rapid increase in workload.

B. FY 85 Budget

Again in 1985, as was the case in 1984, the Commission was forced to close its office from March until May due to the exhaustion of its FY 85 budget. The \$71,200 appropriation proved inadequate to meet Commission expenditures due to the rise in complaint filings and the increase in the number of formal complaints and proceedings.

A supplemental appropriation of \$27,500 enabled the Commission to reopen in late May of 1985. The total Commission expenditures in 1985 were \$98,700.

C. FY 86 Budget

The Commission has been allocated \$69,900 for FY 86. This amount is \$28,800 less than the amount expended in FY 85, and \$1300 less than that budgeted for FY 85. Current projections indicate that these funds will be exhausted by April 1986, making a supplemental appropriation necessary if the Commission is to meet its statutory and constitutional obligations.

D. FY 87 Budget

The budget request for the Commission on Judicial Conduct is \$89,900, which is an increase of \$20,000 over that authorized in FY 86. It is to be noted that a supplemental appropriation of \$22,000 has been requested to keep the Commission office operational through June 1986.

The additional funding is requested to establish the Commission on a full-year basis. Due to the Constitutional Amendment changing the composition and name of the Commission in 1982 the Commission only operated six months in 1983. Since that date the Commission's authorized expenditures have been for less than a full year and supplemental appropriations have been necessary to provide a full year's funding. The requested budget of \$89,900 represents the actual cost of a full year of operation. The actual cost has remained quite consistent for the past three years.

V. 1986 ACTIVITIES

A. Commission Meetings

January 16, 1986	Anchorage
April 25, 1986	Anchorage
July 18, 1986	TBA
October, 1986	TBA

B. Outreach

In 1986, The Commission will continue distributing and broadcasting educational materials explaining its function. An attempt will also be made to communicate the Commission's functions and ethical/conduct standards and problem areas to the Alaska Judicial Council, Alaska Bar Association, and the various judicial conferences and meetings.

APPENDIX A

RULES OF PROCEDURE FOR THE COMMISSION ON JUDICIAL CONDUCT

TABLE OF CONTENTS

- RULE 1 ORGANIZATION OF COMMISSION**
- A. Meeting
 - B. Notice of Meetings
 - C. Officers
 - D. Commission Office
 - E. Quorum
 - F. Voting Requirements
 - G. Order of Business
- RULE 2 POWERS AND DUTIES OF THE COMMISSION**
- A. Annual Report
 - B. Appointment of Executive Director
 - C. Agents or Employees of Commission
- RULE 3 FINANCIAL ARRANGEMENTS FOR COMMISSION**
- A. Compensation Proscribed
 - B. Expenses Allowed
 - C. Authorization for Payments
 - D. Extraordinary Expenses
- RULE 4 DUTIES OF EXECUTIVE DIRECTOR**
- RULE 5 CONFIDENTIALITY OF COMMISSION PROCEEDINGS**
- A. Confidentiality
 - B. Disclosure
 - C. Information Concerning Insufficient Cause
- RULE 6 NOTICE**
- A. General
 - B. Dismissal
- RULE 7 INITIATION AND SCREENING**
- A. Initiation of Accusations
 - B. Screening of Accusations
- RULE 8 PRELIMINARY INVESTIGATION**
- A. Notice
 - B. Right to Counsel
 - C. Investigation
 - D. Subpoena
 - E. Dismissal
 - F. Stay

RULE 9 PROBABLE CAUSE

- A. Probable Cause Determination
- B. Findings and Report
- C. Disposition
- D. Informal Charges

RULE 10 FORMAL DISCIPLINARY HEARING

- A. Special Counsel
- B. Scheduling
- C. Discovery
- D. Factfinder
- E. Conduct of Hearing
- F. Evidence
- G. Amendment of Complaint
- H. Determination
- I. Extension of Time
- J. Hearing Additional Evidence

RULE 11 COMMISSION DECISION

- A. Recommendation
- B. Dissent
- C. No Disciplinary Recommendation
- D. Execution
- E. .Witness Fees

RULE 12 SUPREME COURT REVIEW

- A. Filing and Service
- B. Prompt Court Consideration
- C. Brief and Supplementary Filings

RULE 13 CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL DISABILITY

- A. Procedure
- B. Special Provisions

RULE 1 ORGANIZATION OF COMMISSION

A. Meetings

(1) **Annual.** There shall be one annual meeting on the third Friday in January of each year at the hour of 9:30 a.m. at Anchorage.

(2) **Regular.** Other meetings at designated locations may be held as needed on the third Friday of April, July and October except as otherwise ordered by the Commission.

(3) **Special.** Special meetings may be called by the chairperson or two members of the Commission.

B. Notice of Meetings

(1) **Public.** At least twenty (20) days prior to a Commission meeting, the Executive Director shall cause a notice to be placed in a newspaper of general circulation designated as most likely to give notice to the residents of the State of Alaska and may cause such notice to be published in other newspapers in Alaska. The notice shall clearly advise of the meeting of the Commission, specifying the date, time and place, and shall also state that anyone wishing to appear at the meeting must contact the Executive Director at the Commission office at least five (5) working days before the meeting so that the meeting agenda may include same. Notice of subject matter open to the public shall be stated in the meeting notice.

(2) **Members.** At least twenty (20) days prior to a Commission meeting, written notice of the meeting shall be mailed to each member of the Commission at his address as appears on the Commission records by first class mail. The notice, besides containing the date, time and place of the meeting, shall also include a meeting agenda, so far as it is established at the time of giving notice. Members may waive the giving of notice, such waiver to be in writing, signed by all members, and annexed to the minutes of such meeting.

C. Officers.

(1) **Chairperson.** There shall be a chairperson and a vice-chairperson elected at the annual meeting, who shall serve for a period of two years. The chairperson shall conduct the meetings, certify Commission recommendations and direct the preparation of meeting agendas, notices, reports, minutes and the keeping of Commission records. The Vice-chairperson shall act in the absence of the chairperson.

(2) **Secretary.** The chairperson shall appoint a secretary for the Commission, who need not be a member of the Commission. The secretary shall attend all meetings of the Commission, take roll, keep minutes, issue subpoenas, prepare, serve and publish

notices, and otherwise serve at the pleasure of the chairperson.

(3) Executive Committee. The chairperson may appoint an executive committee to perform matters of administration as from time to time are designated by the Commission.

D. Commission Office. The Commission may establish a permanent office in a building open to the public. The office may be open and staffed at announced hours.

E. Quorum. No official action may be taken by the Commission unless a quorum of at least a majority of the members serving on the Commission are present at the meeting.

F. Voting Requirements. Any act of the Commission requires a concurrence of a majority of the members serving on the Commission at the time the act is taken.

G. Order of Business. The order of business of the Commission shall be determined by the chairperson in advance of each meeting. The meetings shall be ordered to encourage attendance by the public, where confidential matters are not to be considered.

RULE 2 FUNCTIONING OF THE COMMISSION

A. Annual Report. Prior to the annual meeting, the Executive Director shall prepare an annual report of the Commission's activities for presentation at such meeting. Upon approval of the Commission, a copy of the annual report shall be forwarded to the Governor, President of the Senate, Speaker of the House, Chief Justice, the State Publications Distribution and Data Access Center and President of the Alaska Bar. This report shall be presented to the public.

B. Appointment of Executive Director. The Commission may appoint to serve at its pleasure an Executive Director who shall not serve in a judicial capacity.

C. Agents or Employees of Commission. The Commission is authorized to employ such persons as may be appropriate to carry out its function, including but not limited to attorneys, accountants, and investigators.

RULE 3 FINANCIAL ARRANGEMENTS FOR COMMISSION

A. Compensation Proscribed. The Commission members shall serve without compensation for their services.

B. Expenses Allowed. Commissioners shall be reimbursed for expenses necessarily incurred in the performance of their duties.

C. Authorization for Payments. Expenses of the Commission shall be authorized to be paid in accordance with the approved Commission budget.

D. Extraordinary Expenses. In the event of an unanticipated funding shortfall, the Commission shall not curtail the discharge of its constitutionally mandated operations, but shall authorize the Executive Director to seek a supplemental appropriation.

RULE 4 DUTIES OF EXECUTIVE DIRECTOR

The Commission shall prescribe the duties and responsibilities of the Executive Director, which may include the authority to:

- (1) Consider information from any source and receive allegations and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints;
- (4) Conduct investigations;
- (5) Maintain and preserve the Commission's records, including all complaints, files and written dispositions;
- (6) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the court;
- (7) Prepare the Commission's budget for its approval and administer its funds;
- (8) Employ and supervise other members of the Commission's staff;
- (9) Prepare an annual report of the Commission's activities, and
- (10) Employ, with the approval of the Commission, special counsel, private investigators or other experts as necessary to investigate and process matters before the Commission and before the court, and
- (11) Issue subpoenas.

RULE 5 CONFIDENTIALITY OF COMMISSION PROCEEDINGS

A. Confidentiality. All proceedings, records, files, and reports of the Commission shall be confidential and no disclosure shall be made except as permitted by A.S.22.30.060.

B. In order to preserve public confidence in the administration of justice the Commission, in its discretion, may issue one or more announcements confirming or denying the existence of accusations before it, clarifying the procedural aspects, or explaining the right of a judge to a fair hearing when: 1) a judge has been charged pursuant to Rule 9c(4) of these Rules, or 2) the subject matter of a proceeding is generally known to the public.

C. In any instance where accusations against a judge have been considered by the Commission and it has been determined that there is no basis for the filing of the charges or for further proceedings before the Commission, the Commission may, at the request, or with the approval of the judge, issue an explanatory statement.

D. If a judge retires or resigns from judicial office following the filing of a Complaint pursuant to Rule 9c(4) of these Rules, the Commission may, in the interest of justice or to maintain confidence in the administration of justice, publicly release information concerning the investigation and proceedings.

E. Upon completion of an investigation or proceeding, the Commission shall disclose to the person filing an accusation against the judge that after an investigation of the charges the Commission (i) has found no basis for action against the judge, (ii) has taken an appropriate corrective action, the nature of which shall not be disclosed, or (iii) has filed a recommendation with the Supreme Court.

F. The Commission may, from time to time, issue press releases and other public statements explaining the nature of its jurisdiction, procedure for institution of accusations, limitations upon its powers and authority, and reports on the conduct of the affairs of the Commission, providing that such releases and reports shall not identify by name, position, or address the identity of any judge or other person involved in any inquiry before the Commission unless such disclosure is otherwise provided for in A.S.22.30.060 and these Rules.

RULE 6 NOTICE

A. General. Unless otherwise specified, notice when required by these rules shall be given by prepaid certified or registered mail, addressed to the judge.

B. Dismissal. The Executive Director shall furnish the Commission with a report of each dismissal at the next meeting following the dismissal. The complainants, if any, and the judge, if the judge has been given notice thereof, shall be informed, in writing, of the dismissal (pursuant to Rule 5E of these Rules) and that the dismissal will be reviewed by the Commission at its next meeting.

RULE 7 INITIATION AND SCREENING

A. Initiation of Accusations

(1) An accusation relating to the conduct or physical or mental disability of a judge may be initiated upon any reasonable basis, including complaints made by judges, lawyers, court personnel, or members of the general public.

(2) The Commission may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.

B. Screening of Accusations. The Executive Director based upon information received from any source concerning any matter within the Commission's jurisdiction, or upon receiving a statement alleging any such matter, shall make a determination as to whether the information or statement is jurisdictional and not frivolous.

If the Executive Director determines that the matter is not jurisdictional or is frivolous, the accusation shall be dismissed and the judge need not be notified of the accusation or the action taken by the Commission.

If the Executive Director determines that the matter does not meet any of the foregoing conditions the Executive Director shall make a preliminary investigation to determine what further action should be taken, if any, and whether formal proceedings should be instituted.

RULE 8 PRELIMINARY INVESTIGATION

A. Notice. If a preliminary investigation is undertaken, the judge shall be served with a notice of the investigation, the nature of the charge, and the name of the person making the statement, if any, or that the investigation is on the commission's own motion, and shall be afforded reasonable opportunity in the course of the preliminary investigation to present such matters as the judge may choose.

B. Right to Counsel. The judge shall be entitled to counsel of the judge's own choice.

C. Investigation. Under guidelines approved by the Commission, the Executive Director shall determine whether there exists sufficient basis to proceed to a probable cause determination.

D. Subpoena. At any stage of the proceeding, the Commission shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the judge, and the production of papers, books, accounts, documents and testimony relevant to the investigation or the proceeding. Upon receiving notice from the Commission as to the pendency of the proceeding, the judge shall be entitled to compel by subpoena the attendance and testimony of witnesses, and the production of papers, books, accounts, documents, and testimony relevant to the investigation or proceedings.

E. Dismissal. The Executive Director shall, pursuant to Rule 6 B of these Rules, dismiss all accusations for which a sufficient basis to proceed is not established.

F. Stay. If the Executive Director determines that a preliminary investigation may unduly disrupt or delay a pending court proceeding the Executive Director shall stay the investigation until the next regularly scheduled Commission meeting. The complainant(s), if any, and the judge, if the judge has been given notice of the accusation, shall be informed, in writing, of the stay, and that the stay will be reviewed by the Commission at its next meeting.

RULE 9 PROBABLE CAUSE

A. Probable Cause Determination. The Commission shall promptly consider the results of an investigation and evaluation conducted by the chairperson or Executive Director. If the Commission determines that there is probable cause to proceed, it shall comply with Rule 9C.

B. Findings and Report. The Executive Director shall prepare a written report containing the Commission's findings of fact and conclusions for each issue presented.

C. Disposition. The Commission shall dispose of the investigation in one of the following ways:

(1) If the Commission finds that there has been no misconduct, the Executive Director shall be instructed to send the judge and each complainant notice of dismissal pursuant to Rules 5E and 6B of these Rules.

(2)(a) If the Commission finds that there has been misconduct for which an admonishment or a private reprimand constitutes adequate discipline, the Commission may issue a notice of intended private admonishment or reprimand to the judge. The notice shall include the Findings and Report. The notice shall also inform the judge of the judge's right to an appearance before the Commission or a hearing pursuant to Rule 10 of these Rules, and in the case of a private reprimand, that a copy of the reprimand will be sent to the Supreme Court.

(b) Within fifteen (15) days after mailing of a notice of an intended private reprimand or admonishment, the judge may request either an appearance before the Commissioner a hearing pursuant to Rule 10 of these Rules, by filing a written demand therefor with the Commission. Thereupon the Commission may dismiss the complaint, make further investigation or may institute formal charges pursuant to Rules 9C(4) and 10 of these Rules, but shall not recommend the censure, suspension, retirement or removal of the judge unless substantial and serious new facts to justify such a recommendation are proved in the formal proceedings.

(3) If the Commission finds that there has been conduct that is or might be cause for discipline but for which an informal adjustment is appropriate, it may enter into a memorandum of understanding and agreement with the judge concerning the judge's future conduct or submission to professional treatment or counseling. The complainant shall be notified pursuant to Rules 5E and 6B of these Rules that the matter has been

resolved. The Commission shall monitor any prescribed counseling.

(4) If the Commission finds, that there is probable cause to believe that there has been misconduct of a nature requiring formal disciplinary proceedings the chairperson or Executive Director shall cause the judge to be served with the report, a complaint containing the formal statement of the charges, the record of the probable cause determination, and all documents upon which the determination was based. The service upon the judge constitutes notice that a response must be filed within 20 (twenty) days.

D. Informal Charges. Rule 9C (2) & (3) constitute informal charges.

RULE 10 FORMAL DISCIPLINARY HEARING

A. Special Counsel. The Commission may appoint a special counsel to present the formal charges. The special counsel may conduct a further investigation.

B. Scheduling. The Commission shall, upon receipt of the judge's response to the complaint or upon the expiration of the time to answer, schedule a hearing not less than thirty (30) nor more than forty-five (45) days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing. The judge shall be given at least fifteen (15) days written notice by certified mail, return receipt requested at the judge's last known address. [Rev. 9-12-85].

C. Discovery. The judge and Commission shall be entitled to discovery in accordance with the Rules of Civil Procedure.

D. Factfinder. The formal hearing shall be conducted before a factfinder (which may be the entire Commission or a master) designated by the Chairperson. The master shall be either a judge of a court of record, current or retired, or a member of the State Bar. When the hearing is before the Commission, either the chairperson or another member appointed by the chairperson shall preside. No member of the Commission shall serve as master.

If the factfinder is to be a master, the factfinder shall be selected from among a pool of those approved annually by the court.

E. Conduct of Hearing.

(1) At the time and place set for the hearing the Commission or master shall proceed with the hearing whether or not the judge has filed an answer or personally appears at the hearing.

(2) The failure of the judge to answer, to appear or to testify at the hearing shall not be taken as evidence of the truth of the facts alleged to constitute grounds for censure, suspension or removal.

(3) The proceedings at the hearing shall be reported by electronic recording device in the same manner as proceedings are reported in a court of records.

(4) When the hearing is before the Commission, not less than five members shall be present when evidence is taken.

F. Evidence. The rules of evidence apply and all testimony shall be under oath. The chairperson, presiding member or master shall administer the oath, rule on the admissibility of evidence, and otherwise direct the manner and order of proceedings in the same manner as a judge of a court of record. The presiding officer is

authorized to issue subpoenas for attendance of witnesses called to testify or to produce books, papers, and other evidentiary matter. Commission attorneys or special counsel retained for the purpose, shall present the case to the factfinder. The judge whose conduct is in question shall be permitted to adduce evidence and produce and cross-examine witnesses. Facts justifying action shall be established by clear and convincing evidence.

G. Amendment of Complaint. By leave of the Commission or by consent of the judge, the formal charges may be amended after commencement of the public hearing to conform to proof or to set forth additional facts, whether occurring before or after commencement of the hearing if the judge and his counsel are given adequate time to prepare a response.

H. Determination. A fact finder other than the entire Commission shall, within sixty (60) days after the hearing, submit findings and recommendation, together with the record and transcript of proceedings, to the Commission for review and shall contemporaneously serve them upon the judge.

The judge, or Commission counsel, may submit written objections to the findings and recommendations of the factfinder within fifteen (15) days after receipt.

The findings, conclusions and accompanying materials, together with the objections, if any, shall be promptly reviewed by the Commission. The Commission may make independent findings of fact from the record or, if the entire Commission served as factfinder, the Executive Director shall prepare findings and recommendations for Commission approval.

If no statement of objections is filed within the time provided, the Commission may adopt, in whole or in part, the findings of the master without a hearing. If such statement proposes to modify or reject the findings of the master, the Commission shall give the judge and special counsel an opportunity to be heard orally before the Commission and written notice of the time and place of such hearing shall be mailed to the judge at least ten (10) days prior thereto.

I. Extension of Time. The chairman of the Commission may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, for the transmittal of the master's report to the Commission, and for filing a statement of objections to the report of the master. The master may similarly extend the time for the commencement of a hearing. Additional continuances may be granted upon serious illness or other similar, extraordinary circumstances.

J. Hearing Additional Evidence. The Commission may provide for the taking of additional evidence by order at any time while the matter is pending before it. The order shall set the time and place of the hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least ten (10) days prior to the date of the hearing. The hearing of additional evidence shall be before the master or the Commission and the proceedings therein shall be in conformance with this rule.

RULE 11 COMMISSION DECISION

A. Recommendation. Any recommendations for discipline shall be made pursuant to A.S.22.30.011(d).

B. Private Reprimand. In lieu of a recommendation to the Supreme Court the Commission may issue a private reprimand pursuant to A.S.22.30.011(d)(3), (e) and (f).

C. Dissent. If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the court. The recommendation for discipline may include any one or more of the sanctions provided for in A.S.22.30.011(d).

D. No Disciplinary Recommendation. If a majority of the members of the Commission recommend no discipline, the case shall be dismissed.

E. Execution. The recommendation and findings of the Commission shall be signed by the chairperson and presiding member and may be signed by other members, either concurring or dissenting in the recommendation or findings.

F. Witness Fees. All witnesses shall receive fees and expenses in the statutorily allowable amount. Expenses of witnesses shall be borne by the party calling them, unless:

(1) Physical or mental disability of the judge is in issue, in which case the Commission shall reimburse the judge for the reasonable expenses of the witnesses whose testimony related to the disability; or

(2) The judge is exonerated of the charges, and the Commission determines that the imposition of costs and expert witness fees would work a financial hardship or injustice upon the judge and order that those fees be reimbursed.

RULE 12 SUPREME COURT REVIEW

A. Filing and Service. The Commission shall file its report, record findings and recommendations with the court and shall serve copies thereof upon the judge no later than thirty (30) days after the report of the factfinder is submitted. On application by the Commission, the court may direct the withholding of a recommendation regarding discipline pending the determination of other specified matters.

B. Prompt Court Consideration. The Commission shall request the clerk of the court to docket any Commission matter for expedited consideration.

C. Brief and Supplementary Filings. Any petition or brief submitted by the judge or the Commission shall be filed in accordance with the appellate rules.

**RULE 13 CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL
DISABILITY**

A. Procedure. In considering allegations of mental or physical disability, the Commission shall, insofar as applicable and except as provided in Paragraph B, follow procedures established by these rules.

B. Special Provisions.

(1) If in a matter relating to mental or physical disability the judge is not represented by counsel, the Commission shall appoint an attorney to represent the judge at public expense.

(2) If a complaint or statement of allegation involves the mental or physical health of the judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his or her medical records.

(3) In the event of a waiver of medical privileges, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission. The report of the medical practitioner shall be furnished to the Commission and the judge.

(4) The Commission shall bear the costs of the proceedings.

1 IN THE SENATE

BY RODEY

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the duties of the Commission on
7 Judicial Conduct."

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

9 * Section 1. AS 22.30.011(f) is amended to read:

10 (f) If the commission decides to reprimand a judge privately,
11 the commission shall forward the reprimand to the judge. A copy of
12 the reprimand shall be sent to the chief justice of the supreme court
13 and to the judicial council. A private reprimand is confidential.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR
Francis L. Bremson

NON-ATTORNEY MEMBERS
Mary Jane Fate
Hilbert J. Henrickson, M.D.
Renee Murray

February 3, 1986

ATTORNEY MEMBERS
James B. Bradley
James D. Gilmore
Barbara L. Schumann

CHAIRMAN, EX OFFICIO
Jay A. Rabinowitz
Chief Justice
Supreme Court

Senator Patrick Rodey
Chairman
Senate Judiciary Committee
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Senator Rodey:

The Alaska Judicial Council and the Commission on Judicial Conduct, to assist the Judicial Council in its evaluation of judges up for retention, seek to amend Sec. 2. AS 22.30.011(f). The proposed amendment would allow private reprimands to be provided to the Judicial Council by the Commission on Judicial Conduct, enabling the Council to make informed recommendations on questions of judicial retention.

Proposed that Sec. 2. AS 22.30.011(f) be amended to read:

If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court and to the judicial council. A private reprimand is confidential.

Thank you for your assistance. If I can provide any additional information, please do not hesitate to write or call.

SINCERELY,

MARLA N. GREENSTEIN
STAFF ATTORNEY

MG/jz