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SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.



JUNEAU, ALASKA 99811
(907) 465-3717

January 13, 1986

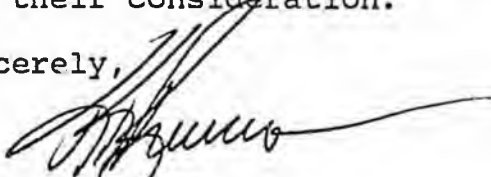
The Honorable Thomas E. Schulz
Superior Court Judge
First Judicial District
415 Main Street, Room 402
Ketchikan, Alaska 99901

Dear Judge Schulz:

Thank you for your comments regarding CSSB 321, "An Act including magistrates within the jurisdiction of the Commission on Judicial Qualifications."

A copy of your letter has been placed in each members' file for their consideration.

Sincerely,


Kevin K. Bruce

KKB/acp



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA
99901

Chambers of
THOMAS E. SCHULZ, Presiding Judge

January 3, 1986

Kevin K. Bruce
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

re: CSSB 321: "An Act including magistrates within
the jurisdiction of the Commission on
Judicial Qualifications"

Dear Mr. Bruce:

A copy of Magistrate Linda Hartshorn's letter to you of December 12, 1985, concerning the above legislation pending in the Senate was sent to me. I have objected in the past, and I still object, to including magistrates within the jurisdiction of the Commission on Judicial Qualifications.

Magistrates serve at the pleasure of presiding judges, and I believe that procedures are now in place in every Judicial District in the State concerning disciplinary matters that involve magistrates. If this legislation passes, it can only serve to screw up the system that I believe is working fairly well at the present time.

Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:abr

cc: Magistrate Hartshorn



Commission on Judicial
Conduct

303 K STREET
ANCHORAGE, ALASKA 99501
264-0528

January 29, 1986

Mr. Kevin Bruce
Office of Senator Rodey
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: SB 321

Dear Mr. Bruce:

The Commission on Judicial Conduct met on Thursday, January 16, 1986, and discussed SB321, which would place magistrates within the jurisdiction of the Commission on Judicial Conduct. The Commission decided that it would be willing to undertake such a responsibility provided that it is adequately funded both for the investigation of judges and for the investigation of magistrates.

Thank you for your patience and consideration.

Sincerely,

Frank Flavin
Executive Director



RECEIVED
In the District Court
at Wrangell

JAN 09 1986

MAGISTRATE/CLERK

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA
99901

Chambers of
THOMAS E. SCHULZ, Presiding Judge

January 3, 1986

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Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

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Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:abr

cc: Magistrate Hartshorn



Trial Courts

State of Alaska

FIRST JUDICIAL DISTRICT

P. O. BOX 869

WRANGELL, ALASKA

99929

December 12, 1985

Kevin K. Bruce
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: CSSB 321: "An Act including magistrates within the jurisdiction of the commission on judicial qualifications."

Dear Mr. Bruce:

The majority of magistrates who responded to my request for comments on CSSB 321 had no objection to passage of the bill. However, many concerns and questions were raised which we believe must be addressed prior to an official response from the Association of Alaska Magistrates. I will list those concerns as presented to me.

- 1) The magistrates feel they are treated fairly by presiding judges with no fear of arbitrary or capricious acts. The consensus is that a magistrate would be afforded due process should a problem arise. However, it would be beneficial to know the procedure that would be employed upon the filing of a complaint.
- 2) What are the rules within which the Commission operates? How and when is a complaint determined to be "formal"? When is notification given to the judge?
- 3) Since we serve at the pleasure of the presiding judge, it is requested, should this bill pass, that any complaint filed against a magistrate be immediately copied to the presiding judge.
- 4) If magistrates were placed under the jurisdiction of the Commission, would attorneys fees be paid by the state as is now the practice with other judges?

Kevin K. Bruce
December 12, 1985
Page Two

5) If the Commission recommends action after investigating a complaint, does this recommendation go to the supreme court or to the presiding judge? Who makes the final decision?

6) Would passage of this bill mean that magistrates, in the future, would have to stand for retention election?

7) Since this is one of two areas where the statutes still differentiate between magistrates and other judges, would inclusion under the jurisdiction of the Commission also mean inclusion under judicial retirement?

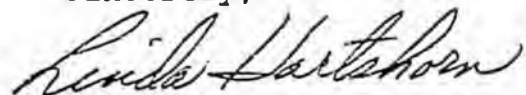
As you can see, there are many questions that need to be answered before we can make the decision to support or oppose this legislation. The general feeling is that it would be good to know there is a fixed procedure for dealing with complaints. However, there is no perception of unfairness or lack of due process under the current system.

The Commission is sending to me their operating manual and annual report, which includes rules and procedures. When this information is received and the above concerns are addressed, we will be able to present a response to your request. I understand that the Court System and the Commission have not yet taken a stand on the bill. We will get ours to you as soon as possible.

I believe the reference in the bill to "Commission on Judicial Qualifications" should be changed to "Judicial Conduct Commission".

Please give me a call at 874-2311 if you have any questions.

Sincerely,



Linda Hartshorn, Magistrate
for The Association of
Alaska Magistrates

cc: All Magistrates

MEMORANDUM

TO: All Magistrates

Date: October 23, 1985

FROM: Linda Hartshorn

RE: SB 321: "An Act including magistrates within the jurisdiction of the commission on judicial qualifications." (Now called the Judicial Conduct Commission)

Hello to everyone! It seems like a long time since we were all together in Anchorage.

I have received a request from Kevin Bruce, legislative aide to Senator Patrick Rodey, for some input from the Association of Alaska Magistrates on Committee Substitute for Senate Bill 321. Enclosed are copies of:

- 1) The request from Mr. Bruce;
- 2) A position paper prepared by the sponsor of the bill;
- 3) A memorandum to Senator Rodey and the Senate Judiciary Committee from Legislative Counsel Michael Ford giving some background on the bill; and
- 4) A copy of the committee substitute for the bill as the Senate Judiciary Committee intends to introduce it this session.

Original SB 321 would have included only those magistrates who sit in a location where a superior court holds regular sessions; the committee substitute would include all magistrates. All magistrates received a copy of the original bill with a May 24, 1985 memorandum from Karla Forsythe in which she requested our comments. The request from Kevin Bruce is the only contact from the legislature asking for the position of the Association.

The position paper and Mr. Ford's memorandum set out the background and intent of the legislation. If you have any questions about the bill or its intent, please feel free to contact me at 874-2311 or Mr. Bruce at 465-3793.

It is important that we respond to this request and I would be pleased to compose the official response from the Association. However, to do this I need your input so the response will be an accurate reflection of the feelings of all the magistrates.

Please review the enclosed materials and get back to me with your comments as soon as possible. I intend to respond by November 15, 1985, as the Judiciary Committee needs this information well in advance of the next session.

Thank you.



Linda Hartshorn

POSITION PAPER
SB321

The intent of the sponsor in introducing SB321, "An Act including magistrates within the jurisdiction of the commission on judicial qualifications" is threefold in nature.

First, as magistrates are not currently under the jurisdiction of the Commission on Judicial Qualifications, there is no uniform or central authority for cataloging and resolving complaints lodged against these judicial officers. At the present time, complaints are forwarded to the presiding judge of each judicial district for disposition. The supervision of and method of processing complaints against magistrates may vary from district to district, essentially creating inequities in the system, both for magistrates and the public.

This "due process" inequity is the second reason for the bill's introduction. Magistrates deserve a uniform procedure for responding to complaints levied against them, as well as a method of safeguards against possible arbitrary and capricious acts by presiding judges.

Finally the bill proports to enhance the judicial independence of magistrates by providing this separate and distinct forum for airing complaints. The Supreme Court has determined, of course, that serving at the pleasure of the presiding judge does not impair the independence of magistrates to adjudicate cases impartially. (Buckalew v. Holloway 604 P. 2d 240 1979)

Without quibbling with the court's decision in this matter, the sponsor is convinced that having an independent review and recommendation by the Commission will better serve the interests of justice and preserve the independence of these judicial officers.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
ROT 465-3600

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

September 24, 1985

SUBJECT: Magistrates

TO: Senator Pat Rodey
Senate Judiciary Committee

FROM: Michael F. Ford *M.F.*
Legislative Counsel

I have enclosed a copy of Buckalew v. Holloway, 604 P.2d 240 (Alaska 1979). This case held that magistrates are judges, at least regards the reference in article IV, section 4, of the Alaska Constitution. The court also held that having the magistrate serve at the pleasure of the presiding judge does not violate the constitutional objective of an independent judiciary. The reasons given by the court were that the legislature is not bound by that concept, and that the influence of the presiding judge is not a form of political patronage. The court did not discuss exactly what due process a magistrate was entitled to, but did indicate that a magistrate was not without legal recourse, including constitutional due process requirements.

The court did not rule on the issue of whether magistrates are within the jurisdiction of the Commission on Judicial Qualifications, but indicated that assuming that jurisdiction did exist, it would not conflict with the power of removal by the presiding judge. I cannot understand how a magistrate could be a judge for article VI, section 4, and not also be a judge for article IV, section 10, of the Alaska Constitution. However, as the court failed to rule on this point, CSSB 321 (Jud) would seem to clear up any possible confusion over the issue.

MFF:lmb
M1/021

Enclosure

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 321 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act including magistrates within the jurisdiction
7 of the commission on judicial qualifications."

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

9 * Section 1. AS 22.30.080(2) is amended to read:

10 (2) "judge" means a justice of the supreme court, a judge
11 of the court of appeals, a judge of the superior court, [OR] a judge
12 of the district court, or a magistrate who is the subject of an inves-
13 tigation or proceeding under sec. 10, art. IV, Constitution of the
14 State of Alaska and this chapter.

M E M O R A N D U M

To: Karla Forsythe
General Counsel

Date: May 30, 1985

From: Linda Hartshorn
Magistrate

Subj: Senate Bill 321: An
Act including certain
magistrates within the
jurisdiction of the
Commission on Judicial
Conduct

I have no objection to the inclusion of magistrates within the jurisdiction of the Commission on Judicial Conduct. However, I do not agree with this applying only to certain magistrates. If the bill were to pass, I would fall under the jurisdiction of the Commission if a complaint were filed against me, but those magistrates in Craig and Haines, for instance, would be under the jurisdiction of the presiding judge. I see no reason to make a distinction between large and small court magistrates as the duties and jurisdiction of magistrates statewide are the same. Do you know why Senator Rodey wanted this to apply only to those magistrates in the large courts?

Magistrates in superior court locations usually have a heavier caseload. They also sit as masters more often than the magistrates in the outlying areas. As masters, we make findings for the superior court and a superior court judge enters the final order. A master's appointment is an additional duty not within the statutory definition of a magistrate's jurisdiction and duties. Any misconduct in this area would not seem to fall within the powers and duties of the Commission, but rather be within the supervisory capacity of the superior court.

The wording "or a magistrate if the location at which the magistrate holds court also has a superior court that holds regular sessions" is unclear. Does this mean a location with a resident superior court judge? Does it include those locations where a superior court judge may come through on a regular schedule? What about the magistrate from a small location who fills in at a superior court location?

It would be interesting to know the history of this bill and why it is considered necessary.

Thank you for the opportunity to comment. I would be interested in any further developments.

cc: Honorable Thomas E. Schulz

MEMORANDUM

RECEIVED
In the District Court
at Wrangell

TO: Presiding Judges
Magistrates
Stephanie Cole
Carole Baekey

DATE: May 24, 1985

MAY 30 1985

G. Lowe
MAGISTRATE/CLERK

FROM: Karla Forsythe *KLF*
General Counsel

SUBJ: SB 321: An act including
certain Magistrates within
the jurisdiction of the
Commission on Judicial
Conduct

I have attached a copy of SB 321, which would bring within the jurisdiction of the Commission on Judicial Conduct those Magistrates who sit in Superior Court locations. I have also attached a copy of AS 22.30.010-080, which outlines the powers and the duties of the Commission.

I would appreciate your comments on this proposed legislation, either in writing or over the telephone (264-0634).

KF/rlc

Introduced: 5/10/85
Referred: Judiciary

1 IN THE SENATE

BY RODEY

2

SENATE BILL NO. 321

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act including certain magistrates within the

7

jurisdiction of the commission on judicial qualifica-

8

tions."

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

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(2) "judge" means a justice of the supreme court, a judge

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of the court of appeals, a judge of the superior court, [OR] a judge

13

of the district court who is the subject of an investigation or pro-

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ceeding under sec. 10, art. IV, Constitution of the State of Alaska

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and this chapter, or a magistrate if the location at which the magis-

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trate holds court also has a superior court that holds regular

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§ 22.25.048

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§ 22.30.010

JUDICIARY

§ 22.30.011

Chapter 30. Judicial Qualifications.

Section

- 10. Commission on judicial conduct
- 11. Powers and duties of the commission
- 40. Preparation of budget
- 50. Validity of acts of the commission

Section

- 60. Rules and confidentiality
- 66. Inquiry
- 80. Definitions

Sec. 22.30.010. Commission on judicial conduct. The Commission on Judicial Conduct shall consist of nine members as follows: three persons who are justices or judges of state courts, elected by the justices and judges of the state courts; three members who have practiced law in this state for 10 years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of two members of the legislature in joint session; and three citizens who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. Commission membership terminates if a member ceases to hold the position that qualified that person for appointment. A person may not serve on the commission and on the Judicial Council simultaneously. The commission shall elect one of its members to serve as chairman for a term prescribed by the commission. A vacancy shall be filled by the appointing power for the remainder of the term. (§ 1 ch 213 SLA 1968; am § 23 ch 71 SLA 1972; am § 1 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 6, 1984, substituted "Conduct" for "Qualifications" in the catchline and "A person may not" for "No person may" in the third sentence and, in the first sentence, substituted "Conduct" for "Qualifications," "three persons who are justices or judges of state courts" for "one justice of the supreme court," "and judges of the state courts; three" for "of the

supreme court; three judges of the superior court, elected by the judges of the superior court; one judge of the district court, elected by the judges of the district court; two," and "and subject to confirmation by a majority of the members of the legislature in joint session; and three" for "and two" and inserted "governor from nominations made by the."

Sec. 22.30.011. Powers and duties of the commission. (a) The commission shall on its own motion or on receipt of a written complaint inquire into an allegation that a judge

- (1) has been convicted of a crime punishable as a felony under state or federal law or convicted of a crime that involves moral turpitude under state or federal law;
- (2) suffers from a disability that seriously interferes with the performance of judicial duties and that is or may become permanent;
- (3) within a period of not more than six years before the start of the current term, committed an act or acts that constitute
 - (A) wilful misconduct in office,
 - (B) wilful and persistent failure to perform judicial duties,

(C) conduct prejudicial to the administration of justice.

(D) conduct that brings the judicial office into disrepute, or

(E) conduct in violation of the code of judicial conduct; or

(1) is habitually intemperate.

(b) The commission may hold a hearing on an allegation under (a) of this section. A hearing under this section is a hearing under AS 44.62.310(d) and is private unless a public hearing is requested by the judge.

(c) A judge appearing before the commission at the hearing is entitled to counsel, may present evidence, and may cross-examine witnesses.

(d) The commission may, after a hearing held under (b) of this section

(1) exonerate the judge of the charges;

(2) informally and privately admonish the judge or recommend counseling;

(3) reprimand the judge publicly or privately;

(4) refer the matter to the supreme court with a recommendation that the judge be suspended, removed, or retired from office or publicly or privately censured by the supreme court.

(e) A decision by the commission to reprimand a judge publicly or privately may be appealed by the judge to the supreme court.

(f) 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. A private reprimand is confidential.

(g) If the commission exonerates a judge, a copy of the proceedings and report of the commission may be made public on the request of the judge. (§ 1 ch 56 SLA 1981; am §§ 2 — 4 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 6, 1984, in paragraph (3) of subsection (a), deleted "or" at the end of subparagraph (C) and added subparagraph (E); changed the

internal reference in subsection (b); and, in subsection (d), inserted present paragraph (2) and redesignated former paragraphs (2) and (3) as present paragraphs (3) and (4), respectively.

Sec. 22.30.015. Term of office.

Cross references. — For terms of members appointed or elected after July 1,

1984, see § 10, ch. 160, SLA 1984 in the Temporary and Special Acts.

Sec. 22.30.040. Preparation of budget. The commission shall be responsible for preparing and presenting to the legislature its proposed annual budgets. (§ 1 ch 213 SLA 1968; am § 5 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 6, 1984, rewrote this section, which formerly read "The Alaska court system shall be respon-

sible for preparing and presenting to the legislature proposed annual budgets for the commission."

§ 22.30.040

§ 22.30.050

JUDICIARY

§ 22.30.080

Sec. 22.30.050. Validity of acts of the commission. No act of the commission is valid unless concurred in by a majority of the members serving on the commission at the time the act is taken. (§ 1 ch 213 SLA 1968; am § 6 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 6, 1984, substituted "the members serving on the commission at the time the act is taken" for "its members."

Sec. 22.30.060. Rules and confidentiality. (a) The commission shall make rules implementing this chapter and providing for confidentiality of proceedings.

(b) All proceedings, records, files, and reports of the commission are confidential and disclosure may not be made except

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

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

(3) upon filing of formal charges, in which case only the charges shall become public. (§ 1 ch 213 SLA 1968; am § 7 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 6, 1984, added subsection (b).

Sec. 22.30.066. Inquiry. (a) The commission may subpoena witnesses, administer oaths, take the testimony of any person under oath, and require the production for examination of documents or records relating to its inquiry under AS 22.30.011.

(b) In the course of an inquiry under AS 22.30.011 into judicial misconduct or the disability of a judge, the commission may request the judge to submit to a physical or mental examination. If the judge refuses to submit to the examination, the commission must determine the issue for which the examination was required adversely to the judge. (§ 2 ch 58 SLA 1981; am § 8 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 6, 1984, added subsection (b).

Sec. 22.30.080. Definitions. In this chapter

(1) "commission" means the Commission on Judicial Conduct provided for in § 10, art. IV, Constitution of the State of Alaska and this chapter;

(2) "judge" means a justice of the supreme court, a judge of the court

of appeals, a judge of the superior court, or a judge of the district court who is the subject of an investigation or proceeding under § 10, art. IV, Constitution of the State of Alaska and this chapter. (§ 1 ch 213 SLA 1968; am § 19 ch 12 SLA 1980; am § 9 ch 160 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 6, 1984, substituted "Conduct" for "Qualifications" in paragraph (1).