

HB

268

Written testimony by Jan Strandberg, ACS  
on proposed CSHB 268 (Judiciary)

The supreme court has very limited comments on the proposed Judiciary Committee substitute.

First, a majority of the court endorses the adoption of the American Bar Association standards which open to the public those proceedings that take place after the filing of formal charges.

The entire court has three concerns that it has asked me to discuss:

- (1) Retired judges should come within the commission's jurisdiction only when they are acting in their judicial capacities as pro tem judges.
- (2) The bill should take care of the conflicts it now has with Article IV, Section 10 of the Alaska Constitution which grants the commission authority only to recommend sanctions to the supreme court, and not to impose sanctions itself. See In re Inquiry Concerning a Judge, 762 P.2d 1292 (Alaska 1988).
- (3) Finally, the court recommends that the Commission's probable cause standard be defined in the statute and that it be similar to the present grand jury standard: that all evidence taken together would warrant a sanction.

This would provide knowledge of the standard to the public as well as to the judges under consideration for discipline at the time formal charges are filed.

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

Date of Committee Action: 3-5-90

The JUDICIARY Committee considered:

HB 268

HOUSE BILL NO. 268

COMMISSION ON JUDICIAL CONDUCT

"An Act relating to the Commission on Judicial Conduct."

### RECOMMENDATIONS:

- be replaced with CS HB 268 (Jud)  the same title  
 a new title  
 have attached amendment(s)  
 do pass  
 do not pass  
 no recommendation  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_  
 zero fiscal note \_\_\_\_\_  
 zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_  
 zero fiscal note(s) AK. Commission Judicial Conduct  
 zero fn/analysis \_\_\_\_\_

### SIGNING DO PASS:

### SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Robert J. Jones  
Michael J. Gumbert  
John J. Danaher  
John E. Egan

	Do Not Pass	No Rec	Amend
<u>Terry Masterson</u>		<input checked="" type="checkbox"/>	
<u>Mike Keller</u>		<input checked="" type="checkbox"/>	

Michael J. Gumbert Robert J. Jones  
Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Alaska Commission  
 Title: Act relating to the BRU: on Judicial Conduct  
Commission on Judicial  
Conduct  
 Sponsor: Judiciary Components: \_\_\_\_\_  
 Requestor: State Affairs

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
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REVENUE						
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**FUNDING:** (Thousands of Dollars)

General Funds	-0-	-0-	-0-	-0-	-0-	-0-
Federal Funds	-0-	-0-	-0-	-0-	-0-	-0-
Other						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Marla N. Greenstein, Executive Director  
 Division: Alaska Comm'n on Judicial Conduct  
 Approved by: Marla N. Greenstein, Executive Director  
 Agency: Alaska Comm'n on Judicial Conduct

Phone: \_\_\_\_\_  
 Date: 2-5-90  
 Date: 2-5-90

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)

Original sponsor(s): Judiciary Committee

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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-  
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12 member of the state bar. The commission shall elect one of its mem-  
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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  
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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)  
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(4) refer the matter to the supreme court with a recommen-  
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1 from office or publicly or privately censured by the supreme court.

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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  
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24 to the chief justice of the supreme court, the attorney general, and  
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26 \* Sec. 8. AS 22.30.070(b) is amended to read:

27 (b) On recommendation of the commission [OR AFTER AN APPEAL  
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9 (c) On recommendation of the commission [OR AFTER AN APPEAL  
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24 \* Sec. 10. AS 22.30.080(2) is amended to read:

25 (2) "judge" means a justice of the supreme court, a judge  
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*called for final 3/6/90 3:40*

6-1132R  
Lauterbach  
3/6/90

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15 decision and minority report, if any, are [SHALL BECOME] public; even  
16 after formal charges are filed, the deliberations of the commission  
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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  
16 persistent failure to perform duties, habitual intemperance, conduct  
17 prejudicial to the administration of justice, or conduct that brings  
18 the 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.  
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A M E N D M E N T

OFFERED IN THE HOUSE

TO: CS HB 268 [2/20/90 Lauterbach #6-1132G]

Page 3, Line 12:

Delete "or [THE COMMISSION MAY]

Insert "Upon a finding of probable cause, the  
commission may"

Page 3, Line 23, after "charges;"

Insert "or"

→ Page 3, Line 26, after "(3)":

Delete "]" after "privately";

Insert "]"

→ Page 3, Line 27:

Delete "3", Insert "2"

→ Page 3, line 28, after "that the judge be":

Insert "reprimanded,"

Page 5, Line 2:

Delete "or who is retired"

Page 5, Line 3:

Insert a new bill section to read

→ Sec. 9. AS 22.30.011(e) and AS 22.30.011(f) are repealed.

Marked up in red to show changes  
from HB 268 as introduced.

6-1132G  
Lauterbach  
2/20/90

My Committee (HJV)  
file

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

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

9 \* Section 1. AS 15.58.050 is amended to read: **NEW SECTION**

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

22 \* Sec. 2. AS 22.30.010 is amended to read: **NEW SECTION**

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

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

15 \* Sec. 3. AS 22.30.011(a) is amended to read: **NO CHANGES**

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

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

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

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

28 (A) wilful misconduct in office;

29 (B) wilful and persistent failure to perform judicial

1 duties;

2 (C) conduct prejudicial to the administration of  
3 justice;

4 (D) conduct that brings the judicial office into  
5 disrepute; or

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

8 (4) is habitually intemperate.

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

10 (b) After preliminary informal consideration of an allegation,  
11 the commission may exonerate the judge, informally and privately  
12 admonish the judge or recommend counseling, or [THE COMMISSION MAY]  
13 hold a formal hearing on the [AN] allegation [UNDER (a) OF THIS SEC-  
14 TION]. A hearing under this subsection [SECTION] is public. Proceed-  
15 ings and records pertaining to proceedings that occur before the  
16 commission holds a public hearing on an allegation are confidential,  
17 subject to the provisions of AS 22.30.060(b) [A HEARING UNDER AS 44.-  
18 62.310(d) AND IS PRIVATE UNLESS A PUBLIC HEARING IS REQUESTED BY THE  
19 JUDGE].

20 \* Sec. 5. AS 22.30.011(d) is amended to read: *NO CHANGE*

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

23 (1) exonerate the judge of the charges;

24 (2) [INFORMALLY AND PRIVATELY ADMONISH THE JUDGE OR RECOM-  
25 MEND COUNSELING;

26 ~~(3)] reprimand the judge publicly or privately;~~

27 (3) [(4)] refer the matter to the supreme court with a  
28 recommendation that the judge be /suspended, removed, or retired from  
29 office or publicly or privately censured by the supreme court.

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

6 (2) if the subject matter or the fact of the filing of  
7 charges has become public, in which case the commission may issue a  
8 statement in order to confirm the pendency of the investigation, to  
9 clarify the procedural aspects of the proceedings, to explain the  
10 right of the judge to a fair hearing, or to state that the judge  
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17 \* Sec. 7. AS 22.30 is amended by adding a new section to read: NEW  
18 Sec. 22.30.068. MINORITY REPORTS. A member of the commission BILL SECTION  
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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

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18 brief statement describing each public reprimand, public censure, or  
19 suspension received by the judge under AS 22.30.011(d) [(3) OR (4)]  
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26 justices and judges of the state courts; three members who have  
27 practiced law in this state for 10 years, appointed by the governor  
28 from nominations made by the governing body of the organized bar and  
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HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF  
HB 268

Commission on Judicial Conduct

Received April 5, 1989  
by The Judiciary Committee

Heard April 12, 1989  
Heard May 2, 1989  
Heard May 3, 1989  
Heard February 6, 1990  
Heard February 7, 1990

CSHB 268 (SA) Adopted February 7, '990

Passed Out of Committee February 7, 1990  
3 Do Pass  
1 Do Not Pass  
1 No Recommendation

## TABLE OF CONTENTS

### HB 268: Commission on Judicial Conduct

- Item 1: HB 268 by The Judiciary Committee  
CSHB 268 (SA)
- Item 2: Fiscal Note by Commission on Judicial Conduct
- Item 3: Sectional Analysis from Rep. Gruenberg, April 11, 1989
- Item 4: Memorandum from Commission on Judicial Conduct, April 3, 1989
- Item 5: Memorandum from Alaska Judicial Council, April 3, 1989

# HOUSE COMMITTEE REPORT

(7)  
Date Referred: April 5, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee considered:

HB 268

HOUSE BILL NO. 268 [COMMISSION ON JUDICIAL CONDUCT]  
"An Act relating to the Commission on Judicial Conduct."

**RECOMMENDATIONS:**

- be replaced with CSHB 2108(SA)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note <sup>AK Common</sup> Jud. Conduct
- zero with analysis \_\_\_\_\_
- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

*Do not pass as amended*  
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**SIGNING:**

(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>	✓		
<i>[Signature]</i>		X	

*[Signature]*  
Chairman's Signature

Item 2

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

Bill Version: HB 268  
Publish Date: 2-5-90

### FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Alaska Commission  
 Title: Act relating to the BRU: on Judicial Conduct  
Commission on Judicial  
Conduct  
 Sponsor: Judiciary Components: \_\_\_\_\_  
 Requestor: State Affairs

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

General Funds	-0-	-0-	-0-	-0-	-0-	-0-
Federal Funds	-0-	-0-	-0-	-0-	-0-	-0-
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Marla N. Greenstein, Executive Director  
 Division: Alaska Comm'n on Judicial Conduct

Phone: 272-1033  
 Date: 2-5-90

Approved by: Marla N. Greenstein, Executive Director  
 Agency: Alaska Comm'n on Judicial Conduct

Date: 2-5-90

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)

Item 3

# State of Alaska

## Committees



CO-CHAIR, HOUSE JUDICIARY  
VICE-CHAIR, HOUSE LABOR AND COMMERCE  
HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4712  
465-4968/4986  
(SESSION)

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spennard, Upper Midtown Anchorage

April 11, 1989

### MEMORANDUM

TO: Representative Red Boucher  
Chairman, House State Affairs Committee

FROM: Representative Max Gruenberg *[Signature]*

RE: Analysis of HB 268

House Bill 268 makes several minor technical changes to the statutes governing the Commission on Judicial Conduct; Sections 2 and 4 make substantive changes intended to make Commission proceedings more open to the public:

Section 1: A technical change, clarifying that the Commission is not authorized to investigate allegations more than six years old.

Section 2: Provides clear authority for the Commission to make preliminary inquiries into a complaint against a judge before holding a formal public hearing. Proceedings prior to a public hearing remain confidential, as they are under current AS 22.30.060(b)(3). (In addition, under the Open Meetings Act, AS 44.67.310(c)(7), agencies may discuss "subjects that tend to prejudice the reputation and character of any person" in executive session.) The bill also removes the judge's ability under current law to keep a hearing closed to the public.

Section 3: A technical change -- language removed in this section of the bill is now contained in Section 2 (page 2, lines 4 - 6).

Section 4: Requires that a Commission decision made after a public hearing also be made public. However, the deliberations of the Commission (like the deliberations of other quasi-judicial agencies, pursuant to AS 44.62.310(d)(1)) are expressly made confidential.

Section 5: A technical amendment, clarifying the term "judge" as including part-time or retired judges.



Commission on Judicial  
Conduct

303 K STREET  
ANCHORAGE, ALASKA 99501  
264 0528

April 3, 1989

M E M O R A N D U M

TO: Members of House Judiciary Committee  
FROM: Marla N. Greenstein, Executive Director *MG*  
RE: Commission Confidentiality and Independent Purpose

(1) Confidentiality of Commission Proceedings

Unlike other state agencies, Alaska's Commission on Judicial Conduct exists solely as an investigatory and adjudicatory body. The Commission's sole purpose is to investigate allegations of misconduct against judges. After a full investigation, if there is proof of misconduct in office, the Commission will issue formal charges and transform into a court-like body. After formal charges, the Commission will hear arguments and issue a recommendation for a sanction to the Alaska Supreme Court.

Throughout the investigatory stages the process is confidential. Purposes of confidentiality include:

- (a) protection of the judge's constitutional due process rights
- (b) encouragement of candor by witnesses
- (c) maintenance of public confidence in the judiciary
- (d) encouragement of retirement as an alternative to costly formal proceedings
- (e) protection of commissioners from outside pressures.

These purposes are achieved by the statutory requirements of AS 22.30.011 and 22.30.060 and Commission Rule 5 (attached). Any change to the constitution, statutes, or rules pertaining to the Commission must be consistent with the purposes stated above.

MEMORANDUM

House Judiciary Committee

RE: Commission Confidentiality and Purpose

April 3, 1989

Page 2 of 2

(2) Need for Commission Independence

The amendment to our state constitution that created the Commission on Judicial Conduct in 1968 was an outgrowth of a national movement to create independent judicial disciplinary commissions. The principle behind the creation of an independent commission was to provide a body that would "protect the public, preserve the integrity of the judicial process, maintain public confidence in the judiciary, and create a greater awareness of proper judicial behavior of the part of judges themselves." (ABA Standards Relating to Judicial Discipline and Disability Retirement, 1977)

At the time the amendment was formulated by the Alaska State Legislature, the Judicial Council had been in existence for almost a decade. The Judiciary Committees of both houses knew that they could merely expand the functions of the Judicial Council to include the discipline of judges but chose not to. Reasons for creating a separate body with separate rules governing it, included an implicit recognition of the very different function of the Conduct Commission. As an investigatory body, the Commission on Judicial Conduct necessarily required stringent rules of confidentiality and procedures that would guarantee the constitutional rights of both complainants and judges. As an adjudicatory body, the Commission required a need of independence from outside pressures in its decision making and special subpoena powers. Any combination of functions with the Judicial Council appeared to have the potential of diluting these essential concerns.

## ATTACHMENTS

1. Constitutional Provision
2. Relevant Statutory Provisions
3. Commission Confidentiality Rule
4. Commission Procedures Flow Chart

Section 10. 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 state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons 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. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

## Chapter 30. Judicial Conduct.

Section	Section
10 Commission on Judicial Conduct	66 Inquiry
11. Powers and duties of the commission	70. Disqualification, suspension, removal, retirement and censure of judges
40. Preparation of budget	80. Definitions
50. Validity of acts of the commission	
60 Rules and confidentiality	

**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 the 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)

**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

(4) 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.

(h) If a judge has been publicly reprimanded, suspended, or publicly censured under this section and the judge has filed a declaration of candidacy for retention in office, the commission shall report to the Judicial Council for inclusion in the statement filed by the judicial council under AS 15.58.050 each public reprimand, suspension, or public censure received by the judge

(1) since appointment; or

(2) if the judge has been retained by election, since the last retention election of the judge. (§ 1 ch 58 SLA 1981; am §§ 2 — 4 ch 160 SLA 1984; am § 13 ch 38 SLA 1987)

**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)

**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)

## RULE 5 CONFIDENTIALITY

A. Confidentiality. All investigative and disciplinary 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. Disclosure - Generally. 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. Disclosure - Dismissal. 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. Nondiscoverable Matters.

(1) The following matters and materials are not discoverable:

a. Commission deliberations concerning alleged acts of judicial misconduct or disability, and

b. Commission staff memoranda, notes and attorney work product.

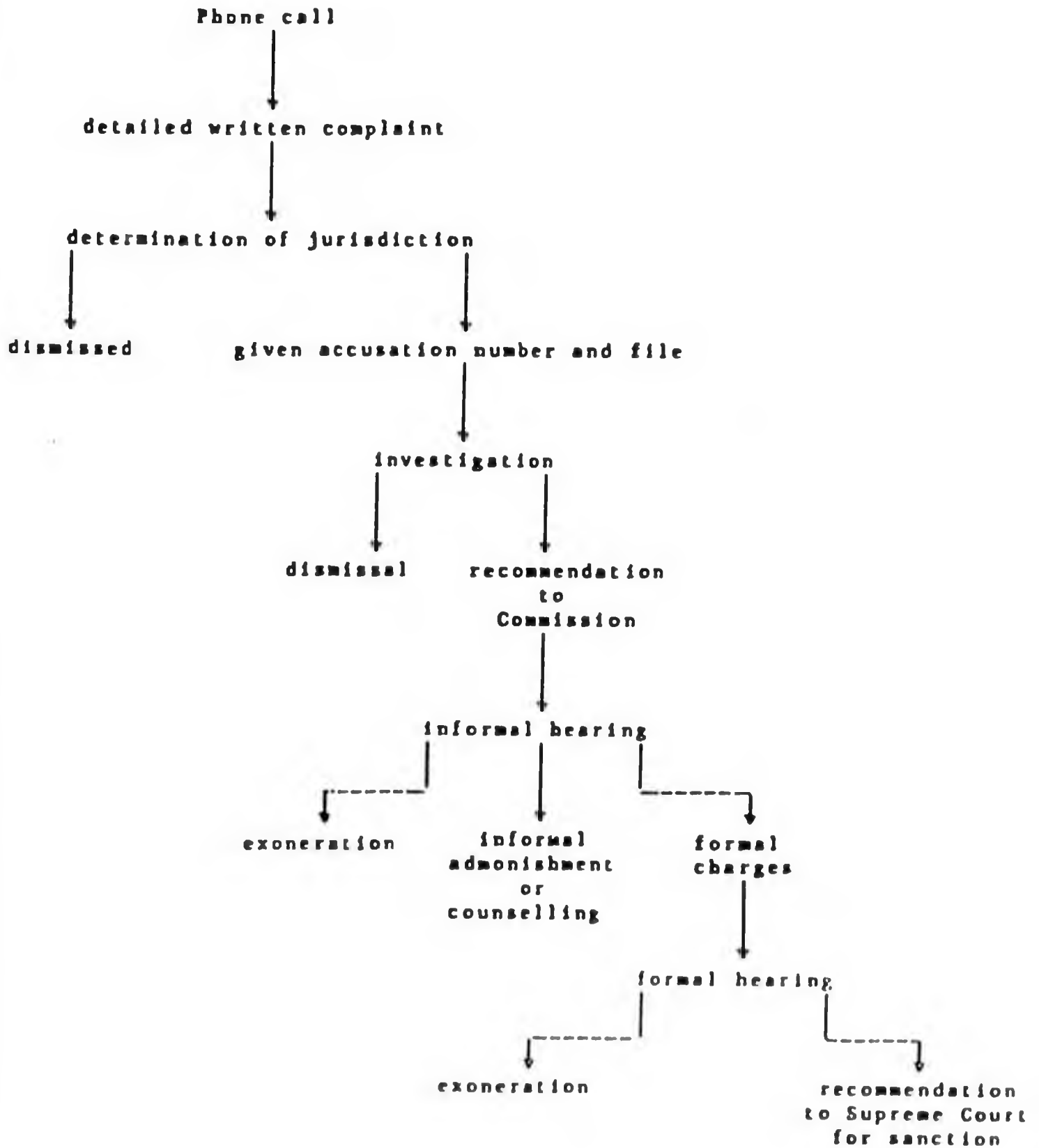
(2) Except as provided in Rule 8A, the identity and statements of witnesses are not discoverable prior to a probable cause determination.

E. Determination Disclosure - Determination. 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, pursuant to statute, cannot be disclosed, or (iii) has filed a recommendation with the Supreme Court.

F. Public Information. The Commission may, from time to time, issue press releases and other public statements explaining the nature of its jurisdiction, procedure for instituting of accusations, limitations upon its power 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.

JUDICIAL CONDUCT COMPLAINT PROCESS



Item 5



# alaska judicial council

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April 3, 1989

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CHAIRMAN, EX OFFICIO  
Warren W. Matthews  
Chief Justice  
Supreme Court

## MEMORANDUM

To: House Judiciary

From: HMB, Alaska Judicial Council

Re: Alaska Judicial Council/Commission on Judicial Conduct

The House Judiciary Committee has requested that the following issues be addressed in writing for the purpose of discussion at the April 3rd meeting of the committee.

1. What is the status of the communication of information between the Alaska Judicial Council (hereinafter COUNCIL) and the Commission on Judicial Conduct (hereinafter COMMISSION).

The sharing of information between the two agencies is not and has not been a problem, insofar as that exchange is not prohibited by law. AS 22.30.060 prohibits the COMMISSION from releasing information concerning evidence or allegations against a judge until and unless formal charges have been filed, in which event only the charges will be made public. A judge can waive the confidentiality provisions of the statute and, of course, if the allegations result in discipline serious enough to reach the level of public sanction or more, the information to the extent reflected in the opinion of the Supreme Court becomes available to the public.

Twice, the COUNCIL requested the legislature to modify the statute so that otherwise confidential information in the possession of the COMMISSION could be shared with the COUNCIL. Most recently, in 1986, the COUNCIL, without objection by the COMMISSION, urged the legislature to amend AS 22.30.011(f) so as to read:

(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 and to the judicial council. A private reprimand is confidential.

When the COUNCIL independently develops information reflecting adversely on the qualifications of a judge, it will be forwarded to the COMMISSION if the COUNCIL votes to do so. This requires an affirmative vote by four or more members of the COUNCIL. See Article IV, Sec. 6 of the Constitution of the State of Alaska.

2. When is information confidential?

The confidentiality of complaints to and evidence developed by the COMMISSION is governed by AS 22.30.060 and the rules adopted pursuant thereto. The confidentiality of information provided to or developed by the COUNCIL depends on the circumstances. Initially, it should be noted that all records of the COUNCIL, unless confidential or privileged, are public as provided in AS 09.25.110. See Article XI of the bylaws, (tab B). Article 1, Sec. 22 of the State Constitution provides for the right of privacy. While the parameters of this "right" have not yet been fully articulated, it is a principle that must be examined and balanced with other principles or rules of law on a case by case basis. This "right" is incorporated in Article XI, Sec. 2 of the COUNCIL'S bylaws which, in turn, provides for the confidentiality of certain communications including solicited information or communications concerning a judicial candidate or judge standing for retention where there is a promise or a reasonable expectation of confidentiality. See Doe v. Alaska Superior Court 721 P.2d 617 (AK. 1986). See also, page two of the October 1984 opinion of the Attorney General (tab D, p.I:17.31) endorsing the adoption of rules by the COUNCIL governing confidentiality that are consistent with state law.

## FISCAL NOTE

**REQUEST:**

Revision Date: _____	Agency Affected: <u>Alaska Commission</u>	
Title: <u>Act relating to the</u>	BRU: _____	<u>on Judicial Conduct</u>
<u>Commission on Judicial</u>		
<u>Conduct</u>		
Sponsor: _____	Components: _____	
Requestor: <u>State Affairs</u>		
	<u>Judiciary</u>	

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**


General Funds	-0-	-0-	-0-	-0-	-0-	-0-
Federal Funds	-0-	-0-	-0-	-0-	-0-	-0-
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

Full-time						
Part-time						
Temporary						

**ANALYSIS: (Attach a separate page if necessary)**

No fiscal impact.

Prepared by:   
Marla N. Greenstein, Executive Director  
 Division: Alaska Comm'n on Judicial Conduct

Approved by: Marla N. Greenstein, Executive Director  
 Agency: Alaska Comm'n on Judicial Conduct

Phone: \_\_\_\_\_  
 Date: 272-1033  
2-5-90

Date: 2-5-90

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)

sented as to the charges that it constituted misconduct for the judges to act as attorneys in cases which originated in their courts, but in which they took no action as judges. Accordingly, these commissioners voted that respondents merely be admonished.

The Commission found that the judges' actions in transferring cases and later acting as attorneys in the cases also violated certain sections of the New York Judiciary Law. Section 16 prohibits a judge from practicing law in a matter originating in his court, and Section 17

further prohibits a judge from acting as an attorney in any case in which he or she took official action as a judge. Section 471 prohibits the law partner of a judge from accepting employment in any cases which originated before the judge. The term "originating" is not defined by statute or case law. The Commission stated that the term's meaning is clear: "any claim or charge initiated in respondent's court, whether or not he took any action on it, originated in his court." The dissent apparently disagreed with the Commission's interpretation of Section

16 and the term "originating" regarding cases in which the judges took no action and later acted as attorneys. Further, the Commission found that the judges' practice of transferring cases out of their courts and later representing a party to the matter "created the impression that the courts were being manipulated to benefit [respondents'] private law practice, to the possible inconvenience of the parties and to the burden of other courts that had to assume an additional case-load."

## Confidentiality Survey Results

by Anita Solanos

In 1985 an article was published in the *Temple Law Quarterly* which included an appendix showing when each state ceased confidentiality in the judicial discipline process. Shaman and Begue, *Silence Isn't Always Golden: Reassessing Confidentiality in the Judicial Discipline Process*, 58 *TEMP. L.Q.* (1985).

According to this article, in 1985 nineteen commissions had provisions whereby confidentiality ceased upon the commission's post-investigation filing of formal charges against the judge, 22 commissions ceased confidentiality upon the commission's filing a recommendation for discipline with the state supreme court, and ten commissions ceased confidentiality upon the ordering of discipline.

In the last three years several states have amended their governing provisions to permit public scrutiny of commission records or proceedings at an earlier date. Since 1985, five states have changed their governing provisions, increasing from 19 to 24 the number of states which cease confidentiality upon the filing of formal charges against the judge. Three of these states, Ohio, Texas, and Washington, formerly ceased confidentiality upon the filing of a recom-

mendation for discipline with the state supreme court. The other two, Nevada and Massachusetts, made a more drastic change by shifting from provisions which ceased confidentiality upon the ordering of discipline—the least open type of provision—to provisions which cease confidentiality upon the filing of formal charges—the most open type of provision. Furthermore, nine states now allow judges to waive confidentiality in the hearing stages.

### Footnotes to Confidentiality Chart

\*States in which a judge can waive confidentiality in the hearing stages.

1 Alaska. Only the charging document is made public. The hearing is confidential.

2 California. Censure recommendations are not made public until thirty days after filing.

3 Connecticut. If probable cause is found to exist, an open public hearing shall be held.

4 District of Columbia. Confidentiality ceases on filing of notice of appeal of Commission decision with D.C. Court of Appeals.

5 Hawaii. Confidentiality only ceases if the Supreme Court enters an order imposing public discipline or the judge requests that the matter be public.

6 Kentucky. If the Commission's order is not appealed, the order becomes public when the 10-day appeal period has expired. Otherwise, the matter becomes public if the Supreme Court, after review, orders discipline or removal.

Consequently, a slim majority of 27 states and the District of Columbia still hold judicial disciplinary proceedings confidential until after a hearing to ascertain whether discipline is justified. However, the trend is toward allowing public access to information about disciplinary proceedings earlier in the disciplinary process.

The chart which follows this article is an update on the material published in the 1985 article.

7 Maine. Confidentiality also ceases if the judge or Committee, after allowing the judge to comment, determines the committee hearing should be public.

8 Massachusetts. Proceedings may remain confidential if the judge, the Commission, and the complainant, if any, all concur.

9 New York. Hearing transcripts, the complaint, and the dispositive action of the Commission with respect to the complaint will not be made public unless the judge so requests in writing.

10 North Dakota. Confidentiality ceases at the start of the fact finding hearing.

11 Oregon. Confidentiality ceases at the start of the fact finding hearing.

12 South Carolina. If the court orders private reprimand, all proceedings remain confidential.

13 Texas. Confidentiality ceases at the start of the fact-finding hearing.

14 Utah. Only the action taken becomes public.

## When Confidentiality Ceases

State	Commission files formal charges against the judge (post-investigation)	Commission files recommendation for discipline with the state's supreme court (post-hearing)	Discipline is ordered
Alabama	x		
Alaska	x <sup>1</sup>		
Arizona		x	
Arkansas	x		
California		x <sup>2</sup>	
Colorado		x	
Connecticut	x <sup>3</sup>		
Delaware <sup>o</sup>			x
D.C. <sup>o</sup>			x <sup>4</sup>
Florida	x		
Georgia	x		
Hawaii <sup>o</sup>			x <sup>5</sup>
Idaho		x	
Illinois	x		
Indiana	x		
Iowa		x	
Kansas	x		
Kentucky <sup>o</sup>			x
Louisiana		x	
Maine		x <sup>7</sup>	
Maryland		x	
Massachusetts <sup>o</sup>	x <sup>8</sup>		
Michigan	x		
Minnesota	x		
Mississippi		x <sup>9</sup>	
Missouri		x	
Montana <sup>o</sup>		x	
Nebraska	x		
Nevada	x		
New Hampshire <sup>o</sup>			x
New Jersey		x	
New Mexico		x	
New York <sup>o</sup>		x <sup>10</sup>	
North Carolina <sup>o</sup>		x	
North Dakota	x <sup>10</sup>		
Ohio	x		
Oklahoma	x		
Oregon	x <sup>11</sup>		
Pennsylvania		x	
Rhode Island			x
South Carolina			x <sup>12</sup>
South Dakota		x	
Tennessee	x		
Texas	x <sup>11</sup>		
Utah			x <sup>14</sup>
Vermont	x		
Virginia		x	
Washington	x		
West Virginia	x		
Wisconsin	x		
Wyoming		x	

662(c); ex-wife therefore could not garnish ex-husband's federal retirement pay), *cert. denied*, 459 U.S. 927, 103 S.Ct. 238, 74 L.Ed.2d 188 (1982).

[2] On the basis of this record we are of the view that Judge Carlson's unappealed order of September 24, 1986, establishing that the \$182 monthly payments were in the nature of "a property settlement," was correct. We therefore hold that 42 U.S.C. § 659(a) prohibits Heidi from garnishing Bill's military retirement pay.

Further we are of the view that 10 U.S.C. § 1408(d)(2) precludes Heidi from reaching Bill's military retirement pay for payment of a property settlement because the parties were not married for ten years.<sup>3</sup> See, e.g., *In re Marriage of Beltran*, 183 Cal.App.3d 292, 227 Cal.Rptr. 924, 927 (1986) (subsection (d)(2) imposed requirement of ten-year marriage before direct payment may be made to former spouse as part of property settlement); *Le Vine v. Spickelmier*, 109 Idaho 341, 707 P.2d 452, 455 (1985) (ten-year limitation applies where direct payments made to spouse in response to court order); *Anderson v. Anderson*, 13 Ohio App.3d 194, 468 N.E.2d 784, 789 (1984) (ten-year limitation is threshold requirement to former spouse's entitlement to recover); *In re Marriage of Wood and Wood*, 66 Or.App. 941, 676 P.2d 338, 341 (1984) (before an ex-spouse can receive direct payments from the pension account, the couple's marriage must have spanned at least ten years of a military career).

Given the foregoing we hold that the superior court erred in denying Bill's motion to terminate garnishment of his military retirement pay.

#### IV. ACCOUNTING.

Bill's final specification of error in this appeal is that "the [t]rial [c]ourt [e]rr[ed] [w]hen [i]t [d]enied the [m]otion for an [a]ccounting of [i]mproperly [c]ollected [a]limony[.]" Given our holding that Heidi may not garnish Bill's military retirement pay for payment of a property settlement,

she has improperly collected the monthly \$182 payments from Bill. Thus an accounting should be conducted on remand to determine the amount improperly garnished as well as the amount to be credited to child support.

REVERSED and REMANDED for further proceedings not inconsistent with this opinion.



#### In re INQUIRY CONCERNING A JUDGE.

No. S-2529.

Supreme Court of Alaska.

Oct. 21, 1988.

On appeal from order of the Commission on Judicial Conduct publicly reprimanding a judge, the Supreme Court, Compton, J., held that statute empowering Commission to publicly reprimand judge violates provision of Alaska Constitution establishing Commission.

Reversed.

Judges 11(1)

Statute empowering Commission on Judicial Conduct to publicly reprimand judge violates provision of Alaska Constitution authorizing Commission to "recommend" sanctions. AS 22.30.011(d)(3); Const. Art. 4, § 10.

George N. Hayes, Jill E. Mickelsen, Delaney, Wiles, Hayes, Reitman & Brubaker, Inc., Anchorage, for appellant.

Arden E. Page, Burr, Pease & Kurtz, Anchorage, for appellee Alaska Com'n on Judicial Conduct.

3. See *supra* note 1.

mproperly collected the monthly payments from Bill. Thus an account should be conducted on remand to the amount improperly gathered as well as the amount to be credited support.

SED and REMANDED for further findings not inconsistent with this



In re INQUIRY CONCERNING A JUDGE.

No. S-2529.

Supreme Court of Alaska.

Oct. 21, 1988.

Appeal from order of the Commission on Judicial Conduct publicly reprimanding a judge, the Supreme Court, J., held that statute empowering Commission to publicly reprimand judge in violation of Alaska Constitution established Commission.

11(1) The statute empowering Commission on Judicial Conduct to publicly reprimand judges provision of Alaska Constitution authorizing Commission to "recommend sanctions. AS 22.30.011(d)(3); Alaska Const. art. IV, § 10.

V. Hayes, Jill E. Mickelsen, Delores Hayes, Reitman & Brubaker, Attorneys for appellant.  
J. Page, Burr, Pease & Kurtz, Attorneys for appellee Alaska Commission on Judicial Conduct.

Before MATTHEWS, C.J., and BURKE and COMPTON, JJ.

OPINION

COMPTON, Justice.

This case presents the question of whether the Alaska Commission on Judicial Conduct (the Commission) acted within the authority given to it by the Alaska Constitution in publicly reprimanding a judge.

In 1986 Appellant<sup>1</sup> was served with a formal complaint regarding actions by Appellant in a judicial capacity that arose out of events which occurred in 1985. Appellant contested the complaint, and a hearing was conducted before the Commission.

The Commission concluded that there was insufficient evidence to support a finding of an actual impropriety committed by Appellant. However, the Commission determined that Appellant had failed to avoid conduct that created an appearance of impropriety. The Commission concluded that Appellant's conduct was prejudicial to the administration of justice and brought the judicial office into disrepute, in violation of AS 22.30.011(a)(3)(C) and (D). The Commission further concluded that Appellant had violated Canons 1 and 2(A) of the Code of Judicial Conduct and AS 22.30.011(a)(3)(E).

In furtherance of its conclusions, the Commission determined that the appropriate sanction was a public reprimand of Appellant by the Commission, pursuant to AS 22.30.011(d)(3). It so ordered.

Appellant appealed the Commission's determination to this court. This court *sua sponte* ordered the parties to brief whether AS 22.30.011(d)(3), which grants the Commission the power to issue public reprimands, conflicts with article IV, § 10 of the Alaska Constitution. It also ordered all further proceedings stayed pending its decision.<sup>2</sup>

The sole issue before this court is the constitutionality of the statute empowering the Commission to publicly reprimand a

judge. This issue is a matter of constitutional and statutory interpretation in which the appropriate standard of review is this court's independent judgment. See *Borkowski v. Snowden*, 665 P.2d 22, 25 (Alaska 1983).

Article IV, section 10 of the Alaska Constitution provides for a Commission on Judicial Conduct. The section states in part:

In addition to being subject to impeachment under section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

Alaska Const. art. IV, § 10. This section was added by amendment in 1968. It was based on a 1966 revision of the judicial article of the California Constitution. *In re Robson*, 500 P.2d 657, 658 n. 1 (Alaska 1972).

Under authority of this section the Alaska legislature passed AS 22.30.010-.080. These statutory sections delineate the membership, powers and duties, and procedures of the Commission. Among the powers granted the Commission are the following:

The commission may, after a hearing

- ....
- (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.

AS 22.30.011(d). This section was adopted in 1981. Subsection (2) was added by amendment in 1987.

1. This court has ordered that the identity of the judge be protected. Therefore, the judge is referred to throughout this opinion as the "Appellant."  
2. The facts are those agreed upon by the parties.

This court has had limited opportunities to review the functions of the Commission. We first discussed the Commission's powers in *In re Robson*. There we wrote:

Concerning the subject of sanctions article IV, section 10 of the Alaska Constitution, and AS 22.30.070(c)(2), provide that upon recommendation of the commission the Supreme Court of Alaska may suspend, remove, retire or censure a judge. Under this discretionary grant, our review of a particular recommendation by the commission is necessarily broader than the substantial evidence criterion adopted for review of findings of fact made by the commission. Normally considerable weight will be accorded to a given recommendation from the commission, if supported by an adequate factual basis. Nevertheless, both article IV, section 10 of the constitution and AS 22.30.070(c)(2) clearly establish that the Supreme Court of Alaska is to exercise its independent judgment in determining an appropriate sanction, if any, as to any recommendation made by the commission. It would be tantamount to an abdication of our constitutional and statutory obligations if we were to automatically adopt the commission's sanction recommendations. In every case of this character we must insure that procedure<sup>1</sup> the process has been accorded the judicial officer proceeded against and that requisite findings of fact have been made and are supported by substantial evidence. We are further obligated to decide whether the commission's recommended sanction is justified by the record and is in accord with the objectives of the commission as reflected in the relevant constitutional and statutory provisions.

3. That the legislature intended reprimand to be a lesser sanction than those reserved to the Supreme Court in article IV, section 10 seems to be supported by the little legislative history that exists. Bruce Campbell, Chairman of the Commission on Judicial Qualification explained the bill to the Senate Judiciary Committee saying:

We are looking for a lesser response than going for censorship by the Supreme Court. That is a very heavy response to make on a judge for a minor transgression.

*Robson*, 500 P.2d at 659-60, quoted in *In re Hanson*, 532 P.2d 303, 315-16 (Alaska 1975).

In *Hanson*, we further observed that "article IV, section 10 of the Alaska Constitution lodges in the Supreme Court of Alaska the exclusive adjudicatory power to suspend, remove from office, retire, or censure a justice or judge in the Alaska Court System." 532 P.2d at 307. Later in the opinion we concluded that our role required us to review independently the evidence supporting the Commission's recommendation:

Article IV, section 10 of the Alaska Constitution and AS 22.30.070(c) unambiguously establish the Supreme Court of Alaska as the body entrusted with the ultimate dispositive decision in a judicial qualifications matter. In light of this constitutional grant and adopting the reasoning of [*Geiler v. Commission on Judicial Qualifications*, 10 Cal.3d 270, 110 Cal.Rptr. 201, 515 P.2d 1 (1973)], we conclude that this court's scope of review in a judicial qualifications proceeding should be that of an independent evaluation of the evidence.

532 P.2d at 309.

The Commission argues that in spite of this court's "unambiguous" role in deciding questions of judicial qualifications, it may issue public reprimands regarding the conduct of a judge. The Commission sets forth two rationales in support of this argument: (1) article IV, section 10 authorizes the legislature to give the Commission the power to impose lesser sanctions than those reserved to the Supreme Court. Subparts of this argument are that the legislature intended a reprimand to be a lesser sanction and that by law it is a lesser sanction;<sup>2</sup> (2) the Alaska system is consist-

Whether the legislature attained its goal is another matter. As the Appellant points out, Black's Law Dictionary defines both "censure" and "reprimand" by using the other word. See Black's Law Dictionary 203, 1170 (rev. 5th ed. 1979). Webster's 3d New International Dictionary lists "censure" as a synonym for reprimand. In view of our resolution of the underlying issue, we do not address this question.

ent with the judicial discipline systems of other states and appeals to common sense.

The threshold question underlying the Commission's arguments is whether the Commission constitutionally may impose any sanction at all on a judge. To answer this question it is helpful to compare the system of discipline established by the Alaska Constitution and AS 22.30.010-.080 with that of other states. What can be seen by this comparison is that the Alaska statute is similar to other states' constitutions, but that the Alaska Constitution is more limited than either the Alaska statute or other states' constitutions.

As observed *supra*, the Alaska system was originally derived from California. The California Constitution allows the Commission on Judicial Performance (the California Commission) to do two things: (1) recommend suspension, retirement, censure or removal to the supreme court, Cal. Const. art. 6, § 18(b) and (c), or (2) on its own authority privately admonish a judge, subject to supreme court review. Cal. Const. art. 6, § 18(c) (added by amendment, 1976). The California Supreme Court has strictly construed the options of the California Commission. In *Geiler v. Commission on Judicial Qualifications*, 10 Cal. 3d 270, 110 Cal.Rptr. 201, 203 n. 5, 515 P.2d 1, 3 n. 5 (1973) cert. denied, 417 U.S. 932, 94 S.Ct. 2643, 41 L.Ed.2d 235 (1974), the California Supreme Court noted that "a recommendation of censure or removal . . . is not self-effectuating." Then, in *Mosk v. Superior Court*, 25 Cal.3d 474, 159 Cal. Rptr. 494, 601 P.2d 1030 (1979), where the California Commission tried to hold public hearings, the California Court wrote:

The question of confidentiality of proceedings before the Commission on Judicial Performance must be considered in light of the Commission's history and the limited scope of its constitutional authority. It was, as previously noted, created by constitutional amendment in November 1960. (See Cal.Const., art. VI, § 8.) It has authority to investigate complaints of judicial misconduct, a judge's failure or inability to perform the duties of a judge, and other conduct prejudicial to the administration of justice. The Com-

mission does not have the authority to investigate a "court." Its inquiry must be limited to misconduct or disability of an individual judge. The Commission has authority to conduct hearings, make findings of fact (see Gov.Code, §§ 68750-68755; Cal. Rules of Court, rules 901-922), and recommend to the Supreme Court that a given judge be censured or removed or retired from the court. (Cal. Const., art. VI, § 18, subd. (c)). *The Commission may privately admonish a judge for improper action or a dereliction of duty, but it has no power to censure, remove, retire or otherwise discipline a judge. It can only make certain recommendations to the Supreme Court, which then reviews the evidence and makes its own findings.* (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 276, 110 Cal.Rptr. 201, 515 P.2d 1; *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 119 Cal.Rptr. 841, 532 P.2d 1209.)

*Mosk*, 159 Cal.Rptr. at 504-505, 601 P.2d at 1040-41 (footnotes omitted, emphasis added).

Consistent with a strict reading of the powers of the California Commission, California statutes do not provide for sanctions in addition to those provided for constitutionally. The California statutes merely empower the California Commission to employ experts and counsel, pay its expenses, serve process and conduct hearings at which testimony may be taken under oath and witnesses may be compelled to attend and testify. See Cal.Gov.Code §§ 68701-68755 (West 1976 and Supp.1988). In other states too, where the power to sanction is reserved to the Supreme Court, that reservation is respected. See, e.g., *In re Neely*, 364 S.E.2d 250, 251 (W.Va.1987); *In re Voorhees*, 739 S.W.2d 178, 181 (Mo.1987); *Small v. Guste*, 383 So.2d 1011, 1013-14 (La.1980); *West Virginia Judicial Inquiry Commission v. Dostert*, 165 W.Va. 233, 271 S.E.2d 427, 428 (1980). But see *In re Van Susteren*, 82 Wis.2d 307, 262 N.W.2d 133, 135 (1978) (Commission took action; Wis. Const. art. 7, § 11 provides in part:

"Each judge or justice shall be subject to reprimand, censure, suspension, removal for cause or for disability, by the Supreme Court pursuant to procedures established by the legislature by law.").

The reasons for guarding the power to sanction were expressed by the Missouri Supreme Court in *Voorhees*:

Any discipline of a judge, even a reprimand, is a serious matter, and should be imposed only for substantial reasons and with all due process rights preserved. A reprimand is a public denunciation which permanently scars the judge's record. Cf. *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 636-37, 105 S.Ct. 2265, 2274, 85 L.Ed.2d 652 (1985). It is not a minor matter and should not be lightly imposed. While complaints of violation of the constitutional standards should be thoroughly investigated when complaint is made, zealously prosecuted when possible cause is shown, and punished by appropriate sanctions when proved, judges should not be held up to public censure on account of good faith exercise of judgment. Our system provides other means of correction for erroneous decisions.

739 S.W.2d at 180. Compare, *Board of Overseers of the Bar v. Rodway*, 461 A.2d 1062, 1064 (Me.1983) (admonition was a form of discipline and therefore judge receiving admonition was due the same procedural protection as judges receiving other forms of discipline), *appeal after reprimand*, 470 A.2d 790 (Me.1984).

Some states' constitutions grant their respective judicial review commissions the power to admonish or censure judges. See, e.g., N.Y.Const. art. 6, § 22(a) ("The commission on judicial conduct ... may determine that a judge or justice be admonished, censured or removed from office for cause..."); Texas Const. art. 5, § 1-a(8) ("the commission may in its discretion issue a private or public admonition, warning,

4. The Commission argues that because a judge may appeal its decision to reprimand, AS 22.30.011(d)(3) does not deprive this court of its ultimate authority to discipline judges. However, the language of both *Robson* and *Hanson* indicates that article IV, § 10 of the Alaska Constitu-

tion requires this court to independently determine the sanction in each case.

reprimand, or requirement that the person obtain additional training or education."). However, the question before the court is not, as the Commission argues, whether the powers granted the Commission by AS 22.30.011 appeal to common sense. Instead, the question is whether the powers are constitutional. In New York and Texas, the state constitution expressly provides that the commission on judicial conduct may act on its own authority. Alaska's constitution contains no such express provision.

This court has held that on review of the Commission's findings the court must "exercise its independent judgment in determining an appropriate sanction." *Robson*, 500 P.2d at 660. Furthermore, this court has said that failure to exercise its independent judgment "would be tantamount to an abdication of our constitutional and statutory obligations." *Id.*<sup>4</sup> Given this court's strict interpretation of its role, and the apparent agreement of other courts that the powers of a judicial disciplinary commission should be limited to those constitutionally granted, we conclude that granting the Commission the authority to impose sanctions is not permitted by article IV, section 10 of the Alaska Constitution.

Because article IV, section 10 of the Alaska Constitution only empowers the Alaska Commission on Judicial Conduct to recommend sanctions to the Alaska Supreme Court, AS 22.30.011(d)(3) is in conflict therewith.<sup>5</sup> The Commission was without authority to impose any self-effectuating sanction on the Appellant.

REVERSED.

RABINOWITZ and MOORE, JJ., not participating.



tion requires this court to independently determine the sanction in each case.

5. Neither party has raised, nor do we address, the constitutionality of AS 22.30.011(d)(2).