

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

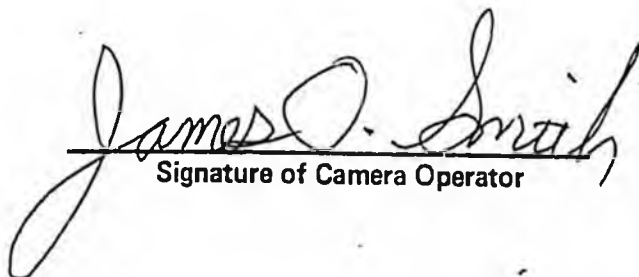
4030 SJUD MAGISTRATES / CONDUCT

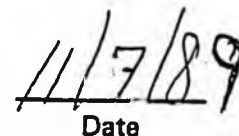
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Signature of Camera Operator


Date

MAGISTRATE

/ CONDUCT

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

FOURTH STATE CAPITOL
JUNEAU, ALASKA 99801
907-465-2600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

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

Ford
9/23/85

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.

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16 *STRAINING PROBLEM - FURTHER THAN ETHICAL PROBLEM*
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STATE OF ALASKA
THE LEGISLATURE

FOUCH STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 24, 1985

SUBJECT: Magistrates

TO: Senator Pat Rodey
Senate Judiciary Committee

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Legislative Counsel

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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.

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Enclosure

Ford
9/23/85

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BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 321 (Judiciary)

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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.

MAGISTRATES

m

DISTRICT/NAME WORK PHONE MAILING ADDRESS

First Judicial District

John Howard, Sr.....	788-3229...	Box 123, Angoon.....	99820-0123
Elizabeth M. Dennis.....	826-3306...	Box 164, Craig.....	99921-0164
Carl W. Heinmiller.....	766-2801...	Box 169, Haines.....	99827-0169
Maxine L. Savland.....	945-3668...	Box 260, Hoonah.....	99829-0260
Richard N. Siangco.....	465-3444...	Box U, Juneau.....	99811-4100
William L. Cheney.....	785-3651...	Box 297, Kake.....	99830-0297
Susan E. Thomsen.....	225-3195...	415 Main St., Room 400 Ketchikan.....	99901-6399
Kimberly Daniels.....	735-2217...	Box 36, Pelican.....	99832
Kathleen A. Stewart.....	772-4466...	Box 1009, Petersburg..	99833-1009
Marilyn D. Hanson.....	747-3291...	304 Lake St., Room 203 Sitka.....	99835
Jean M. Worley.....	983-2368...	Box 495, Skagway.....	99840-0495
Linda Hartshorn.....	874-2311...	Box 869, Wrangell.....	99929-0869
Terrence J. Gallagher....	784-3274...	Box 354, Yakutat.....	99689-0354

Presiding Judge - Thomas E. Schulz
 Training Judge - Duane Craske
 Deputy Training Judge - Linda Hartshorn
 Administrator - Kristen Carlisle

Second Judicial District

Reginald Gates.....	852-4800...	Box 2700, Barrow.....	99723-2700
(vacant).....		Gambell.....	99742-0093
Anita Greist.....	475-2172...	Gen. Del., Kiana.....	99749-9999
James A. Farr.....	442-3208...	Box 317, Kotzebue.....	99752-0317
(vacant).....	443-5216...	Box 100, Nome.....	99762-0100
(vacant).....		Noorvik.....	99763-0146
Steven T. Lisbourne, Sr..	368-2912...	Gen. Del., Pt. Hope...	99766-9999
Abner Gologergen.....	984-6011...	Box 111, Savoonga.....	99769-0111
Lori Fleshman.....	484-2181...	Box 658, Selawik.....	99770-0658
(vacant).....		Shungnak.....	99773
Lowell V. Anagick Sr. ...	624-3015...	Box 185, Unalakleet..	99684-0185

Presiding/Training Judge - Charles R. Tunley
 Training Judge - Paul Jones
 Deputy Training Judge - James Farr
 Administrator - Mike Hall

DISTRICT/NAME	WORK PHONE	MAILING ADDRESS
<u>Bethel Area</u>		
Herb Viergutz.....	675-4325...Box	136, Aniak.....99557-0136
Craig R. McMahon.....	543-2298...Box	130, Bethel.....99559-0130
Dorothy Kameroff.....	949-1748...Box	137, Emmonak.....99581-0137
Alice Smith.....	827-8229...Box	89, Mekoryuk.....99630-0089
John Smith.....	556-8015...Gen.	Del., Quinhagak.....99655
Denice Beans.....	438-2912...Box	134, St. Marys.....99658-0134
Dorothy Sundown-Alder....	558-5427...Box	8, Scammon Bay.....99662

Presiding Judge - Jay Hodges
 Training Judge - Christopher Zimmerman
 Deputy Training Judge - Skip Slater
 Administrator - Charles "Mac" Gibson

Third Judicial District

Karl Heiker.....	532-2440...Box	8, Cold Bay.....99571-0008
Mary J. Wentworth.....	424-3378...Box	696, Cordova.....99574-0696
Geoffrey Comfort.....	842-5215...Box	209, Dillingham...99576-0209
Sheldon S. Sprecker.....	822-3405...Box	86, Glennallen...99588-0086
(see Dist. Ct. Judge)....	235-8171...3670	Lake St., Homer.....99603
Brigitte McBride.....	283-3110...145	Main Street Loop, Room 106 Main Floor, Kenai.....99611
Charles W. Shawback.....	246-6151...Box	197, King Salmon*.99613-0197
Dennis Nelson.....	486-5765...202	Marine Wy, Kodiak.99615-1367
Joe O'Connell.....	745-4284...268	E. Fireweed, Palmer.....99645-0860
George Rukovishnikoff Jr.	546-2300/2226	(Home), Box 76, St. Paul Island.....99660-0076
(vacant).....	Sand Point.....	99661
Christine Kashevarof.....	234-7679...Drawer	H. Seldovia...99663-0257
George Peck.....	224-3075...Box	1929, Seward.....99664-1929
George Dozier, Jr.....	581-1266...Box	245, Unalaska.....99685-0245
(see Superior Ct. Judge).	835-2266...Box	127, Valdez.....99686-0127
Christopher Sullivan.....	472-2356...Box	606, Whittier.....99693-0606

Presiding Judge - Douglas Serdahely
 Training Judges - John Bosshard III
 Glen Anderson
 Rural Court Training Assistant - Ross Ripley
 Administrator - Albert Szal

*Naknek Court

January 1986

DEPUTY MAGISTRATES

DISTRICT/NAME	WORK PHONE	MAILING ADDRESS
<u>First Judicial District</u>		
Henrietta Kato.....	826-3306.....	Box 164, Craig.....99921-0164
Mimi G. Gregg.....	766-2801.....	Box 120, Haines.....99827-0120
Margaret Hendon.....	465-2379.....	Box U, Juneau.....99811-4100
Geraldine Branham.....	225-3195.....	415 Main St., Room 400 Ketchikan.....99901-6399
Darlene Whitethorn.....	772-4466.....	Box 1009, Petersburg..99833-1009
Charlotte Swanberg.....	747-3291.....	304 Lake St., Room 203 Sitka.....99835
Jerri Feris.....	874-2311.....	Box 869, Wrangell.....99929-0869
Ann Lowe.....	874-2311.....	Box 869, Wrangell.....99929-0869
<u>Second Judicial District</u>		
May N. Pannick.....	442-3208.....	Box 317, Kotzebue.....99752-0317
Janet Tobuk.....	443-5216.....	Box 100, Nome.....99762-0100
<u>Third Judicial District</u>		
Goldeen Goodfellow.....	264-0440.....	303 K St., Anch.....99501-2083
Ross Ripley.....	264-0456.....	303 K St., Anch.....99501-2083
Susan Weltz.....	424-7312.....	Box 696, Cordova.....99574-0696
Maureen Wentz.....	842-5215.....	Box 209, Dillingham...99576-0209
Wava Schliesing.....	822-3405.....	Box 86, Glennallen...99588-0086
Anna Creasey.....	235-8171.....	3670 Lake St., Homer.....99603
Robin Turnbull.....	283-3110.....	145 Main Street Loop, Room 106 Kenai.....99611
Sandra Otto.....	283-3110.....	145 Main Street Loop, Room 106 Kenai.....99611
Jackie Allen.....	745-4282.....	268 E. Fireweed, Palmer.....99645-0860
Joanne Graham.....	745-4282.....	268 E. Fireweed, Palmer.....99645-0860
Janet Moore.....	224-3075.....	Box 596, Seward.....99664-0596
Mary Hawkins.....	581-1266.....	Box 245, Unalaska.....99685-0245
Tracee Schnell.....	835-2266.....	Box 127, Valdez.....99686-0127
Phyllis Johnson.....	835-2266.....	Box 127, Valdez.....99686-0127
<u>Fourth Judicial District</u>		
Marjorie Huntsman.....	683-2213.....	Box 41, Healy.....99743-0041
Kaye Knutsen.....	832-5430.....	Box 449, Nenana.....99760-0449
Madge Kelleyhouse.....	883-5171.....	Box 187, Tok.....99780-0187

DISTRICT/NAME	WORK PHONE	MAILING ADDRESS
<u>Fourth Judicial District</u>		
Tracy Blais.....	895-4211...	Box 401, Delta Junction.....99737-0401
Skip Slater.....	452-9220...	604 Barnette St., Room 221 Fairbanks.....99701-4577
Sharon C. Smyth.....	662-2336...	Box 152, Ft. Yukon.....99740-0152
James Jackson**.....	656-1322...	Box 167, Galena.....99741-0167
Barbara Macfarlane***.....	683-2213...	Box 41, Healy.....99743-0041
	832-5430...	Box 449, Nenana.....99760-0449
Paul Verhagen.....	366-7243...	Box 231, Tanana.....99777-0231
Iris A. Lathrop.....	883-5171...	Box 187, Tok.....99780-0187

Presiding Judge - Jay Hodges
 Training Judge - Christopher Zimmerman
 Deputy Training Judge - Skip Slater
 Administrator - Charles "Mac" Gibson

**James Jackson is the magistrate for both Galena and McGrath.
 ***Barbara Macfarlane is the magistrate for both Healy and Nenana.

For additional information concerning magistrates, their addresses and telephone numbers, contact: Magistrate Services, 303 K Street, Anchorage, Alaska 99501-2099, (907) 264-8233.

CORONERS/PUBLIC ADMINISTRATORS

D. Charlene Doris.....	264-0690...	303 K St., Anch.....99501-2083
Richard N. Siangco.....	465-3444...	Box U, Juneau.....99811-4100
Fred H. Smith.....	452-9211...	604 Barnette St., Room 202 Fairbanks.....99701-4577
Susan E. Thomsen.....	225-3195...	415 Main St., Room 400 Ketchikan.....99901-6399

COMMITTING MAGISTRATES

FAIRBANKS: John Hessin...	452-9236...	604 Barnette St., Room 107 Fairbanks.....99701-4577
ANCHORAGE: Brian Johnson		303 K Street
Janna Stewart		Anchorage, AK 99501-2083
Ron Wielkopolski		Phone: 264-0715
Roy Williams		
Ethan Windahl		

Anchorage committing magistrates work 12-hour shifts at the courthouse as follows:

<u>Daytime Duty</u>	<u>Night Duty</u>
Monday-Friday.....264-0715	Monday-Friday.....264-0715
Saturday, Sunday	Saturday, Sunday
and Holidays.....264-0471/2/3	and Holidays.....264-0471/2/3
or 264-0715	or 264-0715
	or 279-1441

January 1986

CLERKS OF COURT

DISTRICT/NAME	WORK PHONE	MAILING ADDRESS
<u>First Judicial District</u>		
*Henrietta Kato.....	826-3306.....	Box 164, Craig....99921-0164
Mimi Gregg.....	766-2801.....	Box 120, Haines...99827-0120
Sharon Walker.....	465-3453.....	Box U, Juneau....99811-4100
Nancy Humphreys.....	225-3195.....	415 Main St., Room 400 Ketchikan.....99901-6399
Darlene Whitethorn.....	772-4466.....	Box 1009, Petersburg.....99833-1009
Charlotte Swanberg.....	747-3291.....	304 Lake St., Room 203 Sitka.....99835
Jerri Feris.....	874-2311.....	Box 869, Wrangell.99929-0869
<u>Second Judicial District</u>		
Tonya Lunceford.....	852-4800.....	Box 2700, Barrow..99723-2700
May N. Pannick.....	442-3208.....	Box 317, Kotzebue 99752-0317
Janet Tobuk.....	443-5216.....	Box 100, Nome....99762-0100
<u>Third Judicial District</u>		
Goldeen Goodfellow.....	264-0440.....	303 K St., Anch...99501-2083
*Diane Mickey.....	532-2440.....	Box 8, Cold Bay...99571-0008
*Susan Weltz.....	424-7312.....	Box 696, Cordova..99574-0696
Maureen Wentz.....	842-5215.....	Box 209, Dillingham.....99576-0209
Wava Schliesing.....	822-3405.....	Box 86, Glennallen.99588-0086
Anna Creasey.....	235-8171.....	3670 Lake St., Homer.....99603
Robin Turnbull.....	283-3100.....	145 Main St. Loop, Room 106 Main Floor, Kenai.....99611
Julie Jedlicka.....	246-4240.....	Box 197, King Salmon.....99613-0197
Lori A. Wade.....	486-5765.....	Box 1367, Kodiak..99615-1367
Jackie Allen.....	745-4282.....	268 E. Fireweed, Palmer.....99645-0860
Janet Moore.....	224-3075.....	Box 596, Seward...99664-0596
Mary Hawkins.....	581-1266.....	Box 245, Unalaska.99685-0245
Phyllis Johnson.....	935-2266.....	Box 127, Valdez...99686-0127
<u>Fourth Judicial District</u>		
Hilma Shavings.....	543-2196.....	Box 130, Bethel...99559-0130
Margaret Christopherson..	895-4211.....	Box 401, Delta Junction....99737-0401
Susan Paterson.....	452-9265.....	604 Barnette St., Room 342 Fairbanks.....99701-4571
*Wilmina Stevens.....	662-2336.....	Box 152, Ft. Yukon.99740-0152
*Cynthia Motschenbacher..	656-1322.....	Box 167, Galena...99741-0167
*Marjorie Huntsman.....	683-2213.....	Box 41, Healy....99743-0041
*Kaye Knutsen.....	832-5430.....	Box 449, Nenana...99760-0449
Madge Kelleyhouse.....	883-5171.....	Box 187, Tok.....99780-0187

*Permanent Part-Time

**Naknek court

First Judicial District

Kristen Carlisle.....225-9875.....415 Main St., Room 206
Ketchikan.....99901-6399

Second Judicial District

Michael Hall.....264-8250.....303 K St., Anch...99501-2099

Third Judicial District

Albert Szal.....264-0415.....303 K St., Anch...99501-2083

Fourth Judicial District

Charles "Mac" Gibson.....452-9200.....604 Barnette St., Room 210
Fairbanks.....99701-4576

DISTRICT COURT JUDGES

<u>DISTRICT/NAME</u>	<u>WORK PHONE</u>	<u>MAILING ADDRESS</u>
<u>First Judicial District</u>		
Linn H. Asper.....	465-3443.....	Box U, Juneau.....99811-4100
George L. Gucker.....	225-3197.....	415 Main St., Room 400 Ketchikan.....99901-6399
<u>Third Judicial District</u>		
Glen C. Anderson.....	264-0660.....	941 W. 4th, Anch.....99501-2074
Elaine Andrews.....	264-0664.....	941 W. 4th, Anch.....99501-2074
Martha Beckwith.....	264-0652.....	941 W. 4th, Anch.....99501-2074
Natalie Finn.....	264-0662.....	941 W. 4th, Anch.....99501-2074
William H. Fuld.....	264-0658.....	941 W. 4th, Anch.....99501-2074
John D. Mason.....	264-0656.....	941 W. 4th, Anch.....99501-2074
Ralph H. Stemp, Jr.....	264-0451.....	941 W. 4th, Anch.....99501-2074
David Stewart.....	264-0451.....	941 W. 4th, Anch.....99501-2074
Michael White.....	264-0648.....	941 W. 4th, Anch.....99501-2074
James C. Hornaday.....	235-8171.....	3670 Lake St., Homer.....99603
<u>Fourth Judicial District</u>		
Christopher Zimmerman..	452-9249.....	604 Barnette St., Room 313 Fairbanks.....99701-4572
Hugh H. Connelly.....	452-9251.....	604 Barnette St., Room 341 Fairbanks.....99701-4572
H. E."Ed" Crutchfield..	452-9250.....	604 Barnette St., Room 313 Fairbanks.....99701-4572
Jane Kauvar.....	452-9248.....	604 Barnette St., Room 304 Fairbanks.....99701-4572

First Judicial District

Thomas E. Schulz.....225-3141.....415 Main Street, Room 400
 Ketchikan.....99901-6399
 Rodger Pegues.....465-3422.....Box U, Juneau.....99811-4100
 Walter "Bud" Carpeneti...465-3420.....Box U, Juneau.....99811-4100
 *Thomas M. Jahnke.....772-4466/.....Box 1009, Petersburg.99833-1009
 874-3966.....Box 869, Wrangell....99929-0869
 Duane K. Craske.....747-6271.....304 Lake Street, Room 203
 Sitka.....99835

*Judge Thomas M. Jahnke serves as Superior Court Judge for Wrangell and Petersburg.

Second Judicial District

Michael I. Jeffery.....852-4800.....Box 2700, Barrow.....99723-2700
 Paul B. Jones.....442-3208.....Box 317, Kotzebue....99752-0317
 Charles R. Tunley.....443-5216.....Box 100, Nome.....99762-0100

Third Judicial District

S.J. Buckalew, Jr.....264-0408.....303 K St., Anch.....99501-2083
 Victor D. Carlson.....264-0418.....303 K St., Anch.....99501-2083
 Rene Gonzalez.....264-0425.....303 K St., Anch.....99501-2083
 Karen L. Hunt.....264-0772.....303 K St., Anch.....99501-2083
 Karl S. Johnstone.....264-0410.....303 K St., Anch.....99501-2083
 Joan Katz.....264-0403.....303 K St., Anch.....99501-2083
 Peter A. Michalski.....264-0510.....303 K St., Anch.....99501-2083
 J. Justin Ripley.....264-0414.....303 K St., Anch.....99501-2083
 Douglas J. Serdahely....264-0401.....303 K St., Anch.....99501-2083
 Brian C. Shortell.....264-0430.....303 K St., Anch.....99501-2083
 Milton Souter.....264-0412.....303 K St., Anch.....99501-2083
 Charles K. Cranston.....283-3117.....145 Main Street Loop, Room 106
 Kenai.....99611
 Roy H. Madsen.....486-5765.....202 Marine Way,
 Kodiak.....99615-1367
 Beverly W. Cutler.....745-5071.....268 E. Fireweed,
 Palmer.....99645-0860
 John Bosshard, III.....835-2266.....Box 127, Valdez.....99686-0127

Fourth Judicial District

Christopher R. Cooke....543-2196.....Box 130, Bethel.....99559-0130
 James R. Blair.....452-9313.....604 Barnette Street, Room 425
 Fairbanks.....99701-4569
 Jay Hodges.....452-9317.....604 Barnette Street, Room 430
 Fairbanks.....99701-4569
 Mary E. Greene.....452-9319.....604 Barnette Street, Room 434
 Fairbanks.....99701-4569
 Gerald Van Hoomissen....452-9315.....604 Barnette Street, Room 426
 Fairbanks.....99701-4569

THE ALASKA SUPREME COURT

303 K Street
Anchorage, AK
99501-2084
(907) 264-0629

604 Barnette Street
Fairbanks, AK 99701-4568
(907) 452-9300

P.O. Box U
Juneau, AK
99811-4100
(907) 465-3410

Chief Justice

Jay A. Rabinowitz.....452-9300...604 Barnette Street, Room 418
Fairbanks.....99701-4568
264-0632...303 K St., Anchorage.....99501-2084

Associate Justices

Edmond W. Burke.....264-0624...303 K St., Anchorage.....99501-2084
Allen T. Compton.....264-0601...303 K St., Anchorage.....99501-2084
Warren W. Matthews....264-0618...303 K St., Anchorage.....99501-2084
Daniel A. Moore, Jr...264-0622...303 K St., Anchorage.....99501-2084

COURT OF APPEALS

Alexander O. Bryner...264-0751....303 K St., Anchorage....99501-2084
Robert G. Coats.....264-0757....303 K St., Anchorage....99501-2084
James K. Singleton....264-0674....303 K St., Anchorage....99501-2084

APPELLATE COURT CLERK'S OFFICE

303 K Street, Anchorage, Alaska 99501-2084

David Lampen, Clerk of the Appellate Courts.....264-0607
Nadya Rodlessny, Secretary.....264-0607
Pam McIntire, Chief Deputy Clerk.....264-0608
Carolyn Hudnall, Legal Technician.....264-0609
Deputy Clerks:
 Sherrie Beck.....264-0611
 Jan Collins.....264-0631
 Patsy Hernandez.....264-0629
 Peggy Lewis.....264-0612
 Carol Vance.....264-0630

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

FOURTEENTH 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:

10

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

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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-

14

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

15

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

16

trate holds court also has a superior court that holds regular

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sessions.

Called FLAVIN

MAGISTRATE SUB
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874-2311

SCHULMANN

State pays legal fees for judges disciplined for conduct

Continued from Page A-1

public employees.

However, the agreement also contains an unusual provision obligating the state to pay defense costs for "proceedings before the Judicial Conduct Commission, the Alaska Bar Association, the Alaska Public Offices Commission, or any similar entity." Only judges and lawyers would normally be subject to discipline by these panels.

Assistant Attorney General Bill Mellow, who approved the pact for Gorsuch, agreed that other state employees brought before disciplinary boards do not have their lawyers' fees paid by the state.

The agreement does not differentiate between judges cleared of wrongdoing and those found the equivalent of guilty.

Keene, a Superior Court judge, was reprimanded earlier this year by the Judicial Conduct Commission for telling a racist joke at the retirement dinner for Judge Ralph Moody. An earlier, unrelated complaint against Keene was

dismissed by the commission.

The state paid \$11,339 to Anchorage attorney Laurel Peterson for representing Keene in the two matters, said Don Hitchcock of the Department of Administration.

Gucker, a District Court Judge, was censured by the Supreme Court last September for making sexual overtures out of court to witnesses testifying in a case before him. Gucker's attorney, Ken Jensen, was paid \$5,952.

Brown, who wants to end or modify the agreement, said he does not like the Department of Law being in the position of arguing with judges about whether their legal fees are covered by the state.

"The state of Alaska has an awful lot of cases before these judges," he said Thursday.

The court system may have to buy an insurance policy providing liability coverage for its employees, he said. And if the state continues to provide legal defense for the judges, the definition of what constitutes actions "taken as

part of official duties" will have to be refined.

Mellow said he had doubts about the disciplinary provision of the agreement at the time he approved it.

"I never saw it as a contract," he said, explaining why he let the agreement go into force. "I guess I thought we can always back out at a later time, so let it go."

Mellow recommended against paying the Keene and Gucker bills.

"I had not even contemplated something like this," he said. "We don't do it for anybody else, why should we do it for them?"

As an example, state-paid lawyers defend a state-trooper charged with false arrest, but would not defend a trooper brought before the Police Standards Council for a hearing on whether his state police license should be revoked.

And, in an extreme example, Gov. Bill Sheffield will have to foot an estimated \$250,000 in legal bills for his defense in impeachment hearings, where he was found the

equivalent of not guilty.

Snowden also recommended against paying the bill submitted for defending Keene in the judicial commission proceeding where he ended up being reprimanded.

"I told them that he was not performing a judicial function and recommended that they not pay it," Snowden said.

The agreement was originally sought by state judges because of a recent U.S. Supreme Court decision that judges are not immune from paying court costs and attorneys fees, even in cases where they otherwise have judicial immunity, Snowden said.

Mellow said there was also concern about how obligated the Department of Law is to defend employees of a separate branch of government — the court system. However, on that issue, the agreement is redundant, he said. The department routinely provides lawyers for judges named in lawsuits related to actions taken in the courtroom.

ANCHORAGE DAILY NEWS SEPT 20, 1985

State pays fees of judges disciplined for conduct

By SHEILA TOOMEY
Daily News reporter

The state of Alaska paid attorneys' fees for two judges recently disciplined for unjudicial conduct.

Under a "memorandum of agreement" between the court system and the state, more than \$17,000 was paid to lawyers representing Ketchikan judges George Gucker and Henry Keene for separate disciplinary proceedings before the Judicial Conduct Commission or the Alaska Supreme Court.

The agreement is dated April 1985 and signed by Art

Snowden, executive director of the court system, and former Attorney General Norm Gorsuch, a Department of Law official said.

Current Attorney General Hal Brown said he made the decision to pay lawyers for both Keene and Gucker but is now seeking to do away with or renegotiate the agreement.

It obligates the state to defend all court employees who are sued for actions taken as part of their job — a benefit generally provided as a matter of routine to all

See Back Page, STATE

I. ON-SITE NEW MAGISTRATE TRAINING

A. LEGAL TRAINING

1. Organization of court system.
2. How to use statutes, rules and administrative code.
3. Jurisdiction; magistrate duties.
4. Judicial ethics.
5. Organization of the criminal code.
6. Elements of crimes.
7. Taking complaints and issuing summonses, arrest warrants and bench warrants.
8. Bail.
9. Arraignments, including a mock arraignment, and first felony appearances.
10. Sentencing.
11. Probation revocation.
12. Search warrants.
13. Drunk driving laws.
14. Emergency children's proceedings.
15. Domestic violence.
16. Coroner duties.
17. Small claims.
18. Alcohol local option law (where appropriate).

B. CLERICAL TRAINING

1. Calendaring, case numbering.
2. Accounting duties, including trust and revenue accounts.
3. Filing of statistical and technical operations reports.
4. Ordering equipment.
5. Vital statistics.
6. Marriages.

II. CORRESPONDENCE LESSONS (to be completed within six months of appointment).

- A. Lesson 1: Introduction to the Court System
- B. Lesson 2: The Criminal Process
- C. Lesson 3: Jurisdiction
- D. Lesson 4A: Library Research - Statutes
- E. Lesson 4B: Library Research - Rules of Court
- F. Lesson 4C: Library Research - Administrative Code
- G. Lesson 4D: Library Research - Caselaw
- H. Lesson 5: Judicial Ethics
- I. Lesson 6: Search Warrants
- J. Lesson 7: Bail
- K. Lesson 8: Domestic Violence

We remand to the trial court with instructions to vacate Hensel's sentence on the charge of malicious destruction of property. As thus modified, the judgment of the superior court is AFFIRMED.

BURKE, J., not participating.



Honorable Judge S. J. BUCKALEW;
Honorable Judge Ralph E. Moody;
and State of Alaska, Appellants,

v.

James HOLLOWAY, Appellee.

No. 4058.

Supreme Court of Alaska.

Dec. 14, 1979.

Proceeding was brought by former magistrate alleging that statute which provides that magistrates serve at the pleasure of presiding judge of superior court was unconstitutional. The Superior Court, Third Judicial District, Mark C. Rowland, J., entered summary judgment in favor of magistrate on his claim that such statute violated constitutional requirement that judges be selected for "terms prescribed by law," and appeal was taken. The Supreme Court, Matthews, J., held that: (1) magistrates are "judges" within meaning of constitutional requirement that judges be selected for terms prescribed by law, but (2) requiring a magistrate to serve "at the pleasure of the presiding judge of the superior court" does not violate the constitutional mandate.

Boochever, J., filed an opinion dissenting in part in which Rabinowitz, C. J., joined.

1. Justices of the Peace ⇐8

A "magistrate," who is not merely an assistant to a district court judge but presides with full authority over a court of limited jurisdiction, exercising judicial power vested by the Constitution, is a "judge" within meaning of constitutional requirement that judges be selected for terms prescribed by law. Const. art. 4, §§ 1, 4; AS 22.20.010.

See publication Words and Phrases for other judicial constructions and definitions.

2. Justices of the Peace ⇐10

Given that magistrate's dismissal and reinstatement were matters of public rather than private interest and that his views had been fully aired in and considered by both Supreme Court and trial court, Supreme Court declined to be bound by form of state's argument below in case challenging dismissal. AS 22.15.170(c).

3. Judges ⇐7

As used in constitutional mandate that judges shall be selected in manner, for terms, and with qualifications prescribed by law, "term" was not intended to imply period of service that is fixed in time but, rather, a broader definition provided by Webster's Third New International Dictionary, "the time for which something lasts," was in closer accord with the apparent purposes of the constitutional mandate. Const. art. 4, § 4.

See publication Words and Phrases for other judicial constructions and definitions.

4. Judges ⇐4

Justices of the Peace ⇐8

Under constitutional provision which sets forth specific selection procedures, terms and qualifications for justices and judges of the supreme and superior courts, and which leaves creation of all other courts to legislature, directing it to provide for selection, terms and qualifications of judges of courts it creates, constitutional framers expressly sought system in which justices and judges would be accountable for their performance in office. Const. art. 4, §§ 1, 4, 6.

5. Justices of the Peace ⇐10

Statutory provision that magistrates serve at pleasure of presiding judge of superior court does not violate constitutional requirement that judges of courts other than the supreme and superior courts be selected "for terms prescribed by law," since Constitution does not indicate that in creating new courts, legislature is bound by framers' concept of independence for supreme and superior court justices and judges, since magistrates are not subject to specific political pressures, since having magistrates serve at the pleasure of presiding superior court judge does not affect their independence to adjudicate cases impartially, and since dismissed magistrates have legal recourse. AS 22.15.170(c); Const. art. 4, § 1.

6. Justices of the Peace ⇐10

Assuming that constitutional procedures concerning suspension, removal, retirement or censuring of justices or judges are applicable to magistrates, such provisions are supplementary to removal procedure that defines end of judge's term and thus, even if constitutional removal provisions are applicable to magistrates, such provisions do not restrict legislature's authority to provide that magistrates serve at pleasure of presiding judge of the superior court. AS 22.15.170(c); Const. art. 4, §§ 4, 10.

Shelley J. Higgins, Asst. Atty. Gen., Anchorage, Avrum M. Gross, Atty. Gen., Juneau, for appellant.

James T. Brennan, John S. Hedland, Rice, Hoppner, Hedland, Fleischer & Ingraham, Anchorage, for appellee.

Robert L. Eastaugh, Delaney, Wiles, Moore, Hayes & Reitman, Inc., Anchorage, amici curiae.

OPINION

Before RABINOWITZ, C. J., BOOCHEVER, BURKE and MATTHEWS, JJ., and DIMONDI, Senior Justice.

1. All other questions, such as whether Holloway's summary dismissal comports with due process, were expressly held in abeyance by

MATTHEWS, Justice.

On August 22, 1977, James Holloway was terminated from his position as Dillingham magistrate, by order of Judge Buckalew, then acting as presiding superior court judge of the third judicial district. The termination order was subsequently approved by the presiding superior court judge, Judge Moody, pursuant to AS 22.15.170(c) which provides in pertinent part: "Each magistrate serves at the pleasure of the presiding judge of the superior court in the judicial district for which appointed."

By way of summary judgment, Holloway prevailed below on his claim that AS 22.15.170(c) violates article IV, section 4 of the Alaska Constitution, which provides:

Qualification of Justices and Judges.

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

The trial court found that magistrates are "judges of other courts" within the meaning of article IV, section 4, and that service at the pleasure of the presiding judge falls short of that section's requirement that judges be "selected . . . for terms prescribed by law."¹ We reverse, based on our contrary interpretation of that latter requirement.

The state conceded at the trial level that magistrates are "judges," but now wishes to retract that concession. We find it unnecessary to address the retraction issue. The argument that magistrates are not article IV "judges" rests primarily on the assertion that territorial commissioners were the predecessors of Alaska magistrates, and that the framers of the Alaska Constitution must have been aware that United States commissioners had been

the parties at the trial level, and we intimate no view on the merits of claims not yet litigated.

found not to be "judges" by the United States Supreme Court.² This argument has many weaknesses,³ chief among them being the fact that the territorial commissioners were predecessors of present-day Alaska district court judges as well as magistrates,⁴ and it is incontestable that article IV, section 4 was intended to confer the appellation "judge" on the former. Thus the state's historical proofs tend more to demonstrate the framers' rejection, rather than adoption, of the circumscribed definition of "judge" found in earlier cases.

2. *Todd v. United States*, 156 U.S. 278, 282, 15 S.Ct. 889, 890, 39 L.Ed. 982, 983 (1895); *United States v. Alfred*, 155 U.S. 591, 595, 15 S.Ct. 231, 233, 39 L.Ed. 273, 274 (1895). See *Grin v. Shine*, 157 U.S. 181, 187, 23 S.Ct. 98, 101, 47 L.Ed. 130, 135 (1902).

3. The "commissioners" found by the Supreme Court not to be "judges," unlike present-day Alaska magistrates, never had authority to try civil cases, see *Alfred*, 155 U.S. at 595, 15 S.Ct. at 233, 39 L.Ed. at 274, and were not given even "petty crimes" jurisdiction until 1940. 54 Stat. 1058 (current version at 18 U.S.C. § 3401). Special commissioners authorized by Congress to serve in the territory of Alaska were empowered to try cases in 1854. 23 Stat. 24. See also 30 Stat. 1253 (1889); Carter Code ch. 42 § 410, ch. 70 § 702 (1900). While territorial courts were declared to be nonarticle III courts in *American Insurance Co. v. 356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 7 L.Ed. 242 (1828), it was not on the ground that their judges were not judges. See Note, *Masters and Magistrates in the Federal Courts*, 65 Harv.L.Rev. 779, 782-84 (1975). The only case deeming territorial commissioners not to be judges relied on the wholly inapposite Supreme Court decisions in *Todd* and *Alfred*. *Ex Parte Neison*, 8 Alaska Reports 5, 11 (1924).

4. Alaska commissioners presided over the "justice court," the primary territorial trial court of limited jurisdiction. The jurisdiction of the justice court, and its relation to the federal district court serving Alaska, respectively, were nearly identical to the jurisdiction now residing in the state district court, and the relation of the latter to the state superior court. Compare A.C.L.A. 1949 §§ 65-2-1, 69-2-1, 53-2-1, and 66-3-1, with AS 22.15.030-050 and AS 22.10.020(a) (1979).

5. See, e.g., the statement of Delegate McLaughlin:

There is competent authority in here for the legislature to create any type of court imaginable.

As for the various pronouncements of the convention delegates⁵ and the first state legislature⁶ that have been cited, we discern in them only the recognition that article IV, section 4 intended to leave the legislature considerable flexibility in the creation of new courts. It is hardly inconsistent with that theme of flexibility for article IV to designate as "judges" those who wield the authority vested in such new courts. Finally, the state has been able to point to no modern authorities supporting the distinction it wishes to draw between judge and magistrate.⁷

and the court with the rule-making power and the administrative power is the supreme court. We can establish probate courts, magistrate courts, if they so desire, justice of the peace courts, domestic relations courts, courts of special sessions, courts of any conceivable nature.

1 Minutes of the Constitutional Convention 733-34.

6. In creating the district court, then called the district magistrate court, the legislature declared:

It is the intent of the Legislature by the passage of this Act [this chapter] to implement the organization of the state courts provided for in the Constitution of the State of Alaska by establishing subordinate courts as an integral part of a unified judicial system. To this end, the district magistrate courts as herein established shall constitute the sole and exclusive subordinate court system of the state . . . with each such district magistrate court having as court officers district magistrates with general trial power within the limits of the court's jurisdiction and deputy magistrates of limited trial power sufficient to meet the immediate requirements of justice in the less populated areas of the state. (Bracketed portion in original text).

A.C.L.A. § 52A-2-42 (Supp. 1955). The district magistrates and deputy magistrates were renamed district judges and magistrates, respectively, by § 3 ch. 24 SLA 1986.

7. Federal magistrates are not "judges" under federal law, since art. III, § 1 of the U.S. Const. requires that all federal "judges" be tenured for life, and magistrates are not. 28 U.S.C. § 631(e). However, a federal magistrate may enter judgment only in certain misdemeanor cases, and then only upon the written waiver by the defendant of his or her right to be tried by a federal district judge. 18 U.S.C. § 3401. This is substantially less than the jurisdiction

[1] A magistrate is a judicial officer of the district court. AS 22.15.020(b). Like a district court judge, a magistrate may issue writs of habeas corpus, issue search and arrest warrants, and conduct preliminary examinations in any criminal proceeding. AS 22.15.100(1, 4, and 5). In addition a magistrate may hear, try and enter judgment in a small claims action, AS 22.15.040, and in any case in which recovery of money damages, personal property, penalty, or forfeiture is sought, when the amount in controversy is less than \$1,000; may enter judgment upon a plea of guilty in any criminal case in which the district court has jurisdiction; may "hear, try, and enter judgments in all cases involving misdemeanors, if the defendant consents in writing that the magistrate may try him;" and may "hear, try and enter judgments in all cases involving infractions under AS 28⁹ and violations of ordinances of political subdivisions." AS 22.15.120(1, 2, 3, 5, 6, and 7).

Alaska magistrates. AS 22.15.040; 22.15.120(1, 2, 3 and 7). Moreover, the federal courts have not yet determined whether 18 U.S.C. § 3401 constitutes a delegation of adjudicatory power to a non life-tenured official in violation of the Federal Constitution. See I. Hall and M. Waxner, 8B Moore's Federal Practice, Appendix § 0.02[2] (2d ed. 1978). The primary argument in support of constitutionality rests on the defendant's consensual waiver and not on the assertion that the magistrate is not acting as a judge. See, e.g., W. Bloch, *An Adjudicative Role for Federal Magistrates in Civil Cases*, 40 U.Chi.L.Rev. 584, 595 (1973). Other powers delegated to federal magistrates have been upheld only insofar as they do not permit magistrates to render ultimate decisions on potentially dispositive questions of law. See, e.g., *Mathews v. Weber*, 423 U.S. 261, 270-71, 96 S.Ct. 549, 554, 46 L.Ed.2d 483, 491-92 (1976); *United States v. Wisnowski*, 580 F.2d 149, 150 (5th Cir. 1978); *United States v. First National Bank of Rush Springs*, 576 F.2d 852, 853 (10th Cir. 1978); *Taylor v. Oxford*, 575 F.2d 152, 154 (7th Cir. 1978). See generally, *Masters and Magistrates*, supra note 3 at 782-97.

8. AS 22.20.010 provides:

The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the superior court, a district judge and a magistrate.

9. Title 28 concerns minor offenses relating to the use of motor vehicles.

just as with a judgment entered by a district court judge, appeal from a magistrate's entry of judgment is to the superior court. AS 22.15.240. Thus a magistrate is not merely "an assistant" to a district court judge, as suggested by the state, but presides with full authority over a court of limited jurisdiction, exercising the judicial power vested by article IV, section 1 of the Alaska Constitution.¹⁰ Such a person is a "judge" within the meaning of article IV, section 4.

[2, 3] Finding magistrates to be "judges", we must next consider whether requiring a magistrate to serve "at the pleasure of the presiding judge of the superior court" violates article IV, section 4's mandate that "judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law" (emphasis added).¹¹ As the word "term" has been interpreted by courts in a variety of contexts,¹² and as it is used elsewhere in the

10. Art. IV, § 1 provides in part:

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law.

11. In the trial court the state conceded that a "term" connotes a fixed period of time, and argued the validity of AS 22.15.170(c) under a somewhat different theory than that presented on appeal. Thus, Holloway urges this court to find the critical issue of this lawsuit waived, and to order his reinstatement as Dillingham magistrate. Given that Holloway's dismissal and reinstatement are matters of public rather than private interest, and that his views have been fully aired in and considered by both this court and the trial court, we decline to be bound by the form of the state's argument below. See, e.g., *Marks v. State*, 496 P.2d 66, 67 (Alaska 1972).

12. Despite the willingness of courts to define "term" as referring to a "fixed" period however, when specific holdings are scrutinized, few provide actual support for the proposition that "service at the pleasure of" is not a "term." See, e.g., *Delahay v. State*, 476 P.2d 908, 911 (Alaska 1970), cert. denied, 402 U.S. 901, 91 S.Ct. 1381, 28 L.Ed.2d 642 (1971); *Collision v. State ex rel. Green*, 9 W.V.Harr. 460, 2 A.2d 97, 100 (Del.1935); *Sueppel v. City Council of Iowa City*, 257 Iowa 1350, 136 N.W.2d 523, 525 (1965); *State ex rel. Anderson v. Fousek*, 91 Mont. 448, 8 P.2d 791, 793 (Mont.1932).

Alaska Constitution.¹³ It refers to a period of service that is fixed in time. As it is used in article IV, section 4, however, we do not believe it was intended to imply such a precise limitation.¹⁴ A broader definition of the word, "the time for which something lasts," Webster's Third New International Dictionary, is in closer accord with the apparent purposes of article IV, section 4.

[4] The provisions of article IV that set forth specific selection procedures, terms, and qualifications,¹⁵ refer to the justices and judges of the supreme and superior courts, the only courts created by the constitution. Section 1 leaves the creation of all other courts to the legislature; section 4 directs the legislature to provide for the selection, terms, and qualifications of the judges of the courts it creates. The directive is unqualified and would appear to vest absolute discretion in the legislature. For example, despite the extensive deliberation engaged in by the delegates regarding the selection procedure that would best avoid involving judges in politics,¹⁶ section 4 does not impose on the legislature the duty to mirror the procedures chosen by the framers. Similarly "qualifications": though the first sentence of section 4 requires only that supreme and superior court justices and judges be citizens and be admitted to the bar, the second sentence does not require the legislature to adopt even

these minimal qualifications for the judges of the courts it creates. It would thus be an incongruous construction if the remaining directive, relating to the "terms" of "judges of other courts," was meant to be a precise commandment, rather than merely point to an area in which the legislature has the power to act.

Article IV, section 6 specifies the "terms" of the justices and judges of the supreme and superior courts:

Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

The "terms" thus delineated constituted a rejection of the federal judicial system, in which federal judges serve no "term", but remain in office for life unless impeached.¹⁷ The framers of the Alaska Constitution expressly sought a system in which justices and judges would be accountable for their performance in office.¹⁸

[5] Providing that magistrates serve "at the pleasure of the presiding judge of the superior court" is clearly designed to

context may intend only the more general, though equally valid connotation of any limitation on a period of service. Cf. Webster's Third New International Dictionary (1971) ("a limited or definite extent of time"); Black's Law Dictionary (4th ed. 1968) ("the period during which elected officer or appointee is entitled to hold office").

15. Article IV, §§ 4, 5, and 6.

16. See, e.g., 1 Proceedings of the Constitutional Convention 584-614.

17. Article II, § 1 of the U.S. Const. provides in pertinent part: "The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior . . ."

18. See 1 Proceedings of the Constitutional Convention 586, 598-99.

achieve an ongoing guarantee of accountability. The legislature's intent in creating the office of magistrate was "to meet the immediate requirements of justice in the less populated areas of the state."¹⁹ Given Alaska's area, that task is not an easy one. Pursuant to the enabling provision of AS 22.15.020(e), Administrative Rule 31²⁰ authorizes the appointment of sixty-four magistrates, nearly half again as many as the total number of supreme, superior and district court justices and judges serving the state.²¹ In order to fill these positions no degree of education or legal training is required of applicants.²² Magistrates normally serve in communities in which no superior or district court judges sit permanently,²³ making day to day supervision impossible. It is apparent that the broad power vested in the presiding superior court judge to dismiss magistrates is intended to provide an unencumbered means of quickly remedying any situation in which judicial unfitness is impairing the administration of justice in rural Alaska. With respect to the accountability demanded in the requirement that the legislature designate the "terms" of judges, service "at the pleasure of" constitutes a "term."²⁴

Appellee Holloway argues that though service "at the pleasure of" the superior court may satisfy the framers' concern for judicial competence, the provision does violence to the framers' objective of establish-

19. § 25 ch 184 SLA 1959, A.C.L.A. § 52A-2-42 (1959 Supp.).

20. Rules Governing the Administration of All Courts.

21. The number of supreme, superior, and district court justices and judges are set by AS 22.05.020, 22.10.120, and Administrative Rule 31, respectively.

22. AS 22.15.160(b) provides:

A magistrate shall be a citizen of the United States and of the state, at least 21 years of age, and a resident of the state for at least six months immediately preceding his appointment. The supreme court may prescribe additional qualifications.

This court has prescribed no additional qualifications. Administrative Rule 36.

23. See Administrative Rules 32-34.

ing an independent judiciary. There is no doubt that judicial independence was a paramount concern of the delegates;²⁵ nor can there be any doubt that a judge who serves at another's pleasure does not enjoy complete independence. Nonetheless, we cannot conclude that the authority given the presiding judge of the superior court violates the framers' intent.

First, article IV does not indicate that in creating new courts, the legislature is bound by the framers' concept of independence for supreme and superior court justices and judges. Though the constitutional design for the selection and retention of the latter officials embodies the core of the framers' statement regarding independence,²⁶ article IV, section 4 would seem to empower the legislature to embrace precisely the procedures rejected by the framers, e.g., selection of judges by partisan election, or by the governor. It is thus impossible to extract from article IV a firm concept of judicial independence applicable to legislatively created courts.

Second, the independence of which the delegates spoke was independence from political pressures. The objective was an impartial judiciary. The framers rejected a system in which judges competitively campaign for election, fearing that financial and psychological debts would be incurred in the process,²⁷ and that pre-election decisions in controversial cases would be molded

24. We reject the appellee's suggestion that since "service at the pleasure of" the superior court does not require a periodic accounting, it may result in a lifetime appointment without review of a magistrate's performance. The possibility that the presiding superior court judge will simply ignore the supervisory duty implicitly imposed by AS 22.15.170(c) is too remote to invalidate the scheme *per se*. Moreover, this court, given its rule-making powers under art. IV, § 15, may mandate periodic performance evaluations, if such become necessary to give effect to the statute.

25. See 1 Proceedings of the Constitutional Convention 586-602.

26. *Id.* at 601-02.

27. *Id.* at 584-85, 601-02.

13. As originally adopted the constitution used "term" to describe the definite periods of service of the governor and secretary of state, art. III, §§ 4 and 7, legislators, art. II, § 3, and members of the judicial council, art. IV, § 8, and used "term" generally to describe the period in office of all justices and judges, art. IV, § 13. Article IV, § 2(b) (adopted in 1970) refers to the three year "term in office" of the chief justice. In referring to persons appointed to serve at the pleasure of the governor, art. III, § 25, and chief justice, art. IV, § 16, the word "term" is not used.

14. With the exception of art. IV, wherever "term" or "service at the pleasure of" appears in the constitutional text originally adopted, supra note 13, the reference is to a period of service for a particular office, thus allowing the drafters to be precise in their terminology. The language of art. IV, §§ 4 and 13, on the other hand, applies to any judge of any court the legislature might create, and "term" in that

more by public mood than the dictates of law;²⁸ they likewise rejected a simple gubernatorial appointment system, fearing executive dominance over the judiciary.²⁹ Magistrates are not subject to any of these specific pressures: they do not campaign, are never accountable to the voting public, and are not appointed by the governor.³⁰

For a magistrate to serve "at the pleasure of" the presiding superior court judge does not impair the independence of the magistrate to adjudicate cases impartially. The influence of the presiding judge simply cannot be equated with the undue influence potential in voter outrage or executive patronage. The latter may affect the outcome of particular cases in contravention of the dictates of the law, merely as a result of psychological pressure; the pressure that inheres in serving at the pleasure of the presiding judge, by promoting competency, tends to ensure precisely the opposite result, namely, that adjudication will be in conformity with the law.

We recognize of course that a position of authority may be abused; however, the mere potential for abuse does not in this case render the statutory mechanism *per se* unconstitutional. Magistrates dismissed pursuant to AS 22.15.170(c) are not necessarily without legal recourse. Abuses in particular cases may still be subject to the dictates of other constitutional commands, such as due process, and in this case to the rulemaking and supervisory powers of this court.³¹ We presume that these issues will be explored at trial.

28. *Id.* at 556, 598.

29. *Id.* at 595.

30. Magistrates are appointed by the presiding superior court judge AS 22.15.170(c). We note that the territorial commissioners who exercised the powers of the offices now held by district judges and magistrates, at the time of the constitutional convention also served at the "pleasure" of their superior judicial officers. A.C.L.A. 1949 § 54-4-1.

31. The chairperson of the committee that drafted the judiciary article, assured the convention delegates that any abuses that might result

[6] Holloway's final contention is that article IV, section 10³² is applicable to magistrates and establishes the only means by which a magistrate may be removed from office. Assuming, without holding, that the section 10 procedures are applicable to magistrates,³³ we do not share the appellee's conclusion. At the very least, the removal provisions of article IV are supplementary to the removal procedure that defines the end of a judge's term. If such were not the case, sections 10 and 6 of article IV would be in direct conflict, since the retention elections for which supreme court justices and superior court judges must stand are most definitely a means of removing the latter from office. Thus even if section 10 is applicable to magistrates, it does not restrict the legislature's authority under section 4 to the prescribe that magistrates shall serve at the pleasure of the presiding judge.

The judgment of the superior court is REVERSED.

BOOCHEVER, Justice, with whom RABINOWITZ, Chief Justice, joins, dissenting in part.

I do not agree with the portion of the opinion that holds that the requirement of art. IV, § 4, of Alaska's Constitution specifying that: "[j]udges of other courts shall be selected . . . for terms . . . prescribed by law" is satisfied by the provisions of AS 22.15.170(c). That section specifies that:

The presiding judge of the superior court in each judicial district shall appoint the magistrates for the district court for the

from the "great flexibility" conferred by art. IV, § 4 on the legislature, would be subject to remedial action by this court under the administrative rulemaking power delegated to it by art. IV, § 15. 1 Proceedings of the Constitutional Convention 733.

32. Adopted in 1968, art. IV, § 10 created a commission on judicial qualifications which could recommend to the supreme court that a justice or judge be suspended, removed from office, retired or censured.

33. A contention disputed by the state.

judicial district. Each magistrate serves at the pleasure of the presiding judge of the superior court in the judicial district for which appointed.

Specifying service "at the pleasure" of an authority seems to me to be the very antithesis of designating a "term." There might be some argument if a term were prescribed—for one, two or more years—and removal specified at the pleasure of the presiding judge. But here no term has been prescribed so we need not reach that issue.¹

The word "term" connotes a fixed period of time, and the use of the adjective "fixed" in connection with the noun "term" would be a redundancy. The framers of our Constitution sought to avoid redundancy.²

The majority admits that the word "term" as interpreted by courts in a variety of contexts refers to a period of service that is fixed in time. Among cases so holding are *Bayley v. Garrison*, 190 Cal. 690, 214 P. 871, 872 (1923); *Kratzer v. Commonwealth*, 228 Ky. 684, 15 S.W.2d 473, 474-75 (1929); *Board of Education of Pendleton County v. Gulick*, 398 S.W.2d 483, 485 (Ky.App.1966); *State ex rel. Gilbert v. Board of Commissioners of Sierra County*, 29 N.M. 209, 222 P. 654, 655 (1924); *State ex rel. Matlack v. Oklahoma City*, 38 Okl. 349, 134 P. 58, 59 (1913) (all cases construing "term" in a constitution). See also *Sueppel v. City Council of Iowa City*, 257 Iowa 1350, 136 N.W.2d 523, 527 (1965); *Ida County Sav. Bank v. Seidensticker*, 92 N.W. 862, 866 (Iowa 1902) (defining "term" in other contexts). In fact, it has been stated that "an officer removable at the pleasure of the appointing officer has, in the strict meaning of the word, no 'term' of office." *State ex rel. Bonner v. District Court*, 122 Mont. 464, 206 P.2d 166 (Mont.1949), quoting, 46 C.J.S. *Officers* § 38.

1. But see *Collision v. State ex rel. Green*, 2 A.2d 97 (Del.1938), discussed *infra*.

2. *Thomas v. Bailey*, 595 P.2d 1, 6 (Alaska 1979).

3. *Id.* at 100. In our prior case concerning the office of a district judge, we did not have

The distinction between a requirement of specifying a "term" of office and a general authorization to the legislature is discussed in *Collision v. State ex rel. Green*, 2 A.2d 97 (Del.1938), wherein it was held that a provision authorizing the governor to remove members of the State Industrial Accident Board "with or without cause" was upheld because of the absence of a constitutional requirement that a "term" be prescribed for the office. The court stated:

As there is nothing in the Delaware Constitution which requires the legislature in the creation of statutory offices to prescribe fixed and definite terms for their occupancy, it must necessarily follow that no constitutional inhibition exists against the creation of such an office to be held during the pleasure of the appointing power.³

In contrast, Alaska's Constitution does contain a provision requiring the legislature to prescribe "terms" of magistrates.

The majority further admits that as used elsewhere in Alaska's Constitution, the word "term" refers to a "period of service that is fixed in time."⁴ I fail to see any reason to utilize a different, and what seems to me to be a most strained, interpretation of the word "term" when applied to magistrates.

I would affirm Judge Rowland's decision that service at the pleasure of the presiding judge falls short of the constitutional requirement that judges be selected for "terms prescribed by law."



presented the issue of whether service "at pleasure" complied with the constitutional requirement of prescribing "terms" of office. *Dehbay v. State*, 476 P.2d 908 (Alaska 1970).

4. See Note 13 of the majority opinion, for examples.

LESSON 5: JUDICIAL ETHICS

The "Code of Judicial Conduct" is located in Volume III of the Alaska Rules of Court. The rules in this code, called "Canons", are the rules and standards which judges in Alaska are required to follow. You should read the canons carefully so that, as a magistrate, you will know the rules and standards which you must follow.

The first question usually asked is why formal rules and standards are necessary for judges. Our court system is a public institution charged with the duty of making fair and just decisions. If the people within the court system behave in a dignified and responsible manner, it is more likely that the public will have confidence in its courts. Judges are the most visible members of the court system. The public expects its judges to follow the rules of the justice system.

A judge is constantly in public view. Because some judges had engaged in questionable behavior prior to 1924, the American Bar Association* adopted rules for judges -- Canons of Judicial Ethics. Since 1924 the rules have been changed to reflect changing public views about how judges should behave.

*The American Bar Association is a voluntary association of lawyers who develop legal and judicial policy.

The Alaska Code of Judicial Conduct was adopted in 1973. The Alaska Supreme Court decided it was necessary to have written standards for judges.

In part, this is for the protection of judges because the written standards make it easier for a judge to know what the judge should not do. Magistrates are considered to be judges under the Code of Judicial Conduct and, as a judge, you are bound by the Code of Judicial Conduct. Some of the canons are inapplicable to part-time judges and those are noted in this lesson. If, at any time during your term as a judge, you have questions about what is proper behavior for a judge, you should read the relevant section of the Code of Judicial Conduct. Then, if you still have questions, you should contact your training judge or presiding judge.

Each canon will be covered in this lesson. Each canon appears on the left-hand side of the page, with an explanation of the canon on the right-hand side of the page.

After reading the lesson, you should answer the questions in the test.

CODE OF JUDICIAL CONDUCT

Part I. Canons

CANON 1

**A JUDGE SHOULD UPHOLD
THE INTEGRITY AND
INDEPENDENCE OF THE JUDICIARY**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. (Added by Supreme Court Order 170 dated September 17, 1973)

CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY
AND INDEPENDENCE OF THE JUDICIARY

If people are to believe in a system of justice, the judges in the system must be "independent" and "honorable". Being "independent" means being free from the influence of public opinion and making honest and fair decisions based on the facts presented in your court. Being "honorable" means acting in the most respectable manner, being honest in all your activities and conducting yourself in a manner which shows you deserve the public trust.

CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY
AND THE APPEARANCE OF IMPROPRIETY IN ALL
HIS ACTIVITIES

CANON 2

**A JUDGE SHOULD AVOID IMPROPRIETY
AND THE APPEARANCE OF
IMPROPRIETY IN ALL HIS ACTIVITIES**

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness. (Added by Supreme Court Order 170 dated September 17, 1973)

Section A of Canon 2 states that a judge should respect and obey the law. At all times you should remember that you are a judge and your community looks to you as a model. In all your dealings you should be honest and fair.

Section B of Canon 2 states that a judge should not allow the judge's personal relationships to affect the judge's decisions. This means that family, friends, business dealings and transactions and political feelings should not be part of what you think about when making a judicial decision. You should not allow other people to use your name or office for private or political gain. You should not let

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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Section B of Canon 2 states that a judge should not allow the judge's personal relationships to affect the judge's decisions. This means that family, friends, business dealings and transactions and political feelings should not be part of what you think about when making a judicial decision. You should not allow other people to use your name or office for private or political gain. You should not let

any person in a community think that the person can influence you. You should do your best not to give anyone the idea that you can be improperly influenced.

As a judge, you should never voluntarily testify as a character witness in a court proceeding. A character witness is a person who makes a statement under oath about another person's traits and habits. For example, if a close friend asks you to testify at her child custody hearing about her ability to be a good parent, you should refuse. You should only appear and testify as a witness if you are subpoenaed, that is, ordered by the court to appear.

Generally, as a judge, you are not to introduce or present facts in a proceeding. For example, a judge would not normally subpoena and question a witness. The factual

presentation is the responsibility of the plaintiff or defendant in a case. In limited situations, such as a children's proceeding, you, as a judge, can introduce facts. (See Children's Rule 20.)

CANON 3

A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

When you were appointed a magistrate, you accepted a high level of responsibility within your community. Your judicial duties are of great importance. As a judge, you should be available for all court proceedings. Your duties and the limits of your powers are set out in Title 22.

A. Adjudicative Responsibilities.

1. As a judge, you should make sure you understand the law and follow all laws and legal procedures. You should keep up with changes in the law. Your decisions should be based on evidence presented to you in court. You should not be influenced by public pressure.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

2. As a judge, you are in control of your courtroom. At all court proceedings you should maintain order and require proper behavior from all persons.

3. As a judge, you should be patient, dignified and courteous. You should require all other persons in court to be patient, dignified and courteous.

4. As a judge, you should allow every person legally interested in a court proceeding the right to be heard in court. This means that any person whose legal rights might be affected has a right to be heard.

An ex parte communication is a person speaking alone or secretly to a judge. As a judge, you should not allow any ex parte communications. All parties in a court proceeding have equal rights to a fair and impartial hearing and should be heard in court.

There may be situations where you, as a judge, will find it necessary to speak to a disinterested expert to gain a necessary understanding of a legal issue in a case. For example, you are hearing a case in which a contract clause is at issue. You wish an explanation of this clause from your training judge. The training judge is not involved in the case. In a case like this, you, as the judge, would tell the parties the name of the training judge you consulted and what the training judge said. Each of the parties should be allowed a reasonable time to respond to this information.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

5. You, as a judge, should handle all court business efficiently and promptly.

6. Neither you nor any court employees under your direction should publicly comment on a case before a case is heard or while it is being heard. However, you, as a judge, may talk about your official duties and

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during the sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the broadcasting, televising, recording, and the taking of photographs in the courtroom and areas immediately adjacent thereto during a judicial proceeding open to the public or during recesses between such sessions of court, provided:

(i) that a plan for media coverage has been approved by the supreme court. A plan for media coverage shall contain safeguards to ensure compliance with (ii) through (iv) of this subsection and shall include provisions governing the numbers and types of camera and broadcast equipment to be allowed, numbers of camera and equipment operators, location of cameras and equipment and media personnel, movement of personnel and equipment, lighting augmentation if any to allowed, forms, designation of courtrooms approved for coverage, and other details as may be necessary to regulate the media activity in accordance with this subsection;

explain procedures of the court. For example, you could talk to the city council or a high school class about the types of cases a magistrate is allowed to hear.

7. The Alaska Supreme Court has adopted a plan for media coverage of judicial proceedings. Media coverage includes broadcasting, televising, or recording by a party other than the court or taking still photographs of proceedings conducted by the supreme court, court of appeals, superior courts and district courts. Whenever you have any questions about media coverage in your courtroom, you should contact your presiding judge and area court administrator. The Alaska Supreme Court Plan for Media Coverage of Judicial Proceedings is very specific.

Basically, the presiding judge and area court administrator for each district should state what area of each court location

(ii) that in civil proceedings other than those listed in subparagraph (iii) permission shall have been expressly granted by the judge, and that in criminal proceedings other than those listed in subparagraph (iii) permission shall have been expressly granted by the judge and the defendant. For media coverage of Supreme Court and Court of Appeals proceedings only the permission of the Court shall be required;

(iii) that the media coverage provisions set forth in subparagraph (ii) shall not apply to matters involving juveniles, divorce, dissolution of marriage, domestic violence, child support, child custody and visitation, adoption, paternity and other family matters. Media coverage of these proceedings is prohibited. For media coverage of proceedings which deal with sexual offenses, the permission of the victim, the defendant, and the judge shall be required;

(iv) that the media activity will not distract the participants, impair the dignity of the proceedings, or interfere with the achievement of a fair and impartial hearing or trial;

(v) that in trial court proceedings, no witness, juror, or party who expresses to the judge any prior objection shall be photographed by any camera, nor shall the testimony of such a witness, juror or party be broadcast or telecast;

(vi) that participating members of the media shall agree to abide by the provisions of this subsection and any approved plan for media coverage; and

(vii) that each judge shall provide the administrative director on request information concerning any media coverage of proceedings before that judge, including written reasons for any denial by the judge of permission for media coverage. (Amended by Supreme Court Order 502 effective February 1, 1982)

is a public area in which media coverage may take place without obtaining prior approval. Media personnel wanting to cover a civil or criminal proceeding in your court must make a request through your area court administrator, who forwards the request to you. You make the decision whether media coverage will be permitted and what the limits of that coverage will be. In a criminal trial, it is the responsibility of the media personnel to get written permission from the defendant to film or audiotape the proceeding. The plan for media coverage of judicial proceedings does not apply to matters involving juveniles, divorce, dissolution of marriage, domestic violence, child support, child custody and visitation, adoption, paternity and other family matters. There should be no broadcasting, televising, or recording by a party other than the court

or taking still photographs of these proceedings.

If the media wishes to cover any of your proceedings, you should contact your area court administrator who will work with you to see that the Alaska Supreme Court plan for media coverage of judicial proceedings is followed. The Alaska Supreme Court Plan for Media Coverage of Judicial Proceedings applies only to media broadcasting, televising, recording or taking of still photographs in the court by a party other than the court. The media cannot be stopped from coverage out of or away from the court, such as taking photographs of a defendant entering a court.

Generally, you should note that anyone can order, pay for and get a cassette recording of a proceeding, court order or transcript. However, some proceedings, for example, grand jury and children's

proceedings, are confidential and cassette recordings of confidential proceedings, court orders, or transcripts are not available to the public.

B. Administrative Responsibilities.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

1. As a judge, you are to be diligent, meaning efficient and thorough in performing your duties. You should help other court staff, if any, to do their jobs properly.

2. You should require court staff members under your supervision to maintain the same standards of honesty and diligence required of a judge.

3. If you, as a judge, become aware of unprofessional conduct of another judge or a lawyer, you should report the offending judge to the Commission on Judicial Conduct or the offending lawyer to the Alaska Bar Association.

4. As a judge, you should not appoint or hire any employees without all necessary

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

approvals and in accordance with court system personnel rules.

C. Disqualification.

1. When you, as a judge, cannot be fair and impartial or when other people could question your fairness, you should disqualify yourself from the case. If you have a bias or prejudice against a party or a witness, you should not hear the case -- this means disqualifying yourself. "To disqualify" means that you will not hear a case. If you have personal knowledge of facts in a case and you could not be fair and impartial or it would appear you could not be fair and impartial, you should not hear the case. If you or a law partner were a lawyer for a party in a case, you should not hear that case. Where you have, or a member of your family living in the same household has, a financial interest in a case -- that is, you

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

or a family member could profit or lose money -- you should not hear the case.

Where you or your spouse or a close family member is connected to a case, you should not hear the case. For example, a connection could be that you or your spouse, or close family member are (i) a party in a case, (ii) an officer, director or trustee for a corporation or organization in a case, (iii) acting or have acted as a lawyer in a case, (iv) known to have an interest that would be largely changed by the decision in the case, or (v) to be a witness in a case.

This means you must be very careful to insure that you can be fair and impartial in all the matters you hear. You should stay informed about your family's financial interests so that you can be certain your immediate family, including those family members living in your home, have no connection to the matters you hear. If you

or your family members have any meaningful connection with a matter before you, you should disqualify yourself, that is, not hear the case. Also, if your impartiality could be questioned by other people, you must remember to avoid "even the appearance of impropriety" or unfairness.

2. This section tells you that you should always be aware and informed of your personal and financial interests and of your spouse's and children's financial interests. If you do not know these things, then you might not know when your impartiality and fairness could be questioned by members of your community.

3. This section tells you the meaning of the words used in Canon 3C:

(a) The civil law system of calculating the degree of family relationship is a system explaining the closeness of one's relatives. The first degree of the family

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

relationship is a person's child. The second degree of the family relationship is grandchildren, brothers and sisters and grandparents. The third degree of the family relationship is great grandchildren, nephews and nieces, uncles and aunts and great grandparents.

Canon 3C(1)(d) refers to a person within the third degree of relationship to a judge or judge's spouse. This means all your family members and your spouse's family members within the first degree, second degree or third degree of relationship. Thus, Canon 3C(1)(d) requires you to be aware of your family's activities and involvements which may come before you as a judge.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(b) A "fiduciary" is a person who acts in a position of trust for another. This can include an (i) executor -- a person appointed under a will to carry out the directions of the will, or (ii) an

administrator -- a person appointed by a court to settle property, or (iii) a trustee -- a person to whom another's property or management of another's property is entrusted, or (iv) guardian -- a person who guards, protects or takes care of another person or property.

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(c) A "financial interest" means an actual money interest or some way in which you could realize any gain or loss to your money or property. If you regularly tell someone else how to handle money or property, even though the money or property does not belong to you, that is a financial interest.

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

An office in an educational, religious, charitable or fraternal organization is not a financial interest. If you have a policy with a mutual insurance company or put your money in a mutual savings association, that is not a financial interest. However, if an educational, religious, charitable, fraternal

or civic organization of which you are a director or officer appears before you, as a judge, you should not hear the case. If your mutual insurance company or mutual savings association appears before you and your decision in the court proceeding could affect your interest, you should not hear the case because you would give the appearance of being unable to be fair and impartial.

Owning government securities is a financial interest only if the outcome of proceedings before you could largely affect the value of the government securities.

D. Remittal of Disqualification.

A judge disqualified by the terms of Canon 3C(1) (c) or Canon 3C(1) (d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding. (Added by Supreme Court Order 170 dated September 17, 1973; amended by Supreme Court Order 387 effective November 1, 1979; and by Supreme Court Order 502 effective February 1, 1982)

D. Remittal of Disqualification.

If you are disqualified under Canon 3C(1) (c) or (d), that is, you or a member of your family have an interest in a case before you, you should state on the record the reason why you are disqualifying yourself from the case. You must make a full disclosure by stating all the reasons you are

disqualifying yourself. If all the parties agree, in writing, that your interest or that of your family is small and does not matter, you can hear the case. The agreement, signed by all parties and their lawyers, becomes part of the record of the proceeding. However, if you know or feel or it appears you cannot be fair, you should not hear the case, even if all the parties agree in writing.

CANON 4

A JUDGE MAY ENGAGE IN ACTIVITIES
TO IMPROVE THE LAW, THE LEGAL SYSTEM,
AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

CANON 4. A JUDGE MAY ENGAGE IN ACTIVITIES TO
IMPROVE THE LAW, THE LEGAL SYSTEM AND THE
ADMINISTRATION OF JUSTICE

A. You may speak, write and teach about the law, the legal system and the administration of justice, as long as your activities do not cast doubt on your ability to be fair when you decide cases. You should never discuss any case which is pending before you.

B. You may appear at public hearings before an executive or legislative body or official. You may speak only about matters concerning the law and the legal system. You may not speak about a particular case which is pending before you. For example, you could speak about fish and wildlife sentencing patterns in your court or region, but you could not speak about a fishing violation then pending in your court or pending in another court.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. (Added by Supreme Court Order 170 dated September 17, 1973)

C. You may serve as a member, officer or director of an organization or agency working on the improvement of the law, the legal system and the administration of justice. For example, you could serve on an interagency committee investigating statewide sentencing patterns or on the court system forms committee.

You should never personally raise money for organizations or participate in their fund raising activities.

CANON 5

A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

CANON 5. A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES

This Canon sets the guidelines for judges and their activities outside their judicial duties.

A. Avocational Activities.

This section requires that your outside activities -- in the arts, sports, social and recreational activities -- not affect your judicial dignity or judicial performance.

B. Civic and Charitable Activities.

You may be involved in civic and charitable activities as long as those activities do not interfere with your judicial duties or fairness. You may be an officer, trustee or non-legal advisor of a

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

civic or charitable organization which is not run for the economic or political benefit of its members.

If it is likely that the organization will regularly be in your court, you should not be part of the organization or act as an officer, trustee or non-legal advisor.

You may be an officer, director or trustee of a civic or charitable organization. However, you should not raise money or speak at any fund raising events or permit your office as judge to lend prestige to a fund raising event. You may attend fund raising events for a civic or charitable organization. For example, you could be a member, officer, director or trustee for the Boy Scouts or Girl Scouts, a hospital, your church, or the local search and rescue organization and attend their fund raising events. (Note the difference between Canon 7A(c), which states clearly that you cannot

attend political events, including fund raising events. Any organization or group engaged in or taking sides in public policy or the election of individuals to office is considered a political organization. For example, the Republican, Democratic, or Libertarian parties would be considered political organizations.)

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

You should not give financial advice to a civic or charitable organization. However, you may serve on the board of directors of a civic or charitable organization.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

C. Financial Activities.

This section requires you to handle your business and financial activities responsibly.

(1) You should handle your business and financial activities so you can be fair in hearing your cases.

(2) This section allows you to invest money and operate a business. However, you must manage investment and financial activities so you can be fair in hearing your cases.

(3) Your investments and any other financial interests should be arranged so that you will not be disqualified from cases. If you have financial or investment interests which cause or will cause you to be frequently disqualified, you should rearrange your finances to avoid disqualification.

(4) You and your family should not take advantage of your position to accept gifts,

favours or loans. This section states that you and family members living in your household may accept:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(a) a gift given at a public function to express appreciation; books for official use given by publishers or an invitation to you and your spouse to attend a legal activity;

(b) ordinary social hospitality, such as a dinner invitation; a gift, a bequest (left to you in a will), favor or loan from a relative; a wedding or engagement gift; a loan on the same terms and conditions required of any other borrower; a scholarship or fellowship on the same terms applied to

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

other applicants;

(c) any other gift, bequest, favor or loan if the person giving it is not likely to come before you in court. If the value of the gift, bequest, favor or loan is greater than \$100.00, you must report it to the Administrative Director of the Alaska Court System, including the date, place and nature of the benefit you received. See Canon 6C for reporting requirements.

(5) Canon 5C applies to you and family members, or any person treated like a family member, residing in your home.

(6) You are required to disclose your income, debts and investments only as set out in Canons 3, 5 and 6.

(7) You should never use any information received by you, in your judicial

capacity, to your personal advantage or for any purpose other than your judicial duties.

D. Fiduciary Activities.

This section applies only to full-time judges. If you are a full-time judge, you should act only for family members as an executor, administrator, trustee, guardian or in any other position of trust. Family members include a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

However, whether you are a part-time or full-time judge, you should not serve as an executor, administrator, trustee, guardian or any other fiduciary if it is likely that proceedings regarding the person or matter would ordinarily come before you, your court or the appellate jurisdiction of your court. Also, if you are acting in any position of trust, you are still subject to all financial restrictions placed on a judge.

D. **Fiduciary Activities.** A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator for compensation.

E. Arbitration.

This section applies only to full-time judges. If you are a full-time judge, you should not act as a paid arbitrator or mediator. For example, a local contractor comes to you, says he does not want to file a formal civil case, and asks that you sit as a third party to decide a dispute about the quality of the electrical wiring in a house he built. The contractor says he will be glad to pay you for your time. If you are a full-time judge, you should refuse to act as the third party to decide this dispute. If you are a part-time judge and act as a paid mediator or arbitrator, those activities should not interfere with matters which might come before you.

F. Practice of Law. A judge should not practice law.

F. Practice of Law.

This section applies only to full-time judges. A full-time judge should not

practice law. This canon provides that a part-time judge admitted to the bar to practice law in Alaska should not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves. However, Administrative Rule 2(d), Rules of Court, sets out a definite standard -- no employee of the Alaska Court System may engage directly or indirectly in the practice of law in any court in the state of Alaska.

Also, you should not act as a lawyer in a proceeding in which you have served as a judge or in any other proceeding related thereto. (See Part II of the Code of Judicial Conduct.)

G. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities. (Added by Supreme Court Order 170 dated September 17, 1973)

G. Extra-Judicial Appointments.

This section applies only to full-time judges. If you are a full-time judge, you can accept appointments to governmental

committees or commissions only if the group is concerned with issues of law, the legal system or the administration of justice. If you are a part-time judge, you are not bound by this restriction.

As either a full-time or a part-time judge, you may represent your country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities. (A note of caution: you should never represent a private or business interest at any ceremonial activity. See Canon 2B).

CANON 6

A JUDGE SHOULD REGULARLY FILE REPORTS OF COMPENSATION RECEIVED FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payment does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. **Compensation.** Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

CANON 6. A JUDGE SHOULD REGULARLY FILE REPORTS OF COMPENSATION RECEIVED FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES

As a judge, you may take payment for work performed and reimbursement for expenses only if the source of the payment does not influence or appear to influence you in the performance of your judicial activities.

A. **Compensation.** Compensation (money earned) should not exceed a reasonable amount for the work performed. Also, you should not be paid more than what a person who is not a judge would receive for the same activity.

B. **Expense Reimbursement.** If you are paid for travel or expenses, the expense reimbursement should be only for travel, food and lodging. Any payment greater than these costs is compensation.

C. **Public Reports.** A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the Administrative Director of the Alaska Court System at such time and in such form as shall be prescribed by the Administrative Director. (Added by Supreme Court Order 170 dated September 17, 1973)

C. Public Reports. This section applies only to full-time judges. If you are a full-time judge, you should report the date, place and type of activity for which compensation is paid, the name of the payor and the amount of compensation. A spouse's compensation or income is not considered for this purpose. This report should be filed as a public document, at least annually, with the Administrative Director of the court system.

CANON 7. A JUDGE SHOULD REFRAIN FROM
POLITICAL ACTIVITY INAPPROPRIATE TO HIS
JUDICIAL OFFICE

CANON 7

A JUDGE SHOULD REFRAIN FROM
POLITICAL ACTIVITY INAPPROPRIATE
TO HIS JUDICIAL OFFICE

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

A. Political Conduct in General.

(1) Because magistrates are appointed to their posts by the presiding judge of their judicial district, a magistrate is never a candidate for election to judicial office.

As a judge, you should never become a candidate for political office, solicit funds for a political organization, attend political gatherings or purchase tickets for political party dinners or gatherings.

(2) This section is inapplicable. In Alaska, all judges, including magistrates, are appointed. A magistrate is never a candidate for election to a judicial office. All judges except magistrates must, at regular intervals, stand for a retention

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

election in which the judge is the only candidate. A retention election is an election in which the voters decide if the judge may continue to serve.

(3) If you decide to run for office, you must resign as a judge. The only circumstance under which you do not have to resign as a judge is if you are serving as a delegate in a state constitutional convention.

(4) As a judge, your only political activity should be on behalf of measures to improve the law, the legal system or administration of justice.

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than ninety [90] days before a primary election and not later than ninety [90] days after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

(3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2). (Added by Supreme Court Order 170 dated September 17, 1973 and amended by Amendment No. 1 to Supreme Court Order 170 effective May 17, 1974)

B. Campaign Conduct.

This section is for judges who are appointed by the governor to their posts and, after serving a specified number of years, must stand for a retention election by the voters. Magistrates are appointed to their posts by the presiding judge of their judicial districts and serve at the pleasure of the presiding judge. Since a magistrate never is elected or stands for a retention election, this section is not applicable to magistrates.

Part II. Compliance and Effective Date

1. Compliance with the Code of Judicial Conduct.

Anyone who is an officer of the Alaska Court System performing judicial functions, including a special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below:

A. **Part-time Judge.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, G, and Canon 6C;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. **Judge Pro Tempore.** A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

Part II. Compliance and Effective Date.

Part II explains who must comply with the Code of Judicial Conduct, the effective date of the Code and when the Code becomes applicable to judges.

1. Compliance with the Code of Judicial Conduct.

Any person who is an officer of the Alaska Court System is considered a judge bound by the Code of Judicial Conduct. This includes special masters, court commissioners, and magistrates.

A. Part-Time Judge.

As already noted, certain sections of the Code of Judicial Conduct do not apply to part-time judges.

B. Judge Pro Tempore.

A judge pro tempore is a person who acts as a judge for a limited period of time. For example, lawyers are sometimes appointed pro tempore district court judges for six months

C. **Retired Judge.** A retired judge who receives the same compensation as a full-time judge on the court from which he retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges. (Added by Supreme Court Order 170 dated September 17, 1973)

2. Effective Date of Compliance.

A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

(a) continue to act as an officer, director, or non-legal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family. (Added by Supreme Court Order 170 dated September 17, 1973)

when a court caseload is particularly heavy. Generally, magistrates do not act as a judge pro tempore.

C. Retired Judge.

Generally, the section on retired judges does not apply to magistrates.

2. Effective Date of Compliance.

Upon being appointed as a magistrate/judge, you are to arrange your affairs as soon as possible to comply with the Code of Judicial Conduct. If, at the time of your appointment as a judge, you are an officer, director or non-legal advisor of a family business, you may keep this position if the demands on your time and possibility of conflict of interest are not great. Also, if you are an executor, administrator, trustee or other fiduciary for an estate or person not a member of your family, you may keep this position if the demands on your

time and possibility of conflict of interest
are not great.

3. **Effective Date of Code.**

The Code of Judicial Conduct shall be effective as of this date. (Added by Supreme Court Order 170 dated September 17, 1973).

3. Effective Date of Code.

The Code of Judicial Conduct went into effect on September 17, 1973.

If you have any questions whatsoever about decisions you have made or will make about your ethical behavior, you should contact your training or presiding judge.

LESSON 5: JUDICIAL ETHICS

REVIEW TEST

MAGISTRATE: _____

LOCATION: _____

DATE: _____

Return completed test to:

MAGISTRATE SERVICES
303 "K" Street
Anchorage, AK 99501

LESSON 5: JUDICIAL ETHICS

REVIEW TEST

INSTRUCTIONS:

Write your answers to the questions in the spaces provided.

1. Magistrate Smith receives a telephone call from the Village Public Safety Officer ("VPSO"). The VPSO tells Magistrate Smith that he is holding Billy Bad Guy for assault in the fourth degree. Magistrate Smith says he will do the arraignment right away. As Magistrate Smith hangs up the telephone, a council member who is also Billy Bad Guy's uncle comes into the magistrate's office. The council member uncle starts telling Magistrate Smith that the assault was not really Billy Bad Guy's fault and that Annie Assault committed the crime.
 - A. What should Magistrate Smith do?
 - B. Which canon in the Code of Judicial Conduct gives Magistrate Smith guidance in this situation?
 - C. Define ex parte communication.

2. Magistrate Brown, as a private person, decides to attend a city council meeting. He is sitting quietly with other city residents. A council member states that he wants Magistrate Brown to tell the council what decision he is going to make in a trial the next day.
 - A. What should Magistrate Brown do?
 - B. Which two canons give Magistrate Brown guidance in this situation?

3. Assume the same facts as Question 3. The city council discusses the case which Magistrate Brown is going to hear the next day. The city council votes on how the case should be decided.