



Alaska Commission on Judicial Conduct

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MEMORANDUM

TO: Chair Marston

FROM: Marla N. Greenstein *MG*
Executive Director

RE: Letter Inviting Alaska Supreme Court to Meet with Commission

At the Commission's meeting on Friday, in public session on a vote of 5 to 3, the Commission decided to invite the members of the Alaska Supreme Court to meet with the Commission to discuss their June "Statement to Alaskans." I offered to do an initial draft of the invitation. That effort has presented some difficulties.

In an effort to ground our invitation in our Rules and Statutes, it seems unclear that this type of invitation fits within the scope of the Commission's authority. Commission Rule 6 generally outlines the scope of public information provided by the Commission:

RULE 6. PUBLIC INFORMATION.

(a) Public Statements – General. The commission will, in its discretion, issue press releases and other public statements explaining the nature of its jurisdiction, procedures for institution of accusations, limitations upon its powers and authority, and reports on the activities of the commission. The releases and reports may not identify the judge or other person involved in any inquiry before the commission unless disclosure is otherwise provided for in AS 22.30.060.

(b) Formal Proceedings. After a formal charge is filed, only the formal charge, the answer, the formal evidentiary hearing, and the final recommendation by the commission, including any minority report, are public. Unless otherwise ordered, all discovery items introduced into evidence at the public formal

hearing become public documents when introduced. All other discovery items remain confidential. Dispositive motions and related resulting orders become public documents when decided.

(c) Formal Ethics Opinions. In its discretion, the commission will issue public formal ethics opinions resulting from actual complaints. Formal ethics opinions are not to be confused with formal advisory opinions issued under Rule 19 of these rules. The purpose of issuing a formal ethics opinion is to guide judges and to inform the public. These opinions may not identify the judge or otherwise violate the commission's obligation to maintain the confidentiality of its proceedings. A formal ethics opinion may not be issued until the disciplinary process involving the underlying facts has been concluded and all related appellate proceedings have been adjudicated.

(d) Inquiries by the Press. Inquiries by the press concerning commission activities may be responded to only by the executive director, unless otherwise directed by the commission.

(e) Comments by Commission Members. Commission members should refrain from publicly commenting on the judicial qualifications of any sitting or pro tem judge. [Adopted November 1, 1991 ; amended March 1, 1996 ; December 1, 2000 .]

Our governing statute, also does not seem to envision a communication of this nature.

Sec. 22.30.011. Powers and duties of the commission.

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

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

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

(3) within a period of not more than six years before the filing of the complaint or before the beginning of the commission's inquiry based on its own motion, committed an act or acts that constitute

(A) wilful misconduct in office;

(B) wilful and persistent failure to perform judicial duties;

(C) conduct prejudicial to the administration of justice;

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

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

(4) is habitually intemperate.

My understanding of the court's statement is that it was issued by the Supreme Court as a body, in its role as head of the Judicial Branch. While members of the public or of this Commission might disagree with the wisdom of the Court's issuance of the statement, it does not appear to raise an issue of Judicial Conduct and Ethics for our Commission. As my duties include interpreting statutes and providing legal opinions to the Commission related to its duties, it is my opinion that the motion adopted at Friday's meeting is likely outside the scope of the statute.

Please let me know how the Commission wishes to proceed.

RULE 4. DUTIES OF EXECUTIVE DIRECTOR:

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(b) Other Duties. The executive director may perform other law-related duties, such as the following:

- (1) interpreting statutes and case law and providing legal opinions to the commission related to its duties;
- (2) preparing and filing court documents, as needed, on behalf of the commission;