

ALASKA RULES OF COURT 2017-2018 Edition

JUDICIAL CONDUCT COMMISSION RULES

Table of Contents

Rule	
<u>1</u>	Organization of Commission. (a) Meetings. (1) Annual. (2) Regular. (3) Special. (b) Notice of Meetings. (1) Public. (2) Members. (c) Officers. (1) Chair. (2) Executive Committee. (d) Commission Office. (e) Quorum. (f) Voting Requirements. (g) Order of Business. (h) Public Participation. (i) Electronic and Written Records. (j) Commission Member Holdover. (k) Complaints Against Staff.
<u>2</u>	Functioning of Commission. (a) Annual Report. (b) Executive Director. (c) Agents or Employees of Commission.
<u>3</u>	Financial Arrangements for Commission. (a) Compensation Proscribed. (b) Expenses Allowed. (c) Authorization for Payments. (d) Extraordinary Expenses.
<u>4</u>	Duties of Executive Director. (a) Listed Duties. (b) Other Duties.
<u>5</u>	Confidentiality. (a) Confidentiality. (b) Disclosure—Generally. (c) Disclosure—Dismissal. (d) Disclosure—Determination. (e) Waivers.
<u>6</u>	Public Information. (a) Public Statements—General. (b) Formal Proceedings. (c) Formal Ethics Opinions. (d) Inquiries by the Press. (e) Comments by Commission Members.
<u>7</u>	Initiation and Screening of Complaint. (a) Filing of Complaint. (b) Screening of Complaint. (c) Commission-initiated Complaint.
<u>8</u>	Notice. (a) Notice of Investigation. (b) Notice of Probable Cause Determination. (c) Notice After Formal Charge. (d) Notice of Recommended Dismissal and of Dismissal. (e) Method of Service.
<u>9</u>	Formal Investigation. (Repealed)

ALASKA COURT RULES

- 10 Subpoenas.
 - (a) When Issued.
 - (b) Request for Commission Subpoena.
 - (c) Non-compliance With Commission Subpoena.
- 11 Investigation Results; Commission Action.
 - (a) Initial Commission Determination.
 - (b) Disposition.
 - (1) Dismissal.
 - (2) Informal and Private Admonishment by the Commission.
 - (3) Recommendation for Counseling.
 - (4) Probable Cause Determination.
 - (A) Lack of Probable Cause.
 - (B) Probable Cause.
 - (c) Reconsideration.
- 12 Pre-Hearing Discovery.
 - (a) General Scope.
 - (b) Discovery Before Formal Charge.
 - (c) Discovery After Formal Charge.
- 13 Special Counsel.
 - (a) Appointment.
 - (b) Role and Duties.
 - (c) Powers.
- 14 Formal Disciplinary Hearing.
 - (a) Pre-hearing Conference.
 - (b) Discovery.
 - (c) Master.
 - (d) Role of the Chair
 - (e) Conduct of Hearing.
 - (f) Evidence.
 - (g) Amendment of Complaint.
 - (h) Determination.
 - (i) Extension of Time.
 - (j) Hearing Additional Evidence.
 - (k) Role of Executive Director After Formal Charge.
- 15 Commission Decision.
 - (a) Decision.
 - (b) Minority Report and Distribution.
 - (c) Voting.
 - (d) Execution.
 - (e) Witness Fees.
- 16 Supreme Court Review.
- 17 Cases Involving Mental or Physical Disability.
 - (a) Procedure.
 - (b) Special Provisions.
- 18 Commission Member Disqualification; Proceeding Against Commission Member.
 - (a) Conflict of Interest.
 - (b) Disclosure.
 - (c) Motion for Disqualification.
 - (d) Proceeding Against Commission Members.
 - (e) Prohibition Against Representing Judge Before the Commission.
- 19 Commission-Issued Advisory Opinions.
 - (a) Issuance of Formal Advisory Opinions.
 - (b) Advisory Opinion Drafting.
 - (c) Use of Formal Advisory Opinions.
 - (d) Informal Verbal Advisory Opinions.
- 20 Settlement Procedures.
 - (a) Settlement After Investigation.
 - (b) Settlement After Probable Cause Finding.

Rule 1. Organization of Commission.

(a) *Meetings.* The commission holds the following meetings:

(1) *Annual.* The first regularly scheduled meeting of the calendar year is the annual meeting. At the annual meeting, the commission will approve the commission's annual report and will elect officers every two years.

(2) *Regular.* Other regular meetings at designated locations may be held as needed. Regular meetings may be held either in person or by teleconference.

(3) *Special.* Special meetings may be called by the chairperson or two members of the commission upon prior written or verbal notice to all members where there is a need to meet on short notice for a special purpose. If the special agenda includes any public matter, public notice shall be given at least 24 hours before the meeting. Special meetings may be held either in person or by teleconference.

(b) **Notice of Meetings.** Notice of meetings is required as follows:

(1) *Public.* At least 14 days before a regular commission meeting, the executive director shall give public notice on the Commission's website of the upcoming meeting. The notice shall clearly specify the date, time, and place of the commission meeting and shall also state that anyone wishing to appear at the meeting must contact the executive director at the commission office at least five working days before the meeting. An agenda of public matters shall also be included in the meeting notice.

(2) *Members.* At least 14 days before a regular commission meeting, the executive director shall give notice of the meeting to each member of the commission. The notice must contain the date, time, and place of the meeting, and a tentative meeting agenda. The commission will, in its discretion, waive notice for any meeting.

(c) **Officers.** The commission has the following officers:

(1) *Chair.* The commission will elect a chair and a vice-chair by majority vote at the annual meeting. The term of office is two years. The chair shall conduct the meetings; certify commission recommendations; direct the preparation of meeting agendas, notices, reports, and minutes; and ensure accurate record-keeping. The vice-chair shall act in the absence of the chair.

(2) *Executive Committee.* The chair may appoint an executive committee to perform matters of administration as from time to time are designated by the commission.

(d) **Commission Office.** The commission shall establish a permanent office in a building open to the public. The office must be open and staffed at regular office hours.

(e) **Quorum.** No dispositive action may be taken by the commission unless a quorum of at least a majority of the

members serving on the commission is present, in person or telephonically, at the meeting. A quorum of the commission must include at least one judge member, one attorney member, and one public member.

(f) **Voting Requirements.** The following rules apply to voting on commission action:

(1) Every action of the commission requires a majority vote of the members serving on the commission at the time the action is taken.

(2) The names of commission members voting on any question shall be recorded in the minutes.

(3) Once cast, votes may be changed only during the same meeting on a motion to reconsider unless otherwise provided by these rules.

(g) **Order of Business.** The chair shall determine the order of business in advance of each meeting.

(h) **Public Participation.** The meetings shall be ordered to encourage attendance by the public, where public matters are considered. To facilitate productive and effective meetings, any member of the public who wishes to testify at a public meeting of the commission shall make the request to the executive director at least 48 hours before the commencement of the meeting. Requests will be honored only if the general substance or subject area on which the individual wishes to testify concerns a public matter related to the commission's function under the Alaska Constitution and the statutes of the state. All requests are subject to approval by the commission chair. Written public testimony will be accepted at any time, concerning any matter relating to the commission's function.

(i) **Electronic and Written Records.** The executive director shall electronically record all commission meetings except for commission deliberations, prepare minutes of both public and closed sessions subject to approval of the commission, and maintain their permanent storage. The executive director shall preserve all documents, including tape recordings, staff notes and memoranda, transcripts of testimony before the commission, and correspondence.

(j) **Commission Member Holdover.** To ensure that the commission continuously fulfills its constitutional responsibilities, a commission member continues to serve as an active member after expiration of that member's term until the vacancy is filled by the appropriate appointing authority.

(k) **Complaints Against Staff.** Complaints against Commission staff will be handled in the same manner as complaints against Alaska Court System employees. Complaints against staff are confidential personnel matters and may not be addressed publicly under section (h) of this Rule. Any complaint against the Executive Director must be in writing and addressed to the Chair. If the Chair determines the complaint merits investigation, the Executive Director will be given an opportunity to respond in writing. Thereafter, the

Rule 2

ALASKA COURT RULES

Chair may: decide the matter, form a personnel committee, or present the matter to the full Commission for its consideration.

(Adopted November 1, 1991; amended December 10, 1993; amended May 9, 1995; December 1, 2000; amended September 23, 2011; and amended April 26, 2013.)

Rule 2. Functioning of Commission.

(a) **Annual Report.** Before the annual meeting, the executive director shall prepare an annual report of the commission's activities for presentation at that meeting. Upon approval by the commission, the executive director shall send a copy of the annual report to the governor, president of the senate, speaker of the house, chief justice, state publications distribution and data access center, and president of the Alaska Bar Association. The report shall also be kept available to the public.

(b) **Executive Director.** The commission will appoint an executive director to serve at its pleasure. While serving, the executive director may not be employed by the court system and may not be a judicial officer.

(c) **Agents or Employees of Commission.** The commission will employ individuals as appropriate to carry out its duties. Employees may include attorneys, accountants, paralegals, secretaries, and investigators.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 3. Financial Arrangements for Commission.

(a) **Compensation Proscribed.** The commission members serve without compensation for their services.

(b) **Expenses Allowed.** Commissioners are reimbursed for expenses necessarily incurred in the performance of their duties as established by state law.

(c) **Authorization for Payments.** The commission will authorize payment for expenses that are within the commission's budget and comply with travel policies and procurement guidelines. Either the executive director or the chair may authorize payments of approved expenses.

(d) **Extraordinary Expenses.** If there is an unanticipated funding shortfall, the commission will not curtail the discharge of its constitutionally mandated operations, but will authorize the executive director to seek a supplemental appropriation.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 4. Duties of Executive Director.

(a) **Listed Duties.** The commission will prescribe the duties of the executive director, which include:

(1) considering information regarding judicial misconduct from all sources and receiving allegations and complaints;

(2) making preliminary evaluations;

(3) screening complaints;

(4) conducting and supervising investigations;

(5) maintaining and preserving the commission's records, including all complaints, files, and written dispositions;

(6) maintaining statistics concerning the operation of the commission and making them available to the commission, the court, and the public;

(7) preparing the commission's budget for its approval and administering its funds;

(8) employing and supervising other members of the commission's staff;

(9) preparing an annual report of the commission's activities;

(10) employing, with the approval of the commission, office assistants, special counsel, private investigators, or other experts, as necessary to investigate and process matters before the commission and before the court;

(11) issuing subpoenas as directed by the commission;

(12) attending all meetings and hearings of the commission, except for commission deliberations; and

(13) providing and publishing notice as required by these rules.

(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;

(3) negotiating appropriate discipline and fact stipulations subject to final approval of and direction by the commission.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 5. Confidentiality.

(a) **Confidentiality.** All investigative records, files, and reports of the commission are confidential and no disclosure may be made except as permitted by AS 22.30.060. All confidential documents acquired in the course of a commission investigation shall be accorded the same confidentiality as commission-generated documents.

(b) **Disclosure—Generally.** To preserve public confidence in the administration of justice, the commission will, in its discretion, issue statements clarifying procedural aspects or explaining the right of a judge to a fair hearing when the subject matter of a complaint is generally known to the

public. Unless otherwise provided by these rules, a person filing an accusation may have access only to those materials that the person has provided to the commission.

(c) **Disclosure—Dismissal.** When an accusation against a judge has been considered by the commission and it has been determined that there is no basis for filing a charge or for further proceedings, the commission will, in its discretion and at the judge’s request or approval, issue an explanatory statement.

(d) **Disclosure—Determination.** Upon completion of an investigation or proceeding, the commission will disclose to the complainant that the commission

(1) has found no basis for action against the judge;

(2) has taken an appropriate corrective action, the nature of which, under AS 22.30.011(b), cannot be disclosed; or

(3) has filed a formal charge against the judge.

(e) **Waivers.** A judge may partially waive confidentiality by signing a Commission Waiver of Confidentiality for future employment or retention purposes. This partial waiver will permit the Commission to provide factual summaries of all instances where the Commission has taken disciplinary action under Rule 11 (b)(2)-(4) of these rules, including Informal and Private Admonishment and Recommendations for counseling in all its forms. “Future employment or retention purposes” include applications for other judgeships, other government employment or public office, private employment and seeking retention in current judicial office.

(Adopted November 1, 1991; amended December 1, 2000; amended June 29, 2009.)

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.)

Rule 7. Initiation and Screening of Complaint.

(a) **Filing of Complaint.** A written complaint about the conduct or physical or mental disability of a judge may be filed upon any reasonable basis. A complaint may be filed by any individual, including a commission member, or by the commission itself. If a commission member files a complaint as an individual and not under (c) of this rule, that member may not participate in the matter.

(b) **Screening of Complaint.** Each written complaint shall be screened in accordance with the following procedures:

(1) The executive director shall review a written complaint and determine whether the information or statement is within the jurisdiction of the commission and is not frivolous.

(2) If the executive director determines that the matter is not within the jurisdiction of the commission or not supported by facts, the executive director shall, after providing notice to the complainant and an opportunity to amend the complaint, recommend dismissal. A judge will not be notified of a dismissal under this paragraph.

(3) If the executive director determines that the matter is not frivolous, the executive director shall make a preliminary investigation to determine what further action should be taken, if any. After the preliminary staff investigation, the commission will either dismiss the complaint or direct further investigation. If the commission directs further investigation, the executive director shall notify the judge of the investigation, as set out in Rule 8 of these rules.

(c) **Commission-initiated Complaint.** When a commission member or staff person becomes aware of information concerning possible judicial misconduct, he or she may inform the executive director. The executive director shall preliminarily investigate the information, and, if supported,

present the information to the commission with a recommendation as to whether the matter should be designated a commission-initiated complaint. Once a matter is designated a commission-initiated complaint it will be treated in the same manner as a complaint filed by an individual under (a) of this rule.

(Formerly (before December 1, 2000) Rule 8. Adopted November 1, 1991; amended December 1, 2000.)

Rule 8. Notice.

(a) **Notice of Investigation.** If, after conducting an initial investigation, the executive director anticipates recommending to the commission at its next meeting an outcome other than dismissal and the chair agrees that notice at this time is appropriate, or if the commission does not dismiss the matter at a meeting, the executive director shall send a written notice of investigation to the judge. The notice of investigation must identify the complainant, if the complainant has authorized use of his or her name, and must convey the basic substance of the investigation and the date of the next commission meeting when the investigation will be reviewed. In addition, the written notice must convey the possible outcomes: dismissal, informal and private admonishment, recommendation for counseling, or proceeding to a probable cause determination. The executive director may issue supplemental notices as appropriate. In instances where the initial investigation is thorough enough to also serve as the full investigation, the commission may authorize both the notice of investigation and notice of probable cause determination under (b) of this rule in the same document at the same time.

(b) **Notice of Probable Cause Determination.** After an investigation, if the commission has decided that a probable cause determination is necessary, the executive director shall send a written notice of probable cause determination to the judge. The notice must include the date of the determination meeting and a citation of Rule 12 of these rules, pre-hearing discovery. In addition, the written notice must state the possible outcomes as listed in (a) of this rule.

(c) **Notice After Formal Charge.** The executive director shall provide appropriate notice of commission action taken under Rules 14–18 of these rules.

(d) **Notice of Recommended Dismissal and of Dismissal.** The executive director shall inform the complainant in writing of the executive director's recommendation of dismissal and that the dismissal will be reviewed by the commission at its next meeting. If the judge has been given prior commission notice, the executive director shall also inform the judge in writing of the recommended dismissal. After the commission's dismissal of a complaint, at whatever stage of proceedings, the executive director shall so inform the complainant and, if the judge has been given prior commission notice, the judge.

(e) **Method of Service.** Unless otherwise specified, notice to the judge, when required by these rules, shall be given by personal service, or by prepaid certified or registered mail that is addressed to the judge.

(Formerly (before December 1, 2000) Rule 7. Adopted November 1, 1991; amended December 1, 2000; June 30, 2003; February 1, 2004; May 19, 2008)

Rule 9. Formal Investigation. [Repealed December 1, 2000.]

Rule 10. Subpoenas.

(a) **When Issued.** The commission will, in its discretion, compel by subpoena the attendance and testimony of witnesses, including the judge, and the production of papers, books, accounts, documents, and testimony relevant to the investigation or proceeding. Service may be by commission staff or official process server.

(b) **Request for Commission Subpoena.** A request for a commission subpoena, under AS 22.30.066, shall be made to the executive director and must include

(1) the name of the person or document to be subpoenaed;

(2) the purpose and relevance of the testimony or document; and

(3) a statement whether the person or document would be available without a subpoena.

(c) **Non-Compliance With Commission Subpoena.** If a person does not attend, testify, or produce a document required by a commission subpoena, the commission will, in its discretion, petition the superior court for an order compelling the person to comply with the subpoena. A claim of privilege must be asserted formally before the commission no later than the date of compliance stated in the subpoena. Privileges are those recognized in Article V of the Alaska Rules of Evidence and claims of privilege will be decided by the commission.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 11. Investigation Results; Commission Action.

(a) **Initial Commission Determination.** The commission will promptly consider the results of an investigation at a regularly scheduled meeting of the commission or a special meeting called for consideration of the matter. In extraordinary situations, as determined by the commission, the commission will designate a master to make findings of fact related to a charge. At the meeting, neither the judge, the judge’s attorney, nor witnesses may appear unless requested by the commission. The commission will consider any brief written statement provided by the judge.

(b) **Disposition.** The commission will proceed in one of the following ways:

(1) *Dismissal.*

(A) If the commission does not find that misconduct has occurred, the commission will instruct the executive director to send notice of dismissal under Rules 5(d) and 8(d) of these rules.

(B) In addition to a dismissal above, where the Commission does not find misconduct but believes that the judge would benefit from informal advice relating to the facts surrounding the complaint, the Commission may, without prior

notice to the judge, authorize a member of the Commission or the Executive Director to provide the advice.

(2) *Informal and Private Admonishment by the Commission.* If the commission finds that there has been misconduct for which informal and private admonishment is appropriate, the commission will, in its discretion, issue a written private admonishment to the judge. The admonishment will include findings of fact and conclusions of law. A private admonishment becomes a final disposition 16 days after service on the judge unless the judge requests reconsideration under (c) of this rule.

(3) *Recommendation for Counseling.* If the commission finds that there has been misconduct for which counseling is appropriate, the commission will, in its discretion, recommend counseling. For purposes of this paragraph, “counseling” means personal or professional counseling, further training, and other remedial measures; it can take the form of a cautionary letter. The commission will, in its discretion, also enter into an agreement with the judge, set out in a memorandum, concerning the judge’s future conduct or submission to counseling. The executive director shall notify the complainant, under Rules 5(d) and 8(d) of these rules, that the matter has been resolved by recommended counseling. The commission will monitor any prescribed counseling.

(4) *Probable Cause Determination.* If the matter has not been resolved under (b)(1), (2), or (3) of this rule, the commission will determine probable cause at a definite time and place with reasonable notice to the judge. The commission chair, or a member of the commission designated by the chair, shall preside. At the meeting, neither the judge, the judge’s attorney, nor witnesses may appear unless requested by the commission. The commission will consider written or taped witness statements, staff investigative reports, and any written information provided by the judge. The commission will make one of the following findings:

(A) *Lack of Probable Cause.* If the commission fails to find probable cause that there has been misconduct that warrants action more serious than informal and private admonishment or counseling, it will dispose of the matter under (b)(1), (2), or (3) of this rule.

(B) *Probable Cause.* If the commission finds that there is probable cause to believe that there has been misconduct that warrants action more serious than an informal and private admonishment or counseling, the chair or executive director shall serve the judge with a statement of formal charge and all documents upon which the finding was based. Service upon the judge constitutes notice that a response must be filed within 20 days.

(c) **Reconsideration.** Within 15 days after service of an informal and private admonishment under (b)(2) of this rule, the judge may request reconsideration, by filing a written motion with the commission. Upon receipt of the motion, the commission will dismiss the complaint, deny the motion for reconsideration, make further investigation, or institute a formal charge under (b)(4)(B) of this rule and Rule 14 of these

rules. Reconsideration is not available for recommendations of counseling under (b)(3) of this rule or determinations of probable cause under (b)(4)(B) of this rule.

(Adopted November 1, 1991; amended December 1, 2000; amended August 19, 2013.)

Rule 12. Pre-Hearing Discovery.

(a) **General Scope.** To expedite the hearing and maintain fairness, discovery will be as full and free as possible. The judge and special counsel are entitled to discovery in accordance with the Alaska Rules of Civil Procedure, including the limitations set out in those rules, except as noted in this rule. Exceptions to discovery are: (1) commission deliberations, and (2) confidential staff memoranda and other communications that do not relate to the charge. In addition, the executive director may not be compelled to testify as to conversations with the chair or other individual commission members concerning nondispositive motions. The judge shall bear the costs of duplication and transcription of all discovery items that require extraordinary staff resources.

(b) **Discovery Before Formal Charge.** Before a formal charge is issued, the commission will provide witness names, factual allegations, and a statement of legal issues to the judge at the conclusion of the investigation if the information does not warrant dismissal. Additional discovery will be, in the commission's discretion, as implemented by the chair under Rule 14(d) of these rules, allowed before the probable cause proceeding.

(c) **Discovery After Formal Charge.** After a formal charge is issued, the chair shall handle discovery requests. All discovery tools are available after a formal charge is issued. With the approval of the commission, the commission chair or the chair's designee (including a special master) may preside over depositions.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 13. Special Counsel.

(a) **Appointment.** The commission will appoint a special counsel when a formal charge is issued or earlier when the commission determines that the appointment is necessary to preserve its adjudicative independence. The special counsel serves at the pleasure of the commission.

(b) **Role and Duties.** The special counsel is hired by the commission to formally prepare and present the case against the judge. The special counsel represents the public interest and may not represent any individual commission member or staff person but may represent the commission, as an entity, in related proceedings.

(c) **Powers.** The special counsel may request commission subpoenas, conduct discovery, and file motions. The special counsel may not dismiss or amend a charge, delay proceedings, or take other dispositive action. The special counsel may incur only those expenses authorized by the commission.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 14. Formal Disciplinary Hearing.

(a) **Pre-hearing Conference.** Upon receipt of the judge's response to the complaint, the commission will set a pre-hearing conference to be held not later than the next regularly scheduled commission meeting. The commission chair or the chair's designee shall preside at the pre-hearing conference. At the conference, a discovery and briefing schedule will be established and the hearing date set. The discovery and briefing schedule will include

- (1) a preliminary witness list;
- (2) a preliminary exhibit list;
- (3) a schedule for substantive motions.

(b) **Discovery.** Discovery for a formal hearing is governed by Rule 12(c) of these rules.

(c) **Master.** The formal hearing will be conducted before either the commission or a master designated by the commission. A master will be used only in compelling and extraordinary situations, as determined by the commission. When the hearing is before the full commission, either the chair or another member appointed by the chair will preside. A member of the commission may not serve as master. The master will have the same procedural authority as the commission chair when conducting the hearing.

(d) **Role of the Chair.** The chair is the presiding officer both at the hearing and during pre-hearing and post-hearing motions. The chair has the authority to decide all nondispositive motions on behalf of the full commission.

(e) **Conduct of Hearing.** The following rules apply to the conduct of hearings:

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

(2) A hearing may rely in whole or in part on a statement of facts agreed to by both parties and placed in the public record.

(3) The proceedings at the hearing will be reported by electronic recording device in the same manner as proceedings are reported in a state court. The judge may, at the judge's expense, provide a court reporter of the judge's choosing.

(4) Commission members may question witnesses and hold brief conferences during the course of the hearing, to facilitate their fact-finding function.

(f) **Evidence.** The rules of evidence apply and all testimony will be under oath. The chair, presiding member, or master will administer the oath, rule on the admissibility of evidence, and otherwise direct the manner and order of

proceedings in the same manner as a judge of a state court. The standard of proof is clear and convincing evidence.

(g) **Amendment of Complaint.** By leave of the commission, a formal charge may be amended after the hearing begins, to conform to proof or to present additional facts, if the judge and the judge’s counsel are given adequate time to prepare a response.

(h) **Determination.** Upon determination of a matter, the following rules apply:

(1) When the factfinder is a master, that master shall, within 60 days after the hearing, submit findings and recommendations, together with the record and transcript of proceedings, to the commission for review, and contemporaneously serve them upon the judge. The commission will pay all costs associated with the master’s findings and recommendations.

(2) The judge, and commission counsel, may submit written objections to the findings and recommendations of the master within 15 days after receipt.

(3) The findings, conclusions, and accompanying materials, together with the objections, if any, will be promptly reviewed by the commission not later than its next regularly scheduled meeting. The commission may make independent findings of fact from the record. If the entire commission served as factfinder, the chair will draft findings and recommendations as directed by the commission.

(4) If no statement of objection is filed within the time provided, the commission will, in its discretion, adopt, in whole or in part, the findings of the master without a hearing. If a statement of objection proposes to modify or reject the findings of the master, the commission will give the judge and special counsel an opportunity to be heard orally before the commission not later than its next regularly scheduled meeting. The executive director shall serve written notice of the time and place of the hearing on the judge at least 10 days before the hearing.

(i) **Extension of Time.** The chair of the commission or the master may grant reasonable time extensions for good cause shown.

(j) **Hearing Additional Evidence.** The commission will, in its discretion, order the taking of additional evidence at any time while the matter is pending before it. The order will set the time and place of the hearing and indicate the matters on which the evidence is to be taken. The executive director shall serve a copy of the order on the judge at least 10 days before the date of the hearing. The hearing of additional evidence may be before the master or the commission, at the commission’s discretion.

(k) **Role of Executive Director after Formal Charge.** After a formal charge is issued, the executive director may serve as a liaison between the commission and all counsel of

record, and may provide research and administrative assistance as requested by the commission.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 15. Commission Decision.

(a) **Decision.** A formal decision consists of the commission determination of dismissal or recommendation for discipline. The recommendation for discipline may include any one or more of the sanctions provided for in AS 22.30.011(d). Formal decisions are public documents.

(b) **Minority Report and Distribution.** If a member of the commission dissents from the decision of the majority of the commission, the dissenting member may submit a minority report, which must accompany the majority report. The minority report may be submitted to the chief justice of the supreme court, the attorney general, and the chairs of the senate and house judiciary committees, as provided in AS 22.30.068.

(c) **Voting.** Only a member who participated in the matter, and who is present at the meeting or teleconference at which commission action is taken on the matter, may vote on the matter. Before the final decision is issued, votes may be changed only during a meeting or teleconference with all members who participated in the matter being present.

(d) **Execution.** The determination and recommendation of the commission will be signed by the chair, or the chair’s designee, and may be signed by other members, either concurring or dissenting in the determination or recommendation

(e) **Witness Fees.** All witnesses will receive fees and expenses in the statutorily allowable amount. Expenses of witnesses will be paid by the party calling them, unless the physical or mental disability of the judge is in issue, when the commission will reimburse the judge for the reasonable expenses of witness testimony related to the disability.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 16. Supreme Court Review.

The commission recommendation for discipline under Rule 15 of these rules will be filed in accordance with Appellate Rule 406 of the Alaska Rules of Court.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 17. Cases Involving Mental or Physical Disability.

(a) **Procedure.** When considering an allegation of mental or physical disability, the commission will, except as provided in this rule, follow procedures established by Rules 1–16, 18, and 20 of these rules.

(b) **Special Provisions.** The following additional provisions apply in disability cases:

(1) If the commission finds probable cause to believe that a judge suffers from a mental or physical disability and the judge is not represented by counsel, the commission will, in its discretion, appoint an attorney to represent the judge at commission expense.

(2) If a judge is charged with a disability or raises a disability as an affirmative defense to misconduct, the commission will, in its discretion, under AS 22.30.066(b), request the judge to submit to a physical or mental examination by an independent medical expert. The medical expert shall report the results of the examination to both the commission and the judge. If the judge refuses to submit to the examination, the commission will decide the issue requiring the examination adversely to the judge.

(3) The commission will bear the costs of disability proceedings.

(Adopted November 1, 1991; amended December 1, 2000.)

Rule 18. Commission Member Disqualification; Proceeding Against Commission Member.

(a) **Conflict of Interest.** A commission member may not participate in the consideration of a complaint against a judge if

(1) the member is the subject of the complaint;

(2) the member is a material witness to the alleged misconduct;

(3) the member is related to the judge or the complainant within the third degree of consanguinity;

(4) the judge has retained the member as the judge's attorney or the member provided legal representation or counseling in any matter within two years before the filing of the complaint with the commission; or

(5) the member believes that, for any reason, that member cannot give a fair and impartial decision.

(b) **Disclosure.** Each commission member shall disclose all facts that may lead to an inference of bias relating to a matter before the commission. After disclosure, the commission will determine whether the facts warrant disqualification. Commission members may also recuse themselves with a statement on the record as to the basis of the recusal.

(c) **Motion for Disqualification.** The judge or special counsel may request the disqualification of a commission member by filing a motion. The motion must be accompanied by an affidavit that states with particularity the grounds upon which it is claimed that the member should be disqualified. A motion for disqualification will be decided by that member. If the motion is denied by that member, the motion will be decided by the commission chair or, if the motion concerns the chair, by the longest-serving commission member.

(d) **Proceeding Against Commission Members.** A proceeding against a member of the commission will be conducted in the same manner as a proceeding against any other judge.

(e) **Prohibition Against Representing Judge Before the Commission.** No commission member may provide legal representation or counseling to a judge in a matter before the commission during the member's term on the commission or within two years after the member's term has expired.

(Adopted November 1, 1991; amended May 23, 1994; December 1, 2000.)

Rule 19. Commission-Issued Advisory Opinions.

(a) **Issuance of Formal Advisory Opinions.** On written request of a state judicial officer subject to the Code of Judicial Conduct, the commission will, in its discretion, issue a written formal advisory opinion concerning the application of the code to a specific fact situation involving that judicial officer. The request for an opinion should specify all facts relevant to the ethical situation. Both the request for an opinion and the opinion itself are confidential unless the requesting judge asks that it be public.

(b) **Advisory Opinion Drafting.** Written formal advisory opinions will be drafted by a committee of the commission, appointed by the chair for the purpose of drafting the opinion, with staff assistance. The drafting committee will be composed of not less than one public member, one attorney member, and one judge member of the commission. The full commission will vote on adoption of the draft opinion.

(c) **Use of Formal Advisory Opinions.** Reliance on the formal advisory opinion by the requesting judge is an absolute defense to subsequent disciplinary proceedings by the commission concerning the identical facts addressed by the opinion. If there are distinguishing facts, reliance on the formal advisory opinion will be viewed as merely a good faith defense.

(d) **Informal Verbal Advisory Opinions.** Informal verbal guidance concerning judicial ethics issues is available from commission members and staff. Informal verbal advisory opinions have no legal effect and, if in error, provide no recognized defense to a later disciplinary charge.

(Adopted March 1, 1996; amended December 1, 2000.)

Rule 20. Settlement Procedures.

(a) **Settlement After Investigation.** After an investigation, the executive director may initiate settlement discussions with the judge that may result in one of the following: an informal and private admonishment, or a recommendation for counseling. The executive director shall present any agreed disposition to the commission for approval or rejection. If rejected, the commission will, in its discretion, give reasons for the rejection but will not comment on the strength or weakness of the factual investigation. If the settlement is approved, the executive director shall prepare a written statement of facts and a decision in support of the agreed action. The statement of facts and decision may be revised by the commission but, once adopted, will either constitute the private admonishment or state the need for counseling.

(b) **Settlement After Probable Cause Finding.** After the commission has found probable cause and has issued a formal charge, the commission will hold a formal hearing on the allegation, as required by AS 22.30.011(b) and as provided in Rule 14 of these rules. A settlement after the commission has found probable cause must include a public hearing during which any stipulation between the parties, and the disposition of each charge, are publicly presented and made a part of the public record. If the commission does not dismiss the charges against the judge, a settlement after the hearing must be in the form of a recommendation to the Supreme Court, and does not take effect until approved by the court.

(Adopted December 1, 2000.)