

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1923

Adopting a new Bar Rule 11.1 providing
for informal ethics guidance by bar
counsel.

IT IS ORDERED:

A new Bar Rule 11.1 is adopted to read as follows:

Rule 11.1 Informal Ethics Guidance By Bar Counsel.

(a) **Informal Guidance.** At the request of a member of the Alaska Bar Association, Bar Counsel or Bar Counsel's designee may provide informal ethics guidance about active or pending issues pertaining to the requesting attorney's own conduct based on the facts provided.

(b) **Protection.** Bar Counsel shall not be compelled to testify, by subpoena or otherwise, in any judicial or adjudicative proceeding, except on behalf of a respondent in a disciplinary proceeding of the Alaska Bar Association, regarding any informal guidance provided to that respondent. Except as provided in this rule, Bar Counsel shall not be subject to subpoena or otherwise compelled to testify as an expert witness regarding legal ethics or the practice of law. In a disciplinary proceeding in which communications between Bar Counsel and an attorney are at issue, testimony of Bar Counsel shall be limited to the substance of the communications by and between Bar Counsel and the attorney.

(c) **Confidentiality.** All communications between Bar Counsel and any attorney requesting guidance will be considered an inquiry to secure advice regarding compliance with the Rules of Professional

Conduct under ARPC 1.6(b)(4), and shall be confidential. Bar Counsel shall not disclose the content of any such communications without the express written consent of the attorney to whom Bar Counsel provided the guidance. An attorney will be deemed to have waived confidentiality if the attorney is claiming, in the course of a disciplinary investigation or hearing, that the attorney relied on the guidance of Bar Counsel.

(d) **Use of Informal Guidance in Collateral Litigation.** Informal guidance of Bar Counsel is advisory only. It expresses the judgment of Bar Counsel based on the facts provided, and is not binding on Bar Counsel, the Court, the Disciplinary Board, the Board of Governors, the Ethics Committee, or any judicial or administrative tribunal. Except as provided in this rule in connection with disciplinary proceedings, guidance of Bar Counsel shall not be used, admitted, introduced, argued, or cited in any litigation or before any judicial or administrative tribunal for the purpose of seeking disqualification of a lawyer or law firm. However, it may be used to show good faith or reasonable diligence as a defense or mitigation in any subsequent disciplinary action involving the same facts.

DATED: August 7, 2018

EFFECTIVE DATE: October 15, 2018

/s/

Chief Justice Bolger

/s/

Justice Winfree

/s/

Justice Stowers

/s/

Justice Maassen

/s/

Justice Carney