

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1629

Amending Administrative Rule 23 to eliminate the requirement for filing a list of lawyers and parties for whom a retired judge acted as an arbitrator or mediator, and to replace it with a disclosure requirement.

Amending Canon 4 of the Code of Judicial Conduct to increase the value of a gift, bequest, favor, or loan that a judge must disclose, and to alter the reporting requirement for retired pro tem judges who are mediators.

IT IS ORDERED:

1. Administrative Rule 23 is amended to read as follows:

Rule 23. Appointment of Retired Justices or Judges Pro Tempore — Compensation — Expenses.

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(f) **Private Arbitration and Mediation.** If a retired judge acts as a private arbitrator or mediator, the judge must comply with the following rules to remain eligible for pro tempore appointment:

~~—— (1) — Prior to acceptance of any pro tem appointment, the judge shall file with the administrative director a list of the lawyers and parties for whom the judge has served as an arbitrator or mediator within the last two years. This list must be made available to the lawyers and parties in any case assigned to the judge.~~

(12) The judge shall refrain from soliciting or accepting employment as an arbitrator or mediator from a lawyer or party who is currently appearing in a case assigned to the judge.

(23) The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if the judge has previously served as an arbitrator or mediator in the same matter. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(34) The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if the judge is currently serving or scheduled to serve as an arbitrator or mediator for a lawyer or party in the case. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(45) If within two years prior to the filing of a case assigned to a pro tem judge ~~The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if within the last two years~~ the judge has served as an arbitrator or mediator for a lawyer or party in that~~the~~ case, the judge shall disclose that fact on the record and disqualify himself or herself from sitting as a pro tem judge in that case. Disclosure must be made under this paragraph regardless of the amount of compensation that the judge received from the arbitration or mediation. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(56) The judge shall refrain from accepting employment as an arbitrator or mediator from a lawyer or party who has appeared in a case assigned to the judge within the last six months.

2. Canon 4D of the Code of Judicial Conduct is amended to read as follows:

Canon 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

* * * *

D. Financial Activities.

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(5) A judge shall not accept, and shall urge members of the judge's family* residing in the judge's household not to accept a gift, bequest, favor, or loan from anyone, except for:

* * * *

(h) any other gift, bequest, favor, or loan, but only if the donor is not a person who has come or is likely to come before the judge, and if the person's interests have not come and are unlikely to come before the judge. If the value of the gift, bequest, favor, or loan exceeds ~~\$150.00~~ \$250.00, the judge shall report the gift, bequest, favor, or loan in the same manner as the judge reports compensation under Section 4H.

Commentary. — *Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.*

3. Canon 4F of the Code of Judicial Conduct is amended to read as follows:

Canon 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

* * * *

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

Commentary. -- *Section 4F does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of judicial duties. A senior judge may act as a private arbitrator or mediator subject to Administrative Rule 23(f), which states:*

(f) Private Arbitration and Mediation. If a retired judge acts as a private arbitrator or mediator, the judge must comply with the following rules to remain eligible for pro tempore appointment:

~~*(1) Prior to acceptance of any pro tem appointment, the judge shall file with the administrative director a list of the lawyers and parties for whom the judge has served as an arbitrator or mediator within the last two years. This list must be made available to the lawyers and parties in any case assigned to the judge.*~~

(12) The judge shall refrain from soliciting or accepting employment as an arbitrator or mediator from a lawyer or party who is currently appearing in a case assigned to the judge.

(23) The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if the judge has previously served as an arbitrator or mediator in the same matter. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(34) The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if the judge is currently serving or scheduled to serve as an arbitrator or mediator for a lawyer or party in the case. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(45) If within two years prior to the filing of a case assigned to a pro tem judge ~~The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if within the last two years the judge has served as an arbitrator or mediator for a lawyer or party in that~~ the case, the judge shall disclose that fact on the record and disqualify himself or herself from sitting as a pro tem judge in that case. Disclosure must be made under this paragraph regardless of the amount of compensation that the judge received from the arbitration or mediation. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(56) The judge shall refrain from accepting employment as an arbitrator or mediator from a lawyer or party who has appeared in a case assigned to the judge within the last six months.

4. Canon 4H of the Code of Judicial Conduct is amended to read as follows:

Canon 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

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H. Compensation, Reimbursement, and Reporting.

(1) *Compensation and Reimbursement Defined.*

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(2) *Limits on Compensation and Reimbursement.*

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(3) *Public Reports of Compensation.* At least once a year a judge shall report the date, place, and nature of any extra-judicial activity for which the judge received compensation, the name of the payor, and the amount of compensation received. If the judge is a retired justice or judge serving pro tempore who receives compensation for private arbitration or mediation services, it is sufficient for the judge to file a copy of Schedule A of the Public Official Financial Disclosure Statement that the justice or judge files with the Alaska Public Offices Commission. Compensation or income of a spouse* that is attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge for purposes of this Code. The judge's report shall be submitted at the times and in the form prescribed by the Administrator Director of the Alaska Court System. The report shall be filed as a public document in the office of the Administrative Director.

Commentary. — See Section 4D(5) regarding reporting of gifts, bequests, and loans.

Section 4H is divided into three Sections. Section 1 contains the definitions of the terms “compensation” and “reimbursement.” Section 2 prescribes the limits on compensation and reimbursement permitted by the Code for extra-judicial activities. Section 3 requires a judge to report compensation (not reimbursement) at least annually.

Section 4H(1)(a) defines “compensation.” In general terms, this definition is intended to cover “earned income” — that is, salary, wages, professional fees, tips, and any other income generated by the judge’s personal efforts. Compensation does not include income generated by a judge’s investments or by partnerships or businesses in which the judge is a passive participant (a limited partner, for example).

Section 4H(1)(b) defines “reimbursement” of expenses. The first sentence gives the general definition of reimbursement: any money, credit, or discount that defrays or reduces a judge’s expenses. Reimbursement in the form of government per diem can exceed actual expenses and still not be classified as “compensation.”

Section 4H(3) requires a judge to report any extra-judicial activity for which the judge received compensation. The second sentence applies to retired justices and judges who are serving in a pro tempore capacity. If that judge acts as a private arbitrator or mediator, the judge may comply with this section by filing a copy of Schedule A of the Public Official Financial Disclosure Statement that the judge files with the Alaska Public Offices Commission. That statement lists the names of self-employment businesses and the names of each client who paid the business over \$5000. The judge is not required to individually name every client of the business, or to list the

amounts received from each client. The judge is nonetheless required, under Administrative Rule 23, to disclose on the record if, within the two years prior to the filing of the assigned case, the judge has served as an arbitrator or mediator for a lawyer or a party in a case; the judge is also required to disqualify himself or herself from sitting pro tem in that case, unless the disqualification is waived.

This Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to use his or her judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

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DATED: December 18, 2006

EFFECTIVE DATE: December 31, 2006

/s/
Chief Justice Fabe

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Bryner

/s/
Justice Carpeneti