

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 2049

Adopting a revised version of the
Alaska Code of Judicial Conduct;

Rescinding Administrative Rule
23(f) regarding private arbitration
and mediation restrictions for pro
tempore judicial service and
adding an explanatory Note; and

Amending Professional Conduct
Rules 1.12, 8.2, and 8.3 and
Comments to update references to
the Revised Alaska Code of
Judicial Conduct.

IT IS ORDERED:

1. The existing Code of Judicial Conduct is rescinded. A new revised code is adopted as shown in the attachment to this order.
2. Administrative Rule 23(f) is rescinded as follows:

**Rule 23. Appointment of Former Justices and Judges to
Pro Tempore Judicial Service.**

* * * *

~~(f) — **Private Arbitration and Mediation.** If, after a former judge has been accepted for inclusion in the pro tempore appointment list, the judge acts as a private arbitrator or mediator, the judge must comply with the following rules to remain eligible for pro tempore appointment:~~

~~(1) — 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 in which the judge is serving as a pro tempore judicial officer.~~

~~(2) — The judge shall disqualify himself or herself from serving as a pro tempore judge in a case if the judge has previously served as an arbitrator or mediator, either in a private capacity or as a settlement judge, in the same matter. This disqualification may be waived under Canon 3F of the Code of Judicial Conduct.~~

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

~~(4) — The judge shall disqualify himself or herself from serving as a pro tempore judge in a case if the judge served as an arbitrator or mediator in a private capacity for a lawyer in that case or a party to that case within the two years prior to the judge's assignment to the case. This disqualification may be waived under Canon 3F of the Code of Judicial Conduct.~~

~~(5) — The judge shall refrain from accepting employment as an arbitrator or mediator from a lawyer or party who, within the preceding six months, has appeared in any case in which the judge was participating personally and substantially as a judge at the same time.~~

~~For purposes of these restrictions, a senior judge is not “serving as a pro tempore judge” or “participating personally and substantially as a judge” if the judge has been assigned to a case solely for the purpose of serving as a settlement judge. As used in this Rule, the term “settlement judge” means a judicial officer who is assigned to a case solely for the purpose of consulting with the parties and assisting them in trying to resolve their dispute without a trial or other formal adjudicative hearing.~~

3. The following Note is added to the end of Administrative Rule 23:
Note to SCO 2049: SCO 2049 rescinded subsection (f) of Administrative Rule 23 that addressed the private arbitration and mediation restrictions on a judge or justice on the pro tempore appointment list. These ethical provisions are now located in the revised Code of Judicial Conduct, Application Section, Part II(B).
4. The Comment and Cross Reference to Professional Conduct Rule 1.12 is amended to read as follows:

Rule 1.12. Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral.

* * * *

COMMENT

This Rule generally parallels Rule 1.11. The term “personally and substantially” signifies that a judge who was a member of a multi-member court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not

participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the COMMENT to Rule 1.11. The term “adjudicative officer” includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. The Application section of the Alaska Code of Judicial Conduct, Part IV(C) section D(3), provides that a lawyer who serves as a special master “must not practice law in a proceeding, or in any other related proceeding, if they are currently serving as a special master in the proceeding or if they anticipate serving as a special master at a later stage of the proceeding” ~~in a proceeding shall not “act as a lawyer in that proceeding or in any other proceeding related thereto”~~ except as otherwise permitted by paragraph (a) of this rule. Although phrased differently from this Rule, those Rules correspond in meaning.

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Cross reference: Under the Alaska Code of Judicial Conduct, unless the parties waive the ground of disqualification, a judge is disqualified from participating in a proceeding if the judge “previously served as a lawyer in the matter”, Rule 2.11(B)(2), or if the judge “previously worked as a nongovernment lawyer in the same law firm as another attorney who, at that time, was participating substantially as a lawyer in the matter”, Rule 2.11(B)(3), or if the judge “previously served as a lawyer or public

official in a government agency and personally and substantially assisted the government lawyers who were handling the matter”, Rule 2.11(B)(4). Canon 3E(1)(b), Alaska Code of Judicial Conduct: ~~“Unless [the ground] for disqualification [is] waived as permitted by [Canon]3F, a judge shall disqualify himself or herself in a proceeding in which...the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during their association as a lawyer concerning the matter, or the judge has been a material witness concerning [the matter].”~~

5. Professional Conduct Rule 8.2 is amended to read as follows:

Rule 8.2. Judicial and Legal Officials.

(a) * * * *

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Article 4 Canon 5 of the Code of Judicial Conduct.

6. The Alaska Comment to Professional Conduct Rule 8.2 is s amended to read as follows:

ALASKA COMMENT

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The Committee concludes, from the COMMENT to Professional Conduct Rule 8.2(b), that Rule 8.2(b) was intended to make sure that lawyers who are not yet judges, but who are candidates for judicial office, abide by the applicable restrictions

on political activity set forth in Article 4 ~~Canon 5~~ of the Code of Judicial Conduct. Rule 8.2(b) was not intended to make a current judge's violation of any other provision of the Code of Judicial Conduct a bar offense if the violation occurs while the judge is a "candidate for judicial office" – i.e., while the judge is standing for retention.

7. Professional Conduct Rule 8.3 is amended to read as follows:

Rule 8.3. Reporting Professional Misconduct.

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(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer ~~or judge~~ while participating in an approved lawyers' ~~or judges'~~ assistance program.

8. The Alaska Comment to Professional Conduct Rule 8.3 is rescinded and the Comment is amended to read as follows:

Rule 8.3. Reporting Professional Misconduct.

* * * *

~~ALASKA COMMENT~~

~~—The Committee added language from Judicial Canon 3D(1) to paragraphs (a) and (b) to reflect that a lawyer is not required to report misconduct if the lawyer reasonably believes that the misconduct has been or will be reported.~~

~~—The Committee also amended paragraph (c) by adding a reference to a judges' assistance program. This conforms the~~

~~language of the rule to the language of the ABA COMMENT,
which speaks equally of lawyers' assistance programs and judges'
assistance programs.~~

COMMENT

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Information about a lawyer's ~~or judge's~~ misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers ~~or judges~~ assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers ~~and judges~~ to seek treatment through such a program. Conversely, without such an exception, lawyers ~~and judges~~ may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer ~~or judge~~ participating in an approved lawyers' ~~or judges'~~ assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

DATED: June 4, 2026

EFFECTIVE DATE: October 15, 2026

/s/

Chief Justice Carney

/s/

Justice Borghesan

/s/

Justice Henderson

/s/

Justice Pate

/s/

Justice Oravec