

IN THE SUPREME COURT FOR THE STATE OF ALASKA

**In the Disciplinary Matter Involving:**

**Honorable Romano DiBenedetto,  
Superior Court Judge.**

Supreme Court No. **S-19524**

ACJC File No. **2025-001**

COMMISSION REQUEST FOR RECONSIDERATION

OF SUA SPONTE ORDER 7/24/2025

Alaska Commission on Judicial Conduct recommendations for discipline are governed by specific requirements under AS 22.30.011 and AS 22.30.060, Commission Rules of Procedure and Appellate Rule 406 to ensure both the due process rights of a judge facing allegations of misconduct and a fully public process once the commission has found a basis for public discipline. The court in its order of July 24, directed the commission to provide the court with “a copy of the investigative materials in the case. These materials should be provided to the court under seal...” For the reasons set out below, the commission respectfully requests that the court reconsider its order.

AS 22.30.011 (b) requires the commission to hold a formal hearing on an allegation of misconduct upon a finding of probable cause. The hearing is required to be public. That section also recognizes that records pertaining to proceedings that occur before the commission holds a public hearing are confidential subject to AS 22.30.060. AS 22.30.060 (b) (3) furthers the balance

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of due process concerns with the need for public scrutiny by providing an exception to confidentiality when “upon filing of formal charges, in which case only the charges, the subsequent formal hearing, and the commission’s ultimate decision and minority report, if any, are public; even after formal charges are filed, the deliberations of the commission concerning the case are confidential.” So too, Appellate Rule 406 (e) explicitly requires that the “records of all proceedings in the supreme court shall be public from the time of filing the commission recommendation in the supreme court.”

Recognizing the need for expedience and economy, without sacrificing the due process rights of the judge and the obligation for as full a public record as possible, the Alaska Commission on Judicial Conduct adopted Rule 20 Settlement Procedures. Rule 20 (b) states that settlement after 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.” Roughly akin to a court’s consideration of a plea agreement, the commission can only accept or reject a proposed settlement, including any stipulated statement of facts. The commission does not have the ability to require the parties to modify the agreement, nor can the commission add additional information for this court’s consideration. In the instant matter, the judge waived the probable cause hearing to allow direct consideration of the

proposed agreement (a process that the commission has used in the past) and the commission accepted the settlement agreement as presented.

The only time that the commission has ever provided confidential investigation materials to the court was not in the context of a recommendation for discipline under Appellate Rule 406, but was to assist the court in its consideration of whether to grant a petition filed by a complainant for review of a commission decision to dismiss a complaint at a pre-probable cause stage (confidential matter S-19156). It is the commission's understanding that if the court in that matter found that the commission did not fulfill its legal duties under Alaska Statutes and its own rules, the court would have then remanded the matter to the commission with direction as to how to proceed. Access to the investigation file was not to determine whether judicial discipline was warranted or not, but rather, whether the commission properly considered the complaint.

Recognizing that the court may come to the conclusion that the limited statement of facts in the agreed findings are not sufficient to accept the commission's recommendation, the best practice to ensure the integrity of the disciplinary process would be to reject the proposed agreement and remand the matter back to the commission for further proceedings. Should the court take that position, on remand the commission would proceed to hold a probable cause hearing that likely would result in charges similar to those articulated in the recommendation filed with the court, hire Special Counsel, and proceed with formal discovery that will allow for sworn statements of all relevant

witnesses by deposition or affidavit. Currently, the investigative file contains an enormous amount of information not relevant to the current concerns and informal statements and interview notes that are not in a form suitable for consideration by a court.

While the order was directed solely to the commission and not to the judge, we have discussed the request with counsel for Judge DiBenedetto and he has authorized us to note that he has no objections to the positions stated in this request.

SUBMITTED by the ALASKA COMMISSION ON JUDICIAL CONDUCT, through its Executive Director, this 13<sup>th</sup> day of August 2025.



Marla N. Greenstein  
Executive Director  
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