

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1324

Amending Administrative Rule
23 concerning appointment of
retired justices or judges pro
tempore.

IT IS ORDERED:

Administrative Rule 23 is amended to read:

(a) **Appointment Pro Tempore.** The chief justice, or another justice designated by the chief justice, may by special assignment appoint a retired justice or a retired judge of the court of appeals or the superior court to sit pro tempore as a senior justice or judge in any court of this state, and a retired judge of the district court to sit as a judge of the district court pro tempore where such assignment is deemed necessary for the efficient administration of justice.

Pro tempore appointments may be made for one or more cases or for a specified period of time up to two years, except that a pro tempore judge or justice may complete a trial or appeal in progress at the conclusion of the appointment. A trial is deemed to be completed and a trial judge's appointment to a particular case terminates upon expiration of the time for filing an appeal. An appeal is deemed to be completed and an appellate judge's appointment to a particular case terminates upon expiration of the time for filing a petition for rehearing or, if a petition for rehearing is filed, upon entry

of the order or opinion that disposes of the petition. Appointments may be renewed.

(b) **Eligibility.** Any judge who has reached mandatory retirement age or who has otherwise voluntarily retired is eligible for pro tempore appointment, with such judge's consent, subject to the provisions of the Judicial Canons, Part II(1)(C). A judge or justice voluntarily retired for incapacity remains ineligible unless or until a licensed physician finds that he or she is able to efficiently perform judicial duties during such period of incapacity. Any judge rejected on retention or removed from office by the supreme court pursuant to an investigation and recommendation of the Judicial Conduct Commission is ineligible for pro tempore appointment until such time as and if such judge is subsequently nominated and reappointed to the bench.

~~(b)~~ (c) **Judicial Performance Evaluation.** Every two years, the chief justice shall review the performance during the prior two-year period of all retired judges and justices who have served pro tempore. Such review shall be based upon (1) an evaluation of the performance of such justices and judges, to be conducted by the Alaska Judicial Council, which evaluation shall include a survey of the members of the bar in those judicial districts where such justices and judges have served pro tempore during the evaluation period; and (2) formal performance

evaluations conducted by the presiding judges under whom such retired justices or judges have served. At the conclusion of such review, the chief justice shall determine the eligibility of such justices and judges to continue to serve pro tempore.

~~(e)~~ (d) **Compensation.** A retired justice or judge is entitled to receive compensation for judicial service pro tempore at the rate of \$225 per day. The annual compensation for pro tempore service may not exceed the difference between the retired justice's or judge's annual retirement pay and the current annual base salary of a justice or judge of the court from which the justice or judge retired. The retired justice or judge is also entitled to receive full medical insurance coverage during the same period. The retired justice or judge is not entitled to personal, annual, or sick leave benefits, and acceptance of an appointment pro tempore acts as a waiver of any claim to such benefits. For an appointment of over 90 consecutive days, such leave may be granted at the discretion of the administrative director upon confirmation by the chief justice.

~~(d)~~ (e) **Additional Service Credit.** A retired justice or judge who has not accrued the maximum service credit for retirement benefits under AS 22.25.020 is entitled to receive additional service credit for each day of pro tempore service until the maximum is reached.

(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.

(2) 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.

(3) 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.

(4) 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.

(5) 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 the case. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(6) 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.

DATED: April 30, 1998

EFFECTIVE DATE: July 15, 1998

/s/
Chief Justice Matthews

Justice Compton

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner