

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 2017

Amending Administrative Rule 23
concerning pro tempore judicial
service.

IT IS ORDERED:

Administrative Rule 23 is amended to read as follows:

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

(a) **Appointment to Pro Tempore Judicial Service.**

(1) *Method of Appointment.* Former judicial officers who have been accepted for inclusion in the administrative director's pro tempore appointment list may be appointed to sit pro tempore as a senior judge in any court of this state when the judicial assignment is deemed necessary for the efficient administration of justice and the former judicial officer consents to the appointment. Pro tempore appointments shall be made by the chief justice, or by another justice designated by the chief justice, in consultation with the administrative director and the presiding judge or chief judge of the affected court.

(2) *Scope or Term of Appointment.* Pro tempore appointments may be made for one or more specified cases, or for a specified period of time, or a combination of both. Appointments may be renewed. A pro tempore judge may complete a trial, including sentencing, or an appeal in progress at the conclusion of the judge's term of appointment. Unless a judge's order of appointment specifies otherwise, the judge's pro tempore appointment to a case in a trial court terminates upon expiration of the

time for filing an appeal except the pro tempore judge may preside over immediate post-judgment proceedings such as deciding restitution in a criminal case or ruling on attorney fees and costs in a civil case. Unless a judge's order of appointment specifies otherwise, the judge's pro tempore appointment to a case in an appellate court 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.

(b) Eligibility to Apply for Inclusion in the Administrative Director's Pro Tempore Appointment List.

(1) *Eligibility to Apply.* Former justices of the supreme court, former judges of the court of appeals and the superior court, and former judges of the district court who were appointed by the governor are eligible to apply for inclusion in the administrative director's pro tempore appointment list unless the former justice or judge

(A) was rejected in a retention election,

(B) was removed from office by the supreme court pursuant to disciplinary proceedings instituted by the Commission on Judicial Conduct,

(C) was removed from office by legislative impeachment proceedings,

(D) resigned from office while disciplinary or impeachment proceedings were pending,

(E) resigned or was removed from office because of incapacity, or

(F) is no longer a resident of Alaska.

(2) *Restoration of Eligibility.* Judicial officers who would be ineligible to apply for inclusion in the pro tempore appointment list under

subparagraphs (b)(1)(A) – (E) of this rule become eligible for appointment if they are subsequently nominated for judicial office by the Alaska Judicial Council and appointed by the governor.

(c) The Pro Tempore Appointment List.

(1) The administrative director shall maintain a list of judges who can be considered for appointment to pro tempore judicial service. A former judge may be included in this list if

(A) the judge is eligible to apply for inclusion in the list under subsection (b) of this rule,

(B) the judge applies for inclusion in the list and declares his or her willingness to accept pro tempore appointments, and

(C) the chief justice, in consultation with the administrative director, determines that inclusion of the judge in the pro tempore appointment list will be consistent with efficient judicial administration and the Court System's budgetary constraints, and that the judge possesses the skills and temperament required for satisfactorily performing pro tempore judicial duties.

(2) Former judges who wish to be included in the pro tempore appointment list shall apply to the administrative director using the application form specified by the director. This application form must require the judges to

(A) acknowledge that, if they are accepted for inclusion in the pro tempore appointment list, they will be bound by all provisions of the Code of Judicial Conduct that apply to senior judges until they formally withdraw from the appointment list as prescribed in paragraph (c)(4);

(B) certify that they have read the applicable provisions of the Code of Judicial Conduct and that they are currently in compliance with those provisions; and

(C) agree that they will promptly withdraw from the pro tempore appointment list if they cease being residents of Alaska.

(3) The administrative director and the chief justice shall review a judge's application for inclusion in the pro tempore appointment list, applying the criteria specified in subparagraph (c)(1)(C). The administrative director shall promptly notify judges when their application for inclusion in the pro tempore appointment list has been granted or denied. Judges who are accepted for inclusion in the pro tempore appointment list become senior judges for purposes of the Code of Judicial Conduct.

(4) A former judge who has been accepted for inclusion in the pro tempore appointment list may withdraw from the list by notifying the administrative director in writing. If the judge's withdrawal will terminate one or more current pro tempore judicial appointments, the administrative director shall notify the presiding judges or chief judge of the affected courts.

(5) The following procedures govern the re-evaluation of judges on the pro tempore appointment list:

(A) Every two years, the administrative director and the chief justice shall review the performance of all judges who have served pro tempore during the preceding two years. This biennial review shall include the results of any evaluation of the pro tempore judge's performance by the Alaska Judicial Council. The biennial review shall also include formal evaluations of the judge's

performance by each of the presiding judges or chief judge of the courts where the judge served pro tempore. At the conclusion of this biennial review, the chief justice, in consultation with the administrative director, shall determine whether the judge will remain on the pro tempore appointment list.

(B) In addition to the biennial review required by subparagraph (c)(5)(A), the administrative director and the chief justice may, at any time, assess any judge's continued inclusion in the pro tempore appointment list if they receive new information which raises a significant question as to whether the inclusion of that judge in the appointment list remains consistent with efficient judicial administration and the Court System's budgetary constraints, or whether that judge possesses the skills and temperament required for satisfactorily performing pro tempore judicial duties. At the conclusion of this assessment, the chief justice, in consultation with the administrative director, shall determine whether the judge will remain on the pro tempore appointment list.

(d) **Compensation.** A former justice or judge is entitled to receive compensation for pro tempore judicial service at the rate of \$500 per day for any day during which the justice or judge served for four hours or more, and \$250 per day for any day during which the justice or judge served less than four hours. The annual compensation for pro tempore service may not exceed the difference between the former 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 supreme court may relax this limit when necessary to cover an extended

judicial vacancy or in other extenuating circumstances. The former justice or judge is eligible to receive health insurance coverage under the active employee plan as permitted under the statutes and regulations that govern participation in that plan. The former justice or judge is not entitled to personal, annual, or sick leave benefits, and acceptance of a pro tempore appointment acts as a waiver of any claim to these benefits. For an appointment of over 90 consecutive days, these leave benefits may be granted at the discretion of the administrative director with the concurrence of the chief justice.

(e) **Additional Service Credit.** A former 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, 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.

DATED: January 17, 2024

EFFECTIVE DATE: April 1, 2024

/s/
Chief Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan

/s/
Justice Henderson

/s/
Justice Pate