

# In the Supreme Court of the State of Alaska

**State of Alaska, Division of Elections  
and Director Gail Fenumiai,**  
Appellants,

v.

**Recall Dunleavy,**  
Appellee.

Supreme Court No. **S-17706**

## **Recusal Notice**

Date of Notice: **3/2/2020**

Trial Court Case No. **3AN-19-10903CI**

After I reviewed the initial motions and filing documents, I asked the clerk of the appellate courts to issue a disclosure letter pursuant to Canon 3(F) of the Alaska Code of Judicial Conduct. As allowed by this rule, the letter provided that a party could file a written motion for disqualification and that failure to so move would be construed as a decision to waive the potential disqualification.

In Alaska, “a judge has as great an obligation not to disqualify himself, when there is no occasion to do so, as he has to [disqualify himself] in the presence of valid reasons.”<sup>1</sup> And neither party has filed a motion for disqualification within the time provided. But a judge is not bound by the parties’ decision to waive disqualification.<sup>2</sup>

In the meantime, the State of Alaska has filed its excerpts of the lower court record. So I now have the opportunity to make a ruling on this potential disqualification with a better understanding of this record. It is clear to me that the issue raised in this case — the adequacy of the grounds for recall of a sitting governor — mandates serious consideration of any potential disqualifying circumstances to maintain the public’s faith and confidence in the justice system.

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<sup>1</sup> *Amidon v. State*, 604 P.2d 575, 577(Alaska 1979).

<sup>2</sup> Canon 3(F)(1), Alaska Code of Judicial Conduct.

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As stated previously, I do not have any personal bias or prejudice concerning the parties or attorneys involved in this case. However, I have special public responsibilities as the administrative head of the Alaska Court System and as the chairman ex-officio of the Alaska Judicial Council. In those capacities, I have made public statements that could suggest a strong disagreement with the governor's conduct on some very fundamental issues affecting the judicial branch, conduct that forms part of the basis for the recall petition under consideration. In other words, this is a case where a reasonable person might question whether my judgment is affected by my overriding public responsibilities to the justice system.

I therefore RECUSE myself from further proceedings in this case.

Issued by direction of Chief Justice Bolger.

Clerk of the Appellate Courts

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Meredith Montgomery

cc: Supreme Court Justices

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