

**ASSEMBLY LEGAL SERVICES**

# **Elected Officials: Disapproval of a Member's Conduct**

**Assembly Worksession July 17, 2026**

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# Elected Officials

## Holding public office is a public trust. Typical duties:

- Shape public policy
- Pass legislation
- Manage government affairs
- Responsible use of public money

Statements of the role during ethics code rewrite:

The proper functioning of democratic government requires ethical behavior by elected public officials. ..the commitment to take individual responsibility in creating a government that has the trust and respect of its citizens.

All who serve the municipality have a solemn responsibility to avoid improper conduct.

elected officials adhere to the highest levels of ethical conduct to preserve the integrity of the governmental process ...



# But ... sometimes bad behavior happens



Brando Villapudua was censured by the Stockton City Council on Tuesday night in a unanimous vote. (Photo by Sammy Jimenez/Stocktonia)

Stockton Councilmember Brando Villapudua was unanimously censured Tuesday for making an obscene hand gesture from the dais. Villapudua is a council member during a January council meeting.



Sometimes REALLY bad...



# Disapproval of a Member's Conduct

## Today's agenda

**Pathways for the Assembly to address a Member's conduct:**

- 1. Inherent power to express disapproval**
- 2. Robert's Rules of Order, 12<sup>th</sup> Ed. (RRO)**
  - a. Call Member to order
  - b. Name the Member in the Minutes
  - c. Censure
- 3. Anchorage Municipal Code - Removal**

## **We will NOT discuss today:**

- **AR 2026-191**
- **AR 2026-192**
- **Any S-versions of above**
- **Any facts or allegations therein**
- **Any speculation on the likely result at any step in any process discussed**

# Do not take any disciplinary action lightly!

Formal disciplinary procedures should generally be regarded as ***a drastic step reserved for serious situations*** or those potentially so. When it appears that such measures may become necessary, ***proper and tactful handling of the case is of prime importance***. It is usually in the best interests of the organization first to make every effort to obtain a satisfactory solution of the matter quietly and informally.



# Do not take a Removal action lightly!

As Assembly Member Campbell said in 1993:

"I think that if we are to usurp the recall process and decide to do it ourselves it should be a tremendous effort to convince us that we need to do that when the people have not initiated a recall against the individual we're about to execute."

And

"I think it tightens it up, makes it so it will be used less for a political hammer than it will be for actually trying to rectify problems. And occasionally, we probably have problems that need to be rectified by doing it ourselves instead of making the city go through a recall is probably a better way to do it if it's a clear and significant problem. [...] I think you've got a good law here, and I think it will rarely, if ever, be used because it's built so that we really have to have a significant problem that has to be demonstrated."

# Inherent power to express disapproval

**At least two legal authorities support the Assembly's inherent power to express disapproval of one of its own Members:**

**1. *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468 (2022)**

**2. Alaska Const. Art. X, § 11, Home Rule Powers.** "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter."



# *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468

“the First Amendment prohibits government officials from subjecting individuals to “retaliatory actions” after the fact for having engaged in protected speech.”

“In this country, **we expect elected representatives to shoulder a degree of criticism** about their public service **from their constituents and their peers**—and to continue exercising their free speech rights when the criticism comes. **...there is practically universal agreement’ that [the First Amendment] was adopted in part to ‘protect the free discussion of governmental affairs.’ ”**

“**...elected bodies in this country have long exercised the power to censure their members.** In fact, no one before us has cited any evidence suggesting that a purely verbal censure ... has ever been widely considered offensive to the First Amendment.”

As early as colonial times, the power of assemblies in this country to censure their members was “more or less assumed.” ... It seems, too, that **assemblies often exercised the power to censure members for views they expressed and actions they took “both within and without the legislature.”**



...the United States Senate issued its first censure in 1811, after a Member read aloud a letter from former President Jefferson that the body had placed under an “injunction of secrecy.” ... The House of Representatives followed suit in 1832, censuring one of its own for “insulting ... the Speaker.”

...censures along these lines have proven more common yet at the state and local level. ... **it seems elected bodies in this country issued no fewer than 20 censures in August 2020 alone ...**

# Alaska Const. Art. X, § 11, Home Rule Powers.

“A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.”

**“The test we derive from Alaska's constitutional provisions is one of prohibition, rather than traditional tests such as statewide versus local concern. ... The question rests on whether the exercise of authority has been prohibited to municipalities.”**  
***Jefferson v. State*, 527 P.2d 37 (Alaska 1974).**

Attorneys know of no such prohibition in existence on the Anchorage Assembly's ability to adopt a resolution expressing disapproval of one of its own's speech or conduct, by reprimand or censure.

# Inherent power to express disapproval

## Precedent by the Assembly:

For reading: October 9, 2007

*Postponed indefinitely 10/9/07*  
ANCHORAGE, ALASKA  
AR NO. 2007-228

1 A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY OFFICIALLY  
2 **ADMONISHING** ASSEMBLY MEMBER PAUL A. BAUER FOR KNOWINGLY VIOLATING  
3 SECTIONS 1.15.070(K)(1), 1.15.070(K)(2), 1.15.070(K)(3) OF THE CODE OF ETHICS BY  
4 PUBLICLY DISCLOSING THE CONTENT OF A NOTICE OF POSSIBLE VIOLATION OF  
5 THE CODE BEFORE THE BOARD HAD THE OPPORTUNITY TO COMPLETE ITS  
6 PRELIMINARY REVIEW OF THE CLAIM AND REQUIRING ASSEMBLY MEMBER  
7 BAUER TO ATTEND AND COMPLETE ETHICS TRAINING WITHIN SIX MONTHS.  
8

CLERK'S OFFICE

For reading: October 9, 2007

APPROVED  
Date: 10-9-07 ANCHORAGE, ALASKA  
AR NO. 2007-230

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY ADOPTING RECOMMENDATIONS OF THE BOARD OF ETHICS IN THE MATTER OF ETHICS BOARD CASE NUMBER 2007-1 REGARDING A VIOLATION OF ETHICS CODE § 1.15.070.K BY ASSEMBLY MEMBER PAUL BAUER IN SUBMITTING DOCUMENTS FOR FILING WITH THE ETHICS BOARD ALLEGING AN ETHICS VIOLATION AND SUBSEQUENTLY HOLDING A PRESS CONFERENCE TO DISCUSS THE SAME ALLEGED ETHICAL VIOLATION.

1. The Assembly, hereby **admonishes** Assembly Member Paul Bauer for
2. The Assembly further requires Assembly Member Paul Bauer to attend and complete appropriate ethics training on the new Ethics Code requirements within six (6) months of the date of this Resolution.

# RRO § 61 Discipline of Members and Guests

## AMC 2.30.080I.:

- I. General adoption of Robert's Rules. In all matters not covered by this chapter, Robert's Rules of Order, Newly Revised, shall govern.

**RRO § 61:1:** ... an organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes.

### **RRO splits discipline of a Member into two categories:**

- 1. Offenses in a Meeting – members all witnessed the conduct, no need for formal trial-like process**
- 2. Offenses Elsewhere than a Meeting – no first-hand knowledge, charges and a trial process should be afforded.**
  - (facts capable of accurate and ready determination by resort to resources whose accuracy cannot be reasonably questioned may be relied upon – ie: proceedings by other tribunal that afforded a trial-like process)

# RR0 § 61 Discipline of Members and Guests

- a. **Call member to order** – for more than slight breaches of order
  - Chair should give a warning first but not required
  - Basically, a strong point of order
  - Not debatable
  - If offender had the floor, asks the body “Shall the member be allowed to continue speaking?”

# RR0 § 61 Discipline of Members and Guests

**b. Name the Member in the Minutes** – for obstinate or grave breaches of order

- After repeated warnings, before “naming,” take down objectionable words or conduct.
- Only entered in minutes if still necessary to name
- Ask for compliance
- Chair or member may move for a penalty:
  - Require an apology
  - Censure
  - \*\*Leave the chambers – for remainder of meeting, or until apology
  - ~~\*\*suspend member's rights~~
  - ~~\*\*expelled from the organization (2/3 vote)~~

**CHAIR:** Mr. J! The chair has repeatedly directed you to refrain from offensive personal references when speaking in this meeting. Three times the chair has ordered you to be seated, and you have nevertheless attempted to continue speaking.

# RRO § 61 Discipline of Members and Guests

## **Abuse of authority by the Chair:**

- **any member may call POO – ruling+appeal**
- **If point of order ignored, member can continue, address the body directly: “Is point well taken?”** (nondebatable)
- **If an appeal is ignored, member can continue and put the vote to the body**
- **Beyond that: RRO inapplicable, Assembly reorganization available. AMC 2.30.010B.**
  - No prior notice required
  - Any regular or special meeting
  - Motion takes precedence over all else



# CENSURE

- **Verbal censure**
  - As in examples above
  - Move that "the Assembly commend Officer Smith for his action in .." -> move to amend by replacing "commend" with "censure"
- **Censure by resolution**
  - As in 2007 ARs
  - A formal statement of disapproval by the body
  - A resolution, in and of itself, does not trigger any due process protections
- **Censure as part of a disciplinary process.**
  - A formal procedure in RRO that provides a system for punishing members for their conduct either within or outside of a meeting.
  - Formal adjudication process is laid out in RRO
  - Can impose meaningful punishment

# REMOVAL: LEGAL BASIS

## Anchorage Municipal Charter § 7.01(b):

Proceedings for removal of an elected official for breach of the public trust may be initiated by a majority of all members of the assembly, or the school board in the case of removal of a school board member. In addition, proceedings for removal may be initiated by any duly constituted ethics board. The assembly by ordinance shall establish procedures for removal of elected officials for breach of the public trust, including provision for notice, a complete statement of the charge, a public hearing conducted by an impartial hearing officer, and judicial review. Removal must be approved by two-thirds of the authorized membership of the assembly or school board as the case may be.

# REMOVAL: LEGAL BASIS

## Anchorage Municipal Code:

AO No. 1993-54(S-1), passed May 5, 1993, established and codified procedures for the removal of:

- Assembly members (§ 2.70.030 - Removal from office.); and
- School board members (§ 29.10.060 - Removal of members from office.)

AO No. 2022-60(S), passed July 12, 2022, codified procedures for the removal of the Mayor (§ 3.10.050 - Removal from office.)

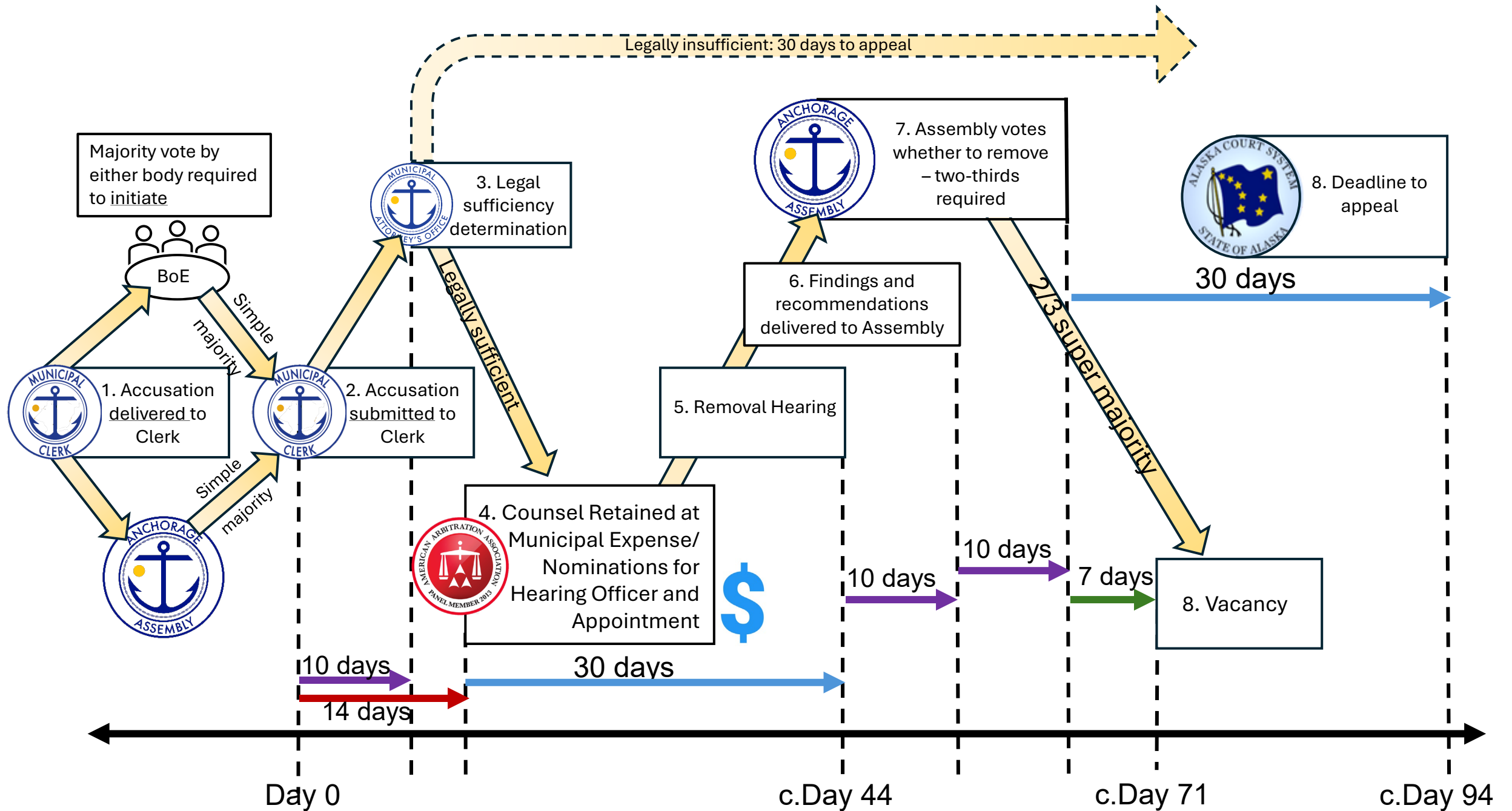
# REMOVAL: PROCEDURE

AMC 2.70.030 sets out an adjudicative process with several steps – Removal, once initiated, is treated with legal guardrails and due process protections.

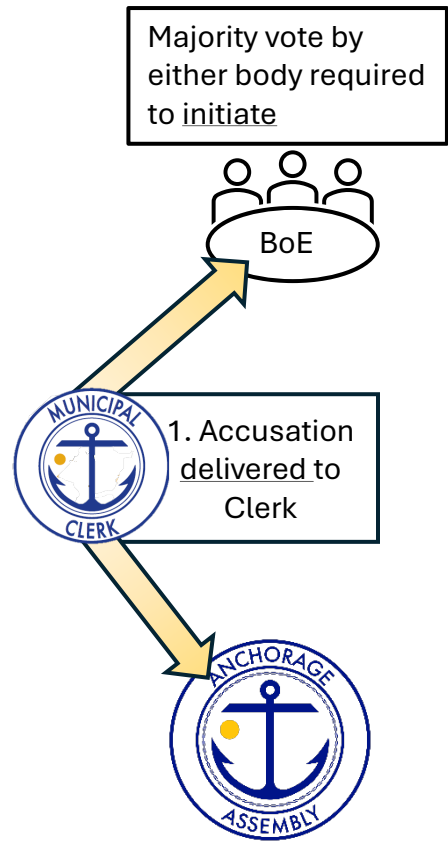
Assembly Member Campbell stated in 1993:

“If the eight members of the assembly that are about to go lynch that other member are so concerned about attorney's fees, maybe they ought not to start the process. But once they start the process, the one who's being accused should be allowed the opportunity to find the best defense they can to protect themselves, their integrity and their reputation based on the accusation. And if they lose, they will have lost fighting a good battle.”

What's the process look like?

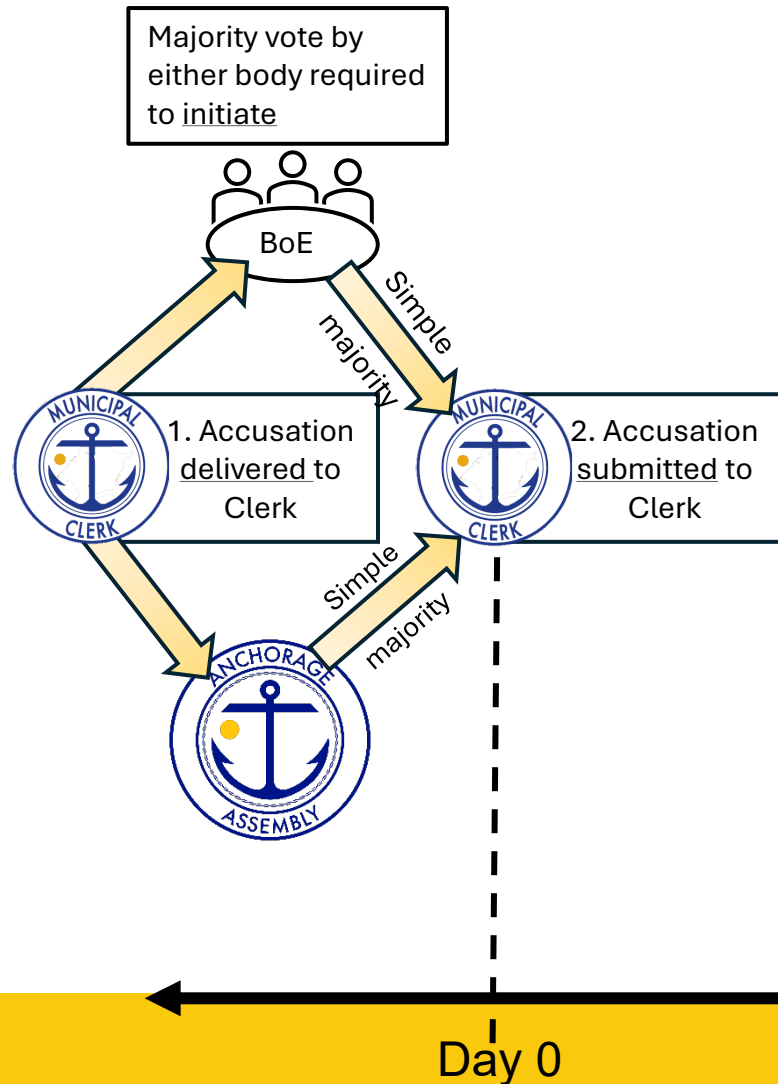


# REMOVAL: § 2.70.030B.



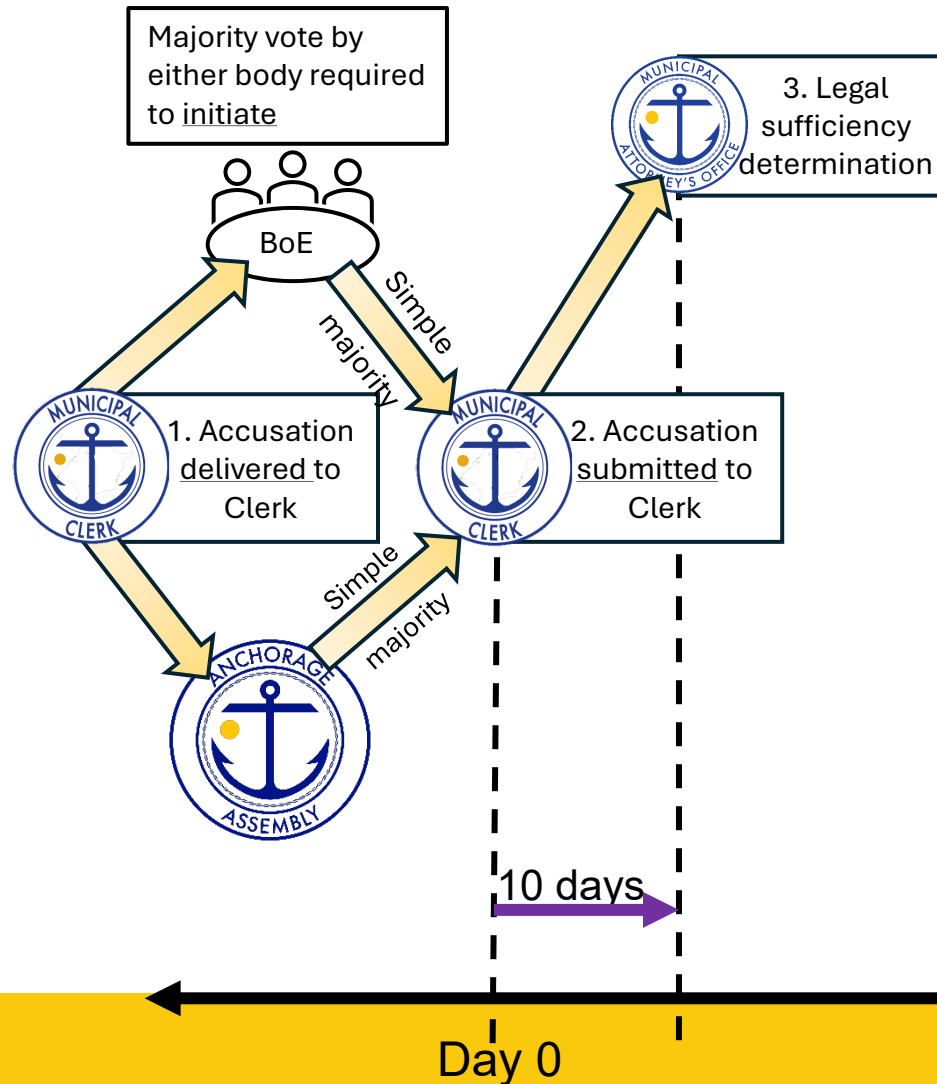
Proceedings for removal from office may only be initiated by delivery of an accusation document to the municipal clerk setting forth the grounds for removal and specifying if delivery is to the assembly or the board of ethics. An accusation document may be submitted to the municipal clerk only by a majority vote of the assembly or decision of the municipal board of ethics and must allege specific actions by the assembly member in question which breach the public trust.

# REMOVAL: § 2.70.030B.



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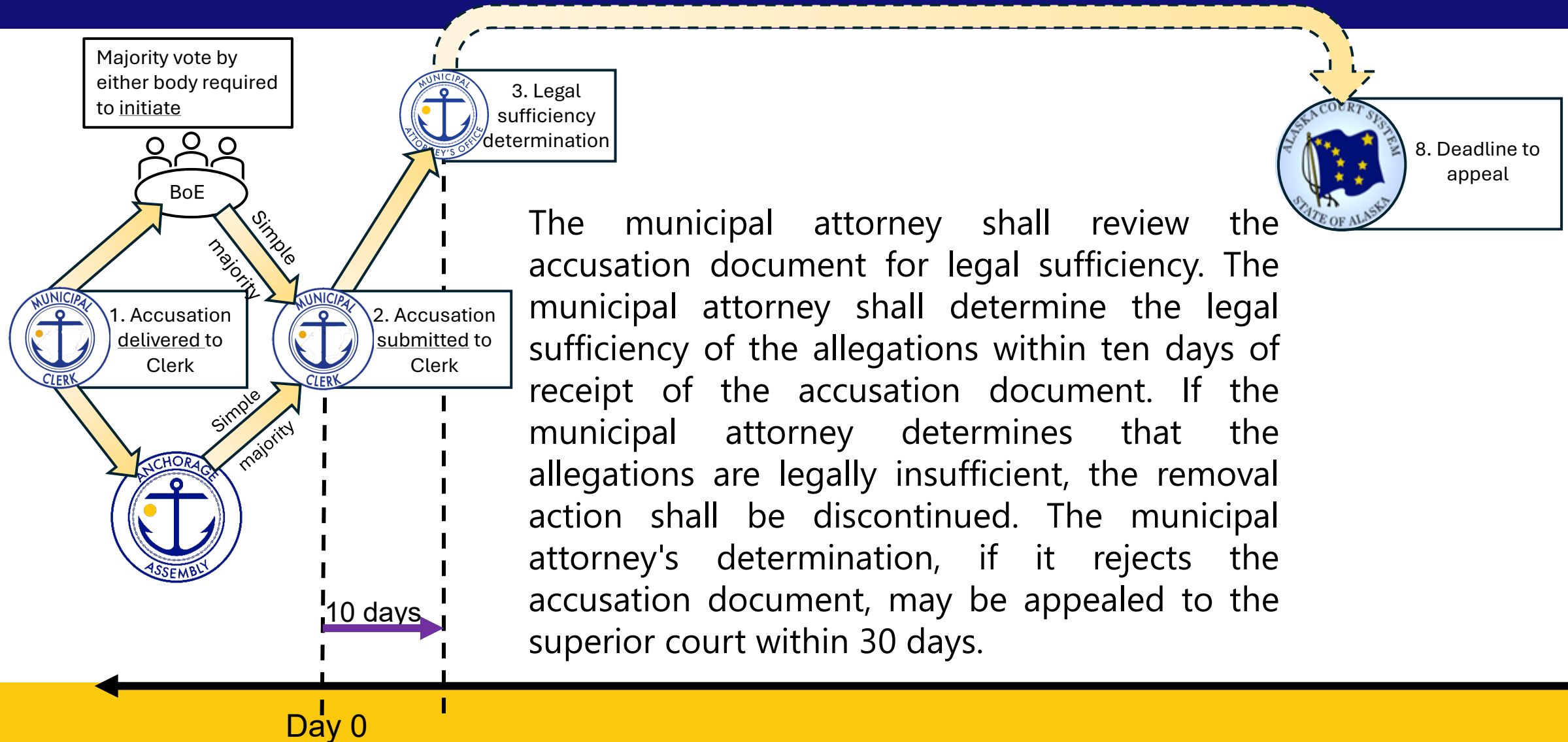
# REMOVAL: § 2.70.030C.



After a successful vote to submit it, the municipal clerk shall cause a copy of the accusation document to be delivered by personal service to the member of the assembly who is the subject of the accusation document and a copy delivered to the municipal attorney.

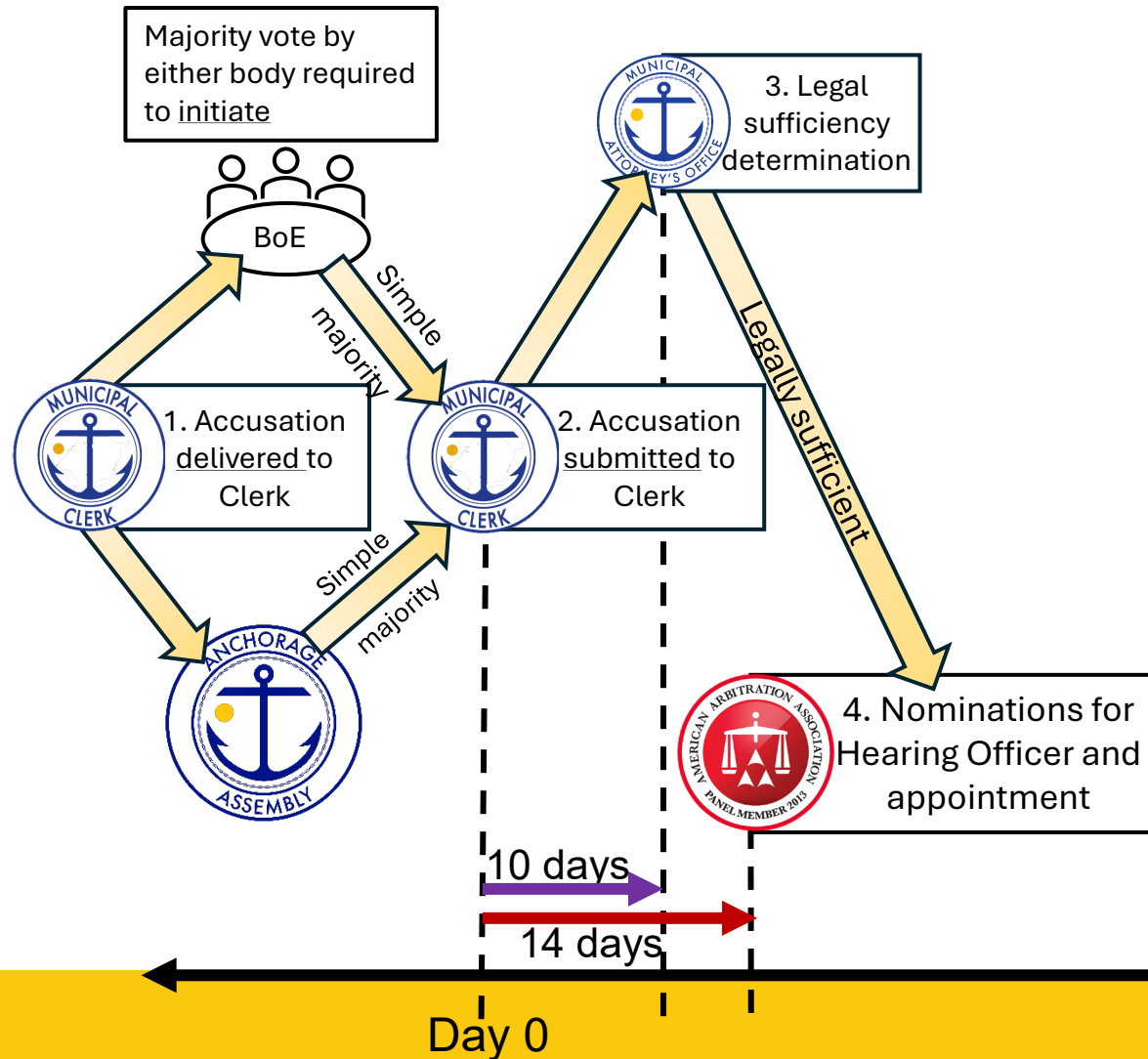


# REMOVAL: § 2.70.030D.



The municipal attorney shall review the accusation document for legal sufficiency. The municipal attorney shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney's determination, if it rejects the accusation document, may be appealed to the superior court within 30 days.

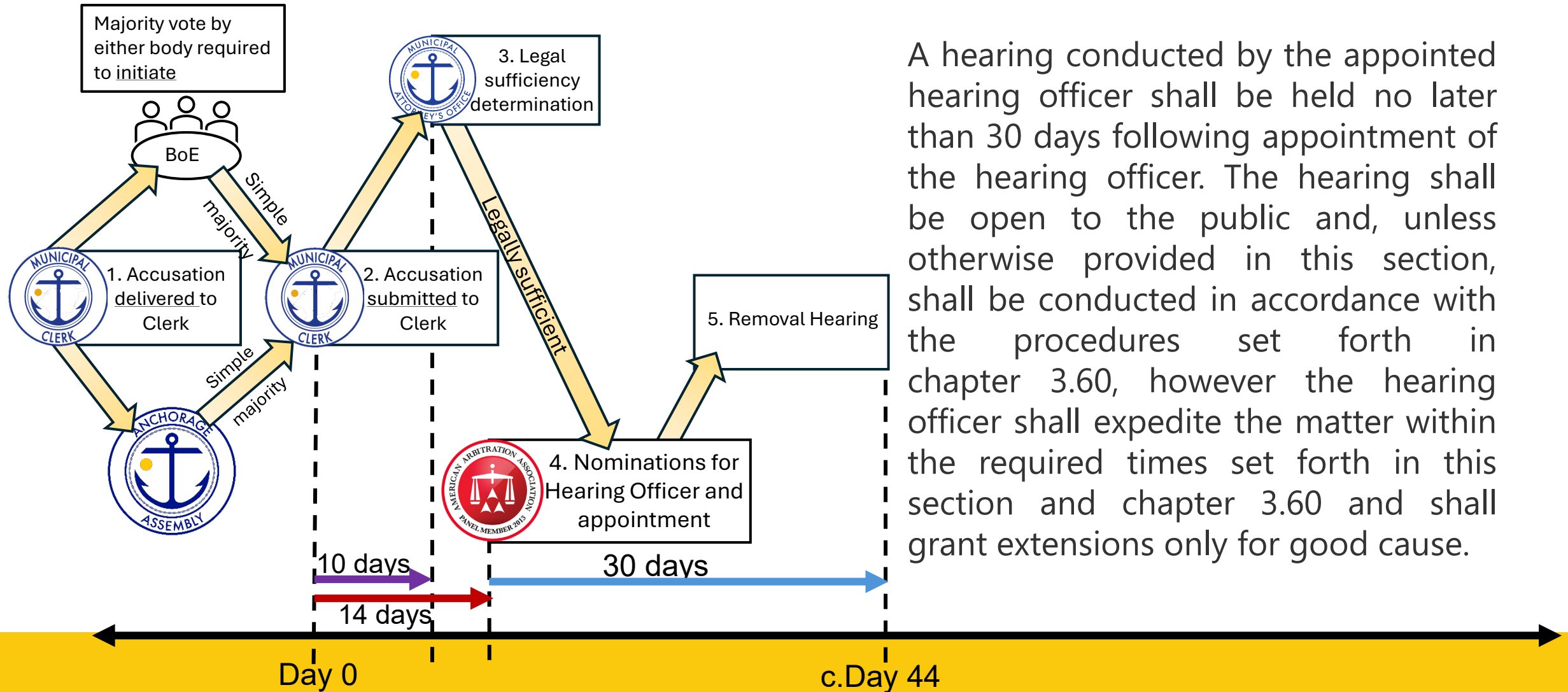
# REMOVAL: § 2.70.030E.



Within two weeks following the delivery of an accusation document, the municipal clerk shall request that six names be submitted as potential hearing officers by the American Arbitration Association. Three of the names submitted should be from the state and three from out-of-state. From these names the assembly and the accused shall agree upon a hearing officer who shall conduct the hearing concerning the allegations in the accusation document. If no agreement is reached within ten days of distribution of the list of potential hearing officers, the hearing officer shall be selected by each side exercising preemptory challenges to the six potential names in turn until only one remains.

# REMOVAL: § 2.70.030F.

Legally insufficient: 30 days to appeal



A hearing conducted by the appointed hearing officer shall be held no later than 30 days following appointment of the hearing officer. The hearing shall be open to the public and, unless otherwise provided in this section, shall be conducted in accordance with the procedures set forth in chapter 3.60, however the hearing officer shall expedite the matter within the required times set forth in this section and chapter 3.60 and shall grant extensions only for good cause.

# AMC 3.60.045 – Hearing procedures

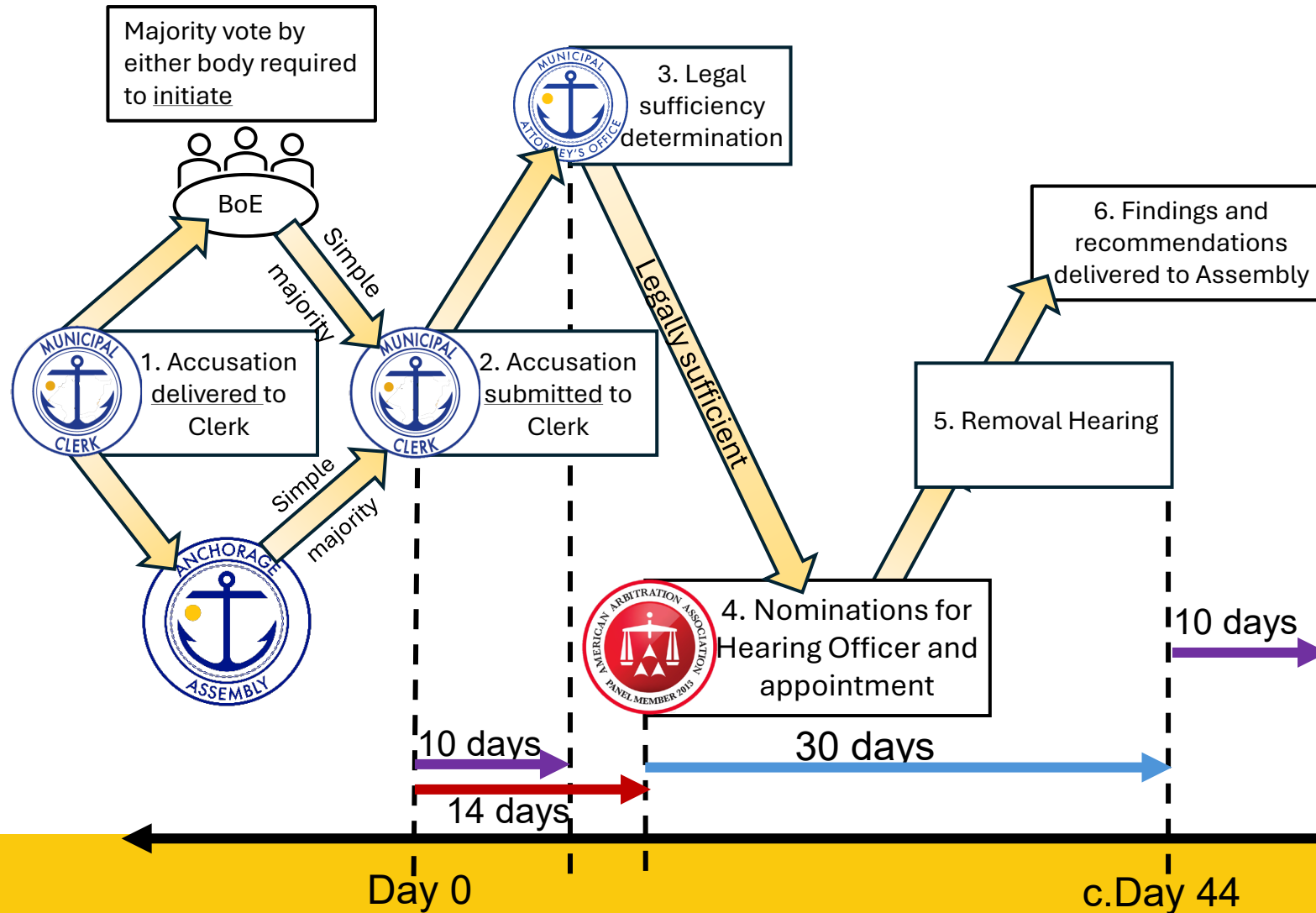
Administrative hearings and quasijudicial proceedings ***shall be conducted informally and may be governed by such rules and procedures as the official*** agency, board or commission empowered to conduct such hearings or proceedings ***may choose to establish***, except that:

- A. Parties may appear in person or through counsel.
- B. Parties may present witnesses and evidence on their own behalf.
- C. Parties or their counsel may cross examine opposing witnesses on matters relevant to the issues, impeach witnesses regardless of which party first called the witness to testify, and rebut evidence against the party.
- D. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be considered provided there are guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.
- E. All administrative hearings and quasijudicial proceedings shall be open to the public, unless otherwise agreed by all parties to such hearings or proceedings.
- F. All parties shall have the right to subpoena witnesses and documents using a form provided by the municipal clerk and submitted to the municipal clerk for issuance at least five working days before the date of the hearing.
- G. All administrative hearings and quasijudicial proceedings shall be memorialized by an electronic recording or a stenographic record.

\*(The Assembly has no role in this hearing)

# REMOVAL: § 2.70.030F.

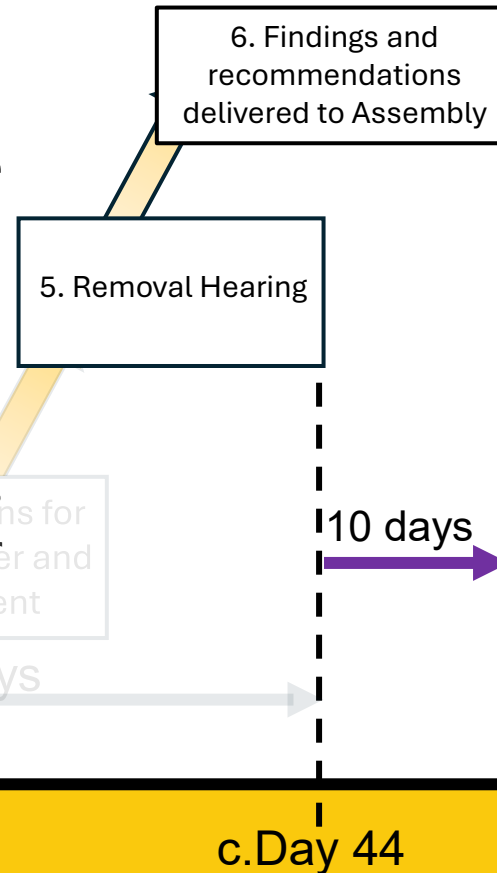
Legally insufficient: 30 days to appeal



Within ten days following the conclusion of the public hearing the hearing officer shall submit written findings and recommendations to the assembly. The recommendations shall include whether the officer should be removed.

# REMOVAL: § 2.70.030G.

The standard of proof of the allegations in the accusation document to be applied by the hearing officer is **clear and convincing evidence**. The hearing officer shall evaluate the evidence relating to the accusations set forth in the accusation document and evaluate both whether the allegations are supported and whether those actions alleged constitute a breach of the public trust as set forth in subsection A of this section. Wrongful acts or admissions occurring while the officer was acting in a private capacity as opposed to his or her capacity as a public officer shall not constitute a breach of the public trust.



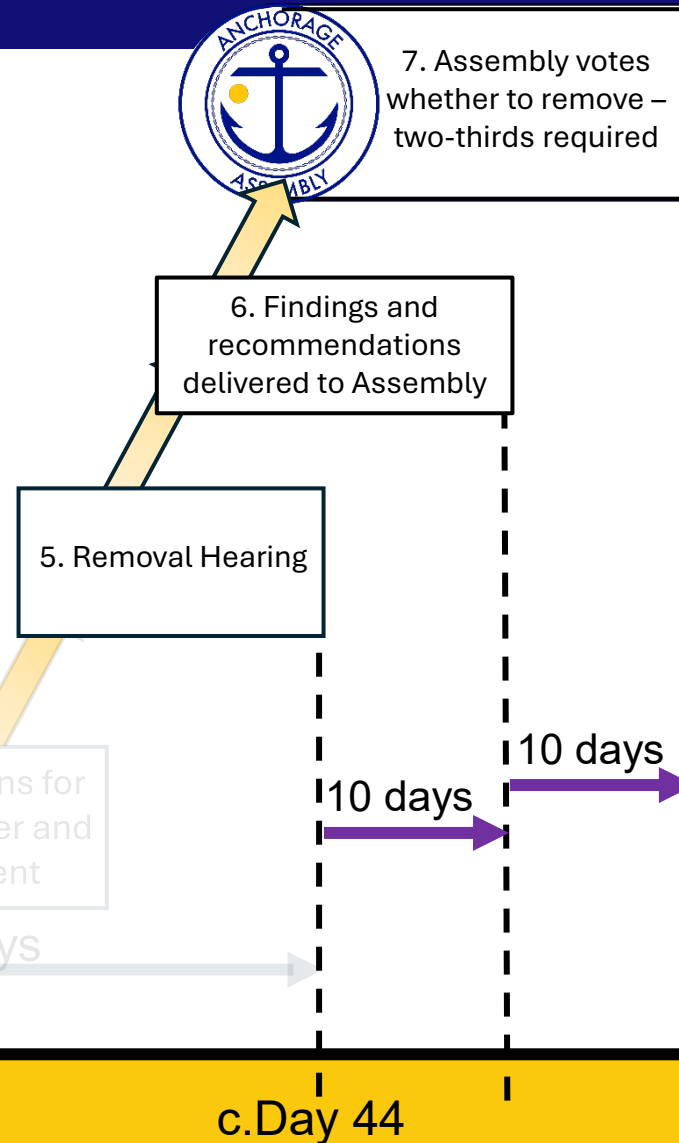
# Evidence standard

The evidentiary standard required to findings of fact on those factual issues:

- Civil litigation – “by a preponderance of the evidence”
  - More likely true than not
- If required by statute, ordinance or law – “clear and convincing evidence”
- Criminal prosecution – “beyond a reasonable doubt”

# REMOVAL: § 2.70.030H.

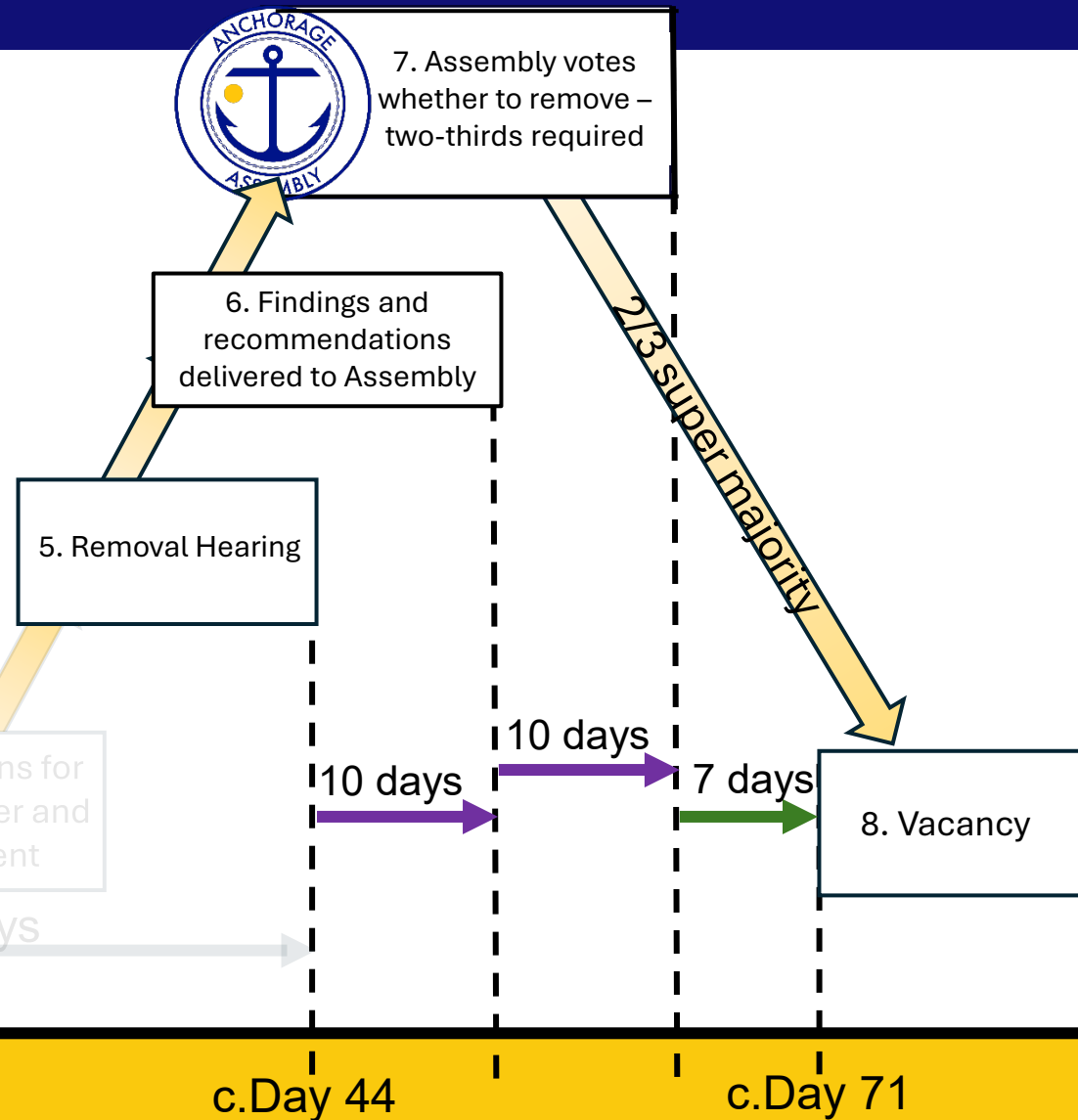
Within ten days of receiving the hearing officer's recommendations, the assembly shall vote on whether to remove the member who is the subject of an accusation document. If more than one member is involved, a separate vote shall be taken on the question of removal of each assembly member who is the subject of accusations. Removal shall occur only on the concurrence of two-thirds of the fully constituted body.





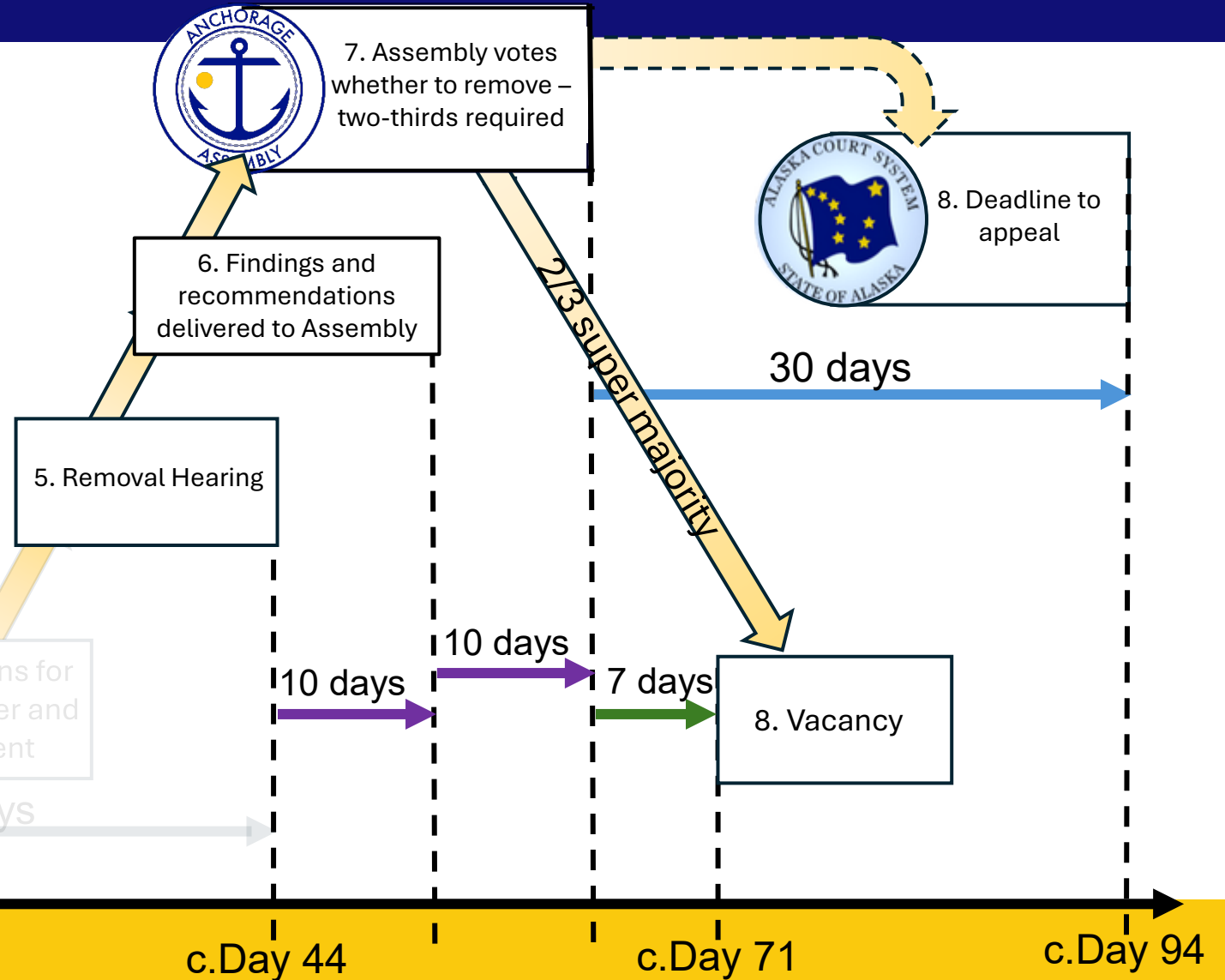
# REMOVAL: § 2.70.030I.

The decision of the assembly acting upon the recommendations of the hearing officer may be appealed to the superior court within 30 days of the assembly's decision. If the assembly's decision is for removal, the office shall be considered vacant beginning at 12:01 a.m. seven days following the decision unless the appellate court issues a stay of the removal pending appeal. In evaluating whether to grant a stay of removal pending appeal the facts that the removed member could miss important votes and that another individual may be seated to replace the removed member shall not constitute irreparable harm.



# REMOVAL: § 2.70.030I.

The decision of the assembly acting upon the recommendations of the hearing officer may be appealed to the superior court within 30 days of the assembly's decision. If the assembly's decision is for removal, the office shall be considered vacant beginning at 12:01 a.m. seven days following the decision unless the appellate court issues a stay of the removal pending appeal. In evaluating whether to grant a stay of removal pending appeal the facts that the removed member could miss important votes and that another individual may be seated to replace the removed member shall not constitute irreparable harm.



# REMOVAL: § 2.70.030I.

During a stay, unless otherwise ordered by the court the seat is considered vacant and shall be filled in accordance with Charter 7.02(b) and section 2.70.020 pending the outcome of the court case. If, after exhaustion of appeals, the final ruling reverses the removal, the removed member shall be reseated for the remainder of the term for which elected, and any replacement, whether appointed or elected at a special election, shall be displaced.

## AMC § 2.70.020 – Filling a vacancy

The action(s) available to fill depend on the time remaining in the term for the vacant seat:

- Less than 30 days remain – do not fill
- 30 days <-> 6 months before a regular election:
  - May appoint, not required
  - Election – regular if coincides with term end; special concurrent with the regular if more time remains in the term
- > 6 months before next regular election:
  - May appoint, not required
  - Assembly must call for a special election

# REMOVAL: ISSUES

The Assembly has never attempted to remove an elected official from office.

Preliminary List of difficult issues:

- Private vs. Official Misconduct
- Executive session
- Projected expense
- What happens after a vacancy.
- Affects the electorate's franchise – approx.~ 48,541 residents

# Economic costs

\*all approximate/estimates

**To date: Staff time ~ 110+ hrs**

**Investigation (6 weeks or 60): 1.5 FTE Municipal Attorney**

| Removal process                                  | Dollars                      | Time          |
|--------------------------------------------------|------------------------------|---------------|
| Outside Attorney for accused:<br>Removal process | \$50k-\$100k                 |               |
| MAT: Legal sufficiency                           | \$375 - \$750                | 5-10 hours    |
| MAT: Removal process<br>(If Outside)             | \$15k-\$30k<br>(\$50-\$100k) | 200-400 hours |
| Hearing Officer                                  | \$25k -\$50k                 |               |
| Appeal costs (all levels total)                  | \$7.5k - \$30k               | 100-400 hours |
| Total approx.                                    | \$98k – \$210k               |               |

# Filling the Vacancy

## **Election to fill a Vacancy:**

- **Special election for District - \$162,000**
- **If part of or concurrent with regular election – negligible additional cost**

# Removal compared to Recall

**Significant difference in the lawful grounds.** In 1993 Assembly Member Wood recognized as such, in an amendment removing recall grounds from the removal section:

**“The power of removal is something that really runs contra to the electoral process and I don’t want us or anybody to have the authority to intercede in that process unless it’s severely restricted.”**

Removal grounds, for “breach of the public trust” AMC 2.70.030A.

- Willful and knowing breach of duty
- Culpable indifference to official duties
- Includes:
- Accepting cash gifts
- Violation of Ethics Code Ch. 1.15
- Perjury
- Falsification of records
- Filing false reports
- Nepotism
- Personal use of MOA/school property
- Destruction of MOA/school property
- Official misconduct, AS 11.56.850

Recall grounds AS 29.26.260:

- Misconduct in office,
- Incompetence, or
- Failure to perform prescribed duties

Removal, cont’d:

- Unexcused absence 3+ consecutive meetings
- Absent 75% of meetings in 24 months
- Substantial breach of a statutory-, Code, or Charter-imposed duty

# PRACTICAL CONSIDERATIONS

- **Process Goals:**
  - Ensure the Assembly has reliable information
  - Promote fairness
  - Provide transparency for the public
- **Recommendations**
  - Investigate *before* taking action
  - Allow the member an opportunity to respond to allegations
  - Report on any findings to the public





# DISCIPLINE, REMOVAL AND CENSURE

QUESTIONS?



**THANK YOU**  
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