

**Twenty-Fourth Report: 2007-2008  
to the  
Legislature and Supreme Court**

January 2009

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# **The Alaska Judicial Council (2007-2008)**

## **Members and Terms**

### **Chairperson**

Chief Justice Dana Fabe *(2006-2009)*

### **Attorney Members**

Douglas Baily *(2004-2007)*

James H. Cannon *(2006-2012)*

Kevin Fitzgerald *(2008-2014)*

Louis James Menendez *(2007-2010)*

Susan Orlansky *(2002-2008)*

### **Non-Attorney Members**

Eleanor Andrews *(2000-2007)*

William F. Clarke *(2007-2013)*

Bill Gordon *(2003-2009)*

Charles Kopp *(2007-2008)*

Christena Williams *(2005-2011)*

### **Council Staff**

Larry Cohn, Executive Director

Teresa W. Carns, Senior Staff Associate

Susie Mason Dosik, Project Coordinator

Susan McKelvie, Research Analyst

E.J. Pavsek, Fiscal Officer

Emily R. Marrs, Executive Secretary

Kathy Grabowski, Selection and Retention Assistant

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### **Judicial Council Membership 2008**

Members and staff, left to right (standing)

James H. Cannon, William F. Clarke, Kevin Fitzgerald, Larry Cohn (Executive Director),

Louis James Menendez

(seated)

Christena Williams, Bill Gordon, Chief Justice Dana Fabe,

Teresa W. Carns (Senior Staff Associate)

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# Part I

## Introduction

Alaska's Constitution established the Alaska Judicial Council and required it to "make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years" (Article IV, Section 9). This twenty-fourth report to the legislature and the supreme court summarizes the Council's activities in 2007 and 2008.

### **A. Judicial Council Duties**

The Judicial Council has constitutional and statutory duties in three general areas. First, the Council screens applicants for judicial vacancies and nominates the most qualified applicants to the governor for appointment. The legislature also has assigned to the Council the responsibility of screening applicants for the head of the Public Defender Agency.

Second, the Council by law must evaluate the performance of judges who are to appear on the ballot, and must make performance information and recommendations available to voters. The legislature provided funding to enable the Council to respond to the Supreme Court's request that the Council conduct similar evaluations of retired judges sitting pro tem, and of masters and magistrates.

Third, the Alaska Constitution directs the Judicial Council to conduct studies and make recommendations to improve the administration of justice in Alaska. The legislature has assigned the Council specific projects from time to time such as staffing Alaska's Criminal Justice Working Group that collaborates on improvements to Alaska's criminal justice system; evaluating Alaska's therapeutic courts; and studying criminal recidivism in Alaska. In 2007 and 2008, the Alaska Court System asked the Council to examine its interstate placement of children in need of aid and to evaluate changes in the court's processing of domestic violence cases. The Alaska Court System also asked the Council for assistance in designing a database to evaluate the new Fairbanks Juvenile Treatment Court. Constitutional and statutory references to all mandated Judicial Council functions are posted on the Council's website at [www.ajc.state.ak.us](http://www.ajc.state.ak.us).

## **B. Council Membership**

Article IV, Section 8 of Alaska's Constitution establishes the membership of the Council as three non-attorney members appointed by the Governor, three attorney members appointed by the Board of Governors of the Alaska Bar Association, and the Chief Justice of the Supreme Court of Alaska who serves, *ex officio*, as Chair. The Constitution provides that all appointments shall be made "with due consideration to area representation and without regard to political affiliation." A majority of both houses of the legislature must confirm the non-attorney appointments, while the Board of Governors of the Alaska Bar Association appoints the attorney members after conducting advisory elections among Bar members within local judicial districts. Members serve six-year staggered terms.

The Council membership has changed since the last report. In 2007, Governor Palin appointed Charles Kopp of Kenai to replace Eleanor Andrews as a non-attorney member. Governor Palin appointed William Clark of Chugiak in 2008 to replace Mr. Kopp when the constitution required Mr. Kopp to resign upon his employment with the state. In 2007, the Alaska Bar Association Board of Governors named Louis Menendez of Juneau to replace attorney Douglas Baily when Mr. Baily moved outside the First Judicial District. In 2008, the Board of Governors named Kevin Fitzgerald of Anchorage to replace attorney Susan Orlansky at the expiration of her term. A roster of current and past members of the Alaska Judicial Council is in Appendix A and on the Council's website.

## **C. Organization and Administration of the Council**

The Judicial Council is governed by bylaws adopted in concurrence with the constitutional provision that the Council shall act ". . . according to rules which it adopts" (Article IV, Section 8). The current bylaws are in Appendix B and on the Council's website at [www.ajc.state.ak.us](http://www.ajc.state.ak.us).

The legislature funds most Council activities from the general fund. The Council received funds in 2007 and 2008 from the Alaska Court System to carry out some of its projects. The Council also received National Institute of Justice funding through the University of Alaska Anchorage.

The Judicial Council's staff currently includes the executive director, senior staff associate, project coordinator, fiscal officer, research analyst, selection and retention assistant, and secretary. Additional temporary staff work as needed.

## **Part II**

### **Judicial Selection 2007-2008**

#### **A. Nominations**

##### **1. Number of vacancies**

In recent years, particularly since 2002, there have been many more judicial vacancies than in the past. Alaska averaged:

- 3.8 vacancies per year from 1984-1988;
- 4.2 vacancies per year from 1989-2002;
- 7 vacancies per year from 2003-2008.

##### **2. Average number of applicants per vacancy**

In addition to an increasing rate of judicial vacancies per year, the average number of applicants per vacancy has risen. The average number of applicants per vacancy was:

- 6.2 applicants per vacancy from 1984-1988;
- 8.5 applicants per vacancy from 1989-2002;
- 10.1 applicants per vacancy from 2003-2008.

##### **3. 2007-2008**

In 2007 and 2008, the Council screened 131 applicants for 15 judicial positions (an average of 8.7 applicants per vacancy) including applicants for two appellate court vacancies. Governor Sarah Palin appointed Daniel Winfree on November 26, 2007 to replace retiring Supreme Court Justice Alex Bryner. On August 29, 2008, Governor Palin appointed Joel Bolger to replace Judge David Stewart who retired from the Alaska Court of Appeals.

The Council nominated applicants for nine superior court vacancies in 2007 and 2008. The legislature created a new superior court position in Kenai. On March 5, 2007, Governor Sarah Palin appointed Anna Moran to fill the vacancy. Judge Dale Curda retired from the Bethel Superior Court.

On March 5, 2007, Governor Palin appointed Marvin Hamilton to replace him. The legislature created a new superior court position in Fairbanks. On June 1, 2007, Governor Palin appointed Michael MacDonald to fill the vacancy. On August 3, 2007, Governor Palin appointed Carl Bauman to replace Judge Harold Brown who retired from the Kenai Superior Court. Judge Larry Weeks retired from the Juneau Superior Court. On August 31, 2007, Governor Palin appointed Phillip Pallenberg to replace him. On October 25, 2007, Governor Palin appointed David George to replace Judge Larry Zervos who retired from the Sitka Superior Court. Governor Palin appointed Paul Lyle to the Fairbanks Superior Court on February 19, 2008 when Judge Niesje Steinkruger retired. A vacancy on the Barrow Superior Court occurred when the Alaska Supreme Court held that Judge Michael Jeffery did not timely file for retention in 2006. Judge Jeffery reapplied for the position and was re-appointed by Governor Palin on May 29, 2008. On December 7, 2008, Governor Palin appointed William Barker Carey to fill the vacancy created by the retirement of Ketchikan Superior Court Judge Michael Thompson.

In 2007 and 2008, the Council nominated applicants for four district court vacancies. On June 14, 2007, Governor Palin appointed Richard Postma to the Anchorage District Court to fill a vacancy created by the appointment of Judge Jack Smith to the Anchorage Superior Court. A vacancy occurred on the Kenai District Court when voters did not retain Judge David Landry. On June 14, 2007, Governor Palin appointed Sharon Illsley to the position. Governor Palin appointed Catherine Easter to the Anchorage District Court on June 5, 2008, when Judge Nancy Nolan retired. In December 2008, the Council nominated applicants for a vacancy created by the retirement of Judge Sigurd Murphy, but an appointment had not been made prior to publication of this report. Appendix C contains a log of applicants, nominees, and appointees for judicial vacancies that occurred in 2007-2008. An historical log of all judicial applicants, nominees, and appointees for all judicial vacancies since statehood is on the Council's website.

## **B. Selection Procedures**

The Council uses selection procedures that it has developed over the past three decades. The Council asks for character references and detailed reference letters and performance assessments by persons with direct, recent professional experience with the applicant, obtains feedback from the applicant's former employers, solicits comments from the public through its website and in public hearings conducted in the location of the vacancy, reviews information about professional discipline and credit and criminal histories, evaluates writing samples, and investigates issues that arise in any of the information. The Council interviews each applicant. Applicants may choose whether to have a public or private interview.

For each vacancy, the Council surveys every active and every in-state inactive member of the Alaska Bar Association. In 2004, the Council began using an electronic survey to supplement

its paper survey. The availability of the electronic survey has resulted in an enhanced survey response rate and more information about applicants. More than 80 percent of survey responses are electronic; the electronic survey is less costly for the Council to administer.

The survey asks respondents to rate attorneys based on their professional competence, integrity, fairness, judicial temperament, suitability of experience, and overall qualifications. Respondents may also submit comments. Comments are shared with applicants after the comments have been edited to preserve the anonymity of survey respondents. Council members do not consider unsigned comments unless the comments are substantiated, corroborated, or acknowledged by the applicant.

The Council periodically reviews its selection procedures to make improvements. A very detailed description of the Council's selection procedures is in Appendix D and on the Council's website.

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## **Part III**

# **Judicial Performance Evaluations 2007-2008**

### **A. Retention Election Evaluations**

#### **1. Introduction**

Alaska's constitution and statutes require each judge periodically to stand for retention at the general election. The lengths of terms vary with the judicial position, with all judges serving a shorter initial term, and longer terms after the first retention. Statutes passed in 1975 require the Judicial Council to evaluate each judge standing for retention, and to make the results of the evaluations known to the public. The Council also recommends a "yes" or "no" vote on each judge to the voters, and publicizes its decisions. Appendix F contains the retention election history for current judges. Lists of judges eligible to stand for retention in 2010 and 2012 are in Appendix G. Appendix H summarizes historical results of the Council's performance evaluations for retention. A history of retention votes from 1976 through 2008 may be found on the Council's website.

#### **2. Evaluation Procedures**

The Judicial Council surveyed all active members of the Alaska Bar Association, and all peace and probation officers in the state. In 2008, the Council sent surveys to 2,884 attorneys (27% response rate) and 1,539 peace and probation officers (27% response rate). An independent contractor handled the surveys for the Judicial Council, to assure objectivity in the findings. Questions on the surveys asked about judges' legal abilities, fairness, integrity, temperament, diligence and overall performance. Similar surveys went to 374 social workers and citizens who participated in helping Alaska's children in court as guardians ad litem and Court Appointed Special Advocate (CASA) volunteers (24% response rate). The Council asked jurors who had served on cases with the judges to comment on the judges' abilities to handle the trials fairly and capably (702 responded). The Council also surveyed 591 non-attorney court employees (41% response rate). The Council used electronic surveys when it was feasible to do so.

Each judge standing for retention returned a self-evaluation questionnaire to the Judicial Council. The questionnaire included lists of recent cases that the judge believed were important for evaluation, with an emphasis on jury and non-jury trials. The Council asked each attorney in each case to fill out an additional survey about the judge's performance in that particular case, including detailed comments about the judge's abilities.

Council staff reviewed a series of other public records, including conflict-of-interest annual statements filed with the Alaska Public Offices Commission and separate forms filed with the court system; court case files; Commission on Judicial Conduct public files; and a report on any withheld salary warrants. The Council also reviewed performance-related court data, such as the number of peremptory challenges filed against a judge, the number of times a judge recused himself or herself from presiding over a case, and how frequently the judge was reversed on appeal in civil and criminal cases. The Alaska Judicial Observers, an independent group of community-based volunteer court observers, provided ratings and observations about judges in Anchorage, Kenai and Palmer who they had evaluated.

The Council widely publicized the evaluation process. The Council held statewide public hearings for all judges standing for retention, using the legislature's teleconference network and public meeting rooms. Statewide newspaper ads encouraged public participation. The Council solicited comments about judges on its website.

Council staff investigated specific cases, listened to court proceedings, and interviewed judges, attorneys, court staff, and others. Council members interviewed some judges.

The Council made its retention evaluation information widely available to the public. The Official Election Pamphlet sent to each Alaska voter included a page summarizing the Council's performance evaluation materials on each judge. The Council published comprehensive materials, and posted most non-confidential information on its Internet home page ([www.ajc.state.ak.us](http://www.ajc.state.ak.us)). In 2008, the Council placed a series of ads in most of the state newspapers during the weeks before the November election, ran radio ads in the Fourth Judicial District, and engaged in community outreach. A detailed description of the Council's retention evaluation process is in Appendix E and on the Council's website.

### **3. Recommendations**

Twelve judges stood for retention in 2008 including a supreme court justice, a judge on the court of appeals, three superior court and seven district court judges. The Council found 11 of the 12 judges qualified and recommended a "yes" vote for retention.

The Council recommended against the retention of Bethel District Court Judge Dennis Cummings. After receiving a number of reports and comments from those who work with and appear before Bethel District Court Judge Dennis Cummings, the Judicial Council undertook an additional investigation including a review of court records and interviews with forty people. The Council also reviewed a complaint issued by the Alaska Commission on Judicial Conduct that found probable cause to allege that Judge Cummings had violated several Canons of Judicial Conduct



relating to ex parte contact with a state witness in a criminal trial. The Council also reviewed Judge Cummings' response to that complaint.

The Council also considered ratings from attorneys statewide who rated Judge Cummings "below acceptable" in the areas of Legal Ability and Temperament. Among attorneys in the Fourth Judicial District, where Judge Cummings presides, the judge received ratings that were substantially "below acceptable" on Legal Ability, Impartiality, Temperament, and Overall Performance.

Based on this investigation and a meeting with Judge Cummings in which he had an opportunity to respond, the Judicial Council had considerable concerns about Judge Cummings' lack of impartiality, inappropriate ex parte contact, inability to control the courtroom, inadequate legal knowledge, and lack of candor.

#### **4. Election Results**

##### **a. Summary**

The public voted to retain Judge Cummings with 54% of the vote. Voters retained the other 11 judges, with "yes" vote percentages ranging from 77% to 63%.

Very shortly after the 2008 election, the Alaska Commission on Judicial Conduct determined that Judge Cummings had violated Alaska statutes and the Alaska Code of Judicial Conduct by creating an appearance of impropriety. The Commission recommended that the Alaska Supreme Court suspend Judge Cummings. The recommendation was pending at the time of publication.

Most voters who cast a vote in the statewide congressional race also voted in one or more judicial elections.<sup>1</sup> Depending on the judicial district, 81.3% to 88.1% of the voters participated in judicial elections. Voters in the Fourth District were most likely to cast ballots in the judicial races, possibly because the Council spent more time and effort to make its recommendations known there (see below, for more detail). Voters in the rest of the state still participated in judicial elections at the rate of 81% or more.

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<sup>1</sup> A congressional race serves as a benchmark because it is statewide and occurs every two years, thus is the best available comparison to judicial races to show voter interest.

**b. “Yes” Vote Percentages for the Various Courts**

**1. Appellate Courts**

The percentage of “yes” votes for supreme court justices tends to vary more by year than for most other judicial positions. The reasons may be related to issues other than the evaluations of the justices standing in a particular year. Justice Eastaugh received 63.5% “yes” votes. He was opposed in the official Republican Party platform and by at least one other on-line group. However, these positions and campaigns were not publicized in the media, and may have had little effect. The 63.5% “yes” votes was well within the typical range for supreme court justices in past years.

The percentage of “yes” votes for court of appeals judges tends to be between about 61% and 69%, a narrower range than that of the supreme court justices. Judge Coats received a “yes” vote percentage of 64.3%, at about the midpoint of the range. There was no opposition to Judge Coats’ retention.

**2. First District**

Superior Court Judge Patricia Collins received 77.4% “yes” votes, and District Court Judge Keith Levy received 76.8% “yes” votes. The relatively high “yes” vote percentages have been typical of First Judicial District judges for many years.

**3. Second District**

No judges stood in the Second District for retention in 2008.

**4. Third Judicial District**

All of the judges in the Third Judicial District were standing in their first retention elections. Anchorage Superior Court Judge Craig Stowers was retained with 63.1% yes votes. District Court Judges Pat Hanley (66.1%) and Alex Swiderski ( 63.7%) were retained in Anchorage. District Court Judge Margaret Murphy was retained in Homer (64.4%), and District Court Judge Daniel Schally was retained in Valdez (64.3%). These are fairly typical ranges of “yes votes for Third Judicial District judges.

## 5. Fourth District

Superior Court Judge Robert Downes stood for the first time and was retained in Fairbanks with 70.8% yes votes, and Fairbanks District Court Judge Ray Funk was retained with 71.3% yes votes. Yes vote percentages for the Fourth District judges historically tend to be somewhat higher than for judges in the Third Judicial District. A majority (54.9%) of Bethel voters were against the retention of first time Bethel District Court Judge Cummings, but the judge was retained by Fourth District voters overall with 53.6% “yes” votes.

### B. Performance Evaluation of Pro Tem Judges and Other Judicial Officers

The Council’s role in evaluation expanded in 1986, when the supreme court adopted Administrative Rule 23, requiring the Council to evaluate retired judges who wish to serve pro tem. The rule requires the Council to survey Bar members, evaluate the judges’ abilities to serve pro tem, and provide the evaluations to the Chief Justice. The rule requires the Council to evaluate the performance of pro tem judges every two years. The Council evaluated nine retired judicial officers in 2008. The Council used a survey to evaluate seven of the retired judges and sent questionnaires to attorneys who had practiced before two retired judges who had served less often. Survey results are posted on the Council's website.

In 2007, the Council, with funding from the Alaska legislature, completed an evaluation of Alaska’s masters and magistrates. Masters and magistrates are not appointed by the governor nor are their qualifications reviewed by the Alaska Judicial Council. Their appointments are made for an indefinite period by the presiding judge of the judicial district in which they serve. They serve at the pleasure of the presiding judge, and are not subject to retention elections like Alaskan judges and justices.

The Council surveyed all active and in-state inactive members of the Alaska Bar Association and all Alaska peace and probation officers about 46 masters and magistrates. The Council solicited comments about three other magistrates who had been serving fewer than six months at the time of the evaluation. Attorneys were asked to rate judicial officers within their judicial districts (the Council used a combined survey for the Second and Fourth Judicial Districts). Peace and probation officers were asked to rate masters and magistrates statewide.

The Council shared the results of its evaluation with the Alaska Supreme Court, court administrators, and presiding judges. Each master and magistrate was provided with a summary of the evaluation pertaining to his or her own performance. Summaries of the Council's survey results are posted on the Council's website. The evaluation provided the court, the legal community, law

enforcement, and the public with information about the performance of Alaska's masters and magistrates. The evaluation also provided useful feedback to these judicial officers.

## **Part IV**

# **Reports and Recommendations**

### **A. Introduction**

Alaska's constitution requires the Judicial Council to "conduct studies for the improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature." This section of the Twenty-Fourth Report summarizes the reports and recommendations completed in 2007 and 2008. All major Council recommendations and reports since statehood are on the Council's website.

#### **1. Criminal Recidivism in Alaska (February 2007)**

The Council published Alaska's first general report on criminal recidivism, following more than 1,900 convicted offenders whose initial offenses and dispositions were described in the Council's earlier report, *Alaska Felony Process: 1999*. The offenders were followed for a full three years after their release from any incarceration served on their sentence. The Council found that at the end of three years, 66% of the offenders had been remanded to incarceration at least once, and 59% were arrested at least once for a new offense. Most of the new offenses occurred within the first year after release, and Property offenders were the most likely to be re-arrested. Other variables that were closely associated with the likelihood of recidivism were drug and alcohol problems, mental health problems, indigency, and ethnicity. Younger offenders, and those with a prior record of offenses were also more likely to recidivate. The report has been used extensively by state justice system agencies and policy-makers as a basis to discuss programs that could reduce the state's recidivism rate. The legislature funded the report through the Alaska Department of Health and Human Services.

#### **2. Recidivism in Alaska's Felony Therapeutic Courts (February 2007)**

The Judicial Council followed up its 2005 evaluation of Alaska's first three felony therapeutic courts with a review of recidivism among participants and comparison offenders for one year after program completion (see, AJC website, "Publications," *Evaluation of the Outcomes in Three Therapeutic Courts* (April 2005)). The Council found that graduates of the three courts were rearrested and re-convicted far less frequently than comparison offenders, and than the offenders studied in the companion recidivism report, *Criminal Recidivism in Alaska*. Graduates plus participants who did not complete the program as the group for analysis did not show significant

change. The longer participants stayed in the program, however, the better the outcome, even if they did not graduate. Native participants did as well as the Caucasian participants. This was a positive finding because the general recidivism rates for Natives were higher than for Caucasians. The Council recommended that the state should develop more information about the costs and benefits of therapeutic courts, and should explore the reasons why Native participants did well in the programs. The legislature funded the report through the Alaska Department of Health and Human Services.

### **3. Evaluation of Domestic Violence Advocates: 2007 (July 2007)**

The Alaska Court System asked the Council to evaluate some parts of the court's domestic violence programs, particularly the effectiveness of the court-based advocates for petitioners in the protective order process. The Council collected data about civil petitions filed in Anchorage, and interviewed practitioners. In its findings, the Council reported that advocates performed tasks that the court staff could not, including calming upset parties, helping the petitioners organize their materials, referring parties to other resources, and helping petitioners fill out court forms. The report described improvements to the process suggested by stakeholders including having more advocates available for longer hours, providing a neutral manual to help petitioners and others, and providing more structure and safe places for the advocates to work.

### **4. Selecting and Evaluating Alaska's Judges: 1984 - 2007 (August 2008)**

The Judicial Council looked at data about judicial applicants, nominees and appointees accumulated between 1984 and 2007, to give the public and judicial applicants a better idea about the selection process. The analysis found that both judicial vacancies and the average number of applicants for each vacancy have increased substantially since 1984. Applicants in 2003 - 2007 were older, much more experienced, and more likely to be women than in the past. Trial court judges salaries are higher than the average incomes of bar members and applicants, suggesting that salaries and benefits have been an incentive for attorneys to apply. Most applicants had practiced in both the public and private sectors. In recent years, more applicants have been employed in the public sector at the time of their applications than in the past, and most applicants appeared regularly in court. Attorneys who practiced civil law in the private sector were more likely to apply for superior court, while prosecutors were more likely to apply for district court. Public criminal defense attorneys applied for the two court levels about equally. The Council nominated about the same number of applicants with prosecutorial experience as it did applicants with public criminal defense attorney experience.

The Council found some relationship between bar survey scores and the likelihood of nomination. It also found that the Council interview with every applicant was one of the most

important aspects of the process, and that writing sample evaluations, counsel questionnaires, public comments and signed comments on bar surveys made a difference.

State law requires that the Council evaluate each judge standing in the periodic retention elections required by the constitution, and the report discusses the Council's evaluations as well as the voting decisions made during the elections by citizens. The analysis showed that high survey scores during the selection process were correlated with high ratings during judicial performance evaluations. Voters were likely to cast votes in most judicial elections. Their likelihood of casting a yes vote depended on several factors, including the Council's evaluations and the judicial district in which the judge was standing.

#### **5. Transferability of the Anchorage Wellness Court Model (September 2008)**

In cooperation with the University of Alaska Anchorage Justice Center and The Urban Institute in Washington, D. C., the Judicial Council undertook a four-year evaluation of the Anchorage Misdemeanor Wellness Court. The project was funded by the National Institute of Justice. The Council focused on discerning the transferability of the Wellness Court model to other jurisdictions and situations. It found that the therapeutic court model used in Anchorage had already been successfully transferred in part to several other locations in the state.

The Anchorage Misdemeanor Wellness Court assisted alcohol-addicted offenders to become accountable and rehabilitated by requiring substance abuse treatment, closely monitoring offenders' behavior, and providing referrals to a variety of services (housing, employment and other needs) during an eighteen month program. All participants in all programs were required to plead guilty and have a conviction entered but were relieved of some fines and incarceration in exchange for participating. The most commonly adopted aspects of the program included frequent court appearances, the use of the cognitive-behavioral treatment module MRT<sup>©</sup>, frequent drug and alcohol testing and other monitoring, and the use of the anti-addiction medication, naltrexone. The eighteen month duration of the program made it less desirable for misdemeanor offenders, whose sentences would rarely exceed twelve months, and many programs were instead focusing on felony offenders.

#### **6. Fairbanks Juvenile Treatment Court: An Evaluation Plan (November 2008)**

The Alaska court system asked the Council to create an evaluation plan for the Fairbanks Juvenile Treatment Court. The court provides an intensive program for juveniles with mental health problems, focused on stabilizing them in their mental situations, education, family situations, and

co-occurring substance abuse problems. The program will reduce the likelihood that teenagers whose criminal activity was related to underlying mental health issues will recidivate. The Council reviewed the performance measures set for the program for feasibility, looked at the possible data bases for recording information, assessed the plans for data collection, and suggested improvements in each area.

## **7. Exchanging Criminal Case Discovery Electronically: A Needs Assessment (December 2008)**

Alaska's Criminal Justice Working Group, with support from the state's interagency technology group (MAJIC), asked the Judicial Council for a needs assessment of the benefits of electronic exchange of discovery materials in criminal cases in Anchorage and Fairbanks. The group anticipated that using technology to expedite the exchange of information might reduce the increasing amount of delay in cases. The report summarizes interviews conducted for the needs assessment. It describes the criminal justice process in Alaska and provides data on case disposition times. The report found that many factors contribute to increasingly lengthy criminal case disposition times. Electronic exchange of discovery among law enforcement agencies and attorneys, however, could substantially reduce the time needed for that aspect of the criminal court process.

The report noted that municipal police departments in Anchorage and Fairbanks already have an electronic records management system for discovery materials and information, and that the Alaska State Troopers were pursuing a similar system. State and municipal prosecutors in Anchorage have access to these electronic records. Enabling defense attorneys to also access records electronically would reduce case disposition times, and would reduce litigation about whether and when discovery had been provided.



# Part V

## Current Judicial Council Projects

### Introduction

This part of the Twenty-Fourth Report describes the Council's current projects.

#### A. Council Projects

##### 1. Criminal Justice Working Group

The 2007 legislature funded the inter-branch Criminal Justice Working Group ("CJWG"), and authorized the Judicial Council to act as staff for the group. The CJWG includes commissioners and other top policymakers from the state departments of Corrections, Health and Social Services, Public Safety, and Law; and the Mental Health Trust Authority. Other members include the heads of the Alaska Public Defender Agency and the Office of Public Advocacy Agencies; the Administrative Director of the Alaska Court System and the deputy court directors; the Judicial Council Executive Director; the U.S. Attorney; and the Chief of the Anchorage Police Department. The present group for the first time is co-chaired by a supreme court justice and the Lieutenant Governor. The group meets monthly to resolve inter-branch issues, and to focus on longer term projects. The Judicial Council staffs the CJWG, providing meeting coordination, doing research, and developing materials for use by the committees.

During 2008, the CJWG's two committees – Efficiencies in the Criminal Justice Process, and Prevention and Recidivism – started by establishing baseline arrest rates and recidivism for both the adult and juvenile systems. The work broke new ground by relying on extensive cooperation among agencies to make use of their combined data, and by analyzing existing data for the juvenile system in ways similar to those commonly used in the adult system.

The committees then undertook separate projects focused on issues of concern to their members:

**Efficiencies Committee:** The committee's members have done extensive work to identify the parameters of delay in the criminal justice process, and then to address some of the possible causes. The Judicial Council looked at the need for a system to electronically exchange discovery materials, and published its report at the end of 2008 (see Part IV, above). Council staff will continue its work

on delay associated with presentence reports, by analyzing more data from the court and the department of corrections, and by interviewing judges about their reasons for ordering presentence reports.

**Prevention and Recidivism Committee:** This committee began its work by identifying a set of existing or proposed evidence-based programs for adults and juveniles that required inter-agency collaboration, and could be shown to reduce recidivism. Members then worked with the Institute for Social and Economic Research at UAA to help prepare a legislature-funded report on how these programs could reduce recidivism and long-term prison populations in Alaska. The report will be presented to the legislature at the beginning of the 2009 session, and will help structure the work of the CJWG in the coming months. The committee also will address other issues of concern, including civil commitments for alcoholism, and re-entry needs and programs.

In addition to the committee work, the group sets aside time at each meeting to work out immediate inter-agency problems. These have included access for defense counsel to offenders at institutions, courthouse security, telephonic access to committing magistrates for bail and warrant decisions, delays in recording judgments in APSIN, and an unexpected influx of people from villages to the urban hubs during the fall of 2008. Many of the issues have been resolved after discussion at the meetings, with follow-up by the group's members.

## **2. Evaluation of Adult Guardianship Mediation Project**

The court system asked the Council to evaluate its three-year-old Adult Guardianship Mediation project. The Council will use survey data compiled by the project and interviews to assess the effectiveness of the program, using performance measures identified by the court at the beginning of the program. Data will be analyzed by location in the state, types of users, and by the types of issues addressed. The Council will report in mid-February of 2009.

## **3. Civil Case Data**

The Council continues to collect data about the resolution of civil cases. The legislature required in 1997 that the Council compile this information and report on it periodically. The Council has issued two reports (available on its website under "Publications").

## **B. Commissions, Boards and Committee Service**

The Judicial Council plays an important role in Alaska's justice system by working with the courts, legislature and executive branch agencies on committees and shared interests. During 2007 and 2008, these groups included:

### **1. Supreme Court Fairness and Access Implementation Committee**

The supreme court's committee of justices and judges includes a Council staff person and the court system's administrative director. The group has worked since 1998 to carry out the recommendations of the Fairness and Access Committee made in 1997. During 2007 and 2008, the Implementation Committee made an interim report to the public, and conducted a series of hearings around the state about fairness and access issues. It heard from hundreds of people in different locations about juries, pre-trial bail and third-party custodians, cultural issues, needs for interpreters, and disparities for ethnic groups. The Council continues to contribute to the committee's work, particularly in the areas of justice system disproportions and disparities.

### **2. Judicial Education Committees**

Council staff serves on two of the court's committees for planning judicial training and education. The Executive Director is a member of the committee for training new judges, which periodically offers conferences for recently-appointed judges about ethics, case management and other issues. The Senior Staff Associate continues to serve on the committee for planning the spring and fall judicial conferences for all judges. Council participation on these committees gives other members the benefit of the Council's perspective on judicial needs gained from the selection and evaluation processes.

### **3. MAJIC Committee**

Council staff serves on the steering committee for the Multi-Agency Justice Integration Consortium (MAJIC). The group was formed in 2002 by the statutory Criminal Justice Information Advisory Board whose mission is to help agencies share information to improve performance of the criminal justice system as a whole. The eighteen agencies on the steering committee meet biweekly to resolve problems, test approaches to information sharing, and find ways to standardize data.

#### **4. Other Interagency Work**

State and national organizations invite the Council to participate in work groups, task forces, planning committees and other organizations because of the Council's experience in various fields. In 2007-2008, Council staff served on the planning committee for the annual conference programs for the National Association of Sentencing Commissions, participated in a nationally-funded drug court database working group, served on a national committee on training judges in self-represented litigant issues, and provided major support for a new national group focused on judicial performance evaluations. Staff continue to work with national organizations interested in promoting merit selection and in understanding judicial performance evaluations and retention elections.

## Part VI

### **The Alaska Judicial Council Website A Guide to Information and Materials**

The Alaska Judicial Council maintains a comprehensive website to inform the public of its activities and to solicit public input about judges and judicial applicants. The Council has received national recognition for the amount of the information available to the public about the judicial selection process, the performance of Alaska's judges, and Council studies to improve the administration of justice in Alaska. The Council's website address is [www.ajc.state.ak.us](http://www.ajc.state.ak.us).

#### **A. Information about the Alaska Judicial Council**

The Council's website includes information about the history of the Alaska Judicial Council. Minutes from Alaska's Constitutional Convention are provided so that the public may review the framers' intent in establishing Alaska's merit selection system. A roster of all current and past members of the Judicial Council is posted. Photographs of the current Judicial Council and the first Judicial Council are posted. Current Judicial Council by-laws are on the website, as are references to all current law regarding the Council.

#### **B. Judicial Selection**

The Council posts a detailed description of its judicial selection procedures on its website. To preserve the integrity and dignity of Alaska's judicial selection process and the public's confidence in it, the Council posts a copy of *Alaska Judicial Applicant Guidelines*, a manual prepared jointly by the Council and the Alaska Commission on Judicial Conduct. The manual discusses the statutes, court rules, and ethical considerations governing the permissible areas of activity by judicial applicants.

Attorneys may download applications for judicial positions from the Council's website. The Council's website enables the public to comment on judicial applicants via the Internet.

For all judicial vacancies, the Council posts:

- A press release announcing the vacancy.
- A list of all applicants with biographical information about each applicant.
- A press release summarizing bar survey results.
- A complete technical analysis of bar survey data.
- A list of the Council's nominees for the vacancy.

The Council posts an historical log of all applicants, nominees, and appointees for judicial positions since statehood in 1959. The historical log contains links to biographical information for all applicants since 1990.

### **C. Information about Judges and Other Judicial Officers**

The Council's website solicits public comments about the performance of judges. Comments may be submitted via the Internet.

The website includes information about all of Alaska's current and past judges. A copy of each current judge's judicial application is posted. The website provides each judge's date of appointment and the years that the judge appeared on the ballot. For current judges, the next date that the judge will be on the ballot is indicated. The website provides retention election results for each judge appearing on the ballot since 1976.

The website includes a description of the procedures the Council uses to evaluate the performance of judges who appear on the ballot. Detailed summaries of all of the Council's retention evaluations since 1996 are posted. The Council also posts summaries of its evaluations of Alaska's pro tem judges, masters, and magistrates.

### **D. Publications**

All Council biennial reports since 2003-2004 and all Council publications since statehood may be downloaded from the Council's website.

## **E. Links to Other Websites**

The Council's website makes it easier for members of the public to access other information of interest by including links to websites maintained by the Governor, the Legislature, the Alaska Court System, the Commission on Judicial Conduct, the Alaska Bar Association, the Child Support Enforcement Division, the Office of Victims' Rights, the Division of Elections, the Alaska Justice Center, and UAA's Institute of Social and Economic Research, among others. Links to Alaskan newspapers, federal courts and justice agencies, and to national justice organizations are also posted.

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**Appendix A**  
**Judicial Council Membership**

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# Appendix A

## Judicial Council Membership

<b>Members of the Alaska Judicial Council</b>		
<b>Council Members</b>	<b>Appointment Effective</b>	<b>Expiration Date</b>
<b>Chief Justice Dana Fabe</b> Alaska Supreme Court 303 K Street Anchorage, Alaska 99501-2084	7/1/06	6/30/09
<b>James H. Cannon</b> <i>(Attorney Member)</i> P.O. Box 70891 Fairbanks, AK 99707	2/24/06	2/23/12
<b>Kevin Fitzgerald</b> <i>(Attorney Member)</i> Ingaldson, Maassen & Fitzgerald 813 W. 3 <sup>rd</sup> Avenue Anchorage, AK 99501	4/28/08	2/23/14
<b>Louis James Menendez</b> <i>(Attorney Member)</i> Law Office of Louis Menendez 227 7 <sup>th</sup> Avenue Juneau, AK 99801	7/19/07	2/23/10
<b>William F. Clarke</b> <i>(Non-Attorney Member)</i> 24805 Thunderbird Drive Chugiak, AK 99567	10/16/08	3/1/13
<b>Bill Gordon</b> <i>(Non-Attorney Member)</i> 3205 Riverview Drive Fairbanks, AK 99709	5/18/03	3/1/09
<b>Christena Williams</b> <i>(Non-Attorney Member)</i> 501 Dock Street Ketchikan, AK 99901	5/19/05	3/1/11

*Judicial Council attorney and non-attorney members serve terms of six years. The Chief Justice serves a three-year term.*

<b>Historical Roster of Alaska Judicial Council Members</b>			
	<b>Residence</b>	<b>Appointment Effective</b>	<b>Expiration of Term</b>
<b>Chairperson<sup>1</sup></b>			
Chief Justice Buell A. Nesbett		11/29/59	06/18/70
Chief Justice George F. Boney		06/18/70	11/16/72
Chief Justice Jay A. Rabinowitz		11/16/72	11/16/75
Chief Justice Robert Boochever		11/16/75	11/16/78
Chief Justice Jay A. Rabinowitz		11/16/78	11/16/81
Chief Justice Edmond W. Burke		11/16/81	09/30/84
Chief Justice Jay A. Rabinowitz		10/01/84	09/30/87
Chief Justice Warren W. Matthews		10/01/87	09/30/90
Chief Justice Jay A. Rabinowitz <sup>3</sup>		10/01/90	09/30/92
Chief Justice Daniel A. Moore, Jr.		10/01/92	09/30/95
Chief Justice Allen T. Compton <sup>3</sup>		10/01/95	07/01/97
Chief Justice Warren W. Matthews		07/02/97	06/30/00
Chief Justice Dana Fabe		07/01/00	06/30/03
Chief Justice Alexander O. Bryner		07/01/03	06/30/06
<b>Chief Justice Dana Fabe</b>		<b>07/01/06</b>	<b>06/30/09</b>
<b>Attorney Members</b>			
E.E. Bailey <sup>2</sup>	Ketchikan	02/24/59	02/24/62
E.E. Bailey	Ketchikan	02/24/62	02/24/68
Frank M. Doogan <sup>3</sup>	Juneau	10/15/68	04/73
Michael L. Holmes <sup>4</sup>	Juneau	05/73	02/24/74
Michael L. Holmes	Juneau	02/24/74	02/24/80
Walter L. Carpeneti <sup>5</sup>	Juneau	02/24/80	02/81
James B. Bradley <sup>4</sup>	Juneau	04/81	02/24/86
William T. Council	Juneau	02/24/86	02/24/92
Thomas G. Nave	Juneau	02/24/92	02/23/98
Geoffrey G. Currall	Ketchikan	02/24/98	02/23/04
Douglas Baily	Juneau	04/27/04	07/18/07
<b>Louis James Menendez<sup>4</sup></b>	<b>Juneau</b>	<b>07/19/07</b>	<b>02/23/10</b>
Robert A. Parrish <sup>2</sup>	Fairbanks	02/24/59	02/24/64
William V. Boggess <sup>5</sup>	Fairbanks	02/24/64	04/64
Michael Stepovich <sup>4</sup>	Fairbanks	05/64	02/24/70
Michael Stepovich	Fairbanks	02/24/70	02/24/76
Michael Stepovich <sup>3</sup>	Fairbanks	02/24/76	08/78
Marcus R. Clapp <sup>4</sup>	Fairbanks	08/78	02/24/82
Mary E. Greene <sup>3</sup>	Fairbanks	02/24/82	04/82
Barbara L. Schuhmann <sup>4</sup>	Fairbanks	07/82	02/24/88
Daniel L. Callahan	Fairbanks	02/24/88	02/24/94
Christopher E. Zimmerman <sup>5</sup>	Fairbanks	04/14/94	07/17/97
Paul J. Ewers	Fairbanks	07/18/97	02/23/00
Robert B. Groseclose	Fairbanks	04/05/00	02/23/06
<b>James H. Cannon</b>	<b>Fairbanks</b>	<b>02/24/06</b>	<b>02/23/12</b>

<b>Historical Roster of Alaska Judicial Council Members</b>			
	<b>Residence</b>	<b>Appointment Effective</b>	<b>Expiration of Term</b>
<b>Attorney Members (Continued)</b>			
Raymond E. Plummer <sup>2, 3</sup>	Anchorage	02/24/59	09/26/61
Harold Butcher <sup>4</sup>	Anchorage	11/61	02/24/66
George F. Boney <sup>5</sup>	Anchorage	02/24/66	09/68
Lester W. Miller, Jr. <sup>4</sup>	Anchorage	10/15/68	02/24/72
Eugene F. Wiles <sup>3</sup>	Anchorage	02/24/72	03/75
Joseph L. Young <sup>4</sup>	Anchorage	04/75	02/24/78
Joseph L. Young	Anchorage	02/24/78	02/24/84
James D. Gilmore	Anchorage	02/24/84	02/24/90
Mark E. Ashburn	Anchorage	03/23/90	02/23/96
Robert H. Wagstaff	Anchorage	03/22/96	02/23/02
Susan Orlansky	Anchorage	03/14/02	02/27/08
<b>Kevin Fitzgerald</b>	<b>Anchorage</b>	<b>04/28/08</b>	<b>02/23/14</b>
<b>Non-Attorney Members</b>			
Elmo LeRoy "Roy" J. Walker <sup>2</sup>	Fairbanks	05/18/59	05/18/61
John Cross	Kotzebue	05/18/61	05/18/67
Thomas K. Downes <sup>3</sup>	Fairbanks	05/18/67	Mid-1968
V. Paul Gavora <sup>4</sup>	Fairbanks	10/15/68	05/18/73
Thomas J. Miklautsch <sup>3</sup>	Fairbanks	05/28/73	12/10/74
Robert H. Moss <sup>4</sup>	Homer	12/10/74	05/18/79
Robert H. Moss	Homer	05/18/79	05/18/85
Dr. Hilbert J. Henrickson	Ketchikan	08/13/85	05/18/91
David A. Dapcevich	Sitka	05/19/91	05/18/97
Mary Matthews <sup>3</sup>	Fairbanks	05/19/97	08/23/98
Sandra Stringer <sup>4</sup>	Fairbanks	08/24/98	07/12/99
Katie Hurley	Wasilla	07/13/99	05/18/03
<b>Bill Gordon</b>	<b>Fairbanks</b>	<b>05/19/03</b>	<b>03/01/09</b>
Jack E. Werner <sup>2</sup>	Seward	05/18/59	05/18/63
Jack E. Werner	Seward	05/18/63	05/18/69
Ken Brady	Anchorage	06/28/69	05/18/75
Ken Brady	Anchorage	05/18/75	05/18/81
Mary Jane Fate	Fairbanks	05/18/81	05/18/87
Leona Okakok	Barrow	07/31/87	05/18/93
Janice Lienhart	Anchorage	05/19/93	05/18/99
Gigi Pilcher	Ketchikan	03/21/00	05/18/05
<b>Christena Williams</b>	<b>Ketchikan</b>	<b>05/19/05</b>	<b>03/01/11</b>

<b>Historical Roster of Alaska Judicial Council Members</b>			
	<b>Residence</b>	<b>Appointment Effective</b>	<b>Expiration of Term</b>
<b>Non-Attorney Members</b> <i>(continued)</i>			
Dr. William M. Whitehead <sup>2, 3</sup>	Juneau	05/18/59	12/06/62
Charles W. Kidd <sup>4, 3</sup>	Juneau	04/63	01/64
H. Douglas Gray <sup>4</sup>	Juneau	04/64	05/18/65
H.O. Smith <sup>6</sup>	Ketchikan	05/18/65	06/65
Pete Meland <sup>4</sup>	Sitka	01/66	05/18/71
Oral Freeman <sup>3</sup>	Ketchikan	11/22/71	01/73
Lew M. Williams, Jr. <sup>4</sup>	Ketchikan	04/73	05/18/77
John Longworth	Petersburg	05/18/77	05/18/83
Renee Murray	Anchorage	08/08/83	05/18/89
Janis Roller <sup>3</sup>	Anchorage	09/01/89	02/14/91
Dr. Paul Dittrich, M.D. <sup>4, 3</sup>	Anchorage	04/06/91	10/03/91
Jim A. Arnesen <sup>4</sup>	Anchorage	10/04/91	05/18/95
Vicki A. Otte <sup>3</sup>	Juneau	05/31/95	11/21/00
Eleanor Andrews <sup>4</sup>	Anchorage	11/15/00	05/18/01
Eleanor Andrews	Anchorage	05/18/01	03/01/07
Charles M. Kopp <sup>3</sup>	Kenai	03/02/07	07/13/08
<b>William F. Clarke<sup>4</sup></b>	<b>Anchorage</b>	<b>10/16/08</b>	<b>03/01/13</b>

<sup>1</sup> *The Judicial Council initially submitted nominations for the position of Chief Justice; the Constitution did not limit the Chief Justice's term. Chief Justice Nesbett and Chief Justice Boney were nominated and appointed in this manner. Voters amended the Constitution on August 25, 1970 to provide for the election of the Chief Justice by the justices of the Supreme Court for a three-year term; the amendment further provided that a Chief Justice may not be re-elected to consecutive terms.*

<sup>2</sup> *Appointed to initial staggered term.*

<sup>3</sup> *Resigned during term.*

<sup>4</sup> *Appointed to complete unexpired term.*

<sup>5</sup> *Resigned during term to apply for judicial office.*

<sup>6</sup> *Denied legislative confirmation.*

**Appendix B**

**Bylaws of the Alaska Judicial Council**

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# **Appendix B**

## **Bylaws of the Alaska Judicial Council**

### **ARTICLE I**

#### **Policies**

##### **Section 1. Concerning Selection of Justices, Judges, and Public Defender**

The Judicial Council shall endeavor to nominate for judicial office and for public defender those judges and members of the bar who stand out as most qualified based upon the council's consideration of their: professional competence, including written and oral communication skills; integrity; fairness; temperament; judgment, including common sense; legal and life experience; and demonstrated commitment to public and community service. The Council shall actively encourage qualified members of the bar to seek nomination to such offices, shall endeavor to prevent political considerations from outweighing fitness in the judicial and public defender nomination processes, and shall consistently strive to inform the public of Alaska's Judicial Council selection process.

##### **Section 2. Concerning Retention of Judges**

Pursuant to the provisions of Alaska Statutes Titles 15 and 22, the Council may recommend the retention in judicial office of incumbent justices and judges found to be qualified through appropriate means of judicial performance assessment; and may recommend against retention of justices and judges found to be not qualified through assessment processes. The Council shall endeavor to prevent political considerations from outweighing fitness in the judicial retention recommendation process.

##### **Section 3. Concerning Administration of Justice**

The Council shall initiate studies and investigations for the improvement of the administration of justice. These studies and investigations may be conducted by the entire Council, by any of its members or by its staff as directed by the Council. The Council may hire researchers and investigators and may contract for the performance of these functions. A topic for any study or investigation may be proposed at any meeting of the Council by any member without prior notice.

### **ARTICLE II**

#### **Membership**

##### **Section 1. Appointment; Limitation of Term**

Members of the Council shall be appointed and shall serve their terms as provided by law; however, a member whose term has expired shall continue to serve until a successor has been appointed. Council members may be appointed to successive terms; however, no Council member should serve more than two full terms or one unexpired term and one full term.

## **Section 2. Effective Date of Appointment**

**(A) Non-Attorney Members.** The effective date of a non-attorney member's appointment to the Council shall be the day following the effective date of the vacancy in the seat to which appointed, if appointed before that date; or the date of or specified in the gubernatorial letter of appointment, if appointed after that date. Non-attorney members shall have full voting rights effective upon the appointment date, unless and until denied confirmation by the legislature.

**(B) Attorney Members.** The effective date of an attorney member's appointment shall be the day following the effective date of the vacancy in the seat to which appointed, if appointed before that date; or the date of or specified in the letter of appointment from the board of governors of the Alaska Bar Association, if appointed after that date.

**(C) Chief Justice.** The effective date of the chief justice's appointment is the date that the chief justice assumes the post of chief justice.

## **Section 3. Oath of Office**

The Chair of the Council shall administer the oath of office to each new member, following a determination by the Council that the person selected has met the qualifications for membership set forth by law.

## **Section 4. Vacancies**

At least 90 days prior to the expiration of the term of any Council member, or as soon as practicable following the death, resignation, or announced intent to resign of any Council member, the executive director shall notify the appropriate appointing authority and request that the appointment process be initiated immediately to fill the vacancy.

## **Section 5. Disqualification**

**(A) Candidacy of Council Member.** Any member of the Judicial Council who seeks appointment to a judicial office or the office of public defender must resign from the Council as of the date of the application and should not accept reappointment to the Council for a period of two years thereafter.

**(B) Attendance at Regular Meetings.** Council members shall attend all regular meetings of the Council unless excused by the chair for good cause. If a member is absent without good cause for two consecutive meetings, the chair shall formally request the resignation of that member.

## **Section 6. Expenses; Compensation**

Council members shall be reimbursed for travel and other expenses incurred while on Council business and may receive compensation as otherwise provided by law.

## ARTICLE III Officers

### Section 1. Officers Specified

(A) The officers of the Council shall be the chair, vice-chair and executive director.

(B) **Chair.** The chief justice of the Alaska Supreme Court is the chair of the Alaska Judicial Council.

(C) **Vice-Chair.** The vice-chair will be the member of the Judicial Council whose current term will first expire.

(D) **Executive Director.** The Council by concurrence of four or more of its members may designate an executive director to serve at the pleasure of the Council.

### Section 2. Duties and Powers

(A) **Chair.** The chair shall preside at all meetings of the Council and perform such other duties as may be assigned by the Council. In the absence of an executive director or acting director, the chair will serve as acting director.

(B) **Vice-Chair.** The vice-chair shall preside at meetings of the Council in the absence of the chair. The vice-chair shall perform such other duties as usually pertain to the office of the chair when the chair is unavailable to perform such functions.

(C) **Executive Director.** The executive director shall keep a record of all meetings of the Council; shall serve as chief executive officer of the Council; shall be responsible to the Council for planning, supervising and coordinating all administrative, fiscal and programmatic activities of the Council; and shall perform such other duties as may be assigned. The executive director may receive compensation as prescribed by the Council and allowed by law.

(D) **Acting Director.** In the event of the incapacity, disability, termination or death of the executive director, the Council may appoint an acting director, and may impose such limits on the authority of said acting director as it deems advisable, until such time as a new executive director can be found, or until such time as the incapacity of the executive director can be cured. Should the Council choose not to appoint an acting director or otherwise fail to appoint, the chair of the Council will, ex officio, serve as acting director until a replacement executive director can be found.

## ARTICLE IV Meetings

### Section 1. Public Sessions; Public Notice

All meetings of the Judicial Council shall be open to the public, except as hereinafter specifically provided. At least three days prior to any such meeting to be held in Anchorage, Fairbanks, or Juneau, public notice of date, time, and place of the meeting and of general topics to

be considered shall be given through paid advertisements in major newspapers of general circulation in all three cities; for meetings to be held elsewhere in the state, paid public notice shall be provided at least three days in advance in the newspaper or newspapers of general circulation in such other areas as well as in the newspapers of general circulation in Anchorage, Fairbanks, and Juneau. When the notice requirements of this section are determined by the Council to be unreasonable, the Council is authorized to meet after such other period and utilizing such other form of public notice as it deems reasonable under the circumstances.

### **Section 2. Participation by Telecommunications**

It shall be the policy of the Judicial Council to meet in person, where practicable. When, however, in the opinion of the chairperson, circumstances exist warranting a telephone conference among members between meetings, or the personal attendance of one or more Council members at a regularly scheduled meeting has been excused for good cause, a member or members may participate in regular or special meetings by teleconference subject to the following requirements: that reasonable public notice under Article IV, Section 1, and adequate notice to members under Article IV, Section 8, have been given; that at least one member or staff person is present at the time and location publicly announced for any such meeting; and that adequate teleconference or other electronic communication means are available. Teleconferencing may be used to establish quorums, receive public input and, if all voting individuals have a substantially equal opportunity to evaluate all testimony and evidence, to vote on actions.

### **Section 3. Regular Meetings**

The Council shall hold not fewer than two meetings per year, at times designated by the Council, to consider problems which may affect the Council and concern the administration of justice in the State of Alaska.

### **Section 4. Special Meetings**

When a vacancy in the office of justice, judge, or public defender actually occurs or is otherwise determined to be lawfully impending, the chairperson shall call a special meeting of the Judicial Council within the time-frame required by law. The chairperson shall also call a special meeting of the Council upon the request of four or more members to consider such business as may be specified in the request; at such meeting, the Council may also consider such other business as may come before the Council with the consent of four or more of the members present. The chairperson shall fix the time and place of such meeting not more than 30 days from the date of receipt of such request.

**Section 5. Public Hearings**

The Council may hold public hearings on all matters relating to the administration of justice as it deems appropriate and in such places as it determines advisable.

**Section 6. Executive Sessions**

The Council may determine as permitted by law whether its proceedings will be conducted in executive session. This determination must be made in a session open to the public and the decision to hold an executive session must be supported by the concurrence of four or more members. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session, unless auxiliary to the main question. No action may be taken in executive session.

**Section 7. Place of Meeting**

Insofar as may be practicable, meetings should be held in the area of the State most directly affected by the subject matter under consideration, or elsewhere as determined advisable.

**Section 8. Notice of Meeting: Waiver**

Written notice of each meeting shall be mailed to all members of the Council as far in advance as practicable but in any event not less than five days before the date fixed for each meeting. Presence at a meeting of the Council without objection shall constitute waiver of notice.

**ARTICLE V  
Voting and Quorum**

**Section 1. Voting**

All members of the Council present shall be entitled to vote on all matters coming before the Council, except that the chair shall only vote when to do so would change the result. The Council shall act by concurrence of four or more members. All votes shall be taken in public session. Any member can vote in the affirmative or negative or abstain on any matter; However, a member who wishes to abstain shall so indicate before the question to be voted on is called and shall disclose the reasons for abstaining.

**Section 2. Conflict of Interest; Disqualification**

No member may vote on any matter in which he or she has a substantial personal or pecuniary interest. In addition, a member of the Council who believes that his or her personal or business relationship to any applicant for a judicial or public defender vacancy or to any judge or justice being evaluated for retention purposes might prevent such member from fairly and objectively considering the qualifications of such person, or might otherwise involve a conflict of interest or create the appearance thereof, shall disclose the circumstances of the actual or apparent conflict to the Council and shall disqualify himself or herself from discussing or voting on the nomination or retention of that person.

### **Section 3. Quorum**

Four members of the Council shall constitute a quorum for the transaction of business at any meeting.

### **Section 4. Rules of Order**

Robert's Rules of Order Revised will govern the meetings of the Council insofar as they do not conflict with these bylaws.

## **ARTICLE VI Committees**

### **Section 1. Standing Committees**

The Council may establish such standing committees from time to time as may be deemed appropriate for the efficient and effective conduct of Council business. Standing committee assignments shall be made annually by the chairperson. The function of each committee shall be to monitor Council activities between meetings, to provide guidance and advice to staff, and to report to the Council at regularly scheduled meetings regarding the committees' areas of oversight. Each committee shall include at least one attorney and one non-attorney member. To the maximum extent possible, Council members should be permitted to serve on the committee or committees of their choice. The following standing committees may be established:

- (A) Finance, audit, and administration;**
- (B) Programs and research;**
- (C) Judicial and public defender selection and retention;**
- (D) Legislation.**

### **Section 2. Ad Hoc Committees**

The chairperson may direct the establishment of ad hoc committees from time to time as may be deemed appropriate. Ad hoc committees shall report to the Council on their activities and may make recommendations for Council action.

## **ARTICLE VII Procedure for Submitting Judicial and Public Defender Nominations to the Governor**

### **Section 1. Notice of Vacancy; Recruitment**

Whenever a vacancy to be filled by appointment exists, or is about to occur, in any supreme court, court of appeals, superior court, or district court of this state, or in the office of public defender, the Council, by mail or by such other publication means as may be appropriate, shall notify all active members of the Alaska Bar Association of the vacancy, and shall invite applications from qualified judges or other members of the bar of this state for consideration by the Council for recommendation to the governor. Council members may also encourage persons believed by such

members to possess the requisite qualifications for judicial or public defender office to submit their applications for consideration and may cooperate with judicial selection committees of the state or local bar associations or of such other organizations as may be appropriate in the identification and recruitment of potential candidates.

## **Section 2. Application Procedure**

Each applicant for a judicial or chief public defender position shall obtain and complete an application for appointment provided by the Council and shall comply with all the requirements therein. Such application may request such information as deemed appropriate to a determination of qualification for office, including but not limited to the following: family and marital history; bar and/or judicial discipline history; criminal record; involvement as a party in litigation; credit history; physical and mental condition and history; community activities; academic and employment history; military record; and representative clientele.

## **Section 3. Evaluation and Investigation of Applicants' Qualifications**

**(A) Judicial Qualifications Polls.** The Judicial Council may conduct judicial qualifications polls in such form and manner as may be prescribed by the Council and cause the same to be circulated among the members of the Alaska Bar Association. The poll should be relevant to criteria listed in Article 1, Section 1 of these bylaws. If the Alaska Bar Association conducts a qualifications poll satisfactory to the Council, the Council may recognize such poll. The Judicial Council may conduct such other surveys and evaluations of candidates' qualifications as may be deemed appropriate.

**(B) Investigation.** The Council and its staff shall investigate the background, experience, and other qualifications of an applicant under consideration for a judicial or a public defender vacancy, and may call witnesses before it for such purposes.

**(C) Candidate Interviews; Expenses.** The Council may, when and where it deems desirable, conduct a personal interview with one, some, or all applicants for any judicial or public defender vacancy. Candidates requested to appear before the Council for such interviews shall appear in person; when, however, a candidate for good cause shown is unable to personally attend such interview, the Council may arrange for an interview by telephone or other electronic communication means with such applicant, and such alternative interview as may be appropriate, including but not limited to interview of such candidate by a committee of the Council at such other time and place as may be convenient. A candidate may choose to be interviewed publicly or in executive session, to protect the candidate's privacy interests consistent with Alaska's Open Meetings Act. The choice to interview publicly or in executive session will have no bearing on the council's evaluation of the candidate's qualifications.

A candidate's expenses for judicial or public defender office are that candidate's responsibility. The Council may reimburse candidates for travel expenses in the Council's discretion. The cost of a telephone interview requested by the Council shall be paid by the Council.

#### **Section 4. Nomination Procedure; Recommendation of Best Qualified Candidates**

The Council shall select two or more candidates who stand out as the most qualified under the criteria set out in Article I, Section 1 of these bylaws, considering (a) other candidates who have applied; (b) the position applied for; and (c) the community in which the position is to be located. The names of the selected candidates shall be submitted to the governor in alphabetical order; but if the council's vote does not result in selecting at least two applicants who are sufficiently qualified, the council shall decline to submit any names and will re-advertise the position.

#### **Section 5. Reconsideration**

The Council will not reconsider the names submitted to the governor after the nominees are submitted unless the disability or death of one or more nominees leaves the governor with less than two names for filling a judicial vacancy. If the governor requests additional nominees in such a situation, the Council will submit additional names so that the governor has at least two nominees for each vacancy. The Council may select additional names from the original applicants for the position or may re-advertise for the position.

#### **Section 6. Publication and Review of Procedures**

The Council shall establish and follow written forms and procedures for the nomination of attorneys who apply to be justices, judges, and public defender. The Council shall publish the bylaws and procedures in its biennial report to the Alaska Supreme Court and legislature, post them on its website, and provide them to applicants. The Council shall review these procedures at intervals not to exceed three years.

### **ARTICLE VIII Review of Judicial Performance**

#### **Section 1. Retention Election Evaluation**

Prior to each general election in which one or more justices or judges has expressed the intention to be a candidate for retention election, the Council shall conduct evaluations of the qualifications and performance of such justices and judges and shall make the results of evaluations public. Evaluations may be based upon the results of a judicial performance survey conducted among all active members of the Alaska Bar Association and other members, retired or inactive, that the Council chooses. Evaluations also may be based upon such other surveys, interviews, or research into judicial performance as may be deemed appropriate, including but not limited to, any process that encourages expanded public participation and comment regarding candidate qualifications.

#### **Section 2. Recommendation**

Based upon the evaluative data, the Council may recommend that any justice or judge either be retained or not be retained. The Council may actively support the candidacy of every incumbent judge recommended to be retained, and may actively oppose the candidacy of every incumbent judge whom it recommends not be retained. The Council shall publicize its recommendations.



### **Section 3. Judicial Performance Evaluation**

The Council may conduct evaluations of judges or other judicial officers, other than at the time of retention elections, and may make the results of the evaluations public.

### **Section 4. Publication and Review of Procedures**

The Council shall establish and follow written procedures for the evaluation of justices and judges. The Council shall publish the procedures in its biennial report to the Alaska Supreme Court and legislature, post them on its website, and provide them to justices and judges. The Council shall review these procedures at intervals not to exceed four years.

## **ARTICLE IX Extra-Council Communications**

Members of the public may wish to communicate their thoughts about the qualifications of applicants and the performance of judicial officers to individual Council members. All written communications between a Council member and any other person or organization regarding the qualifications of any applicant or the performance of any judicial officer should be forwarded to all other members; all oral communications regarding such matters should be shared with other members. Council members may encourage people to communicate with the Council in writing or at a public hearing.

Council members may discuss their individual views about the qualifications of applicants and the performance of judicial officers with members of the public, including the applicants and judicial officers. Council members may not publicly discuss the views of other Council members about the qualifications of applicants and the performance of judicial officers. Communications and deliberations among Council members that occur in executive session, including discussion about the qualifications of an applicant or the performance of a judicial officer shall be kept confidential in accordance with the law and Council bylaws.

## **ARTICLE X Access to Council Records**

### **Section 1. Public Records**

All records of the Judicial Council, unless confidential or privileged, are public as provided in AS 40.25.110. The public shall have access to all public records in accordance with AS 40.25.120.

Public Records include:

1. Council bylaws and policy statements;
2. Minutes of Council meetings;
3. Final Council reports;
4. Financial accounts and transactions;
5. Library materials; and
6. All records other than those excepted in this bylaw.

## **Section 2. Right to Privacy**

Materials that, if made public, would violate an individual's right to privacy under Art. I, Section 22 of the Alaska Constitution shall be confidential. Confidential materials are not open for public inspection and include:

1. Solicited communications relating to the qualifications of judicial or public defender vacancy applicants, or judicial officers;
2. Unsolicited communications relating to the qualifications of a judicial or public defender applicant or judicial officer, where the source requests confidentiality;
3. Those portions of the "application for judicial appointment" and "judge questionnaire" that reveal sensitive personal information entitled to protection under law;
4. Investigative research materials and internal communications that reveal sensitive personal information entitled to protection under law; and
5. Contents of Council employees' and members' personnel records, except that dates of employment, position titles, classification and salaries of present and/or past state employment for all employees are public information. In addition, application forms, resumes and other documents submitted to the Judicial Council in support of applications for any position with the Council grade 16 or above are public information.

## **Section 3. Deliberative Process**

Materials that are part of the deliberative process of the Judicial Council, including those prepared by Council employees, are privileged and confidential if their disclosure would cause substantial and adverse effects to the Council that outweigh the need for access. These materials generally include drafts and computations prior to final document approval, internal memoranda conveying personal opinions, and other pre-decisional documents not incorporated into public records under this bylaw.

## **Section 4. Other Information**

Information required or authorized to be kept confidential by law is not a public record.

## **Section 5. Privileged Communications**

Communications that are legally privileged are not public information. These communications include but are not limited to communications between the Council and its attorney made for the purpose of facilitating the rendition of professional legal services to the Council.

## **Section 6. Release of Information**

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information will be disclosed. Information that otherwise would not be disclosable may be released to the subject of that information or to the public if it is in a form that protects the privacy rights of individuals and does not inhibit candid debate during the decision-making process.

## **ARTICLE XI Office of Judicial Council**

The Council shall designate an office of the Council in such location as it deems appropriate. Records and files of the Council's business shall be maintained by the executive director at this location.

## **ARTICLE XII Appropriations**

The Council will seek such appropriations of funds by the Alaska Legislature and other funding sources as it deems appropriate to carry out its constitutional and statutory functions.

## **ARTICLE XIII Bylaw Review and Amendment**

The Council shall review these bylaws at intervals not to exceed six years. These bylaws may be altered or amended by the Judicial Council by concurrence of four or more members, provided reasonable notice of proposed amendments has been provided to all Council members.

These bylaws adopted by the Alaska Judicial Council, this 15th day of February 1966; amended November 10, 1966; June 18, 1970; March 30, 1972; February 15, 1973; May 26, 1983; December 10, 1986; March 19, 1987; January 14, 1989; November 2, 1993; June 26, 1996; December 9, 1996; September 23-24, 1997; July 6-7, 1998; July 15, 2002; September 22, 2005; November 28, 2005; October 14, 2006.

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**Appendix C**

**Judicial Appointment Log 2007 - 2008**

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## Appendix C

### Judicial Appointment Log 2007 - 2008

<b>Historical Log of Judicial Appointments 2007 - 2008</b>			
	<b>Candidates</b>	<b>Nominated</b>	<b>Appointed</b>
<b>2007 - Kenai Superior - new position</b>			
	Sharon A.S. Illsley Dennis Patrick James Scot H. Leaders Lynn E. Levengood Anna M. Moran Arthur "Chuck" Robinson	Anna M. Moran Arthur "Chuck" Robinson  <i>Meeting date 1/17-18/2007</i>	<b>Anna M. Moran</b> <i>3/5/07 by Governor Sarah Palin</i>
<b>2007 - Bethel Superior - Dale O. Curda - (no appointment in 2005 or 2006; readvertised in 2007)</b>			
	Ella Anagick R. Poke Haffner Marvin Charles Hamilton, III Dennis Patrick James	R. Poke Haffner Marvin Charles Hamilton, III  <i>Meeting date 1/17-18/2007</i>	<b>Marvin Charles Hamilton, III</b> <i>3/5/07 by Governor Sarah Palin</i>
<b>2007 - Fairbanks Superior - new position</b>			
	Aisha Tinker Bray R. Poke Haffner Bethany Spalding Harbison Judge Jane F. Kauvar Michael A. MacDonald Michael P. McConahy Alicemary L. Rasley John J. Tiemessen	Bethany Spalding Harbison Judge Jane F. Kauvar Michael A. MacDonald Michael P. McConahy  <i>Meeting date 4/14-15/2007</i>	<b>Michael A. MacDonald</b> <i>6/1/07 by Governor Sarah Palin</i>
<b>2007 - Anchorage District - Jack Smith</b>			
	Ella Anagick ( <i>withdrew</i> ) Nathaniel "Nick" Atwood Christopher C. Canterbury Suzanne R. Cole John M. Darnall Catherine M. Easter Rachel K. Gernat Patrick S. Hammers Dennis Patrick (Pat) James Richard W. Postma, Jr. Verne Edwin Rupright	Suzanne R. Cole John M. Darnall Catherine M. Easter Richard W. Postma, Jr.  <i>Meeting date 4/29/2007</i>	<b>Richard W. Postma, Jr.</b> <i>6/14/07 by Governor Sarah Palin</i>
<b>2007 - Kenai District - David Landry</b>			
	Patrick S. Hammers Sharon A.S. Illsley Dennis Patrick (Pat) James Scot H. Leaders Joe Montague Anna M. Moran ( <i>appt. to Superior Ct.</i> ) Paul A. Roetman Verne Edwin Rupright	Patrick S. Hammers Sharon A.S. Illsley Joe Montague  <i>Meeting date 4/28/2007</i>	<b>Sharon A.S. Illsley</b> <i>6/14/07 by Governor Sarah Palin</i>







<b>Historical Log of Judicial Appointments 2007 - 2008</b>			
	<b><i>Candidates</i></b>	<b><i>Nominated</i></b>	<b><i>Appointed</i></b>
<b>2009 - Supreme Court - Warren Matthews</b>			
	Morgan Christen Kenneth P. Jacobus Kenneth C. Kirk David A. Lawrence Frank A. Pfiffner Eric Smith	<i>Meeting date 02/03/2009</i>	
<b>2009 - Kodiak Superior - Joel Bolger</b>			
	Steve Cole Mark D. Osterman Robert P. Owens Stephen B. Wallace	<i>Meeting date 02/04/2009</i>	

**Appendix D**  
**Judicial Selection Procedures**

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## Appendix D

*The following information is given to each applicant for a judicial position. The Council updates this description of procedures periodically, so the information below should not be relied upon as the most current.*

### Alaska Judicial Council Procedures for Nominating Judicial Candidates

The Alaska Judicial Council is a constitutionally created state agency that evaluates the applications of persons seeking judicial appointment and nominates two or more qualified applicants to the governor for appointment to fill existing or impending vacancies.<sup>1</sup> The following is a brief summary of the judicial selection process - the steps that an applicant must take in order to be considered for a judicial appointment and the steps that are taken by the Judicial Council to ensure that applicants are fairly evaluated and that the most qualified are nominated. These procedures are published in the Council's biennial reports to the supreme court and to the legislature and are posted on the Council's website. Every applicant receives a copy of these procedures.

#### I. Application Procedures

##### A. Notice of Vacancy; Recruitment

###### 1. Notice of Vacancy

As soon as possible after learning that a vacancy exists or is about to occur in the supreme court, court of appeals, superior court, or district court, the Council issues a press release announcing the vacancy, posts a notice on its website, and sends notice of the vacancy to all active members of the Alaska Bar Association. The notice describes the judicial vacancy, states the statutory requirements for the position, invites all qualified attorneys to apply, tells interested attorneys how to obtain applications, and sets the deadline for applying. The notice may also state that the Council has the discretion to use applications to make nominations for other pending or impending vacancies at the same level of court in the same location. The application deadline is typically three to four weeks after the Council announces the vacancy.

###### 2. Recruitment

Council members and staff may actively encourage qualified persons to apply for a judicial position. The Council may cooperate with selection committees of the state bar or local bar

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<sup>1</sup> Article IV, Section 5 of the Alaska Constitution; Titles 15 and 22 of the Alaska Statutes.

associations, or other appropriate organizations to identify and recruit potential applicants. The Council may extend an application deadline to encourage more applications.

## **B. Submission of Applications**

Application forms for open judicial positions may be obtained upon request from the Council's office and are also available on the Council's website. Each applicant seeking to be considered for nomination by the Council to an open judicial position must file a completed Judicial Council application form and must comply with all requirements described in the form.

### **1. Background Information**

The application form asks for information that may be relevant to determine qualifications for office, including but not limited to: academic and employment history; bar and/or judicial discipline history; community service and pro bono activity; community activity and non-legal interests; involvement as a party in litigation; criminal record; credit history; military record; the addresses of all of the applicant's residences in the past five years; and the applicant's ability to perform essential job functions with or without reasonable accommodation. The Council asks each applicant to provide a photograph to assist members in recalling the interviews. The Council also asks whether an applicant prefers to be interviewed in public session or in executive session.

### **2. References**

The Council requires an applicant to submit the names of three professional references and two character references. The Council asks the applicant to submit the names of attorneys and judges involved in three of the applicant's cases in the past three years that went to trial and three of the applicant's cases in the past three years that did not go to trial but in which the applicant did substantial work. An applicant must submit the names of persons who can verify and comment about the applicant's past and present employment.

### **3. Nature of Law Practice**

An applicant is asked to provide detailed information about the applicant's practice of law within the past five years, including the percentage of practice in state versus federal court, the percentage of practice in civil versus criminal matters, and the percentage of practice at the appellate versus trial court level. An applicant must describe how often the applicant appears in court and must provide an estimate of how many jury and non-jury trials, appellate matters, and administrative hearings the applicant has handled within the past five years.

**4. Writing Sample**

The Council requires a sample of the applicant's writing ten to twenty pages in length, prepared solely by the applicant within the past five years. The Council also asks the applicant to provide a list of any legal publications the applicant has authored.

**5. Information Needed to Determine Potential Conflicts**

An applicant is asked to provide the amount and source of the applicant's income for the past three years and the names and occupations of the applicant's immediate family members. The applicant is asked to identify any public or political office the applicant has held. The applicant is asked to provide information about his or her membership in legal and non-legal organizations and other information bearing on potential conflicts of interest.

**6. Short Biography to Post on Council Website**

The Council requires an applicant to submit a brief written summary of his or her background, legal education, and legal experience. The Council posts applicants' summaries on its website and invites attorneys to review them when responding to Council surveys. Applicants may also choose to have their photograph posted on the website with their biographical summary.

**7. Number of Copies; Re-Use of Applications**

Applicants must submit twelve copies of the completed questionnaire and writing sample and twelve copies of their photograph to the Council on or by the date set forth in the notice of vacancy. If an applicant applies for another judicial position within six months of a prior application, the applicant must provide written notice to the Council of his or her intent to apply for the new vacancy. The Council may permit the applicant to rely on his or her most recent application, but requires the applicant to provide any supplemental information.

**C. Confidentiality**

**1. Non-Public Materials**

The Council maintains the confidentiality of sensitive and highly personal information in applications, including but not limited to: home and e-mail addresses; home and mobile telephone numbers; social security number; income; names and occupations of immediate family members; formal disciplinary or ethical complaints, charges or grievances brought against the applicant as an attorney or judge that did not result in public discipline; medical and health history; and the financial interests of the applicant. The Council maintains as non-public material all solicited counsel questionnaires, reference letters, and employment verifications except those that the authors state in writing can be provided to the governor; those are provided only to the governor. The Council

maintains as non-public material all unsolicited comments and letters for which the author requests confidentiality or which the Council in its discretion believes should remain confidential to protect third parties.

## **2. Public Materials**

Information not described above as non-public material is set forth in a separate part of the application and is available to the public.

## **II. Initial Review of Applications; Background Investigation**

### **A. Initial Review for Completeness and Compliance with Statutory Requirements**

As soon as possible after applications are received, Council staff review the applications for completeness and may reject non-conforming applications. Staff review applications to determine whether the applicant meets the minimum statutory requirements for the position, including active practice of law and residency requirements. Staff may request additional information from an applicant to resolve any potential problems the applicant may have in meeting statutory requirements. If the additional information does not resolve the problem, staff will refer the issue to the Council for it to make the determination. The Council may choose to determine the applicant's eligibility immediately, to request further investigation, or to defer a decision pending completion of the interview process. In deciding if an applicant meets an active practice requirement, the Council will consider whether the applicant has substantially complied with the requirement.

### **B. Background Investigation**

#### **1. Reference Check**

Council staff begin an investigation to confirm and supplement information provided by the applicant. The Council writes to all of the applicant's references and former employers. References and prior employers are asked to comment on the applicants' qualifications under the criteria set forth in Article 1, Section 1 of the Council's bylaws and Section VI of these procedures, among other things. Attorneys and judges identified by the applicant as having had recent experience with the applicant are sent questionnaires that ask about these qualities and request the respondent's opinion about the applicant's suitability for nomination. Questionnaires may be submitted electronically via the Council's website or returned to the Council through the mail. Questionnaire respondents are provided with the option of signing their name. The Council does not share with applicants the materials it solicits, including reference letters, employment verification letters, or questionnaires. The Council may share with applicants the substance of a solicited comment. The Council does not reveal the identity of the respondent unless the respondent waives anonymity. The reference check takes about six weeks to complete.



## **2. Background Investigation**

Council staff review bar files for the applicant's history with and standing in the bar, and fee arbitration and grievance histories, whether action was taken or not. It further investigates the allegations if necessary. An applicant's credit report is obtained. The applicant's Martindale Hubble rating, if any, is reviewed. Staff investigate whether the applicant has been a party to any civil litigation and if so, what the applicant's involvement was in that litigation and how it was resolved. Staff investigate whether the applicant has had any criminal history, traffic violations, or administrative actions against his or her driver's license. Staff review the applicant's potential conflicts of interest as indicated on the application, or from attorney or public comment or other sources that could pose a significant problem for the proper functioning of the courts if the applicant is appointed. Staff members obtain and/or verify information on pro bono or other legal service activity. Staff members may otherwise investigate any specific verifiable information obtained from any source about an applicant's fitness for office. This may include speaking with the source of that information, researching the Internet, newspapers, court files, transcripts, hearing records, or otherwise attempting to ascertain the veracity of the information. The background investigation normally takes about two months to complete. Because the Council continually solicits and receives public feedback about applicants, a background investigation can extend until the time the Council votes on its nominations.

## **3. Evaluation of Writing Samples**

After the application deadline, staff evaluate applicant writing samples for organization, use of language, correct grammar and syntax and other characteristics of good writing. Staff also review the samples for the quality of the applicant's legal research and analysis.

# **III. Bar Poll; Public Comment**

## **A. Bar Poll**

### **1. Form of Poll**

The Council surveys all active and in-state inactive members of the Alaska Bar Association. The bar poll asks attorneys to rate each candidate on a five point scale [1 (Poor) to 5 (Excellent)] on six criteria: professional competence, integrity, judicial temperament, fairness, suitability of experience, and overall professional qualifications. Survey respondents indicate whether they base their numerical ratings on direct professional experience, other personal contacts, or professional reputation, or whether they are declining to evaluate a particular candidate due to insufficient knowledge. Respondents with direct professional experience with an applicant are asked to specify whether that experience is substantial and recent, moderate, or limited. Respondents are asked to

provide demographic information including their length, location, and type of law practice and their gender.

The Council asks respondents to submit comments about an applicant. Respondents are not required to provide their names with each comment but are encouraged to do so. Respondents are reminded of their ethical obligation to be truthful in all comments submitted. Respondents are assured that their names, if provided, will not be given to applicants and will not be used by the Council to identify the respondent's survey ratings. Sample pages of a bar poll are appended (Appendix B).

## **2. Method of Polling**

The Council uses an electronic survey and a paper survey to poll attorneys. Surveys are distributed about one week after the application deadline. Attorneys have three to four weeks to respond to the Council's surveys.

The Council maintains an updated list of active and in-state inactive members of the Alaska Bar Association. Each name on the list is associated with a control number. Immediately after the application deadline, the Council sends the complete list to an independent contractor, typically a workgroup affiliated with the University of Alaska. This contractor receives paper surveys and analyzes all survey data.

The Council maintains an updated list of active and in-state inactive members of the Alaska Bar Association who have provided their e-mail address to the Alaska Bar Association or to the Council. Each attorney on this list is assigned a control number that corresponds to the control number on the complete list of attorneys described in the preceding paragraph. A different independent contractor administers the electronic survey. Immediately after the application deadline, the Council forwards its list of e-mail addresses to the contractor administering the electronic survey.

### **a. Electronic Bar Survey**

The contractor sends an e-mail invitation to participate in the bar poll to attorneys on the Council's e-mail list. The invitation provides an attorney with a password encoded link to access the survey. The invitation reminds an attorney to not respond to the paper survey if the attorney responds to the electronic survey. The electronic survey asks attorneys whether they wish to discontinue receiving paper surveys. Attorneys receiving electronic surveys are sent an e-mail reminder prior to the response deadline, if they have not yet responded to the survey. Electronic survey data are encrypted during transmission to preserve the confidentiality of the data. The contractor strips the response of its e-mail address. Thereafter, the contractor identifies the survey response by its control number. Within a few days of the survey deadline, the contractor who

administers the electronic survey transmits the data to the independent contractor who receives paper surveys and analyzes all survey data.

**b. Paper Bar Survey**

The Council sends paper surveys to active and in-state inactive members who have not indicated that they wish to discontinue receiving paper surveys. The paper survey reminds an attorney to not respond to the electronic survey if the attorney responds to the paper survey. Respondents are instructed to place the completed survey inside a plain envelope marked “confidential” and to place that envelope in a self-addressed, pre-paid postage return envelope containing the respondent’s name and signature. Upon receipt, the contractor separates the outside envelope from the survey form. Thereafter, the contractor identifies the survey response by its control number.

**3. Method of Evaluating Poll Results**

**a. Review for Duplicate Responses**

When the electronic survey data are received by the contractor responsible for survey analysis, the contractor eliminates the possibility of duplicate responses by comparing the control numbers of paper and electronic survey responses. If the contractor identifies duplicate responses, the contractor discards the survey that is less complete. The contractor then assigns a new, randomly assigned control number to all survey responses.

**b. Numerical Ratings**

The contractor prepares a statistical analysis of all survey responses, including average ratings for each quality for each candidate by range. Ratings based on personal contacts or professional reputation are not included in most average ratings. The report provides detailed information about ratings by different demographic groups. The Council may use these data to identify patterns in poll results. The Council may ask the contractor to analyze the report for statistical or other anomalies in the data. The report includes a discussion of methodology and data management procedures. The Council publishes the report of numerical ratings on its website. Sample pages from an evaluation report are appended. (Appendix C)

**c. Bar Poll Comments**

The contractor also prepares a separate report that includes a transcription of all respondent survey comments about applicants. If a respondent signed a comment, the respondent’s name is transcribed with the comment. If a respondent did not sign a comment, the comment is associated with the new control number assigned by the contractor. The assignment of a new control number precludes the Council from identifying the author of a bar poll comment from a survey respondent

who wants to remain anonymous. Staff may investigate substantive comments submitted in the bar poll.

#### **4. Distribution of Bar Poll Results**

The contractor provides the Council with its analysis and a transcript of all bar survey comments two to three weeks after the survey response deadline. Within a few days of receiving the analysis, Council staff inform applicants of survey results.

##### **a. Numerical Ratings**

Staff inform the applicant of his or her ratings and provide the applicant with a general idea of the spectrum of ratings received by applicants. Staff do not identify the scores of other applicants.

About two weeks after staff have contacted all applicants about their ratings, the Council publicly announces the numerical ratings received by applicants who have not withdrawn. An applicant's ratings are not released publicly if the applicant withdraws sufficiently in advance of publication. The Council distributes a press release that summarizes survey ratings. All applicants who have not withdrawn receive a copy of the complete survey rating analysis. The Council posts the press release and the survey rating analysis on its website.

##### **b. Bar Poll Comments**

Council staff edit the transcribed bar poll comments to remove information that might compromise the identities of respondents. Staff send applicants their written edited comments about one week after all applicants have been contacted by telephone. The edited comments indicate whether the comments were signed or unsigned, but no identifying information about the survey respondent is provided. Bar poll comments about applicants are not released publicly.

#### **B. Solicitation of Public Comment**

Immediately after the application deadline has passed, the Council issues a press release announcing the names of applicants; it also publicizes and posts on its website the place and approximate date of the Council meeting set for candidate interviews and the Council's vote. In its press release and on its website, the Council invites comments from the public about applicants. The public is invited to write, telephone, or fax comments to the Council. The public is also invited to submit comments via the Council's website.

The Council holds a public hearing to receive public comments. If feasible, the hearing is held in the community where the judge will sit. The hearing typically coincides with the time set for applicant interviews. The Council advertises its public hearing through paid advertisements in major

newspapers in Anchorage, Fairbanks, and Juneau, and in the location of the vacancy if different. The Council may take public comments telephonically at the Council's expense.

#### **IV. Distribution of Applicant Materials to Council Members**

Council staff compile all solicited materials and any unsolicited materials submitted to the Council about applicants. Approximately three weeks prior to the Council's meeting to interview applicants, Council staff send a packet of materials to each Council member about the applicants. This packet includes:

1. copies of the written applications
2. applicant writing samples and a memo prepared by staff analyzing the samples
3. a staff memorandum summarizing staff review of the applicant's discipline files, credit, civil, and criminal history, and conflicts of interest
4. memoranda concerning particular matters investigated by staff
5. a report of the complete bar poll numerical ratings and statistical analysis
6. an unedited transcription of attorney comments submitted in the bar poll in a format that identifies information omitted in the edited version received by each applicant
7. if applicable, bar poll ratings received by the applicant in prior applications or judicial retention elections
8. all letters of reference
9. all responses to questionnaires solicited by the Council from attorneys and judges with recent experience with the applicant
10. all public comments
11. any unsolicited materials received concerning the applicant

These materials typically exceed one hundred pages of written materials per applicant. Council members review all of these materials before meeting to interview applicants.

## **V. Interview Procedures**

### **A. Prior to the Interview**

#### **1. Scheduling**

Within a few days after bar poll results are publicly released, the Council schedules specific interview times for applicants. The Council sends letters to applicants notifying them of the date, time, and location of their interview. Applicants are given about four to six weeks notice of their specific interview time. The Council posts a schedule of interview times on its website. In its advertisements and notices of a Council meeting to interview applicants, the Council invites the public to contact the Council or review the Council's website for an interview schedule.

The Council typically interviews all applicants. If an applicant applies for multiple judicial openings that are simultaneously pending, the applicant is interviewed only once for all vacancies.

Interviews usually occur in the location of the vacancy. The Council interviews applicants in person or may arrange an interview by telephone or other electronic means, at its discretion. Expenses incurred by the applicant are the applicant's responsibility. The Council has the discretion to reimburse applicants for travel expenses or the cost of a telephone interview.

#### **2. Public and Private Interviews**

The application gives applicants a choice between an interview in public session or an interview in executive session. Applicants may change their request in writing at any time before the interview starts. An applicant's choice of a public or private interview has no bearing on the Council's determination of the applicant's qualifications or on the questions the Council may ask. The Council notes on its schedule which interviews are expected to be in public session and which are expected to be in executive session. To the extent possible, the Council schedules public interviews consecutively.

#### **3. Communicating Comments About Applicants**

Without identifying the source, staff inform an applicant of comments about the applicant that the Council may have received that were not included in the bar survey comments forwarded to the applicant.

#### **4. Disclosures by Council Members**

Immediately before interviewing an applicant, the Council convenes briefly in executive session and each Council member discloses to other Council members any relevant information

known or communicated to the Council member about the applicant that other members may not know.

**B. The Interview**

**1. Length of Interview**

An interview usually lasts about forty-five minutes.

**2. The Interview Process**

The interview is preceded by an introduction of the applicant to all Council members and any Council staff present. The chief justice typically begins the interview by asking the applicant to provide an opening statement concerning the applicant's interest in and qualifications for the position. Each Council member is then given an opportunity to question the applicant. After all Council members have completed the first round of questioning, any Council member may ask additional questions. The chief justice then has an opportunity to ask questions. At the conclusion of the interview, applicants may make a brief closing statement and address any matters not raised during the interview.

**3. Focus of Interview Questions: Selection Criteria**

The Council's interview questions will focus on matters relevant to determining the applicant's qualifications under the criteria set out in Article I, Section 1 of the Council's bylaws. Council members may inquire about any relevant concerns raised in the materials provided to the Council or any issues arising from the applicant's testimony before the Council.

Members will not ask questions designed to elicit views on issues likely to be litigated before the applicant, if appointed. Nor will Council members ask about an applicant's political affiliations, religious beliefs, or other "prohibited considerations" listed below in Part VI, except when reliable evidence or the applicant's own testimony suggests that questions relating to these topics may be reasonably necessary to address specific concerns about the applicant's qualifications. Thus, for example, if the Council received credible and specific information indicating that an applicant's actions on the bench might be influenced by religious bias, Council members could pursue the issue to ensure that the applicant would be able to act fairly and impartially as a judge. Similarly, if an applicant made statements about having strong political affiliations or views, Council members could ask follow-up questions to confirm that these affiliations and views would not carry over to the applicant's judicial performance.

#### **4. Questions Based on Confidential or Anonymous Source**

When questioning an applicant about information received from a source who was promised confidentiality, Council members will phrase their questions to avoid revealing the confidential source's identity, and the Council will not otherwise disclose the source to the applicant during the interview or at any other time. When a Council member asks a question concerning unfavorable information received from a confidential or anonymous source and it appears that the confidentiality or anonymity of the Council's source might impair the applicant's ability to answer the question, the applicant's inability to respond fully will be taken into account. If the applicant can shed any light on the allegation, the Council will consider the applicant's explanation; if not, the applicant's failure to explain will have no negative effect on the Council's decision. An applicant who is asked such a question has no "burden" to defend against the confidential or anonymous allegation; and the mere fact that a Council member asks about a confidential or anonymous allegation does not imply that the Council member or the Council as a whole assume that the allegation is true. Although Council members may ask such questions to determine if the applicant might be able to shed light on the issue, members always bear in mind that, ultimately, anonymous allegations cannot be held against an applicant unless they are corroborated, independently substantiated, or acknowledged by the applicant.

### **VI. Nomination Procedures**

#### **A. Criteria for Evaluating Qualifications of Individual Applicants**

Article I, Section 1 of the Council's Bylaws requires Council members to determine the qualifications of individual judicial applicants by considering the following selection criteria:

- Professional Competence, Including Written and Oral Communication Skills. When addressing professional competence, Council members consider intellectual capacity, legal judgment, diligence, substantive and procedural knowledge of the law, organizational and administrative skills, and the ability to work well with a variety of types of people. Because communications play a vital role in any judge's work, Council members assess an applicant's ability to communicate in writing and speaking. Members consider the applicant's ability to discuss factual and legal issues in clear, logical, and accurate legal writing. They also consider the applicant's effectiveness in communicating orally in a way that will readily be understood and respected by people from all walks of life.
- Integrity. In evaluating integrity, Council members consider whether the applicant has demonstrated a consistent history of honesty and high moral character in the applicant's professional and personal life. Members also consider the applicant's respect for professional duties arising under the codes of professional and judicial conduct, as well as the applicant's ability to understand the need to maintain propriety and the appearance of propriety.



- **Fairness.** To assess an applicant's fairness, Council members examine whether the applicant has demonstrated the ability to be impartial to all persons and groups of people and has shown a commitment to equal justice under the law. Members look for applicants who have shown themselves to be open-minded and capable of deciding issues according to the law, even when the law conflicts with their personal views.
- **Temperament.** In assessing an applicant's temperament, Council members consider whether the applicant possesses compassion and humility; whether the applicant has a history of courtesy and civility in dealing with others; whether the applicant has shown an ability to maintain composure under stress; and whether the applicant is able to control anger and maintain calmness and order.
- **Judgment, Including Common Sense.** To determine an applicant's judgment and common sense, Council members look for a sound balance between abstract knowledge and practical reality: members consider whether, in making decisions in the legal arena or in other spheres of life, the applicant has demonstrated the ability to make prompt decisions that resolve difficult problems in a way that makes practical sense within the constraints of any applicable rules or governing principles.
- **Legal and Life Experience.** Council members consider both legal and life experience. They evaluate the amount and breadth of an applicant's legal experience and the suitability of that experience for the position sought, including trial and other courtroom experience and administrative skills. At the same time, Council members look for broader qualities reflected in the applicant's life experiences, such as the diversity of the applicant's personal and educational history, exposure to persons of different ethnic and cultural backgrounds, and demonstrated interests in areas outside the legal field.
- **Demonstrated Commitment to Public and Community Service.** In assessing an applicant's commitment to public and community service, Council members consider the extent to which an applicant has demonstrated a commitment to the community generally and to improving access to the justice system in particular.

#### **B. Initial Discussion of Individual Applicant's Qualifications**

Immediately after concluding an individual applicant's interview, the Council discusses that applicant to enable each Council member to evaluate the applicant's qualifications under the selection criteria described above and in Article I, Section 1 of the Council's Bylaws. The Council holds the discussion in executive session to promote candid discussion about the qualifications of applicants. Each Council member is given an opportunity to comment on that member's assessment

of the applicant; the order of discussion follows the order in which Council members questioned the applicant.

At this stage, the discussion centers on the individual applicant's strengths and weaknesses under the selection criteria. Council members do not decide which applicants rank as most qualified among all the applicants. Each Council member independently assesses the individual applicant's qualifications. The Council does not attempt to reach a consensus, and no vote occurs.

After each member has spoken, all members have an opportunity to make further comments. The discussion then ends, and the Council turns to the next applicant interview, if any is scheduled. The Council repeats the same procedure until all candidates have been interviewed and their individual qualifications have been discussed.

### **C. Deliberation to Determine Most Qualified Applicants**

After all applicants have been interviewed, the Council deliberates on the entire slate of candidates. By this time, each Council member has evaluated the individual qualifications of all applicants under the criteria described in Article I, Section 1 of the bylaws; the deliberations now turn to comparing and ranking all applicants so that each member can identify the candidates whose overall qualifications, in that member's view, make them most qualified to be nominated. The procedure for making this determination is spelled out in Article VIII, Section 4 of the Council's bylaws. This section requires Council members to select the candidates who are most qualified under the criteria described in Article I, Section 1 by considering:

- **All Candidates Who Have Applied.** Under the procedures set out in Article VIII, Section 4, each Council member compares the relative standing of all applicants, relying on that member's independent judgment as to each candidate's individual qualifications according to Article 1, Section 1's selection criteria.
- **The Position Applied For.** Each Council member takes into account the specific level of judgeship applied for and considers the ability of each candidate to serve at that level.
- **The Community in Which the Position is Located.** Each Council member looks at the needs of the particular community where the new judge will serve.

In all cases, then, each Council member's final choice of the most qualified applicants will reflect a relative determination that depends in part on the strength of the entire slate of applicants, the nature of the open position, and the needs of the community to be served.

With these procedures in mind, the Council begins its deliberations. It deliberates in executive session to promote candid discussion about the qualifications of applicants in order to determine the most qualified applicants. The order of discussion usually follows the order in which Council members questioned the first applicant for the position; the chief justice speaks last. After each Council member has spoken, all members may engage in additional discussion until no member wishes to make further comments.

Although all members consider the views of other members and strive for consensus if possible, each ultimately makes an independent decision as to which candidates are most qualified under the Council's selection standards, voting on the basis of the member's personal judgment and conscience. No vote is taken in executive session. The Council has no policy regarding the ideal or “target” number of applicants who should be named as most qualified — either generally or for any given judicial position. In each case, the number of candidates nominated is simply determined by how many candidates receive four or more affirmative votes — a determination that occurs in the public session after the Council ends its deliberations.

#### **D. Vote To Nominate Most Qualified Applicants**

As soon as practicable after the Council completes its deliberations in executive session, it goes into public session and takes its formal vote to nominate the most qualified applicants. Each Council member votes according to that member’s personal assessment of the applicants’ qualifications as determined under the criteria and procedures set out in this statement of procedures. The vote consists of a roll call vote taken for each applicant individually, in alphabetical order. The Council's executive director ordinarily administers the voting. After the roll call is completed as to all applicants for a vacancy, the person administering the voting confirms that no further voting by regular members is needed and declares voting by regular members closed. At any time during the voting on a vacancy until the person administering the voting declares voting by regular members closed, Council members may change their vote for or against any applicant. Once voting by regular members is closed, the chief justice votes if the vote might affect the outcome. To be nominated, a candidate must receive four or more affirmative votes. If the Council votes to nominate fewer than two applicants it will decline to submit any names. Typically, the Council will re-advertise the position immediately.

#### **E. Prohibited Considerations in Determining Qualifications and Voting**

##### **1. Anonymous Comments**

Council members do not rely on anonymous comments unless they are corroborated, independently substantiated, or acknowledged by the applicant.

## **2. Discrimination**

The Council refrains from any form of discrimination prohibited under state and federal law.

## **3. Religious and Political Beliefs**

The Council does not consider an applicant's political or religious beliefs, but will consider whether the applicant's personal beliefs indicate a substantial bias or conflict of interest that could impede the proper functioning of the courts or show that the applicant would be unable to apply the law impartially.

## **4. Likelihood of appointment**

The Council does not consider an applicant's likelihood of appointment by the governor.

# **VII. Post-Nomination Procedures**

## **A. Notification of Applicants**

At the interview, applicants are asked for contact numbers where they can be reached immediately after the Council's vote. As soon as possible after the Council completes its vote, the Council's executive director or designee telephones applicants about the Council's vote. The Council also sends each applicant written notice of its decisions. Nominations are posted on the Council's website as soon as possible after the meeting. The Council issues a press release about its nominations.

## **B. Transmittal to the Governor**

### **1. Preparation of List of Nominated Candidates and Press Release**

As soon as possible after the Council meeting, staff prepare a list of nominated candidates compiled in alphabetical order. Staff also prepare a press release listing the Council's nominees.

### **2. Call to Governor's Office**

As soon as possible after individual applicants are notified, Council staff call the governor's office to communicate the Council's nominations.

### **3. Written Notification to Governor**

On the first business day after the Council's vote, the Council sends the governor a letter listing the nominees in alphabetical order, accompanied by the following materials: the Council's vote tally; each nominee's application, including the confidential sections; the results of any

qualification surveys, without comments provided to the Council in confidence; written responses solicited by the Council from persons identified by the nominee in his or her application as references, former employers, and attorneys and judges who had recent experience with the nominee, but only if these persons gave written permission to send their responses to the governor; and any unsolicited materials received by the Council about the nominee, unless the source requested in writing that the material be kept confidential.

**C. Requests for Additional Names; Reconsideration**

The Council does not reconsider its nominees after the names are submitted except in the case of death, disability, or withdrawal of a nominee. If the death, disability, or withdrawal of one or more nominees leaves the governor with fewer than two names for filling a vacancy, the Council may, upon request of the governor, submit enough additional names so that the governor has at least two nominees for the vacancy. The Council will vote to determine if there are additional applicants who can be nominated from the original list of applicants. If no candidate receives sufficient votes to be nominated, the Council will re-advertise the position.

Effective date: October 3, 2005, amended October 14, 2006.

**Attachment A**  
*(Sample Judicial Council selection survey document)*



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1969 (907) 279-2526 FAX (907) 276-5046  
http://www.ajc.state.ak.us E-Mail: postmaster@ajc.state.ak.us

EXECUTIVE DIRECTOR  
Larry Cohn

NON-ATTORNEY MEMBERS  
William F. Clarke  
Bill Gordon  
Christena Williams

ATTORNEY MEMBERS  
James H. Cannon  
Kevin Fitzgerald  
Louis James Menendez

CHAIR, EX OFFICIO  
Dana Fabe  
Chief Justice  
Supreme Court

July 8, 2008

Dear Member of the Alaska Bar Association:

Attached is the bar survey for applicants for the current vacancy on the Ketchikan Superior Court, First Judicial District. Please refer to Professional Conduct Rule 8.2 concerning your obligation to provide truthful and candid opinions on the qualifications and integrity of these applicants.

The Council encourages narrative comments. A page for comments is provided for each applicant. If these pages are not sufficient please attach separate pages as needed.

The Council gives attorneys the option of identifying their written comments to the Council by signing comment pages. While optional, providing your name does tend to give comments more credibility with the Council. The Council does not consider unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant. Your name will not be provided to the applicant, and it can not be used by the Council to identify your ratings or your comments on other applicants. Survey comments will be shared with an applicant only after the comments have been edited to remove information that might identify the respondent. Note that you must write your name on each comment page for which you wish to identify yourself to the Council.

**We ask that you complete and return the survey forms no later than August 8, 2008**, to Behavioral Health Research & Services (BHRS), P.O. Box 240207, Anchorage, Alaska 99524-9990. Alternatively, you may respond to the survey electronically over the Internet. If you respond to the electronic survey, please do not respond to this paper survey.

Very truly yours,

A handwritten signature in black ink, appearing to read "Larry Cohn".  
Larry Cohn  
Executive Director

**Attachment A - Continued**  
**(Sample Judicial Council selection survey document)**

**Judicial Council Electronic Surveys - Easier, Faster, Cheaper, Secure**

The Judicial Council hopes that you will consider using its electronic surveys instead of paper surveys. Most attorneys respond to our surveys via the Internet. In our most recent survey, more than twice as many attorneys responded via the Internet. Attorneys who use our electronic surveys report that they are much easier and considerably less time-consuming to use. We appreciate their use of our electronic surveys because on-line surveys are substantially less costly for the Council. Electronic surveys reduce printing, postage, data entry, and data analysis costs. Electronic surveys benefit applicants, the court, and the public by shortening the time needed by the Council to screen judicial applicants.

Some attorneys may have decided to not respond electronically due to concerns about confidentiality and the security of on-line transmissions. Please be assured that measures are in place to protect the privacy of your survey response. Each participating attorney is given an individualized link to the survey. Survey responses are encrypted for secure transmission to the contractor. When an on-line response is received by our independent contractor, it is stripped of the e-mail address that might identify the respondent. The response is then identified by a control number. This is essentially the same process that is used with the paper survey when the outside return envelope bearing the respondent's name and signature is separated from the survey response.

If you already receive electronic surveys, we hope that you will respond electronically instead of using our paper surveys. In that case, we encourage you to discontinue receiving paper surveys. There is a question at the end of the electronic survey that allows you to notify us that we no longer need to send you a paper survey.

If you do not receive electronic surveys, we encourage you to provide us with your current e-mail address. We will not forward your e-mail address to any other entity. You can check out the on-line survey and still receive a paper survey. We hope that you will try the electronic survey and then opt to receive only electronic surveys in the future.

Our aim is to eliminate the use of paper surveys. We encourage you to join your colleagues who respond electronically. If you have any questions about our electronic survey, please do not hesitate to contact us. Thank you very much for your participation.

**Attachment A - Continued**  
**(Sample Judicial Council selection survey document)**

**Demographic Questions**

1. **Type of Practice.** Which of the following best describes your practice? *(CIRCLE ONE)*
  1. Private, solo
  2. Private, office of 2-5 attorneys
  3. Private, office of 6 or more attorneys
  4. Private corporate employee
  5. Judge or judicial officer
  6. Government
  7. Public service agency or organization (not government)
  8. Retired
  9. Other (specify) \_\_\_\_\_
  
2. **Length of Alaska Practice.** How many years have you practiced law in Alaska? \_\_\_\_\_ years
  
3. **Gender**                    \_\_\_\_\_ Male    \_\_\_\_\_ Female
  
4. **Cases Handled.** The majority of your practice consists of *(CIRCLE ONE)*
  1. Prosecution
  2. Mainly criminal
  3. Mixed criminal and civil
  4. Mainly civil
  5. Other (specify) \_\_\_\_\_
  
5. **Location of Practice.** In which judicial district is most of your work conducted? *(CIRCLE ONE)*
  - First District
  - Second District
  - Third District
  - Fourth District
  - Outside Alaska

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Please consider each of the following applicants.

**If you do not have sufficient knowledge to evaluate an applicant, please go to the next applicant.**



**Attachment A - Continued**  
**(Sample Judicial Council selection survey document)**

Ketchikan Superior Court, First Judicial District

<b>WILLIAM BARKER CAREY</b>
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**Basis for Evaluation**

- A. Which of the following best describes the basis for your evaluation of this applicant? Direct professional experience is limited to direct contact with the applicant's professional work. This includes working with or against the attorney on a legal matter (i.e., a case, arbitration, negotiation, . . .) or as a judicial officer or other dispute resolution role. (*check one*)
- Direct professional experience       Professional reputation
- Other personal contacts       Insufficient knowledge to evaluate this candidate (go to **next** candidate)
- B. If you checked direct professional experience, which of the following best describes the amount of that experience?
- Substantial and recent (within last 5 years)       Moderate       Limited
- C. Please rate the applicant on each of the following qualities by circling the number that best represents your evaluation. Applicants should be evaluated on each quality separately. Use the ends of the scales as well as the middle. The tendency to rate an applicant "excellent" or "poor" on every trait should be avoided since each person has strengths and weaknesses. If you cannot rate the applicant on any one quality, leave that one blank.

	1	2	3	4	5
1 PROFESSIONAL COMPETENCE	<b>POOR</b> Lacking in knowledge and/or effectiveness	<b>DEFICIENT</b> Below-average performance occasionally	<b>ACCEPTABLE</b> Possesses sufficient knowledge and required skills	<b>GOOD</b> Usually knowledgeable and effective	<b>EXCELLENT</b> Meets the highest standards for knowledge and effectiveness
2 INTEGRITY	<b>POOR</b> Unconcerned with propriety and/or appearance, or acts in violation of codes of professional conduct	<b>DEFICIENT</b> Appears lacking in knowledge of codes of professional conduct and/or unconcerned with propriety or appearance at times	<b>ACCEPTABLE</b> Follows codes of professional conduct, respects propriety and appearance of propriety at all times	<b>GOOD</b> Above-average awareness of ethics, holds self to higher standard than most	<b>EXCELLENT</b> Outstanding integrity and highest standards of conduct
3 FAIRNESS	<b>POOR</b> Often shows strong bias for or against some person or groups	<b>DEFICIENT</b> Displays, verbally or otherwise, some bias for or against groups or persons	<b>ACCEPTABLE</b> Free of substantial bias or prejudice towards groups or persons	<b>GOOD</b> Above-average ability to treat all persons and groups impartially	<b>EXCELLENT</b> Unusually fair and impartial to all groups
4 JUDICIAL TEMPERAMENT	<b>POOR</b> Often lacks compassion, humility, or courtesy	<b>DEFICIENT</b> Sometimes lacks compassion, humility, or courtesy	<b>ACCEPTABLE</b> Possesses appropriate compassion, humility, and courtesy	<b>GOOD</b> Above-average compassion, humility, and courtesy	<b>EXCELLENT</b> Outstanding compassion, humility, and courtesy
5 SUITABILITY OF THIS CANDIDATE'S EXPERIENCE FOR THIS VACANCY	<b>POOR</b> Has little or no suitable experience	<b>DEFICIENT</b> Has less than suitable experience	<b>ACCEPTABLE</b> Has suitable experience	<b>GOOD</b> Has highly suitable experience	<b>EXCELLENT</b> Has the most suitable experience possible for this position
6 OVERALL RATING FOR THIS POSITION	<b>POOR</b> Has few qualifications for this position.	<b>DEFICIENT</b> Has insufficient qualifications for this position	<b>ACCEPTABLE</b> Has suitable qualifications for this position	<b>GOOD</b> Has highly suitable qualifications for this position	<b>EXCELLENT</b> Has exceptionally high qualifications for this position



## **Appendix E**

### **Retention Evaluation Procedures**

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## Appendix E

### Alaska Judicial Council Retention Evaluation Program

Alaska's constitution and statutes require the Alaska Judicial Council to evaluate each judge standing for retention election, and to make its evaluations and any recommendations public prior to the election.<sup>1</sup> The procedures used by the Council, are described. The results of the evaluations conducted since 1976 are summarized.

#### A. Retention Evaluation Procedures

The legislature first authorized retention evaluations in 1976. The evaluation procedures have evolved since that time into a thorough, objective review of each judge. Revisions in the process have focused on broadening the scope and effectiveness of the evaluations. The Council also has improved its communication of evaluation information and recommendations to voters.

The procedures fall into three general categories. The Council asked thousands of Alaskans about their direct experience with judges. The Council surveyed attorneys, peace and probation officers, social workers, guardians ad litem, CASA volunteers, jurors, and court employees. Second, the Council reviews materials specific to each judge. Public input is the third aspect of the evaluations.

The Council reviews all of the materials collected before meeting to make its final evaluation and recommendation. Members may interview one or more judges personally. (The Council interviewed three judges in 2008.) After the Council evaluates each judge and makes its recommendations, it publishes the results in newspapers throughout the state and in the Official Election Pamphlet prepared by the Lieutenant Governor. Detailed evaluation materials are available to voters on the Internet.

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<sup>1</sup>The Judicial Council evaluates *pro tem* judges (retired judges sitting temporarily by order of the supreme court) at the request of the supreme court and may evaluate other judges. The supreme court also has asked the Council to conduct surveys about the performance of magistrates and masters. The legislature has funded these evaluations.

## **1. Professional Evaluations**

### **a. Surveys**

The Council surveys all active and all in-state inactive members of the Alaska Bar Association, all peace and probation officers in the state who handle criminal cases, all social workers and all guardians ad litem/CASA volunteers.

Bar members evaluate all judges and justices. Peace and probation officers, and social workers/guardians ad litem/CASA volunteers evaluate all trial court judges. The areas of evaluation for each judge include legal ability, impartiality, integrity, judicial temperament, diligence, and knowledge, and overall performance. The non-attorney professionals do not evaluate trial judges on legal abilities. The Council encourages respondents to add comments, based on their experience with each judge. (See Attachment A for a sample page.)

An independent contractor at the University of Alaska (BHRS) carries out the surveys for the Judicial Council, to assure objectivity in the findings. Most of the analysis uses only responses from those who reported direct professional experience with the judge being evaluated. Analysis considers the respondent's type of practice, location within the state, and other demographic variables.

The Council's survey of court employees asked respondents to use a 5-point scale to evaluate judges' treatment of staff and others, management abilities, diligence, integrity and overall performance. Court employees also had space for comments. The Council also surveyed all jurors who served in trials before retention judges in 2006 and 2007. The Judicial Council collected and tabulated the court employee survey and the juror survey.

Survey respondents are encouraged to sign their comments but are not required to do so. The Council shares survey comments with the judges after the comments are edited to preserve the anonymity of survey respondents. The Council shares survey scores with each judge before the Council's evaluation meeting and makes the final report available to the public and media throughout the state. Since 1996, survey results have been made available on the Internet ([www.ajc.state.ak.us](http://www.ajc.state.ak.us)).

### **b. Counsel Questionnaires**

Each judge gives the Judicial Council a list of three trials, three non-trial cases, and any other cases that the judge found significant during his or her most recent term in office. The Council asks all of the attorneys in each case to complete a brief questionnaire about the judge's fairness, legal

abilities, temperament and administrative handling of the case. Most attorneys contacted return these questionnaires. Council members use these questionnaires as part of their final evaluations.

## **2. Judges' Materials**

### **a. Judge's Questionnaire**

Each judge fills out a short questionnaire about the types of cases handled during the previous term, legal or disciplinary matters the judge may have been involved in, and health matters that could affect the judge's ability to perform judicial duties. The questionnaire asks the judge to describe satisfaction with judicial work during the previous term. The judge can make any comments that would help the Council in its evaluations.

### **b. Other Records**

Council staff review public records, including annual conflict-of-interest statements filed with the Alaska Public Offices Commission, separate conflict-of-interest forms filed with the court system, court case files, and Commission on Judicial Conduct public files. The Council also reviews performance-related court data, such as the number of peremptory challenges filed against a judge and the number of reversals on appeal. The Council scrutinizes performance-related data carefully because the type of caseload or judge's location may play a major part in the numbers of challenges or appeals and reversals. These challenges may arise more from the local legal culture and the nature of the cases than from the judges' decisions.

### **c. Interviews**

Any judge may request an interview with the Judicial Council. The Council, in turn, may ask judges to speak with the Council members during the final stages of the evaluation process. Judges may respond to concerns raised during the evaluation process by records or by persons commenting.

## **3. Public Input**

The Council uses public hearings, juror surveys, and publicity to encourage the public to help evaluate judges.

### **a. Juror Surveys**

The Council asks jurors who have sat on trials during the most recent years of a judge's term for their knowledge of the judge's performance. Jurors highlight different aspects of judicial

performance than do professionals. Their role in a case gives them an objective perspective that may not be as easily available to others in the courtroom.

**b. Public Hearings**

Public hearings for all judges standing for retention were conducted throughout the state in 2008, using the legislature's teleconference network and public meeting rooms. Statewide newspaper ads encouraged citizens to comment. While juror surveys provide largely positive information about judicial performance, public hearings may attract persons who were less satisfied with judicial decisions. The two procedures give the Council the opportunity to view a range of opinions.

**c. Other Publicity and Input**

The Council publicized the evaluation process widely through frequent press releases and submission of feature articles to newspapers. The Council invites public comments about judges on its website. The Council incorporated the independent evaluations of Alaska Judicial Observers, a group of community-based volunteer court observers into its decisions.

**4. Other Investigation**

Council staff investigated specific cases and listened to court proceedings. Council staff conducted more than 50 interviews about the performance of judges with attorneys, court staff, peace and probation officers, and other judges.

**5. Dissemination of Results**

By law, the Council must make its evaluations and recommendations public at least sixty days prior to the election. It also must submit materials to the Lieutenant Governor's Official Election Pamphlet. Attachment B includes sample materials. In 2008 the Council published newspaper ads with its recommendations and address for more detailed evaluations for several weeks before the election in many newspapers around the state. The Council also ran radio ads and engaged in community outreach. Detailed summaries of the Council's evaluation were available on the Council's website and in the election pamphlet distributed to all Alaskan households.





## Attachment B

(Sample voter pamphlet pages - general pages submitted by the Council)



# Alaska Judicial Evaluation and Retention System

[www.ajc.state.ak.us](http://www.ajc.state.ak.us)



Alaskans choose their judges through a merit selection system and vote every few years on whether to keep them on the bench. The system assures that judges remain non-partisan and accountable to the public. The constitution requires that the Alaska Judicial Council nominate only the best-qualified people to the Governor for appointment to judgeships, and the state laws require that the Judicial Council evaluate each judge standing for retention elections. State law also requires that the Judicial Council publish its evaluations in the Voters' Pamphlet. The evaluations of judges standing in the November 2008 election appear on the following pages. Each judge also may pay for a page of biographical information that he or she prepares.

## Judicial Evaluation Procedures

The Alaska Judicial Council, a non-partisan citizens commission established by the Alaska constitution, evaluates judges on a number of criteria that include legal ability, demeanor, diligence, ability to manage their caseloads, and fairness and integrity. The Council evaluates judges with the help of thousands of Alaska citizens – police and probation officers, attorneys, jurors, court employees, social workers and others who appear in court before the judges. In 2008, the Council surveyed these groups, asked for written and oral comments from the public throughout the state, and reviewed records about judges' workloads, conflicts of interest, and other aspects of performance.

**Summary of Alaska Judicial Council Recommendations - In 2008 the Judicial Council evaluated ten trial court judges, one supreme court justice and one court of appeals judge. The Council found that eleven judges were QUALIFIED and recommends that voters retain them as judges. The Council found that Judge Dennis P. Cummings was UNQUALIFIED and recommends that voters not retain him as a judge.**

**Surveys** - The Judicial Council surveyed all active members of the Alaska Bar Association, and all peace and probation officers in the state. In 2008, the Council sent surveys to 2,884 attorneys and 1,539 peace and probation officers. An independent contractor handled the surveys for the Judicial Council, to assure objectivity in the findings. Questions on the surveys asked about judges' legal abilities, fairness, integrity, temperament, diligence and overall performance. Similar surveys went to social workers and citizens who participated in helping Alaska's children in court as guardians ad litem and Court Appointed Special Advocate (CASA) volunteers. The Council asked jurors who had served on cases with the judges to comment on the judges' abilities to handle the trials fairly and capably. Court employees also received surveys to rate the judges.

**Judge and Counsel Questionnaires** – Each judge standing for retention returned a self-evaluation questionnaire to the Judicial Council. The questionnaire included lists of recent cases that the judge believed were important for evaluation, with an emphasis on jury and non-jury trials. The Council asked each attorney in each case to fill out an additional survey about the judge's performance in that particular case, including detailed comments about the judge's abilities.

**Other Records** - Council staff reviewed a series of other public records, including conflict of interest annual statements filed with the Alaska Public Offices Commission and separate forms filed with the court system; court case files; Commission on Judicial Conduct public files; and a report on any withheld salary warrants. The Council also reviewed performance related court data, such as the number of peremptory challenges filed against a judge and the number of reversals on appeal. The Council looked at performance related data carefully, because a judge's caseload type or location may play a major part in the numbers of challenges or appeals and reversals. For example, an Anchorage judge assigned 800 civil cases in one year may receive more challenges (and possibly more appellate reversals) than a rural area judge assigned a mixed caseload of 500 civil and criminal cases. The Alaska Judicial Observers, an independent group of community-based volunteer court observers, provided information to the Council about the retention judges in Anchorage who they had evaluated.

**Public Hearings and Comment** - The Council held statewide public hearings for all judges standing for retention, using the legislature's teleconference network and public meeting rooms. Statewide newspaper ads encouraged public participation. Public hearings gave citizens a valuable opportunity to speak out about their experiences with judges. They also provided a forum in which citizens could hear the opinions of others.

**Investigation** - Council staff investigated specific cases, listened to court proceedings, and interviewed judges, attorneys, court staff, and others.

**Other Publicity and Input** - The Council widely publicized the evaluation process. The Council solicited comments about judges on its website. The Council balanced all the information it received from its many sources.

## Results of Evaluations

Evaluation information for each retention judge appears on the following pages. Summaries of the attorney, peace and probation officer, juror, social worker and court employee survey scores are provided. The Alaska Judicial Observers evaluation, where available, also is summarized. Summaries of survey results are shown in tables. Survey ratings are on a five-point scale with "5" as the highest score, "1" as the least favorable score, and "3" as acceptable. The Council's Internet web pages contain survey results and performance information about each judge on the ballot this fall. (<http://www.ajc.state.ak.us>)

## Judicial Council Members

Alaska's constitution establishes the membership of the Judicial Council as three non-attorney members appointed by the Governor, three attorney members appointed by the Board of Governors of the Alaska Bar Association, and the Chief Justice of the Supreme Court of Alaska who serves, ex officio, as chair. (The Chief Justice only votes when his or her vote can affect an outcome.) The Constitution provides that all appointments be made with "due consideration to area representation and without regard to political affiliation." A majority of both houses of the Legislature must confirm the non-attorney appointments, while the Board of Governors of the Alaska Bar Association appoints the attorney members after conducting advisory elections among bar members within local judicial districts. Members serve six-year staggered terms. They receive no financial compensation for their work other than reimbursement for travel expenses.

Dana Fabe was chair of the Judicial Council when the Council conducted its evaluation and made its retention recommendations, by virtue of her position as Chief Justice of the Alaska Supreme Court. Justice Fabe was appointed to the supreme court in 1996. Before her appointment, she had served as a superior court judge. (Term: 2006 - 2009)

James H. Cannon is an attorney member from Fairbanks. Mr. Cannon is in private practice in Fairbanks. He previously served as a public defender in Fairbanks from 1980-2005. He has practiced law since 1975. (Term: 2006-2012)

Bill Gordon is a non-attorney member from Fairbanks. He is a lifelong Alaskan who served as Executive Assistant to Governor Hammond, served as chair of the Alcohol Beverage Control Board, and is a semi-retired consultant and part owner of public water and wastewater companies in interior Alaska. (Term: 2003 - 2009)

Louis James Menendez is an attorney member from Juneau. Mr. Menendez is in private practice in Juneau. (Term: 2007 - 2010)

Kevn Fitzgerald is an attorney member from Anchorage. He is a partner in Ingaldson, Maassen & Fitzgerald. (Term: 2008 - 2014)

Christena Williams is a non-attorney member from Ketchikan. She is a third generation Alaskan and newspaper co-publisher. She and her family own and operate Pioneer Printing Co., Inc. and the Ketchikan Daily News. (Term: 2005 - 2011)

At the time the Council made its recommendations, one non-attorney member position was vacant.

**See [www.ajc.state.ak.us](http://www.ajc.state.ak.us) for detailed judicial evaluation information.**

## District Court Judge *(sample pamphlet page submitted by judge)*

### J. Patrick Hanley, Third Judicial District



**MAILING ADDRESS:** 825 W. 4<sup>th</sup> Avenue  
Anchorage, AK 99501

**AGE:** 42

**PLACE OF BIRTH:** Birmingham, Alabama

**NAME OF SPOUSE:** Tracy

**CHILDREN:** Blake

**LENGTH OF RESIDENCY IN ALASKA:** 37 years

**ALASKAN COMMUNITIES LIVED IN:**

Anchorage	1871-1988
Red Devil	1989
Kwigillingok	1989-1992
Quinhagak	1992-1993
Anchorage	1993 to present

**EDUCATION:**

Dimond High School, Anchorage, AK 1980-1984, Diploma; Northern Arizona University, 1984-86; Pacific Lutheran University, 1986-88, B.A.E.; University of Utah College of Law, 1993-96, J.D.

**POLITICAL AND GOVERNMENT POSITIONS:**

Public school teacher, 1989-1993; Law clerk for the Alaska Court of Appeals, 1996-97; Assistant Anchorage Municipal Prosecutor, 1998-2000; Assistant District Attorney 2000-2005; District Court Judge, 2005 to present.

**BUSINESS AND PROFESSIONAL POSITIONS:**

Alaska Bar Association

**SPECIAL INTERESTS:**

Family activities, biking, hiking, skiing.

**STATEMENT:**

My parents and four brothers and I moved to Anchorage in 1971, and Alaska has been home ever since. After graduating from college with a teaching degree I taught students in the Western Alaska villages of Red Devil, Kwigillingok, and Quinhagak. After returning to school and earning my law degree, I clerked for the Alaska Court of Appeals, and then was a prosecutor for the Municipality of Anchorage and the State of Alaska.

I believe the purpose of the court system is to serve the people, and my practice is to treat all people who appear in court with fairness, dignity and respect. I am committed to honoring the time of jurors and providing access to justice for all participants, including those without attorneys.

I consider each case before me individually, carefully, and impartially, and try to reach decisions promptly. I strive to maintain the integrity we are entitled to expect from judges. It has been an honor and a privilege to serve Alaskans as a district court judge in Anchorage. If retained, I will continue to serve Alaska as a judge to the utmost of my ability.

*The views expressed in the statement are from the candidate and not endorsed by the Division of Elections.  
The text of this statement was provided and paid for by the candidate in accordance with AS 15.58.030 and 6 AAC 25.700*

(Sample voter pamphlet individual judge page submitted by the Council)

# Alaska Judicial Council Recommendation

## Judge J. Patrick Hanley, District Court, Anchorage

### Judicial Council Recommendation

The Alaska Judicial Council, a non-partisan citizens commission established by the Alaska constitution, evaluates judges on a number of criteria, including their legal ability, demeanor, their diligence, their ability to manage their caseloads, and their fairness and integrity. The Judicial Council finds Judge Clark to be **Qualified** and recommends unanimously that the public vote "Yes" to retain him as a district court judge.

### Judicial Council Evaluation

The Judicial Council surveyed 2,884 attorneys and 1,539 peace and probation officers, together with social workers/guardians ad litem, and child advocates, jurors, and court employees about the judges on the ballot. Respondents were asked to rate judicial performance and to submit comments. The Council also reviewed the ratings and observations of the Alaska Judicial Observers, independent community-based volunteers. The Council reviewed court system records concerning peremptory challenges, recusals, and appellate affirmance and reversal rates; any civil or criminal litigation involving the judge; APOC and court system conflict-of-interest statements; any public disciplinary files; and whether a judge's pay was withheld for an untimely decision. The Council investigated judicial conduct in specific cases. The Council interviewed some judges, attorneys, court staff, and others, and held a statewide public hearing to obtain comments about judges.

	Attorney Survey	Peace Officer Survey	Juror Survey	Court Employee Survey	Social Workers Guardians ad Litem CASA's
Legal Ability	4.4	---	---	---	---
Impartiality	4.5	4.7	4.9	4.7	5.0
Integrity	4.6	4.8	---	4.7	5.0
Temperament	4.5	4.8	4.9	4.7	5.0
Diligence	4.5	4.8	---	4.7	5.0
Overall	4.5	4.8	4.8	4.7	5.0

Ratings are based on a one to five scale. Five is the best rating and three is "acceptable."

Rating Scale

5.0 = Excellent  
4.0 = Good  
3.0 = Acceptable  
2.0 = Deficient  
1.0 = Poor

### Summary of Survey Information

Attorneys in Alaska rated Judge Hanley on the six categories summarized in the table above, using 5 as the highest rating possible. The attorney rating for Judge Hanley on overall performance was 4.5. Peace and probation officers rated Judge Hanley on five categories, using the 5-point scale above. They gave Judge Hanley a rating of 4.8.

Four other groups also evaluated Judge Hanley's performance, using the same 5-point scale with 5 as the highest rating. Jurors rated him 4.8 overall, court employees gave him 4.7, and social workers, guardians ad litem and CASA volunteers rated him at 5.0. The Alaska Judicial Observers rated him 3.44.

**Recommendation: Vote "YES" to retain Judge J. Patrick Hanley**

Contact the Judicial Council at 1029 W. 3rd, Suite 201, Anchorage, AK 99501 (telephone: (907) 279-2526) for more detailed information, or review the information on our Internet site at:

[www.ajc.state.ak.us](http://www.ajc.state.ak.us)

November 2008

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**Appendix F**

**Retention Election History  
for Judges Currently Serving on the Bench**

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## Appendix F Retention Election History for Judges Currently Serving on the Bench

*Note: Years shown in italics and parentheses indicate when a judge stood for retention in a prior position.*

<b>Supreme Court Justices</b>			
<i>Retention Dates: First general election held more than three years after appointment; every ten years thereafter.</i>			
Justice	Appointed	Prior Retention Elections	Next Retention
Walter L. Carpeneti	11/04/98	<i>(84, 90, 96) 02</i>	2012
Robert Eastaugh	01/29/94	98, 08	2018
Dana A. Fabe	01/26/96	<i>(92) 00</i>	2010
Daniel Winfree	11/16/07	<i>none</i>	2012
<i>Position Currently Open</i>			2012

<b>Court of Appeals</b>			
<i>Retention Dates: First general election held more than three years after appointment; every eight years thereafter.</i>			
Judge	Appointed	Prior Retention Elections	Next Retention
Robert G. Coats	07/30/80	84, 92, 00, 08	2016
David Mannheimer	10/11/90	94, 02	2010
Joel H. Bolger	08/29/08	<i>(00, 06)</i>	2012

<b>First Judicial District</b>			
Judge	Appointed	Prior Retention Elections	Next Retention
<b>Superior Court Judges</b>			
<i>Retention Dates: First general election held more than three years after appointment; every six years thereafter.</i>			
Patricia A. Collins - <i>Juneau</i>	03/27/99	<i>(98) 02, 08</i>	2014
David V. George - <i>Sitka</i>	10/25/07	<i>None</i>	2010
William Barker Carey - <i>Ketchikan</i>	12/06/08	<i>None</i>	2012
Philip M. Pallenberg - <i>Juneau</i>	08/31/07	<i>None</i>	2010
Trevor Stephens - <i>Ketchikan</i>	07/31/00	04	2010
<b>District Court Judges</b>			
<i>Retention Dates: First general election held more than two years after appointment; every four years thereafter.</i>			
Kevin G. Miller - <i>Ketchikan</i>	08/30/99	02, 06	2010
Keith B. Levy - <i>Juneau</i>	01/24/05	08	2012

<b>Second Judicial District</b>			
Judge	Appointed	Prior Retention Elections	Next Retention
<b>Superior Court Judges</b>			
<i>Retention Dates: First general election held more than three years after appointment; every six years thereafter.</i>			
Richard H. Erlich - <i>Kotzebue</i>	03/08/91	94, 00, 06	2012
Ben Esch - <i>Nome</i>	02/16/96	00, 06	2012
Michael I. Jeffery - <i>Barrow</i>	05/29/08	<i>(86, 92, 98, 04)</i>	2012
<b>District Court Judges</b>			
<i>No District Court Judge positions in the Second Judicial District.</i>			

**Retention Election History (continued)**

<b>Third Judicial District</b>			
<b>Judge</b>	<b>Appointed</b>	<b>Prior Retention Elections</b>	<b>Next Retention</b>
<b>Superior Court Judges</b>			
<i>Retention Dates: First general election held more than three years after appointment; every six years thereafter.</i>			
Eric A. Aarseth - Anchorage	11/30/05	None	2010
Carl Bauman - Kenai	08/03/07	None	2010
Morgan Christen - Anchorage	10/25/01	04	2010
Beverly W. Cutler - Palmer	10/28/82	(78, 82) 86, 92, 98, 04	2010
Sharon L. Gleason - Anchorage	02/19/01	04	2010
Charles Huguelet - Kenai	09/02/03	06	2012
Stephanie E. Joannides - Anchorage	04/10/00	(96) 04	2010
Kari Kristiansen - Palmer	11/17/06	None	2010
Patrick J. McKay - Anchorage	11/30/05	None	2010
Peter A. Michalski - Anchorage	01/31/85	88, 94, 00, 06	2012
Anna M. Moran - Kenai	03/05/07	None	2010
William F. Morse - Anchorage	02/27/02	06	2012
Mark Rindner - Anchorage	10/20/00	04	2010
Eric Smith - Palmer	04/18/96	00, 06	2012
Jack Smith - Anchorage	11/17/06	(06)	2010
Michael Spaan - Anchorage	11/17/06	None	2010
Craig F. Stowers - Anchorage	09/21/04	08	2014
John Suddock - Anchorage	11/14/02	06	2012
Sen K. Tan - Anchorage	12/04/96	00, 06	2012
Fred Torrissi - Dillingham	11/27/96	00, 06	2012
Philip R. Volland - Anchorage	11/14/02	06	2012
Vanessa H. White - Palmer	11/17/06	None	2010
Michael L. Wolverton - Anchorage	12/04/96	(90, 94) 00, 06	2012
<i>Kodiak Superior - Currently Open</i>			2012
<b>District Court Judges</b>			
<i>Retention Dates: First general election held more than two years after appointment; every four years thereafter.</i>			
Brian K. Clark - Anchorage	06/11/03	06	2010
Catherine M. Easter - Anchorage	06/05/08	None	2010
William L. Estelle - Palmer	06/11/03	06	2010
Pat Hanley - Anchorage	01/14/05	08	2012
Gregory Louis Heath - Palmer	10/11/03	06	2010
Sharon A.S. Illsley - Kenai	06/14/07	None	2010
John R. Lohff - Anchorage	03/08/91	94, 98, 02, 06	2010
Gregory Motyka - Anchorage	07/26/91	94, 98, 02, 06	2010
Margaret L. Murphy - Homer	04/20/05	08	2012
Richard W. Postma Jr. - Anchorage	06/14/07	None	2010
Stephanie Rhoades - Anchorage	07/30/92	94, 98, 02, 06	2010
Daniel Schally - Valdez	01/17/05	08	2012
Alex M. Swiderski - Anchorage	04/11/05	08	2012
John W. Wolfe - Palmer	11/01/04	06	2010
<i>Anchorage District - Currently Open</i>			

**Retention Election History (continued)**

<b>Fourth Judicial District</b>			
Judge	Appointed	Prior Retention Elections	Next Retention
<b>Superior Court Judges</b>			
<i>Retention Dates: First general election held more than three years after appointment; every six years thereafter.</i>			
Douglas L. Blankenship - <i>Fairbanks</i>	03/10/06	None	2010
Leonard R. Devaney, III - <i>Bethel</i>	02/27/02	06	2012
Robert B. Downes - <i>Fairbanks</i>	04/20/05	08	2014
Marvin Charles Hamilton III - <i>Bethel</i>	03/05/07	None	2010
Paul Lyle - <i>Fairbanks</i>	02/19/08	None	2012
Michael A. MacDonald - <i>Fairbanks</i>	06/01/07	None	2010
Randy M. Olsen - <i>Fairbanks</i>	04/28/03	06	2012
<i>Fairbanks Superior - Currently Open</i>			2012
<b>District Court Judges</b>			
<i>Retention Dates: First general election held more than two years after appointment; every 4 years thereafter.</i>			
Dennis P. Cummings - <i>Bethel</i>	11/30/05	08	2012
Raymond Funk - <i>Fairbanks</i>	04/16/98	00, 04, 08	2012
Jane F. Kauvar - <i>Fairbanks</i>	02/18/81	82, 86, 90, 94, 98, 02, 06	2010
<i>Fairbanks District - Currently Open</i>			2012

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## **Appendix G**

### **Judges Eligible to Stand for Retention Election in 2010 and 2012**

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## Appendix G

<b>Judges Eligible to Stand for Retention Election in 2010</b>			
Judge	Court Level	Date Appointed	Prior Retention Elections
<b>Supreme Court Justices</b>			
Dana A. Fabe	N/A	01/26/96	<i>(92)</i> 00
<b>Court of Appeals</b>			
David Mannheimer	N/A	10/11/90	94, 02
<b>First Judicial District</b>			
David V. George - <i>Sitka</i>	Superior	10/25/07	<i>None</i>
Philip M. Pallenberg - <i>Juneau</i>	Superior	8/31/07	<i>None</i>
Trevor Stephens - <i>Ketchikan</i>	Superior	07/31/00	04
Kevin G. Miller - <i>Ketchikan</i>	District	08/30/99	02, 06
<b>Third Judicial District</b>			
Eric A. Aarseth - <i>Anchorage</i>	Superior	11/30/05	<i>None</i>
Carl Bauman - <i>Kenai</i>	Superior	08/03/07	<i>None</i>
Morgan Christen - <i>Anchorage</i>	Superior	10/25/01	04
Beverly W. Cutler - <i>Palmer</i>	Superior	10/28/82	<i>(78, 82)</i> 86, 92, 98, 04
Sharon L. Gleason - <i>Anchorage</i>	Superior	02/19/01	04
Stephanie E. Joannides - <i>Anchorage</i>	Superior	04/10/00	<i>(96)</i> 04
Kari Kristiansen - <i>Palmer</i>	Superior	11/17/06	<i>None</i>
Patrick J. McKay - <i>Anchorage</i>	Superior	11/30/05	<i>None</i>
Anna M. Moran - <i>Kenai</i>	Superior	03/05/07	<i>None</i>
Mark Rindner - <i>Anchorage</i>	Superior	10/20/00	04
Jack Smith - <i>Anchorage</i>	Superior	11/17/06	<i>(06)</i>
Michael Spaan - <i>Anchorage</i>	Superior	11/17/06	<i>None</i>
Vanessa H. White - <i>Palmer</i>	Superior	11/17/06	<i>None</i>
Brian K. Clark - <i>Anchorage</i>	District	01/23/03	06
Catherine Easter - <i>Anchorage</i>	District	06/05/08	<i>None</i>
William L. Estelle - <i>Palmer</i>	District	06/11/03	06
Gregory Louis Heath - <i>Palmer</i>	District	11/25/03	06
Sharon A.S. Illsley - <i>Kenai</i>	District	06/14/07	<i>None</i>
John R. Lohff - <i>Anchorage</i>	District	03/08/91	94, 98, 02, 06
Gregory Motyka - <i>Anchorage</i>	District	07/26/91	94, 98, 02, 06
Richard W. Postma, Jr. - <i>Anchorage</i>	District	06/14/07	<i>None</i>
Stephanie Rhoades - <i>Anchorage</i>	District	07/30/92	94, 98, 02, 06
John W. Wolfe - <i>Palmer</i>	District	11/01/04	06
<b>Fourth Judicial District</b>			
Douglas L. Blankenship - <i>Fairbanks</i>	Superior	03/10/06	<i>None</i>
Marvin Charles Hamilton III - <i>Bethel</i>	Superior	03/05/07	<i>None</i>
Michael A. MacDonald - <i>Fairbanks</i>	Superior	06/01/07	<i>None</i>
Jane F. Kauvar - <i>Fairbanks</i>	District	02/18/81	82, 86, 90, 94, 98, 02, 06
<b>Total = 33 -- standing for retention</b>			

Note: Years shown in italics and parentheses indicate when a judge stood for retention in a prior position.

<b>Judges Eligible to Stand for Retention Election in 2012</b>			
<b>Judge</b>	<b>Court Level</b>	<b>Date Appointed</b>	<b>Prior Retention Elections</b>
<b>Supreme Court Justices</b>			
Walter L. Carpeneti	N/A	11/04/98	<i>(84, 90, 96) 02</i>
Daniel Winfree	N/A	11/16/07	<i>None</i>
<i>Position Currently Open</i>			
<b>Court of Appeals</b>			
Joel H. Bolger	N/A	08/29/08	<i>(00, 06)</i>
<b>First Judicial District</b>			
William Barker Carey - <i>Ketchikan</i>	Superior	12/07/08	<i>None</i>
Keith B. Levy - <i>Juneau</i>	District	01/24/05	08
<b>Second Judicial District</b>			
Richard H. Erlich - <i>Kotzebue</i>	Superior	03/08/91	94, 00, 06
Ben Esch - <i>Nome</i>	Superior	02/16/96	00, 06
Michael I. Jeffery - <i>Barrow</i>	Superior	05/29/08	<i>(86, 92, 98, 04)</i>
<b>Third Judicial District</b>			
Charles Huguelet - <i>Kenai</i>	Superior	09/02/03	06
Peter A. Michalski - <i>Anchorage</i>	Superior	01/31/85	88, 94, 00, 06
William F. Morse - <i>Anchorage</i>	Superior	02/27/02	06
Eric Smith - <i>Palmer</i>	Superior	04/18/96	00, 06
John Suddock - <i>Anchorage</i>	Superior	11/14/02	06
Sen K. Tan - <i>Anchorage</i>	Superior	12/04/96	00, 06
Fred Torrisi - <i>Dillingham</i>	Superior	11/27/96	00, 06
Philip R. Volland - <i>Anchorage</i>	Superior	11/14/02	06
Michael L. Wolverton - <i>Anchorage</i>	Superior	12/04/96	<i>(90, 94) 00, 06</i>
<i>Kodiak Superior - Currently Open</i>			
Pat Hanley - <i>Anchorage</i>	District	01/14/05	08
Margaret L. Murphy - <i>Homer</i>	District	04/20/05	08
Daniel Schally - <i>Valdez</i>	District	01/17/05	08
Alex M. Swiderski - <i>Anchorage</i>	District	04/11/05	08
<i>Anchorage District - Currently Open</i>			
<b>Fourth Judicial District</b>			
Leonard R. Devaney, III - <i>Bethel</i>	Superior	02/27/02	06
Paul Lyle - <i>Fairbanks</i>	Superior	02/19/08	<i>None</i>
Randy M. Olsen - <i>Fairbanks</i>	Superior	04/28/03	06
Dennis P. Cummings - <i>Bethel</i>	District	11/30/05	08
Raymond Funk - <i>Fairbanks</i>	District	04/16/98	00, 04, 08
<i>Fairbanks Superior - Currently Open</i>			
<i>Fairbanks District - Currently Open</i>			
<i>Total = 31 standing for retention</i>			

Note: Years shown in italics and parentheses indicate when a judge stood for retention in a prior position.



**Appendix H**

**Retention Vote History 1976 - 2008**

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# **Appendix H**

## **Retention Vote History 1976 - 2008**

### **A. Historical Results of Evaluations**

The Council has evaluated judges standing for retention since 1976 (see the Council's website for a history of retention votes from 1976 through 2008). In every election, the Council has found all or most of the judges qualified, and has recommended their retention. Voters retained all of the judges found qualified, most by substantial margins in most years. Vote analyses for all years since 1976 indicate that typically judges received from 60% to 70% "yes" votes in the Third Judicial District (which includes Anchorage, Palmer, the Kenai Peninsula and Kodiak), and from 65% to 75% "yes" votes in the other judicial districts. The effects of the Council's recommendations, and of campaigns opposing judges, must be measured against the typical voting patterns.

#### **1. Judges Found "Not Qualified"**

The Council found one or two judges not qualified for retention in 1976, 1978, and 1980. All of the judges were district court judges. Both attorneys and peace officers evaluated each as "below acceptable" on most of the evaluation criteria, including legal ability and overall performance. The judges were retained, although by significantly lower vote totals than most judges in their districts.

In 1982, voters did not retain two district court judges found to be unqualified, giving them about 45% "yes" votes in each case. Reasons suggested for the difference between the 1982 election and prior elections included increasing reliance on Judicial Council recommendations as voters grew more familiar with them. A number of very controversial ballot issues in 1982 may have generated more general interest in the elections. Low "yes" vote totals for all judges in the Third Judicial District in 1982 may have been correlated with a minority of "yes" votes for the two judges found unqualified by the Council.

During the years 1984 through 2004, the Council found all but one judge qualified. Voters retained all in office. The one unqualified judge was a superior court judge who stood for retention in 1988. The judge had received "below acceptable" ratings from attorneys on integrity, impartiality, temperament and overall performance. Peace officers also rated the judge "below acceptable" on several qualities. The Council based its finding of "unqualified" on these survey ratings and other information brought to its attention. The Council publicized the judge's survey scores but did not publicize the source or nature of the particular other concerns that contributed to the Council's

recommendation against the retention of the judge. Voters retained the judge, although with significantly fewer "yes" votes than typical for that year.

In 2006 and 2008, the Council found one district court judge unqualified in each year and recommended against their retentions. Before making its findings, the Council conducted extensive investigations, interviewing dozens of attorneys, judges, court staff, police and probation officers, and others in each location, listening to tapes of court hearings, and reviewing court files. The Council also publicized its concerns in each case to give voters an informed basis for making their decisions. In both cases, the judges were alleged to have violated canons of judicial ethics and were under investigation by the Commission on Judicial Conduct.

In 2006, the judge in the Third Judicial District received only 47% "yes" votes, and was therefore removed from his seat. In 2008, the judge found unqualified stood for retention in the Fourth Judicial District where judges typically receive higher percentages of "yes" votes than they do in the Third District. He was retained, with 53.6% "yes" votes. The other judges on the ballot in the same judicial district received an average of 71% "yes" votes. Shortly after his retention, the Alaska Commission on Judicial Conduct held a formal hearing and recommended that the Alaska Supreme Court suspend him from his duties as a judge and provide additional training. The recommendation was pending at the time of this report.

## **2. Campaigns Against Judges**

Various groups have campaigned against judges in the past three decades. Most have not mounted their campaigns until shortly before the election. Opponents have noted that the Code of Judicial Conduct prohibits judges from campaigning until opposed. Canon 5C(2) of the Alaska Code of Judicial Conduct allows a judge who is a candidate for retention in judicial office to engage in limited political activity when there is active opposition to the judge's candidacy. Canon 5C(1) allows judges to form an election committee to conduct an election campaign in case there is active opposition. Canon 5C(3) outlines the parameters for soliciting and spending campaign funds.

Opponents can prepare campaigns and raise funds well in advance, while judges cannot raise funds or advertise until after the first instance of public attack. Substantial campaigns against supreme court justices were waged in 1980, 1988 and in 2000. The justices were retained, but by lower margins than most other judges. In 1984, 1994, 2000 and to a lesser extent in the other years, groups and individuals conducted campaigns against some trial court judges. For the most part, they were not well-organized and had little effect on voters' actions. Campaigns against four trial court judges in 2000 did have a significant impact on vote totals.

In 2008, one group and other individuals made on-line recommendations on their web sites that a particular judge not be retained. No groups used more traditional media – newspapers, radio or TV – to actively campaign against the judge. The judge was retained with a “yes” vote percentage similar to those found in past years for the same position, indicating that electronic-only campaigns may not be effective at this time in judicial retention elections.

### **3. Effectiveness of Council Evaluations**

The Council has assessed the effectiveness of its evaluation process twice. It surveyed nearly 2,000 voters in 1979, and made a formal report. In 1990, students informally polled voters in exit surveys. In both surveys, some voters said that they always voted either for or against all judges. Others said they discriminated, voting “yes” for some judges and “no” on others, based on personal experience or information available to them. Those voters were more likely to say that they had read the Judicial Council's recommendations or had used them in their voting. In 1996, the American Judicature Society conducted an independent review of retention evaluation procedures in several states. AJS found the Council’s evaluations effective for those who used them. AJS also found that judges with higher ratings from attorneys and peace and probation officers tended to get more “yes” votes.

In some elections, judges who were not opposed by the Council but who received lower performance evaluation ratings than their peers also received noticeably lower "yes" vote percentages than other judges in the same judicial district. These judges were not opposed by local groups, indicating that the voters may have relied upon the information provided by the Council when making their decisions. Conversely, judges who have been actively opposed by groups but who received high performance ratings have been retained despite the opposition. This also indicates that voters may be relying on the Council's information.

The comprehensive judicial performance evaluations conducted in Alaska have served as a model for many other states. The evaluations provide a strong incentive for judges to do their best. Some judges choose to retire rather than to run for retention. Occasionally, a judge's performance evaluation is a factor in that decision. The relatively low percentage of judges against whom the Council recommends, and the even lower percentage of judges rejected by the voters, demonstrates the quality of both Alaska's non-political merit selection system for judges, and of Alaska's judiciary.

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