

# **Selecting and Evaluating Alaska's Judges: 1984 - 2012**

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## **Judicial Council Staff:**

Teresa White Carns, Senior Staff Associate  
Larry Cohn, Executive Director  
Susan McKelvie, Research Analyst

## **Contact:**

Alaska Judicial Council  
510 L Street, Suite 450  
Anchorage, Alaska 99501  
Phone: (907) 279-2526  
Email: [lcohn@ajc.state.ak.us](mailto:lcohn@ajc.state.ak.us)



## Acknowledgments

The list of people who have volunteered their time to serve on the Judicial Council reads like a Who's Who of distinguished Alaskans (see Appendix A). Council staff would like to recognize their considerable efforts. Members serve six-year terms. The number of judicial vacancies and the number of applicants per vacancy have increased substantially, particularly in recent years. The Council has had to meet more frequently and for longer periods of time. Currently, members meet about fifteen days each year in several locations throughout the state. Meeting time is only a portion of the time donated by Council members. In advance of each judicial selection and retention meeting, members must review about 100 pages of materials about each judicial applicant or judge. Each member averages about 150 volunteer hours per year, not including the travel time and non-meeting time members must spend in communities away from home. Unlike members of some boards and commissions, Council members receive no form of compensation, other than reimbursement for their travel expenses. The high quality of Alaska's judiciary, noted in this report, is a testament to their efforts.

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## Executive Summary

The Judicial Council, a citizens' commission of three non-attorneys, three attorneys, and the chief justice, was established in Alaska's constitution at statehood. When there is a judicial vacancy, attorneys must apply to the Council, which nominates two or more most qualified applicants to the governor for appointment. Following appointment, judges periodically stand for election on the general ballot. By law, the Council evaluates their performance and reports its evaluations to voters.

This report builds on two previous reports<sup>1</sup> that identified the characteristics most closely associated with applicants for judicial positions, nominees, and appointees. The report documents the substantial changes that have occurred in the characteristics of the bar and applicants in the years between 1984 and 2012, and notes changes in the numbers of vacancies and applications during that period. It also updates information about characteristics of retention evaluations of judicial performance, and shows how qualities demonstrated during the selection process are associated with evaluations during the retention process.

This report will better inform the public, bar members, prospective applicants, and the judiciary about the Council's practices, the performance of Alaska's judges, and the applicant qualifications associated with nomination by the Council and appointment by the governor. The report also provides information to the Judicial Council about its own performance and promotes the Council's ability to fulfill its constitutional and statutory responsibilities in the best way possible.

## Summary of Findings

### Judicial selection process

#### Judicial vacancies and applicants [pp. 7-9]

- Judicial vacancies increased substantially.
- The average number of applicants for each vacancy increased substantially.
- The Council nominated about 37% of judicial applicants.
- The Council nominated more than the minimum number of applicants 73% of the time.

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<sup>1</sup> The Council's web site is [www.ajc.state.ak.us](http://www.ajc.state.ak.us). It includes links to all of its reports, links to historical documents about judicial selection and retention, full information about its selection and retention evaluation procedures, and links to a wide variety of state and federal agencies and organizations. It also includes the two previous reports on judicial selection and retention, a 2008 report, *Selecting and Evaluating Alaska's Judges: 1984-2007*, <http://www.ajc.state.ak.us/reports/JudgeProfile08.pdf>, and a 1999 report, *Fostering Judicial Excellence*, at <http://www.ajc.state.ak.us/reports/jgprofile.pdf>.

### **Demographic characteristics of applicants, nominees and appointees [pp. 10-15; pp. 28-30]**

- Applicants were older. Age was associated with the likelihood of nomination for the superior and appellate courts, but not district courts.
- Applicants had substantially more years of Alaskan residency and legal practice than in the past.
- A higher percentage of applicants were women, tracking a similar change among the Alaska Bar membership. The same percentages of male and female applicants were nominated, but the percentages of women appointed varied over the years.
- Judicial salaries are increasingly higher than the average incomes of bar members and applicants, suggesting that salaries and benefits have been an incentive for attorneys to apply for judgeships.

### **Legal experience of applicants, nominees and appointees [pp. 15-25 ]**

- Most applicants had practiced in both the public and private sectors. Applicants with only private sector experience were less likely to be nominated and appointed.
- More applicants between 2008 and 2012 were employed in the public sector at the time of their application than in earlier years, continuing a trend observed in the 2008 report.
- More judges applied for judicial positions than in past years, probably because of the increased number of appellate court positions open between 2008 and 2012. They were nominated and appointed at higher rates than they applied.
- More than half of the applicants had worked as public defenders or prosecutors, and the percentage increased in the past five years.
- The Council nominated about the same number of applicants with prosecutorial experience as it did applicants with public defense attorney experience. It nominated applicants with public defense experience at a higher rate than they applied, particularly for appellate courts. It nominated prosecutors at higher rates than they applied for district court, and at lower rates for superior and appellate courts.
- Private practitioners were more likely to apply for superior court, while prosecutors were more likely to apply for district court. Public criminal defense attorneys applied about equally for both types of courts.
- Applicants with substantial recent trial experience were nominated and appointed at about the rate that they applied for trial courts, but at slightly higher rates for appellate courts.



### **Relationship of bar survey ratings to nomination and appointment [pp. 34-37]**

- Applicants with higher survey ratings (3.5 and above) were more likely to be nominated. A high rating did not guarantee nomination.
- There was little difference between nominees and appointees on bar survey ratings.
- Appellate applicants, nominees and appointees had higher average ratings than the corresponding trial court groups.

### **Relationship of other applicant information to nomination and appointment [pp. 37-38]**

- Higher writing sample ratings were associated with a greater chance of nomination and appointment for all levels of court.
- Council members believed that counsel questionnaires and signed comments on bar surveys were important factors to consider.
- The interview was one of the most important aspects of the selection process for members.

### **The retention evaluation process [pp. 39-45]**

- Attorney and peace and probation officer ratings of judges have improved since 1984.
- About two-thirds of Alaska's voters approve of Alaska judges when the judges stand for retention, with a higher percentage of "yes" votes in the First and Second Judicial Districts.
- Most voters (84% to 87%) cast a vote on appellate judges who are standing for retention when they are voting.

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## Introduction

The constitution emphasizes public participation in the process of choosing and retaining judges, through the governor's appointment of non-attorney members to the Council, and through the requirement that judges appear on the general ballot periodically for retention. To give citizens the most information possible about its work, the Council publishes a wide variety of material on its website.<sup>2</sup> Brief biographies of judicial applicants, copies of their applications, survey ratings, other public materials, and a detailed description of the Council's procedures are available on the Internet.<sup>3</sup> Equally detailed information is available about every judge standing for retention. Periodically, Council staff speak to the bar or public about selection and retention. The Council holds public hearings and solicits public comments for each judicial selection process, and during each retention evaluation period.

This report provides a different sort of information about judicial selection and retention. Using data about each application, and each judge standing for retention, the Council looked in detail at the factors that might be considered by its members when it makes its decisions. Using standard statistical techniques, it found that some factors appeared less important, while others were closely associated with greater or lesser chances of nomination, appointment, and high ratings as a judge.<sup>4</sup> It builds on the work done by the Council in its 2008 report, *Selecting and Evaluating Alaska's Judges: 1984-2007*, and a 1999 report, *Fostering Judicial Excellence*.<sup>5</sup>

This information helps the Council and others assess the Council's performance and observe the consistency with which the Council has applied its criteria for evaluating applicants' qualifications. Potential applicants may use the report to identify career paths that may support their desire to serve the state as a judge. The retention analysis provides feedback as to whether the Council's process has resulted in a well-qualified judiciary.

Finally, the report tracks the important changes that have occurred between 1984 and 2012 in the characteristics of the Alaska Bar membership and the attorneys who have applied for judgeships. The report also documents the substantial increase in the numbers of judicial vacancies and judicial applicants in the past twenty-nine years.

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<sup>2</sup> The Council's web site is [www.ajc.state.ak.us](http://www.ajc.state.ak.us). It includes links to all of its reports, links to historical documents about judicial selection and retention, full information about its selection and retention evaluation procedures, and links to a wide variety of state and federal agencies and organizations.

<sup>3</sup> Go to <http://www.ajc.state.ak.us/selection/procedures/procedures.html>.

<sup>4</sup> See Appendix B for a detailed methodology.

<sup>5</sup> The 2008 report is at <http://www.ajc.state.ak.us/reports/JudgeProfile08.pdf>. The 1999 report is at <http://www.ajc.state.ak.us/reports/jgprofile.pdf>.

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## Part 1

### Merit Selection and the Alaska Judicial Council

#### A. Background

Delegates to Alaska’s constitutional convention identified the merit selection system<sup>6</sup> as the best way to appoint the most qualified applicants to judicial positions<sup>7</sup> and to maintain an appropriate balance between judicial independence and judicial accountability to the public. The constitution they adopted in 1956 established the Alaska Judicial Council to implement the merit selection system.<sup>8</sup> A separate section of the constitution requires the Council to “conduct studies for improvement of the administration of justice,” and to report periodically to the supreme court and the legislature.<sup>9</sup>

The seven-member Council includes three non-attorney members appointed by the governor and confirmed by the legislature, and three attorney members appointed by the Alaska Bar Association, all of whom serve staggered six-year terms. Council members serve as volunteers. They represent different areas of the state. They must be appointed without regard to political affiliation. The chief justice serves as chair ex officio during the three years of the chief justice’s term.

The constitution and state law require each judge to stand periodically for an unopposed retention election.<sup>10</sup> In 1975, the legislature enacted legislation that required the Council to evaluate judges on the ballot.<sup>11</sup> It also authorized the Council to recommend whether the public should vote

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<sup>6</sup> Alaska’s system is usually known as the “Missouri Plan,” named after the first state to use it. Alaska is one of thirty-six states and the District of Columbia that use merit selection for some or all of their judges. *Inside Merit Selection*, page 2, American Judicature Society, 2012, available at <https://www.ajs.org/index.php?CID=268>.

<sup>7</sup> Mr. Ralph Rivers, a member of the Judiciary Committee at Alaska’s Constitutional Convention said that merit selection would provide “an orderly screening process” in which the “Judicial Council will seek for the best available timber . . .” *Alaska Constitution Convention Minutes*.

<sup>8</sup> Alaska Constitution Article IV, Section 8.

<sup>9</sup> Alaska Constitution Article IV, Section 9. This report was prepared as part of that responsibility.

<sup>10</sup> Judges appointed to the bench serve a short initial term before their first retention election. Supreme court justices, and court of appeals and superior court judges stand for retention at the first general election more than three years after the date of their appointment. Their subsequent terms are ten years (supreme court justices, AS 15.35.030); eight years (court of appeals judges, AS 15.35.053); and six years (superior court judges AS 15.35.060). District court judges stand for retention at the first general election more than two years after the date of their appointment and serve four-year terms after that (AS 15.35.100). Alaska constitution, Art. IV, Sec.6 governs the terms of supreme court justices and superior court judges; the other two courts were created by statute.

<sup>11</sup> AS 15.58.050.

to retain each judge in office, and required the Council to publicize its evaluations and recommendations.<sup>12</sup>

## **B. Judicial selection**

When a vacancy occurs, the Judicial Council solicits applicants for the position over a one month period.<sup>13</sup> The Council then conducts a comprehensive investigation of the applicants. The Council asks the public for comments; reviews criminal and credit records; examines any litigation involving the applicant; looks at bar or judicial disciplinary records; sends out requests for more detailed information to attorneys/judges in recent cases handled by the applicant; checks references supplied by the applicants; contacts all former employers; surveys Alaska Bar Association members about legal skills; integrity and other qualities; and conducts any other investigation.

Council members meet to conduct a public hearing and interview every applicant for the vacancy.<sup>14</sup> Most meetings are in the location of the vacancy to encourage public participation. At the end of the interviews, the Council discusses the applicants, and votes on the two or more most qualified to nominate for appointment.<sup>15</sup>

Although the Council's collective decisions are examined in the report, it is important to note that each Council member votes separately. It takes four votes for an applicant to be nominated. The chief justice only votes when his or her vote affects the outcome. Typically, Council members agree about the most qualified applicants.<sup>16</sup>

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<sup>12</sup> AS 15.58.050.

<sup>13</sup> A detailed description of Alaska's merit selection process, examples of forms used by applicants, and the Council's bylaws that govern the details of the process are found on the Council's website. See "Judicial selection," at [www.ajc.state.ak.us](http://www.ajc.state.ak.us).

<sup>14</sup> The Council occasionally interviews by phone. Interviews are public or private, at the choice of the applicant.

<sup>15</sup> Rarely, not enough qualified attorneys apply for a position, and the Council declines to nominate two applicants. In that situation, the Council re-advertises the position and repeats the selection process.

<sup>16</sup> From 1984-2012, the Judicial Council voted on 1,116 applicants (some applicants withdrew their names from consideration before the vote occurred). The chief justice was required to vote 67 times, or 6% of the total votes. Seventy-six percent of chief justice votes were in favor of nomination. There have been only fourteen times when public and attorney members were divided in their vote (one-third as often as the odds of this type of division occurring randomly). In those situations, the chief justice voted with the public members six times and with the attorney members eight times. The attorney members (including the chief justice) have determined the Council's nominations in less than three-quarters of one percent of the total number of Council votes on judicial applicants.

## C. Judicial retention

The Judicial Council thoroughly reviews a judge's performance before the retention election.<sup>17</sup> The Council surveys thousands of Alaskans including police, peace and probation officers, court employees, attorneys, jurors, social workers and those who serve as guardians ad litem for children, asking them about their experience with the judges on the ballot. Those who appear frequently before the judges rate them on a number of criteria, including their legal ability, diligence, temperament, and fairness and may submit narrative comments about the judge's performance. The Council also solicits specific feedback from attorneys who appeared before the judge in recent cases and considers the ratings and observations of the Alaska Judicial Observers, an independent, community-based group of volunteers who attend courtroom proceedings and rate a judge's performance.

Among other materials, the Council also reviews how often the judge was disqualified from presiding over a case, how often a trial judge was affirmed or reversed on appeal, whether the judge has been involved in any disciplinary proceedings, and whether the judge's pay was withheld for an untimely decision. The Council may perform detailed follow-up investigations of any potential problem areas, and may conduct personal interviews with presiding judges, attorneys, court staff, and others about the judge's performance. The Council also holds a statewide public hearing to obtain comments about judges.

Council members meet before the retention election to discuss the information gathered for these judicial evaluations, and at the conclusion of the meeting, the Council publicly votes on its retention recommendations. Four votes by Council members are necessary for the Council to recommend for or against the retention of a judge. The Council's recommendations and summaries of its evaluations are posted on the Council's website and are included in the Official Election Pamphlet issued by the Division of Elections and distributed to Alaskan households statewide.<sup>18</sup>

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<sup>17</sup> Details of the Council's retention evaluation, and information about the history of retention election evaluations and process are on the website at <http://www.ajc.state.ak.us/retention/retent.html>.

<sup>18</sup> AS 15.58.020 (2).

## Part 2 Judicial Selection

### A. The selection process

This part of the report describes and analyzes recent changes in the selection process, the characteristics of applicants, and how those characteristics are associated with the likelihood of nomination by the Council and appointment by the governor. It focuses on the years between 1984 and 2012, for which detailed information is available. More information about the methods of data compilation and analysis are found at Appendix B.

#### 1. Number of vacancies

From 1984 to 2012, Alaska averaged 5.3 judicial vacancies per year (153 vacancies in 29 years).<sup>19</sup> Judicial vacancies have increased, particularly since 2002. The average number of vacancies per year<sup>20</sup> was:

- 3.8 vacancies per year from 1984 to 1988;
- 4.2 vacancies per year from 1989 to 2002;
- 7.2 vacancies per year from 2003 to 2007;
- 7.6 vacancies per year from 2008 to 2012.

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

##### a. Historically

In addition to an increasing rate of judicial vacancies per year, the average number of applicants per vacancy rose until 2007, and has dropped slightly since then. The average number of applicants per vacancy was:

- 6.2 applicants per vacancy from 1984 to 1988;
- 8.5 applicants per vacancy from 1989 to 2002;
- 10.6 applicants per vacancy from 2003 to 2007;
- 8.9 applicants per vacancy from 2008 to 2012.

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<sup>19</sup> The Council also evaluated applicants for one Chief Administrative Law judge vacancy in 1996, and three public defender vacancies between 1984 and 2007 (1989, 1996, and 2005).

<sup>20</sup> See Appendix B, Methodology, for an explanation of the time frames used for analysis.



Since 1984, the number of attorneys eligible to apply for judgeships has increased at a faster rate than the rate at which new judicial positions have been created.

- In 1984, there were 53 judicial positions and 1,528 active attorneys in Alaska, a ratio of 29 active attorneys per judicial position.
- In 2012, there were 73 judicial positions and 2,443 active attorneys in Alaska, a ratio of 33 active attorneys per judicial position.<sup>21</sup>

As discussed below, in 2012, the average member of the Alaska bar was considerably older and had many more years of active practice than in earlier years. Many more attorneys were eligible under the statutory minimum qualifications for appointment to the bench than in the past.

#### **b. Level of court**

The average number of applicants per district court and appellate court vacancies increased substantially while a smaller increase was observed in the average number of applicants for superior court. From 1984 to 2012, the average number of applicants per vacancy:

- increased from 6.0 to 8.8 for district court positions;
- increased from 7.4 to 7.8 for superior court positions;
- increased from 7.7 to 13.7 for appellate court positions. In the past five years, the average number of applicants for appellate positions was particularly high.<sup>22</sup>

#### **c. Location**

The average numbers of applicants per vacancy were substantially higher in the Third Judicial District than in other areas of the state for both district and superior court positions. Increases in the average number of applicants per vacancy were mostly due to high numbers of applicants for Anchorage and Palmer positions. In Fairbanks and other parts of the state, the average numbers of applicants have declined slightly. From 1984 to 2012, the average number of applicants per vacancy for trial court positions:

- increased in Palmer and Anchorage from 5.8 to 9.0;

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<sup>21</sup> The number of active attorneys in November 2012 was provided by the Alaska Bar Association.

<sup>22</sup> There were no appellate vacancies from 1984-1989. There were seven vacancies between 1990-2007. Because of the relatively small number of appellate vacancies between 1990 and 2007, they have been grouped into one period for analysis. There were six vacancies between 2008 and 2012, enough to use to analyze trends in the average number of applicants per vacancy.

- decreased in Fairbanks from 9.0 to 7.25;
- decreased in most other locations from 6.3 to 5.9.

### **3. Percentage of applicants nominated**

#### **a. Historically**

Despite regular changes in Council membership,<sup>23</sup> the percentage of applicants nominated remained remarkably consistent between 1984 and 2012. During all time periods studied, the percentage of applicants nominated has ranged between 36% and 39%.<sup>24</sup>

About seventy-three percent of the time the Council has nominated more than the minimum number of applicants. In about one quarter of its votes, the Council has nominated the minimum number of applicants. These votes have often occurred on rural judgeships for which there have been fewer applicants. From 1984 to 2012:

#### **b. Level of court**

- 36% of district court applicants were nominated;
- 38% of superior court applicants were nominated;
- 35% of appellate court applicants were nominated.

#### **c. Location**

- 44% of applicants were nominated for vacancies in Southeast, and 43% in Fairbanks (the highest rates in the state). By comparison, 31% of applicants were nominated for vacancies in Palmer (the lowest rate).
- Over time, the percentage of applicants nominated increased in Fairbanks and Southeast, stayed about the same in Anchorage and Palmer, and decreased for “other” locations and for the appellate courts.

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<sup>23</sup> See *supra*, Council membership, Part 1.

<sup>24</sup> The percentages are higher, looking only at the applicants interviewed. Applicants may withdraw before the interview for a variety of reasons. Although the Council has spent substantial amount of time and effort investigating them and reviewing their materials, applicants who withdrew were not among the pool of potential nominees at the end of the process. At the district court level, between 2008 and 2012, 33% of all applicants were nominated, but 41% of those interviewed. At the superior court level, 40% of all applicants were nominated, but 50% of those interviewed. At the appellate level, 29% of applicants were nominated, and 33% of those interviewed. Only 12% of appellate court applicants withdrew their names before the interviews compared to 18% of the district court applicants, and 19% of the superior court applicants.

## B. Characteristics of applicants

This section describes the characteristics of the 1,285 applicants for judicial positions between 1984 and 2012. The discussion shows trends in applicant characteristics, and the relationships between applicant characteristics and the likelihood of nomination and appointment during the 29 years covered by this report.

The report analyzes the characteristics of applicants for judicial positions in the context of the Alaska bar membership to see how applicants differ from typical bar members. In 1989, the Alaska Judicial Council partnered with the Alaska Bar Association to survey members of the Alaska bar to collect demographic and other information.<sup>25</sup> In 2007 and 2013, the Judicial Council conducted additional surveys of bar members.<sup>26</sup> Information gained in these surveys is cited in the following sections to provide context for the applicant characteristics reported below.

### 1. Age<sup>27</sup>

#### a. Alaska Bar members

- From 1989 to 2013, the average age of members of the Alaska bar increased from 40 to 52 years old.<sup>28</sup>

#### b. Applicants, nominees, and appointees

- From 1984 to 2012, the average age of applicants increased from 39 to 50 years old. The average age of applicants, nominees, and appointees varied by court level.

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<sup>25</sup> ALASKA BAR MEMBERSHIP SURVEY, 1989; published jointly by the Judicial Council, the Alaska Bar Association, and the court system, with the cooperation of the Juneau and Tanana Valley Bar Associations. Available at <http://www.ajc.state.ak.us/reports/barmem.pdf>.

<sup>26</sup> The 2007 survey results were published in *The Alaska Bar Rag*, Vol. 32, No. 1, January - March 2008, page 1. The response rates for the 1989 and 2007 surveys among attorneys in-state were 56% and 44% respectively. In addition to the bar survey in 2007, the Alaska Bar provided some information for all members, including those who did not respond to the survey. Survey results in 2007 tracked available data from the Alaska Bar Association suggesting that the 2007 survey responses were representative of the bar at large.

The 2013 Bar Membership survey was sent only to the 2,438 members of the bar who were in-state active members in March 2013. Thirty-seven percent of the members responded. The characteristics of those who responded were similar to those of the active members of the bar, suggesting that the survey reflected the composition of the bar well.

<sup>27</sup> District court judges must be “at least 21 years of age.” There are no statutory age requirements for other judicial appointments. AS 22.15.160(a).

<sup>28</sup> Characteristics of the bar at large reported below do not include out-of-state members of the bar. In the context of this report, active in-state bar membership is more useful because most out-of-state bar members are ineligible to apply for judgeships due to residency requirements.

### **1) District court**

District court applicants, nominees, and appointees tended to be younger than the average bar member. From 1984 to 2012:

- The average age of district court applicants increased from 37 to 48 years old;
- The average age of district court nominees increased from 37 to 48 years old;
- The average age of appointees increased from 36 to 48 years old.

### **2) Superior court**

The average age of superior court applicants and nominees has tended to be close to the average age of bar members. Appointees tended to be older than the average bar members. From 1984 to 2012:

- The average age of superior court applicants increased from 41 to 50 years old;
- The average age of superior court nominees increased from 42 to 52 years old;
- The average age of appointees increased from 40 to 55 years old.

### **3) Appellate court**

The average age of appellate court applicants and nominees has tended to be older than the average age of bar members, but the average age of appointees was slightly younger than the average bar member. From 1989 to 2012:<sup>29</sup>

- The average age of appellate applicants increased from 48 to 55 years old;
- The average age of appellate court nominees increased from 49 to 53 years old;
- The average age of appointees increased from 48 to 51 years old.

## **2. Gender**

### **a. Alaska Bar members**

- From 1989 to 2013,<sup>30</sup> the percentage of female members of the Alaska Bar increased from 25% to 38%. The percentage of male members decreased from 75% to 62%.

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<sup>29</sup> There were no appellate court vacancies from 1984-1988.

<sup>30</sup> According to the Alaska Bar Association website, as of May 2013, there were 3,252 active in-state and inactive bar members. Female attorneys constituted 38% (N=1,240) of these.

## **b. Applicants, nominees, and appointees**

From 1984 to 2012:

- The percentage of female applicants increased from 15% to 32%.<sup>31</sup>
- An increasing percentage of the applicants for district and superior court were females, but the percentage of applicants for appellate courts who were female decreased.<sup>32</sup>
- Female and male applicants were nominated at the same rate (37%);
- Women were nominated to district and superior courts at the rates at which they applied, but were nominated to appellate courts at a higher rate.

Because the percentage of female applicants has increased over time, and because female applicants have been nominated at the same rate as male applicants, governors have had increasingly more female nominees to consider for appointment. However, the percentage of female appointees has varied over time:

- From 1984 to 1988, 9% of nominees were female and 26% of appointees were female.
- From 1989 to 2002, 25% of nominees were female and 21% of appointees were female.
- From 2003 to 2007, 27% of nominees were female and 16% of appointees were female.
- From 2008 to 2012, 32% of nominees were female and 29% of appointees were female.

## **c. Gender and age**

### **1) Alaska Bar members**

From 1989 to 2013:

- The average age of male members of the Alaska Bar increased from 41 to 55 years old.
- The average age of female members of the Alaska Bar increased from 37 to 47 years old;
- In 2013, 69% of male bar members and 44% of female bar members were 50 years or older.

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<sup>31</sup> A disproportionately lower percentage of females applied for judicial positions considering the percentage of females in the bar at large. As discussed below, females in the bar at large were younger than males.

<sup>32</sup> From 1984 to 2007, 30% of the appellate applicants were women. From 2008 to 2012, 16% were women.

## **2) Applicants, nominees, and appointees**

Male applicants, nominees, and appointees have been older than female applicants, nominees, and appointees. The average ages of both male and female applicants, nominees, and appointees have increased over time. From 1984 to 2012:

- The average age of male applicants increased from 40 years old to 51 years old; the average age of male nominees increased from 40 years old to 53 years old; and the average age of male appointees increased from 39 years old to 55 years old.
- The average age of female applicants increased from 37 years old to 48 years old; the average age of female nominees increased from 38 years old to 47 years old; and the average age of female appointees increased from 36 years old to 46 years old.
- In recent years, the average male appointee has been older than the average male nominee, who has been older than the average male applicant. In contrast, the average female appointees have been younger than the average female applicants and nominees.

### **d. Gender and income**

#### **1) Alaska Bar members**

- In 2007, 20% of the women and 10% of the men earned \$50,000 or less. In 2013, 12% of the women and 11% of the men earned \$50,000 or less.<sup>33</sup>
- At the upper end of the scale, in 2007, 16% of the men and 4% of the women earned \$200,001 or more. In 2013, the proportions were almost identical, with 16% of the men at \$200,001 or more, and 6% of the women.

#### **2) Applicants, nominees, and appointees**

- The difference in income between male and female applicants has increased. From 1984 to 1988, the average male applicant earned about 10% more than the average female applicant compared to 2008 to 2012, when the average male applicant earned about 17% more than the average female applicant.
- The difference in income between male and female nominees has also increased. From 1984 to 1988, the average male nominee earned about 6% more than the average female nominee, compared to 2008-2012, when the average male nominee earned about 13% more than the average female nominee.

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<sup>33</sup> Comparable data were not available from the 1989 Membership Survey. In the 2007 and 2013 bar member surveys, detailed information about type of legal work, and whether it was full-time or part-time was not available. This information could have helped to explain some of the differences between male and female incomes.

- Historically, more females than males were employed in the public sector when they applied for a judicial position or were nominated.<sup>34</sup> However, the differences between the percentage of females and males employed in the public sector at the time of application and nomination have diminished over time. While some difference in income between female and males might be expected based on public sector employment, the data do not explain the increased differences in income between them.
- In the past five years, there has been a large difference between the income of male and female appointees. From 1984 to 1988, the average female appointee earned about 3% more than the average male appointee compared to 2008 to 2012, when the average male appointee earned about 35% more than the average female appointee. Here the recent difference may in fact be attributable to a much higher percentage of females than males who were employed in the public sector at the time of appointment. From 1984 to 1988, 60% of females compared to 57% of males were employed in the public sector when appointed. From 2008 to 2012, the percentage of female appointees employed in the public sector increased to 80%, and the percentage of male appointees employed in the public sector decreased to 52%.

### 3. Ethnicity

The state has relatively few minority attorneys and too few minority applicants for judicial positions to carry out a statistical analysis. In 2013, 94% of the members of the Alaska bar responding to the membership survey were Caucasian, about the same percentage as in 2007. Just more than 2% of bar members were Alaska Native/American Indian. Hispanics, and Asian/Pacific Islanders each comprised a little more than 1% of the bar membership, and Blacks were less than 1%.<sup>35</sup>

Ethnic diversity on the bench has increased in the past five years. At the end of 2007, Alaska had two minority judges. At the end of 2012, Alaska had five minority judges, 7% of the bench (8% of the trial court judges).

- During the past five years, minority applicants filed nearly as many applications as during the preceding 23 years. Thirteen minority attorneys filed twenty-seven

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<sup>34</sup> See Table 2 below.

<sup>35</sup> Four percent of the attorneys responding to the 2013 membership survey identified themselves as other, or did not respond to the question.

applications between 1984 and 2007.<sup>36</sup> Thirteen minority attorneys filed twenty applications during the 2008-2012 period.

- The percentage of minority nominees who were appointed to a judicial position increased in the past five years. From 1984 to 2007, eight minority attorneys were nominated one or more times and four were appointed. From 2008 to 2012, five minority attorneys were nominated one or more times and four were appointed.
- From 1984 to 2012, minority attorneys were more likely to be from Anchorage, and to apply for Anchorage positions. From 2008 to 2012, they were slightly more likely to apply for district court positions than for superior court, and very unlikely to apply for appellate positions.

#### **4. Career legal experience**

Applicants' experiences throughout their legal careers were among the most important factors considered by the Council in making its nominations. This section discusses the association of private sector and public sector work with the likelihood of application, nomination, and appointment. It includes the associations with specific types of jobs throughout applicants' careers, their trial experience in the five years before their application, and the associations among all of these variables and the level of judicial position – district court, superior court, and appellate courts.

##### **a. Public sector and private sector experience**

From 1984 to 2012, more than two-thirds of applicants had both public sector and private sector experience.

##### **1) Combination of public sector and private sector experience**

From 1984 to 2012, applicants with a combination of public sector and private sector experience were nominated and appointed at slightly higher rates than they applied.

- 70% of applicants had both public sector and private sector experience;
- 74% of nominees had both public sector and private sector experience;
- 73% of appointees had both public sector and private sector experience.

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<sup>36</sup> Throughout the report, the unit of analysis is an application: one attorney applying for one position. There were 1,285 applications in the database, coming from 461 individual attorneys. See Appendix B, Methodology.



## **2) Only public sector experience**

From 1984 to 2012, applicants with only public sector experience were nominated and appointed at slightly higher rates than at which they applied.

- 11% of applicants had only public sector experience;
- 14% of nominees had only public sector experience;
- 15% of appointees had only public sector experience.

## **3) Only private sector experience**

From 1984 to 2012, applicants with only private sector experience were nominated and appointed at lower rates than at which they applied.

- 20% of applicants had only private sector experience;
- 12% of nominees had only private sector experience;
- 13% of appointees had only private sector experience.

**b. Specific types of career experience**

The Council examined applicants’ careers to see if specific job experience, including any past or present employment, was associated with higher rates of application, nomination, or appointment. Table 1 shows the percentages of applicants, nominees, and appointees who had specific experience at some point during their legal careers.

Table 1 Work Experience of Applicants, Nominees and Appointees (1984-2012)			
	Applicants	Nominees	Appointees
<b>Solo private practice<sup>37</sup></b>	44%	37%	40%
<b>Private Practice (2 or more attys)</b>	77%	72%	74%
<b>Public Defender/Advocate</b>	24%	37%	33%
<b>Prosecutor</b>	35%	35%	42%
<b>Attorney General<sup>38</sup></b>	24%	27%	26%
<b>Judge</b>	13%	20%	21%
<b>Magistrate</b>	11%	10%	8%
<b>Appellate/Federal Clerk</b>	14%	15%	14%
<b>Trial Court Law Clerk</b>	16%	18%	17%
<b>Military<sup>39</sup></b>	8%	7%	8%
<b>Corporate/Other<sup>40</sup></b>	27%	22%	22%
<b>Public Interest</b>	15%	19%	13%

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<sup>37</sup> Private practice experience on Table 1 and throughout this report included only work for a private law firm, whether solo or with other attorneys.

<sup>38</sup> The Attorney General category included the Attorney General, all assistant attorneys general who represented the state in civil matters, and all attorneys in the Office of Special Prosecutions and Appeals (OSPA).

<sup>39</sup> Military experience refers to work as an attorney while in the military.

<sup>40</sup> The category of corporate included those attorneys who said they had worked as corporate counsel during their legal careers. The category of “other” includes those who served in different agency roles, municipal attorneys, university attorneys, positions in the court system and other types of jobs that qualified as active legal practice but were too uncommon to do a separate valid statistical analysis.

## 1) Private practice experience

- Eighty-six percent of applicants had at least some private practice experience during their legal careers, whether as a solo practitioner or as a member of a firm.<sup>41</sup>

## 2) Criminal law experience

- More than half (59%) of applicants had worked as public criminal law attorneys either as public defenders or advocates, or as prosecutors.<sup>42</sup>
- The Council nominated virtually the same number of applicants who had prosecutorial experience as it did applicants who had worked as public defenders or public advocates.<sup>43</sup>
- The Council nominated applicants who had worked as public defenders or public advocates at a higher rate than they applied. Governors appointed applicants who had worked as public defenders or public advocates at a slightly lower rate than they were nominated.<sup>44</sup>
- The Council nominated applicants who had worked as prosecutors at the same rate at which they applied. Governors appointed applicants with prosecution experience at a higher rate than they were nominated.
- 42% of the appointees had prior prosecutorial experience, compared to 33% of the appointees who had prior public criminal defense experience. From 2008 to 2012, the percentage of appointees with past prosecutor experience was 43%, and the percentage of appointees with past public criminal defense experience was also 43%.

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<sup>41</sup> Private *practice* experience included only those attorneys who had worked in a private law firm. Private practice lawyers have individual or corporate clients. Private *sector* experience is distinguished by the fact that it also included attorneys who had worked as corporate counsel or in non-profit public interest organizations. Corporate counsel and those who work for non-profit organizations are employees of the organization.

<sup>42</sup> From 2008 to 2012, a higher percentage of applicants (63%) had, at some point in their career, worked as prosecutors or public defense attorneys than in the past.

<sup>43</sup> From 1984 to 2012, 174 nominees had prior experience as a public defender or OPA attorney; 166 had prior experience as a prosecutor; and 35 had prior experience as both prosecutor and public defense attorney.

<sup>44</sup> From 2003 to 2007, governors appointed these applicants at less than half the rate they were nominated. From 2008 to 2012, however, the former pattern re-appeared – governors appointed PDs/OPA at about the same rate at which they were nominated.

### **3) Experience in the Attorney General's Office**

- Those with experience in the attorney general's office were nominated and appointed at about the same rate that they applied except that from 2008 to 2012, the appointment rate (14%) dropped to about half its previous level.

### **4) Judicial experience**

- Historically, the Council has nominated applicants with judicial experience at slightly higher rates than they applied and governors have appointed them at higher rates. From 2008 to 2012, a slightly higher percentage of applicants (15%) and appointees (26%) had prior experience as a judge compared to the previous 23 years, perhaps because of the relatively high number of appellate court vacancies during this time.
- Applicants with experience as a magistrate or law clerk were nominated and appointed at about the same rate at which they applied.

### **5) Military experience**

- Applicants with experience in the military were nominated and appointed at about the same rate at which they applied.

### **6) Public interest experience**

- Applicants with public interest experience were nominated at higher rates than they applied, and were appointed at slightly lower rates. From 2008 to 2012, applicants with public interest experience were nominated and appointed at higher rates than they applied, and at higher rates than in the past.

### **7) Recent trial experience**

Applicants were asked how many trials they had conducted during the five years immediately preceding their application.<sup>45</sup>

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<sup>45</sup> In late 2011, the Council decided that it would have a better sense of applicants' familiarity with trials if it asked about the number of trials conducted during the attorneys' careers rather than just the most recent five years. The Council will still obtain feedback about the applicants' recent trial work by sending questionnaires to attorneys and judges in applicants' most recent three trials. To enable a comparison with historical data, the analysis in this section does not include the small number (72) of applications that occurred after the Council changed from asking about trial experience in the past five years to asking about trial experience over the entire course of applicants' careers.

**a) Substantial recent trial experience**

- Two-thirds of all applicants (67%), nominees (69%) and appointees (66%) had substantial trial experience (six or more trials) in the five years immediately preceding their applications.

**b) No recent trial experience**

- One tenth of all applicants (10%), nominees (10%), and appointees (11%) had no trial experience in the five years immediately preceding their applications.

**c) Some recent trial experience**

- About one quarter of all applicants (23%), nominees (21%), and appointees (23%) had some trial experience (one to five trials) in the five years immediately preceding their applications.

**c. Specific types of career experience by level of court**

When the specific job experiences of applicants, nominees and appointees were compared by court level, some notable differences were observed:

**1) Specific types of employment**

- Experiences as a judge, public defender/OPA attorney, public interest attorney, and in practice with a private law firm were associated with a higher chance of nomination and appointment to superior court, and even more markedly with nomination and appointment to an appellate court.
- Experiences as a prosecutor, solo practitioner, military attorney, or trial court law clerk were associated with greater likelihood of nomination and appointment to district court than to superior or appellate courts. This was also true for those with experience in the attorney general's office or as a magistrate.
- Experience as an appellate or federal law clerk was strongly associated with nomination and appointment to appellate courts.
- Experience as a trial court clerk was strongly associated with nomination to a district court position, and less strongly associated with appointment.

**2) Recent trial experience by level of court**

**a) Substantial recent trial experience**

- Applicants with substantial recent trial experience were nominated and appointed at about the same rate that they applied for both district and superior courts. A slightly

lower percentage (59%) of applicants for appellate court positions had substantial recent trial experience when compared to applicants for trial court positions. They were nominated (66%) and appointed (64%) at slightly higher rates than they applied.

**b) No recent trial experience**

- Applicants for trial courts with no recent trial experience were nominated and appointed at about the same rates at which they applied. A higher percentage (16%) of applicants for appellate court positions had no recent trial experience when compared to applicants for trial court positions. They were nominated at a slightly lower rate (13%) than they applied, but were appointed at twice the rate they were nominated (27%).

**c) Some recent trial experience**

- Applicants with some recent trial experience were nominated and appointed at about the same rates that they applied for both district and superior courts. About the same percentage of applicants who applied for appellate positions (25%) had some recent trial experience when compared to applicants for trial court positions. They were nominated at a slightly lower rate (21%) than they applied and were appointed at a noticeably lower rate (9%).

## 5. Employment at time of application

In addition to analyzing applicants' career experience, the Council reviewed applicants' employment at the time they applied for a judicial position.

### a. Public sector and private sector employment<sup>46</sup>

- From 1984 to 2012, the percentage of applicants who were working in the public sector at the time of their applications increased from 49% to 58%. The percentage of nominees and appointees from the public sector stayed at about 58% to 60% throughout the period.
- Historically, higher percentages of females than males were employed in the public sector at the time of application, nomination, and appointment. Table 2 summarizes these percentages. In recent years, more male applicants and more female appointees have been employed in the public sector than in the past.

Table 2 Public Sector Employment at Time of Application by Gender (1984-2012)			
	<b>Applicants</b>	<b>Nominees</b>	<b>Appointees</b>
<b>Females</b>	60%	70%	72%
<b>Males</b>	49%	57%	51%

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<sup>46</sup> As in the previous section, private sector employment included private practice whether as a solo practitioner or in a firm of two or more employees, as well as work with a public interest firm or corporation, or corporate counsel. Private practice employment is a subset of private sector employment.

**b. Specific types of employment at time of application**

Specific types of career experience and the breadth of applicants’ career experience were associated with applicants’ chances of nomination at all court levels. However, whether applicants’ specific employment at the time of application was associated with their chances of nomination and appointment mostly depended on the court level for which they applied.

Table 3 shows the percentages of applicants, nominees and appointees by their type of employment at the time of application, for 1984-2012.

	<b>Applicants</b>	<b>Nominees</b>	<b>Appointees</b>
<b>Solo Private practice<sup>48</sup></b>	20%	13%	19%
<b>Private Practice (2 or more attys)</b>	22%	23%	25%
<b>Public Defender/Advocate</b>	7%	11%	6%
<b>Prosecutor</b>	14%	12%	15%
<b>Attorney General’s Office<sup>49</sup></b>	13%	15%	12%
<b>Judge</b>	10%	15%	16%
<b>Magistrate</b>	8%	7%	6%
<b>Corporate/Public Interest/Other<sup>50</sup></b>	6%	4%	1%
<b>Total</b>	100%	100%	100%

**1) Private practice**

- Twenty-six percent of the applicants for the superior court were private practitioners in firms of two or more attorneys. They were nominated at a slightly higher rate (30%), and appointed at an even higher rate (33%).

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<sup>47</sup> The categories of military employment and employment as law clerks have been omitted from this table because although attorneys had career legal experience in these fields, almost none of them were employed at these jobs when they applied for judicial positions.

<sup>48</sup> Private practice experience on Table 2 and throughout this report included only work for a private law firm, whether solo or with other attorneys.

<sup>49</sup> The “Attorney General” category included the Attorney General, all assistant attorneys general who represented the state in civil matters, and all attorneys in the Office of Special Prosecutions and Appeals (OSPA).

<sup>50</sup> The category of “other” includes those who served in different agency roles, municipal attorneys, university attorneys, positions in the court system and other types of jobs that qualified as active legal practice but were too uncommon to do a separate valid statistical analysis. Public interest has been combined with corporate and other because too few attorneys were employed in these positions at the time of application to make a valid separate analysis.



- From 2008 to 2012, private practitioners working in firms of two or more attorneys were appointed to district court positions at twice the rate (18%) at which they applied (9%).
- Solo practitioners were nominated at a lower rate (13%) than they applied (20%) but appointed (19%) at about the rate they applied. From 2008 to 2012, solo practitioners continued to be nominated at the rate they applied (20%), but were appointed to district court positions at a higher rate (27%).
- From 2008 to 2012, a lower percentage of applicants were working in private practice at the time they applied for a judicial position than in the past.

## **2) Public defenders/advocates**

- Applicants employed as public defenders or public advocates at the time of application have been nominated at a higher rate (11%) than they applied (7%), but appointed at a slightly lower rate (6%) than they applied. This was true for both district and superior courts.

## **3) Prosecutors**

- Prosecutors applied most often for the district court, about half as often for the superior court, and almost never for the appellate courts. They applied to district court at a 21% rate, were nominated at half that rate, and appointed at a noticeably higher rate (33%). For superior court, prosecutors were nominated at a lower rate (7%) than they applied (12%) and were appointed at a slightly lower rate (5%) than they were nominated.

## **4) Attorney general's office**

- Attorneys employed in the attorney general's office were a larger percentage of the applicants for all court levels from 2008 to 2012 than they had been in the past.
- They were nominated and appointed at about the levels at which they applied, except that none were appointed to appellate courts. From 2008 to 2012, they were appointed at lower rates (6%) than they applied (16%) or were nominated (18%).

## **5) Judges**

- Judges have been about 10% of the applicants for superior court and 39% of the applicants for appellate courts.
- They have been nominated at higher rates than they applied, and appointed at higher rates than they were nominated. They have been more than half (54%) of the appointees to appellate courts.

- In the past five years, judges were more likely to apply, be nominated and be appointed, in large part because of the relatively high number of appellate court vacancies during this period.

#### **6) Magistrates**

- Magistrates were more likely to apply for, be nominated for, and be appointed to district court positions than for superior or appellate court judgeships.

#### **7) Corporate/public interest/other**

- Applicants employed as corporate, public interest, or “other” types of attorneys were nominated at the same rate at which they applied (7%) for district court but appointed at a lower rate (2%). They were nominated at a lower rate (2%) than they applied (5%) for superior court. None have been appointed to superior or appellate court positions.

### **6. Bar and judicial discipline and actions**

The Council reviews reports of grievances filed with the Alaska Bar Association, fee arbitrations involving an applicant, and instances of judicial discipline.<sup>51</sup>

#### **a. Grievances**

Grievances may be filed with the bar association against an attorney by any person. The bar reviews the allegations, and in most cases, decides that there is no basis for investigation. In the small number of investigated grievances, the attorney is given an opportunity to respond to the complaints, and after investigation, most complaints are dismissed. Grievances may result in a private reprimand or admonition, a public reprimand or admonition, or in sanctions such as suspension or disbarment.

Factors affecting the number of grievances filed against an attorney include the number of cases an attorney handles, the types of cases, the length of time an attorney has practiced, and whether the attorney has worked as a public criminal defense attorney. The great majority of grievances were either not investigated because the bar found no merit in the allegations, or were dismissed following investigation with no action against the attorney. Given the number of variables affecting how many grievances are filed, and the likelihood that most grievances will not be investigated or are dismissed after a brief investigation, the Council does not report the information about them in detail in this report.

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<sup>51</sup> The Council also investigates any suspension of an applicant’s license to practice law. Occasionally, attorneys’ licenses are suspended for failure to promptly pay Bar dues; less commonly, licenses are suspended for other reasons. These events happened too infrequently to report statistically and were not included in this report.

From 1984 to 1988, 37% of the applicants had one or more grievances filed against them. From 2008 to 2012, the percentage of applicants with grievances had increased to 43%. Staff members investigate patterns of grievances and specific grievances that resulted in further action by the bar association. The Council considers all of this information in making its final decision about nomination.

From 1984 to 1988, 5% of applicants had four or more grievances, and there were no nominees or appointees with four or more grievances. From 2008 to 2012, 19% of applicants had four or more grievances; 21% of nominees; and 26% of appointees. From 2008 to 2012, a higher percentage of applicants, nominees, and appointees came from the public sector. In their capacities as public attorneys, they were more likely to have grievances filed against them; however, in the great majority of cases, the bar investigation found no basis for the grievances and they were dismissed.

#### **b. Fee arbitrations**

Clients of private attorneys who disagree with the fees charged by their attorneys may ask the bar association for assistance in arbitrating the fees. Attorneys volunteer to serve on fee arbitration panels as a service to the bar and community. Many fee arbitrations result in some adjustment of the fees charged.

Nine percent of the applicants from 1984 to 1988, compared to 17% from 2008 to 2012, had experienced one or more fee arbitrations. Many factors can affect the number of fee arbitrations filed against an attorney and the outcome of a fee arbitration case. An attorney's type of practice, the size of a law firm, and the length of time an attorney has practiced are among the most important. The Council staff investigates all reported fee arbitrations, and Council members consider the information when they review materials about each applicant. An applicant with three or more fee arbitrations had a lower likelihood of nomination and appointment, in all time periods.

#### **c. Judicial discipline**

At the time they applied for other judicial positions, no judge had been publicly disciplined. A few judges had been privately admonished, but the incidence was insufficient to enable statistical analysis.

## 9. Income

The Council asked applicants about their income<sup>52</sup> for each of the three years immediately preceding the application. The Bar Membership surveys in 1989, 2007, and 2013 asked bar members about their incomes during the preceding year. The analysis compares the incomes of applicants and members of the bar with judicial salaries.<sup>53</sup>

### a. Bar member incomes compared to judicial salaries

- For 2012, 68% of the bar members reported an income of less than \$130,001 and 11% had incomes between \$130,001 and \$155,000. Thus, most bar members had incomes near or below the salary ranges for district and superior court judgeships.
- Twenty-one percent of bar members had an average 2012 salary of \$155,001 or more. The average salary of an appellate judge between FY2008 and FY2013 was \$171,655.<sup>54</sup>

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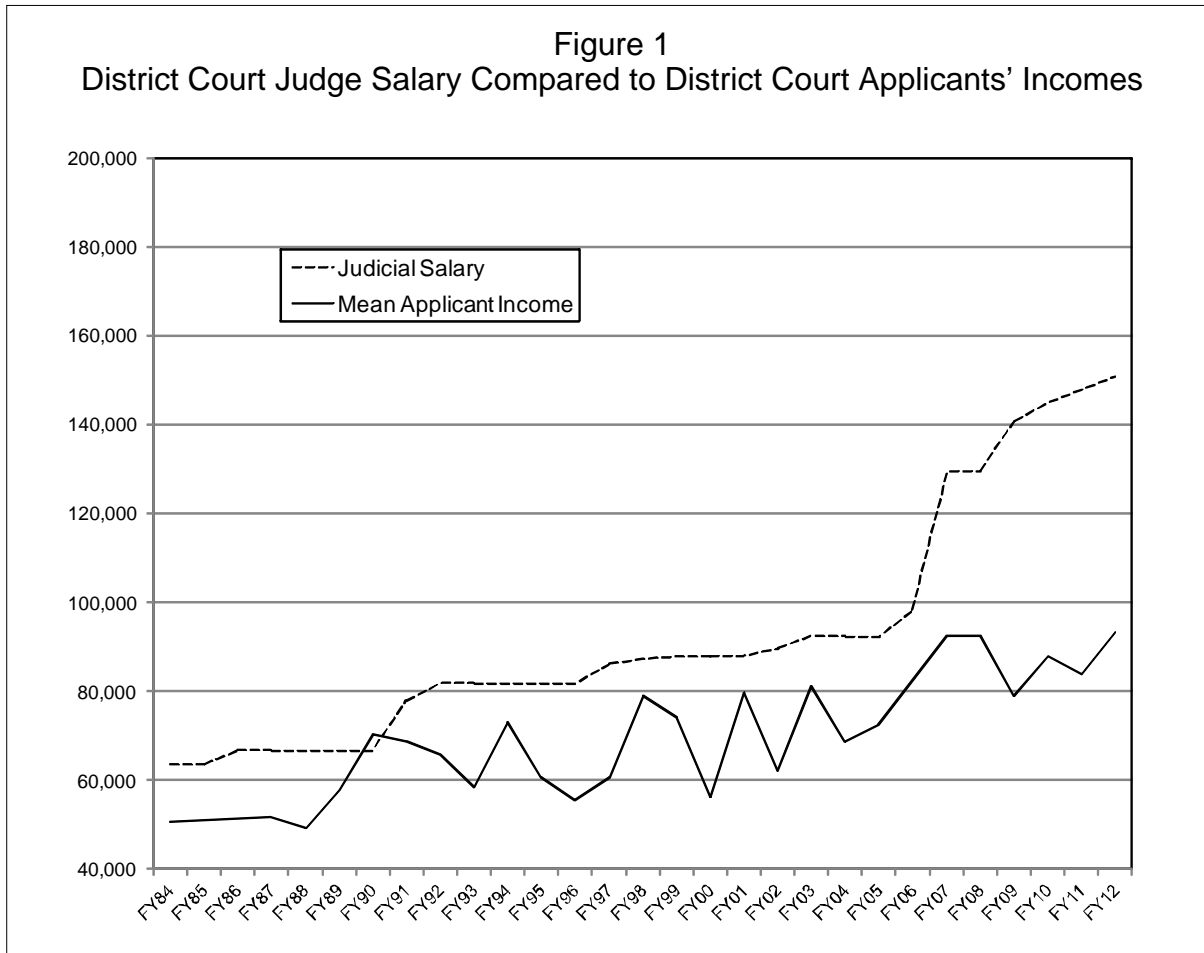
<sup>52</sup> The Council requires applicants to provide their total income for each of the three years immediately preceding the date of this application, and to estimate the percentage of total income derived from the practice of law. This information is used to evaluate active practice of law and potential conflict of interest issues.

<sup>53</sup> The judicial retirement system also may tend to encourage some attorneys to apply for a judicial position.

<sup>54</sup> This was the average of the supreme court and court of appeals salaries combined over that period. FY2013 included the last half of calendar year 2012.

**b. Applicant incomes compared to judicial salaries**

In the past twenty-nine years, the difference between the income of the average applicant and the average salaries of judges has grown substantially. The gap is greatest at the district court level, and progressively less at higher court levels.



- From 1984 to 1988, the average district court applicant earned 75% of the salary of a district court judge. From 2008 to 2012, the average district court applicant earned 61% of the average district court salary.

Figure 2  
 Superior Court Judge Salary Compared to Superior Court Applicants' Incomes



- From 1984 to 1988, the average superior court applicant earned 91% of the salary of a superior court judge. From 2008 to 2012, the average superior court applicant earned 73% of the average superior court salary.
- From 1989 to 2007,<sup>55</sup> the average appellate court applicant earned 3% more than the average appellate court salary. From 2008 to 2012, the average appellate court applicant earned 77% of the average appellate court salary.

**c. Public sector incomes compared to private sector incomes**

- Private sector attorneys average more income than public sector attorneys and the difference has grown substantially over the past twenty-nine years. Public sector applicants' average incomes increased by 64%, from \$63,049 from 1984 to 1988, to \$98,720 from 2008 to 2012. Private sector applicants' incomes increased by 208% during the same period, from \$65,806 to \$136,787. From 1984 to 1988, private sector applicants' incomes were 4% higher than public sector applicants; from 2008 to 2012, private sector applicants' incomes were 72% higher.

<sup>55</sup> No appellate court vacancies occurred between 1984 and 1988.

- Eighty-nine percent of respondents to the bar membership survey in 2013 who worked in the public sector had incomes of \$155,000 or less, compared to 70% of the respondents working in the private sector. The private sector incomes were more widely spread, with 17% of the private sector respondents reporting incomes of \$50,000 or less, and 20% of them reporting incomes of \$200,001 and more.<sup>56</sup> Fifty-three percent of the private sector respondents made between \$50,001-\$155,000, compared to 85% of respondents in the public sector.

### **C. Statutory requirements for judicial applicants**

Alaska’s Constitution requires that “Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the state, and possessing any additional qualifications prescribed by law.”<sup>57</sup> Statutes mandate that all judges shall be residents of Alaska for the five years immediately preceding their appointment, and that they have engaged in the active practice of law<sup>58</sup> for differing periods, depending on the position.<sup>59</sup>

#### **1. Years of residence in Alaska**

From 1984 to 2012, the mean number of years that applicants resided in Alaska immediately preceding their judicial application increased substantially for trial court applicants and less so for appellate court applicants. Applicants for lower courts resided in Alaska for fewer years than applicants for higher courts. From 1984 to 2012, the average number of years that applicants resided in Alaska immediately preceding appointment:

- increased from 13.8 to 23.5 years for district court applicants;
- increased from 14.7 to 25.9 years for superior court applicants;

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<sup>56</sup> Some of the bar members earning \$50,001 or less reported that they were partially retired, or working part-time for various reasons. Of the public employees making higher salaries, some were judges, and some had past income from other sources, such as payouts from prior private sector jobs, real estate or stock income, and income from other sources.

<sup>57</sup> Alaska Constitution, Article IV, Section 4. Additional requirements for the different levels of courts are spelled out in AS 22.05.070 (supreme court); AS 22.07.040 (court of appeals); AS 22.10.090 (superior court); and AS 22. 15.160 (district court).

<sup>58</sup> Defined in AS 22.05.070.

<sup>59</sup> Supreme court justices and court of appeals judges are required to have eight years active practice; superior court judges five years, and district court judges three years. District court judges also may have served as a magistrate for seven years and graduated from an accredited law school; further information is available in AS 22.15.160 and Alaska Court Administrative Rule 19.1.

- increased from 27.8<sup>60</sup> to 29.5 years for appellate court applicants.

Years of residence varied by location.

- For Fairbanks and “Other” locations, 52% of the applicants had 20 or more years residency, compared to Southeast Alaska where 73% of the applicants had 20 or more years.
- In “Other” areas (20%) and Southeast (13%), larger percentages of applicants had only 6 - 10 years of residence, compared to Anchorage (3%) and Palmer (5%) where much smaller percentages of applicants had relatively few years of residence.
- From 2008 to 2012, most appointees were residents longer than nominees and applicants.

## **2. Years of practice**

### **a. Bar members**

In 1989, the average bar member had been practicing for 11.6 years. By 2013, that nearly doubled to 21.6 years.

### **b. Applicants and nominees**

- Applicants’ years of practice increased from 11.2 years from 1984-1988 to 21.4 years from 2008 to 2012, tracking the bar members’ pattern of practice closely. Average years of practice increased for each level of court.
- From 1984 to 2012, the percentage of applicants with 16 or more years of practice increased from 17% to 72%. From 2008-2012, 56% of district court applicants, 70% of superior court applicants, and 96% of appellate court applicants had 16 or more years of practice.
- From 1984 to 2012, the percentage of nominees with 16 or more years of practice increased from 20% to 82%. From 2008 to 2012, 69% of district court nominees, 83% of superior court nominees, and 96% of appellate court nominees had 16 or more years of practice.
- From 2008 to 2012, only 3% of applicants had five or fewer years of practice, and none were nominated for any level of court.

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<sup>60</sup> The appellate court mean years of residency were for the time from 1989 to 2007. There were no appellate court vacancies from 1984 to 1988, and relatively few in the years between 1989 and 2007, so these years were grouped together. The time periods used to compare mean years of residency for the district and superior courts were from 1984 to 1988, and from 2008 to 2012.



- The applicants' years of practice tended to vary by location. From 1984 to 2012, a larger percentage of Southeast practitioners had 20 or more years of practice than did applicants in other locations.

#### **D. Writing samples**

Staff evaluate each writing sample for clarity, grammar, proofing, and other indicators of ability to communicate in writing. These criteria have remained constant over the time periods included in this report. Writing samples are evaluated on a "1" to "5" scale, with "5" being "Excellent," and "1" being "Below Acceptable."

On average, applicants for higher courts received higher writing sample ratings. As shown below, higher mean writing sample ratings were associated with nomination, and to a lesser extent, appointment.<sup>61</sup> In recent years, particularly for appellate court positions, writing sample ratings have improved for applicants, nominees, and appointees. From 1984-2012:

- For district court, the mean writing sample ratings for applicants, nominees, and appointees were 3.5; 3.9; and 3.8 respectively.
- For superior court, the mean writing sample ratings for applicants, nominees, and appointees were 3.7, 4.1, and 4.2 respectively.
- For appellate courts, the mean writing sample ratings for applicants, nominees, and appointees were 4.5, 4.5, and 4.6 respectively.

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<sup>61</sup> The differences among ratings for applicants, nominees, and appointees were statistically significant.

## E. Bar survey ratings

Since 1980, the Council has surveyed Alaska bar members<sup>62</sup> about each applicant for each position.<sup>63</sup> The Council is not bound to make any decisions based on the results of the surveys. The Council does not rank applicants based on survey results, but uses the survey as one tool among many to gauge applicants' abilities. The Council releases survey ratings to the public several weeks before meeting to interview applicants and make its nominations.

The Council asks for information about an applicant's professional competence, integrity, fairness, judicial temperament, suitability of this applicant's experience for this vacancy, and the overall rating for this position. If an applicant is applying for two or more different vacancies simultaneously, which happens fairly frequently, the bar members rate them separately for each vacancy. Bar survey respondents may evaluate applicants as more qualified for one position than another, depending on the level and location of the court.

The rating scale uses ratings from 1 to 5 (Likert scale), with 1 being the lowest rating and 5 the highest. Each numerical rating is tied to a verbal description.<sup>64</sup> A 3 is an Acceptable rating. In general, a few tenths of a point difference among ratings is not meaningful. If one applicant is scored 3.9 and another 4.0, there is no significant difference between their ratings.

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<sup>62</sup> Active in-state members may complete a paper survey or an on-line survey. Active out-of-state members, inactive in-state members and retired members may respond to the electronic survey. Alaska has a mandatory bar for attorneys wishing to appear in state courts. Attorneys who practice in federal court and those whose positions do not require appearances in state court may maintain their memberships as inactive, or may drop membership altogether.

<sup>63</sup> During the early 1960's the Council administered a simple survey itself. At some point, the Alaska Bar Association started doing the survey, and continued until early 1980. The Alaska Bar Association sent out a survey that asked whether the applicant was "unqualified," "qualified," or well-qualified." In mid-1980, the Council took over the survey process, and since that time has contracted with an independent organization to conduct the survey. The questions have changed somewhat over the years, but have always focused on legal ability, integrity, impartiality, fairness, and temperament. Usually the survey has included a variable for an overall evaluation of performance.

<sup>64</sup> 1=poor; 2=deficient; 3=acceptable; 4=good; 5=excellent. Each value also has a descriptive statement: 1 (poor) Seldom meets minimum standards of performance for this court; 2 (deficient) Does not always meet minimum standards of performance for this court; 3 (acceptable) Meets minimum standards of performance for this court; 4 (good) Often exceeds minimum standards of performance for this court; and 5 (excellent) Consistently exceeds minimum standards for this court. Respondents also may check "Insufficient knowledge to rate this judge on this criterion."

Surveyed attorneys are asked to provide demographic information about themselves. They indicate whether they are in private practice or the public sector, their length of practice, the size of their law firm (for private practitioners), their gender, their type of caseload, and the location of their practice. Survey results are analyzed using this demographic information. These data can reveal how an applicant is perceived by different groups of attorneys. For example, Council members are able to examine how an applicant was rated by judges, or government attorneys, or men versus women, or prosecutors versus criminal defense attorneys.

Demographic data also help Council members identify the effects of any possible “bloc voting.” Although survey respondents must affirm that they have completed their survey in conformity with their professional responsibilities, some ratings may be affected by groups of attorneys who may favor one applicant over another for reasons more related to factors other than merit.

In addition to the numerical ratings, attorneys have the opportunity to comment about an applicant. Signed attorney comments tend to be quite useful to Council members; (see below at section F.) Attorneys have the option of signing their names to their comments. Council members do not consider unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant. Survey comments are shared with applicants after they have been edited to remove information that might identify individual survey respondents.

Attorneys can complete their surveys on-line, or on paper, although most prefer to use on-line forms. A detailed description of the bar survey methodology is available from the Judicial Council.<sup>65</sup>

The analysis shows the extent to which survey ratings are associated with the likelihood of nomination and appointment, and how they differ by court level and period of time. When reviewing this analysis, it is important to consider the following:

- Although Council members do not use survey ratings to rank applicants, the ratings for individual applicants are considered in relation to ratings for other applicants. For example, an overall rating of 3.5 could be the highest rating among applicants for one position and the lowest rating among applicants for another position.
- Overall bar survey ratings can mask concerns suggested by more detailed analysis. For example, an applicant may receive a reasonably good overall rating, but analysis of the demographic data may indicate substantial concern among some groups of attorneys.

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<sup>65</sup> For an on-line description, go to <http://www.ajc.state.ak.us/selection/procedur.htm>.

- Bar survey ratings may not directly correlate with the requirements of the judicial position sought. An applicant may be highly rated in a narrow field of practice that does not closely track the requirements of the position.<sup>66</sup>
- The bar survey ratings typically provide another lens for viewing an applicant's characteristics. A high rating in Professional Competence may be supported by a high rating on the writing sample, publications, and the reference letters and counsel questionnaires. The applicant's Suitability of Experience bar rating may correlate with type of practice, and other information considered by the Council.

### **1. Applicant survey ratings compared to likelihood of nomination and appointment**

Applicants receiving overall ratings of 3.5 or higher from other bar members were more likely to be nominated than those with ratings of 3.4 or lower. Those with ratings of 4.0 or higher were the most likely to be nominated and appointed.<sup>67</sup> While few applicants with low bar survey ratings were nominated, high ratings on the bar survey did not guarantee nomination or appointment. Nominees, as a group, had noticeably higher mean ratings on all variables on the bar survey than did applicants. The differences between nominees and appointees were not more than two-tenths of a point.<sup>68</sup> From 1984 to 2012:

- 13% of applicants received an overall rating below 3.0. One percent of these applicants were nominated by the Council.
- 24% of applicants received an overall rating between 3.0 and 3.4. Eleven percent of these applicants were nominated.
- 42% of applicants received an overall rating between 3.5 and 3.9. Forty-six percent of these applicants were nominated.
- 21% of applicants received an overall rating between 4.0 and 5.0. Eighty-one percent of these applicants were nominated.

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<sup>66</sup> For example, an applicant for a trial court position might have a practice that is confined to appellate or transactional work. High survey ratings may not be as useful in that situation.

<sup>67</sup> The differences among ratings were statistically significant.

<sup>68</sup> Some applicants who were rated in the bar survey withdrew their applications prior to being interviewed by the Council, for a variety of reasons. Average overall survey ratings for applicants who withdrew were the same as the average overall ratings for applicants who did not withdraw.

Table 4 summarizes an applicant’s likelihood of nomination in relation to an applicant’s overall bar survey rating.<sup>69</sup>

Table 4 Applicant Overall Bar Survey Rating Compared to Likelihood of Nomination (1984-2012)	
Overall Bar Survey Rating	Percent Nominated
<b>Below 3.0</b>	1%
<b>Between 3.0 and 3.4</b>	11%
<b>Between 3.5 and 3.9</b>	46%
<b>Between 4.0 and 5.0</b>	81%

## 2. Mean ratings on individual variables

Nominees, as a group, had noticeably higher mean ratings on all variables on the bar survey than did applicants. The variations in ratings between nominees and appointees, when they existed, were not noticeably different.

Table 5 Bar Survey Ratings for Applicants, Nominees and Appointees by Survey Criteria (1984-2012)			
Survey Criterion	All Applicants	Nominated	Appointed
<b>Professional Competence</b>	3.7	4.0	4.0
<b>Fairness</b>	3.7	4.0	4.0
<b>Integrity</b>	3.9	4.1	4.2
<b>Temperament</b>	3.6	3.9	4.0
<b>Suitable Experience</b>	3.6	3.9	4.0
<b>Overall Rating</b>	3.6	3.9	4.0

<sup>69</sup> Of the applicants who received the highest rating in a given bar survey, 88% were nominated.

### 3. Mean ratings by court level

The mean ratings of “overall rating for this position” for all applicants varied by court level, and generally were higher for nominees and appointees than for applicants. District court and superior court mean ratings resembled each other closely. Appellate ratings were higher than trial court ratings for applicants, nominees and appointees.

Court Level	All Applicants	Nominated	Appointed
District	3.5	3.9	3.9
Superior	3.6	3.9	4.0
Appellate	3.7	4.1	4.3

### 4. Mean ratings over time

The mean ratings for applicants, nominees, and appointees increased over time. Other evidence in this report suggests that the quality of applicants has improved. The number of attorneys eligible to apply for judgeships has increased at a faster rate than the rate at which new judicial positions have been created, leading to increased competition for appointment to the bench.<sup>70</sup> Applicants in recent years tended to have more experience, more varied experience practicing law, and were older with more life experience.<sup>71</sup> From 1984 to 2012 the mean overall rating for:

- applicants increased from 3.3 to 3.7;
- nominees increased from 3.7 to 4.0;
- appointees increased from 3.8 to 4.1.

### F. Other information

The Council investigates applicants’ bar and judicial discipline histories, potential conflicts of interest, credit and criminal records, all court cases in which the applicant was a party, and additional information as needed. Applicants’ pro bono work, and service to the bar and the community are reported to the Council. Finally, the Council interviews each applicant before making its decisions about nominations.

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<sup>70</sup> *Supra*, page 8.

<sup>71</sup> Also Bar members could have begun to use the ratings system more generously. This phenomenon has been observed in other contexts, including rising grades for U.S. students. See e.g., <http://www.gradeinflation.com/>.

Council members who served since 1999 responded to a survey asking them to assess the importance of the non-quantifiable information that they reviewed. They also remarked on the value of the interview.

### **1. Community and bar service; pro bono**

Council members believed that pro bono and community service were important or somewhat important for applicants. They thought that bar service was not as important.

### **2. Counsel questionnaires, bar survey comments, reference letters, and public comments**

Counsel questionnaires and signed bar survey comments were among the most valued information to Council members, followed by reference letters. The Council member procedures require members to disregard unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant (see below). As a result, unsigned survey comments were ranked low on the list of useful information.

### **3. Law school**

About half of the members thought that the applicant's law school was somewhat important. The other half thought it was neutral, or not as important.

### **4. Public comment**

The Council encourages public comment about the applicants throughout the process. It issues at least three press releases during each application process inviting comments. For each vacancy, it holds a public hearing, nearly always in the location of the judicial position. The hearings coincide with the meeting to interview applicants, and to vote on nominations. When the Council receives comments in time, it will investigate any concerns raised by members of the public.

### **5. Conflicts of interest, credit and criminal histories, other investigative information**

Council members consider this information in appropriate cases. The weight given to it depends on the specific circumstances in each application.

### **6. Interview**

Most of the Council members said that the interview was very important. They noted that it gave insight to the applicants' abilities that could not be gleaned from the written materials alone. A couple of members thought that it was somewhat important, relative to the other information, but none found it neutral or unimportant.

## **G. Prohibited considerations**

Council procedures preclude the Council from considering certain information.<sup>72</sup>

- As noted above, members may not consider unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant.
- The Council refrains from any discrimination prohibited under state and federal law.
- 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.
- The Council does not consider an applicant's likelihood of appointment by the governor.

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<sup>72</sup> *Alaska Judicial Council Procedures for Nominating Judicial Candidates*, Sec. VI(E).  
<http://www.ajc.state.ak.us/selection/procedur.htm>



## Part 3 Judicial Retention

### A. Introduction

Alaskan judges stand for retention on the ballot in the general elections.<sup>73</sup> Voters may vote “yes” or “no” on the judges’ retentions. Only residents of the judicial district in which a trial court judge serves vote on that judge’s retention. Voters statewide decide the retention of appellate judges.

To enable voters to make informed decisions on the retention of judges, the Alaska legislature requires the Council to evaluate the performance of the judges on the ballot and to publicize the results of its evaluations. Based on its evaluations of judicial performance, the Council makes recommendations about whether voters should retain judges who are on the ballot.<sup>74</sup>

The discussion below includes an analysis of the Council’s survey data. Council surveys are useful and are subject to statistical analysis, but it is critically important to note that survey results provide only some of the information that Council members use to make their retention recommendations. Sometimes, survey results can mask problems experienced by judges that are not well known to survey respondents. In recent years, the Council has recommended against the retention of three judges who received acceptable survey ratings but who experienced issues outside of the courtroom that required additional and substantial investigation.

### B. Retention surveys

The Council surveys thousands of Alaskans who have frequent experience with judges. The Council invites attorneys, peace and probation officers, court employees, jurors, and social workers, guardians ad litem and volunteer children’s case workers (CASAs)<sup>75</sup> to complete surveys about the performance of trial court judges standing for retention elections.<sup>76</sup> The format and number of questions asked in the surveys have changed during the years covered in this report (1984-2012).

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<sup>73</sup> Statutes establish a shorter period for service before the judge’s first retention election, and longer terms if the judge is retained. District court judges are on the ballot at the first general election more than two years after their appointment (*supra*, note 10) Superior court and appellate judges are on the ballot at the first general election more than three years after their appointment. Subsequently, district court judges serve four year terms; superior court judges six year terms; court of appeals judges eight year terms; and supreme court justices ten year terms.

<sup>74</sup> For a further description of the Council’s evaluation process, see *supra* note 17.

<sup>75</sup> CASAs, Court Appointed Special Advocates, are community volunteers trained by the Office of Public Advocacy to work with guardians ad litem in Child In Need of Aid (CINA) cases. Each CASA handles one to three cases and is supervised by an OPA GAL. In the 2012 retention elections, it was not possible to include the CASAs in the surveys, but the social workers and GALs still rated judicial performance.

<sup>76</sup> The Council has conducted attorney and peace and probation officer surveys since 1976 when the legislation authorizing judicial performance evaluations took effect.

Throughout, all groups have used the same 1 to 5 scale.<sup>77</sup> The different groups evaluated judges on fairness, integrity, diligence, temperament, and overall evaluation of the judge. Attorneys also evaluated judges on legal ability, and evaluated appellate court judges in addition to trial court judges.<sup>78</sup>

## 1. Attorneys

Table 7 shows the ratings by attorneys for each survey criterion at the district court, superior court, and appellate court levels, for all years combined.<sup>79</sup> Mean ratings for district and superior court judges were virtually the same; appellate court judges were rated slightly higher. Trial court judges were rated highest on Integrity. The highest ratings for appellate court judges were for Integrity and Diligence.

	District Court	Superior Court	Appellate Courts <sup>80</sup>	All
<b>Legal Ability</b>	3.9	3.9	4.1	3.9
<b>Impartiality</b>	4.0	4.0	4.1	4.0
<b>Integrity</b>	4.1	4.2	4.3	4.2
<b>Temperament</b>	4.0	4.0	4.2	4.0
<b>Diligence</b>	4.0	4.0	4.3	4.0
<b>Overall Performance</b>	3.9	3.9	4.2	3.9

Attorneys' overall ratings of judges have increased consistently and substantially over time. From 1984 to 2012, attorneys' mean overall ratings of trial court judges on the ballot increased from 3.6 to 4.2. Similarly, from 1988 to 2012, attorneys' mean overall ratings of appellate court judges on the ballot increased from 4.1 to 4.4.

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<sup>77</sup> 5=Excellent, 4=Good, 3=Acceptable, 2=Deficient, 1=Poor. See note 64 *supra*, for definitions for these values.

<sup>78</sup> See the Council's web site, <http://www.ajc.state.ak.us/retention/retent.htm> for more information about the surveys and more detailed results for each year. The 1-5 scale is the same one used in selection surveys.

<sup>79</sup> Five judges who were eligible to stand for retention were evaluated, but retired without filing to be retained. They are included on Tables 7 and 8.

<sup>80</sup> No appellate court judges were on the ballot in 1984, 1986, 1996, 2004, and 2006.

As discussed below, peace and probation officers’ mean overall ratings of trial court judges have also increased substantially over time. This may suggest that the quality of Alaska’s judges, high to start with, has improved over time. As discussed previously, mean overall ratings for judicial applicants have also increased, suggesting that judicial appointees have been increasingly well qualified.

There was little variation in how attorneys from the four judicial districts rated their respective trial judges. The mean overall rating by First District attorneys for First District trial judges was the highest at 4.1. The mean overall rating by Fourth District attorneys for Fourth District trial judges was the lowest at 3.8. The mean overall rating by Second and Third District attorneys for trial judges in their respective districts was 3.9.

Most appellate judges received consistently high ratings from all judicial districts, although Fourth District ratings tended to be lower than those in other districts.<sup>81</sup>

## 2. Peace and probation officers

Peace and probation officers tended to give judges high evaluations. They rated district court judges slightly higher than superior court judges, perhaps because they were likely to have more contact with district courts. There were no significant differences among the judicial districts.

Rating Category	District Court	Superior Court	All
<b>Impartiality</b>	4.0	3.8	3.9
<b>Integrity</b>	4.1	4.0	4.0
<b>Temperament</b>	4.0	3.9	3.9
<b>Diligence</b>	4.1	3.9	4.0
<b>Overall Performance</b>	4.0	3.8	3.9

Like attorneys’ overall ratings of judges, ratings of judges by peace and probation officers have increased noticeably over time. From 1984 to 2012, peace and probation officers’ mean overall ratings of trial court judges on the ballot increased from 3.4 to 4.2.

There was little variation in how peace and probation officers from the four judicial districts rated their respective trial judges. The mean overall ratings by the peace and probation officers were 4.0, 3.9, 3.8, and 3.7 for the Third, First, Fourth, and Second Districts respectively.

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<sup>81</sup> Data for retention ratings on overall performance by judicial district were only available from 1992-2012.

### **3. Court employees, jurors, and social worker/GAL/CASAs**

The Council has surveyed three other groups about judicial performance. Juror surveys were conducted in the 1970s and early 1980s. They were dropped during the later 1980s, then resumed in 1996. Court employees were added in 1996, and the social worker/GALs/CASAs were added in 1998. All of these groups were smaller than the attorney and peace and probation officer groups, and all tended to rate the judges more highly than the larger groups. The mean rating from jurors for both district and superior court judges were 4.8. The mean ratings for social workers/GALs/CASAs for both district and superior court judges were 4.3. Court employees evaluated appellate judges as well as trial court judges. They rated district court judges at 4.3, superior court judges at 4.4, and appellate judges at 4.5.

#### **C. Relationship between retention evaluations, and the characteristics of applicants and nominees**

The Council had enough data for about 73% of the judges who are included in this retention analysis<sup>82</sup> to look at any association between a judge's characteristics at the time of application, and that judge's performance as reflected in the surveys of attorneys and peace and probation officers. The analysis showed that:

- Attorney ratings of retention judges showed small but noticeable differences associated with judges' prior legal career experience.<sup>83</sup> Judges who had been public defense attorneys or judges (in a different position than the one evaluated) at any time in their careers received slightly higher than average retention survey ratings from attorneys. Those who had prior prosecutorial experience received slightly lower than average ratings from attorneys.
- The prior legal career experiences for the retention judges was not associated with any differences in the peace and probation officer retention survey ratings.
- High bar survey ratings during the selection process correlated well with high performance evaluation ratings at retention. Seventy-five percent of the applicants who were rated 4.3 or higher on the selection survey also were rated 4.3 or higher on their retention surveys. The other 25% with selection survey ratings of 4.3 or higher were rated between 4.0 and 4.2 on retention evaluations.

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<sup>82</sup> 215 of the 294 retention evaluations reported in this section were for judges for whom the Council had selection information. The remaining 79 retention evaluations occurred for judges who had been appointed before 1984, and no selection information was available.

<sup>83</sup> Attorneys evaluated judicial performance on legal ability and the five other qualities of integrity, impartiality, temperament, diligence, and overall performance. Peace and probation officers did not evaluate judges on legal ability.

- Writing sample evaluations from the selection process were closely correlated with overall ratings from attorneys in retention evaluations. Judges with attorney ratings below 3.5 on the retention survey all had writing sample evaluations of “acceptable or “good;” none had “excellent” writing samples. Most judges with attorney retention evaluation ratings of 4.0 or above had selection writing sample evaluations of “good” or “excellent.”

#### **D. Council retention recommendations**

The Council makes recommendations to the voters about whether to vote for a specific judge, based on its evaluations.<sup>84</sup> Since 1984, the Council has recommended non-retention of a judge only four times, in 1988, 2006, 2008, and 2010.<sup>85</sup> Two of these judges were not retained (in 2006 and 2010). Two of these judges were retained (in 1988 and 2008) by much smaller margins than other judges on the ballot in those years.

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<sup>84</sup> Although the statute establishing the retention evaluation responsibility for the Council makes recommendations optional, the Council has always made recommendations.

<sup>85</sup> The Council recommended against judges several times between 1976 and 1982. In 1982, the two judges on whom the Council recommended a “no” vote were not retained. In the other instances, the judges were retained, but by substantially smaller margins than the judges for whom the Council recommended a “yes” vote.

## E. Retention votes

### 1. By year

Table 8 shows the number of judges standing for retention and the average “yes” vote percentage for each year. From 1984 to 2012, the average “yes” vote ranged between 63% and 70%.

Year	Number of Judges	Percent Yes Vote
1984	20	69%
1986	18	71%
1988	17	69%
1990	15	68%
1992	15	64%
1994	25	66%
1996	13	69%
1998	13	68%
2000	30	64%
2002	16	69%
2004	10	70%
2006	31	64%
2008	12	67%
2010	28	63%
2012	26	66%
	289 <sup>86</sup>	

### 2. By judicial district

Judges in some districts typically receive a higher percentage of “yes” votes than those in other districts. Judges in the First and Second Judicial Districts typically receive a higher percentage of “yes” votes. Appellate judges and judges in the Third Judicial District typically receive a lower percentage of “yes” votes. Judges in the Fourth Judicial District typically receive “yes” vote percentages close to the state average.

Some factors might help to explain the differences in “yes” vote percentages by location. In judicial districts with smaller populations – the First and Second districts – voters are more likely to be acquainted with their judges in their capacity as judicial officers and as members of the community. Historically, mean overall attorney survey ratings of trial judges in the First Judicial District have been slightly higher than in other districts.

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<sup>86</sup> Five judges who were eligible to stand for retention were evaluated, but retired without filing to be retained. They are not included on Tables 9 or 10.

Since 1984, three of the four judges not recommended for retention were seated in the Third Judicial District. Trial court judges who served in judicial districts rather than statewide have been less likely to face organized opposition to their retention than appellate judges who served statewide. On the average, however, nearly two-thirds of the votes cast in the judicial retention elections were “yes” votes, indicating general approval of the judges’ performances.

Table 10 Vote Percentages by Judicial District (1984-2012)		
Judicial District	Number of Judges	Percent Yes Vote
First	39	73%
Second	13	71%
Third	163	65%
Fourth	48	68%
Appellate	26	64%
All	289	67%

### 3. Voter participation

The Council analyzes the information available from each retention election after the vote totals have been certified as official by the Lieutenant Governor’s office. The purpose is to discern voting patterns, to be alert to public concerns, and to assess the usefulness of the Council’s recommendations. Voter participation in judicial races is compared to voter turnout for the biannual U.S. House race,<sup>87</sup> and to the gubernatorial race every four years. Typically, 98% to 99% of all people voting participate in those races. In appellate retention elections that are statewide, 84% to 87% of all voters participate.

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<sup>87</sup> Alaska’s population entitles it to only one Congressional position; it also has two U.S. Senators.

## Part 4 Conclusion

The Alaska Judicial Council prepared this report to identify the factors most closely associated with applicants for judicial positions, nominees, and appointees. The report documents the substantial changes that have occurred in the characteristics of the Alaska Bar and judicial applicants in the years between 1984 and 2012, and notes changes in the numbers of vacancies and applications during that period.

This report will better inform the public, bar members, prospective applicants, and the judiciary about the Council's practices, the performance of Alaska's judges, and the applicant qualifications associated with nomination by the Council and appointment by the governor. The report also provides information to the Judicial Council about its own performance and promotes the Council's ability to fulfill its constitutional and statutory responsibilities in the best way possible.



Appendix A  
Judicial Council members serving from 1984 - 2013

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## Appendix A Judicial Council members serving from 1984 - 2013

### Chief Justices

**Edmond W. Burke** (1981 - 1984)  
**Jay A. Rabinowitz** (1984 - 1987)  
**Warren W. Matthews** (1987 - 1990)  
**Jay A. Rabinowitz** (1990 - 1992)  
**Daniel A. Moore, Jr.** (1992 - 1995)  
**Allen T. Compton** - (1995 - 1997)  
**Warren W. Matthews** (1997 - 2000)  
**Dana Fabe** (2000 - 2003)  
**Alexander O. Bryner** (2003 - 2006)  
**Dana Fabe** (2006 - 2009)  
**Walter L. Carpeneti** (2009 - 2012)  
**Dana Fabe** (2012-2015)

The following list includes brief biographies of former Council members at the time of their appointment to serve on the Judicial Council.

### Former Attorney Members

**Joseph L. Young** - Anchorage (1978 - 1984)  
Mr. Young was in private practice in Anchorage, with the firm of Young and Sanders.

**James B. Bradley** - Juneau (1981 - 1986)  
Mr. Bradley was in private practice in the Juneau firm of Robertson, Monagle, Eastaugh and Bradley.

**Barbara L. Schuhmann** - Fairbanks (1982 - 1988)  
Ms. Schuhmann was in private practice in Fairbanks with the firm of Staley, DeLisio, Cook & Sherry.

**James D. Gilmore** - Anchorage (1984 - 1990)  
Mr. Gilmore was in private practice in Anchorage with the firm of Gilmore and Feldman.

**William T. Council** - Juneau (1986 - 1992)  
Mr. Council was in private practice in the Juneau firm Council and Crosby.

**Daniel L. Callahan** - Fairbanks (1988 - 1994)  
Mr. Callahan was in private practice in Fairbanks with the firm of Schendel and Callahan.

**Mark E. Ashburn** - Anchorage (1990 - 1996)  
Mr. Ashburn was in private practice in Anchorage with the firm of Ashburn and Mason.

**Thomas G. Nave** - Juneau (1992 - 1998)  
Mr. Nave was a sole practitioner in Juneau with a general civil and criminal practice.

**Christopher E. Zimmerman** - Fairbanks (1994 - 1997)

Mr. Zimmerman was a Fairbanks district court judge from 1985 - 1990, and was a partner in the law firm Call, Barrett & Burbank with a general civil and criminal practice during the time he served on the Judicial Council.

**Robert H. Wagstaff** - Anchorage (1996 - 2002)

Mr. Wagstaff was a sole practitioner with a general civil trial practice.

**Paul J. Ewers** - Fairbanks (1997 - 2000)

Mr. Ewers was a Deputy City Attorney with the City of Fairbanks.

**Geoffrey G. Currall** - Ketchikan (1998 - 2004)

Mr. Currall was a partner in the law firm of Keene and Currall. Mr. Currall served many years as a prosecutor before entering private practice.

**Robert B. Groseclose** - Fairbanks (2000 - 2006)

Mr. Groseclose was a partner in the law firm of Cook, Schuhmann and Groseclose.

**Susan Orlansky** - Anchorage (2002 - 2008)

Ms. Orlansky was a partner in the law firm of Feldman & Orlansky.

**Douglas Baily** - Juneau (2004 - 2007)

Mr. Baily served as Attorney General for Governor Cowper, was in private practice in Juneau and practiced law in Alaska for nearly 40 years.

**Louis James Menendez** - Juneau (2007 - 2010)

Mr. Menendez was in private practice in Juneau.

**James H. Cannon** - Fairbanks (2012 - 2018)

Mr. Cannon was in private practice in Fairbanks. He previously served as a public defender in Fairbanks from 1980-2005.

### **Former Non-Attorney Members**

**Robert H. Moss** - Homer (1979 - 1985)

Mr. Moss was a fisherman from Homer. He was appointed by Governor Hammond.

**Mary Jane Fate** - Fairbanks (1981 - 1987)

Ms. Fate served on the board of Alaska Airlines, and on non-profit boards. She was appointed by Governor Hammond.

**Renee Murray** - Anchorage (1983 - 1989)

Ms. Murray was the manager of Scott Wetzell Services, an insurance adjustment firm, in Anchorage. She was appointed by Governor Sheffield.

**Dr. Hilbert J. Henrickson** - Ketchikan (1985 - 1991)

Dr. Henrickson practiced general medicine in Ketchikan. He was appointed by Governor Sheffield.

**Leona Okakok** - Barrow (1987 - 1993)

Ms. Okakok served as the liaison officer for the Inupiat History, Language and Culture Commission of the North Slope Borough. She was appointed by Governor Cowper.

**Janis Roller** - Anchorage (1989 - 1991)

Ms. Roller was a federal court reporter in Anchorage from 1982 to 1988. She was appointed by Governor Cowper.

**Dr. Paul Dittrich, M.D.** - Anchorage (1991 - 1991)

Dr. Dittrich was an orthopedic surgeon in Anchorage. He was appointed by Governor Hickel.

**David A. Dapcevich** - Sitka (1991 - 1997)

Mr. Dapcevich was an accountant who specialized in tax preparation and served as election judge for several Alaska native corporations. He was appointed to the Council by Governor Hickel.

**Jim A. Arnesen** - Anchorage (1991 - 1995)

Mr. Arnesen was a real estate broker and president of the Alaska Family Support Group, a non-profit organization. He was appointed by Governor Hickel.

**Janice Lienhart** - Anchorage (1993 - 1999)

Ms. Lienhart was the director of Victims for Justice, a non-profit agency dedicated to supporting victims of crime and advancing their interests. She was appointed by Governor Hickel.

**Vicki A. Otte** - Juneau (1995 - 2000)

Ms. Otte was the President of the non-profit Native Justice Center. She was appointed by Governor Knowles.

**Mary Matthews** - Fairbanks (1997- 1998)

Ms. Matthews was the Executive Director of the Literacy Council of Alaska. She was appointed by Governor Knowles.

**Sandra Stringer** - Fairbanks (1998 - 1999)

Ms. Stringer was a special assistant to the Fairbanks North Star Borough Mayor, a non-attorney member of the Alaska Bar Association's Board of Governors, and a member of the Fairbanks Borough Assembly. She was appointed by Governor Knowles.

**Katie Hurley** - Wasilla (1999 - 2003)

Ms. Hurley was a retired life-long Alaskan, who was the clerk to the Alaska Constitutional Convention, and who served in the legislature prior to her appointment to the Council. She was appointed by Governor Knowles.

**Gigi Pilcher** - Ketchikan (2000 - 2005)

Ms. Pilcher ran a small business, directed non-profit service organizations, and served on several state commissions. She was appointed by Governor Knowles.

**Eleanor Andrews** - Anchorage (2000 - 2007)

Ms. Andrews served as commissioner of the Department of Administration under Governor Sheffield, and employee relations director for the Municipality of Anchorage. She was owner and CEO of Andrews Group in Anchorage. She was appointed by Governor Knowles.

**Bill Gordon** - Fairbanks (2003 - 2009)

Mr. Gordon served as Executive Assistant to Governor Hammond, as chair of the Alcohol Beverage Control Board, and was a semi-retired consultant and part owner of public water and wastewater companies in interior Alaska. He was appointed by Governor Murkowski.

**Christena Williams** - Ketchikan (2005 - 2011)

Ms. Williams was a third generation Alaskan and newspaper co-publisher. She and her family owned and operated Pioneer Printing Co., Inc. and the Ketchikan Daily News. She was appointed by Governor Murkowski.

**Charles M. Kopp** - Kenai (2007 - 2008)

Chief Kopp was the Chief of Police in Kenai. He was appointed by Governor Palin.

**William F. Clarke** - Chugiak (2008 - 2013 )

Mr. Clarke was a retired Air Force pilot and engineering marketing manager. He was appointed by Governor Palin.

## Current Council Members

### Attorney Members

**Aimee Oravec** - Fairbanks (2012 - 2018)

Ms. Oravec is an attorney member from Fairbanks. Ms. Oravec has practiced law since 1998, and is a shareholder in Oravec Law Group.

**Kevin Fitzgerald** - Anchorage (2008 - 2014)

Mr. Fitzgerald is an attorney member from Anchorage. He is a partner in Ingaldson, Maassen & Fitzgerald and is a second generation Alaskan.

**Julie Willoughby** - Juneau (2010 - 2016)

Ms. Willoughby is an attorney member from Juneau. She is in private practice in Juneau. She has practiced law since 1998 and is a second generation Alaskan.

### Non-Attorney Members

**Ken Kreitzer** - Juneau (2011 - 2017)

Mr. Kreitzer is a public member from Juneau. He has many years of public safety experience, including work as an airport safety officer, a corrections officer, a firefighter, EMT, a police officer and a court security officer. He was appointed by Governor Parnell.

**Dave Parker** - Wasilla (2013 - 2019)

Mr. Parker is a public member from Wasilla. He has been a law enforcement officer in Alaska since 1995. Prior to that he was a pastor in Alaska, France, Washington State, Ivory Coast, and Oregon. He began his professional career as a teacher in Washington State and Yemen. He was appointed by Governor Parnell.

**Kathleen Tompkins-Miller** - Fairbanks (2009 - 2015)

Ms. Tompkins-Miller is a public member from Fairbanks. She is a schoolteacher. She was appointed by Governor Palin.

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## Appendix B Methodology

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## Appendix B Methodology

The methods of analysis in this report are based on those used for the Council's most recent report on data about judicial selection and retention, *Selecting and Evaluating Alaska's Judges, 1984-2007*.<sup>88</sup> That report in turn built on one published in 1999, *Fostering Judicial Excellence*.<sup>89</sup>

### A. Data

The Judicial Council maintains an on-going database about judicial applicants, nominees, and appointees that includes information about individuals who have applied for judicial positions since the beginning of 1984.

- **Unit of analysis:** The basic unit of analysis for most of the report is a single application. Many attorneys have applied for more than one judicial position; each application is counted once. Between 1984 and 2012, the Council received 1,285 applications for judgeships from 461 unique individuals.
- **Sources of information:** The information came from the application forms submitted by the applicants, and from the other investigative materials accumulated, including reference letters, evaluation of writing samples, bar survey ratings, and other relevant materials. It also came from other Judicial Council records about vacancies, and retention evaluations.
- **Types of information:** The database included information about the judicial selection process including number of applicants per vacancy, location of the judgeship, and level of court. It also included data about demographic characteristics of applicants, employment past and present, bar and judicial discipline, courtroom experience, ratings on surveys, and writing sample evaluations. For appointed judges, the database included retention survey evaluations, voting pattern information, and correlations between selection performance and performance in retention evaluations.
- **Time Frames:** Several different time frames were used in the analysis, building on the Council's 2008 report. That report used the first five years of data available to the Council, the most recent five years, and years between. This report adds a fourth period, the five years that have elapsed since the 2008 report. The periods used in the 2008 report were maintained so that trends in judicial selection could be accurately noted.

At some places in the report, variation among all four periods was noted. Other data were reported for the aggregate twenty-nine years, 1984-2012.

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<sup>88</sup> <http://www.ajc.state.ak.us/reports/JudgeProfile08.pdf>.

<sup>89</sup> <http://www.ajc.state.ak.us/reports/jgprofile.pdf>.

The reporting periods were:

- 1984-2012 – This data set included all 1,285 applications.<sup>90</sup>
- 1984-1988 – The first five years of data available.
- 1989-2002 – The second period used in the 2008 report.
- 2003-2007 – The third period used in the 2008 report.
- 2008-2012 – The five years that have elapsed since the end of data collection for the 2008 report.

## **B. Analysis**

The Judicial Council analyzed the data using standard database and statistical programs.<sup>91</sup>

For the majority of the analysis, the Council looked at each of the variables – e.g., demographics, employment – by three time periods: all data together (1984-2012), earliest five years (1984-1988) and most recent five years (2008-2012). If the data showed little change during the twenty-nine year period, it was reported for all years together (1984-2012). If the data indicated a consistent trend, they were reported by comparing the earliest years to the most recent five years. Other variations between time periods were noted.

This is the Council’s third review of information about judicial applicants and vacancies. Data that had been shown to be less important in earlier reports (e.g., type of law school attended) was not included in the present analysis. Conversely, information that seemed to be associated with greater likelihood of nomination and appointment was reviewed in detail during the analysis, using cross-tabulations with tests of statistical significance where appropriate.

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<sup>90</sup> Data about judicial applicants from statehood in 1959 through 1983 were not available.

<sup>91</sup> Access 2007, and SPSS version 18.