

Larry D. Wood
Attorney & Mediator
19640 S Montague Loop
Eagle River, Alaska 99577
(907) 726-7032
March 19, 2014

VIA FACSIMILE

The Honorable Bill Stoltze
The Honorable Alan Austerman
Co-Chairmen, House Finance Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99654

Re: Written Testimony in Support of HJR 33

Dear Co-Chairmen Stoltze and Austerman and Members of the House Finance Committee:

Unfortunately, I am Outside and return to Alaska on Saturday night following your Thursday hearing. However, I offer the following comments in support of HJR 33. The resolution proposes to increase the number of public members on the Alaska Judicial Council. I also suggest a revision.

By the way of introduction, I am a long time Alaska resident having been born in our state during its Territorial days. I have practiced law in Alaska for nearly 38 years. During that time, I have served as an Assistant Public Defender, Chief Assistant Attorney General, General Counsel for the Alaska Railroad, and Assistant General Counsel for Alyeska Pipeline Service Company. I have served as Chair for the Alaska Public Offices Commission and I have also served on many Alaska Bar Association committees.

I support the Missouri Plan for judicial appointments adopted in our state constitution. The plan is preferable over election of judges; however, I do share this concern expressed by Professor Brian Fitzpatrick of Vanderbilt University. He has argued that politics are undoubtedly a part of judicial selection in Missouri Plan states and writes: "In short, I am skeptical that merit selection *removes* politics from judicial selection. Rather, merit selection may simply *move* the politics of judicial selection into closer alignment with the ideological preferences of the bar." The Politics of Merit Selection, Missouri Law Review, Vol. 74, Issue 3. Importantly, Kathleen Tompkin-Miller, currently the longest serving member of the Alaska Judicial Council, similarly states in her February 20, 2014, letter supporting companion SJR 21: "It is routinely claimed, in defense of Chief Justice's and lawyers' roles on the AJC, that the Alaskan judicial system is free of political influence. That has not always been my experience." She adds:

“Regrettably, a candidate who has been actively involved in traditional ‘conservative’ causes is likely to have what appears to be a more vigorous background investigation, disparaging comments [by attorneys in bar polls], and poor bar scores.” Ms. Tompkins-Miller also states: “Additionally, the members of the Alaska bar have tremendous influence over the process.”

I agree. We attorneys exert influence over the selection and appointment of Alaska judges in three primary ways: by participating in a poll for selection and appointment by our association of three members of the Judicial Council, by participating in a poll regarding judicial candidates that is given great weight by the Judicial Council, and through the influence and tie-breaking authority of the chief justice, an attorney, and ex-officio member of the Judicial Council. Moreover, the professional advocacy skills and persuasive abilities of the four attorneys in Council deliberations must be considerable.

Qualifications of Alaska judges are established by statute. However, using its rulemaking authority, the Judicial Council has declared that only the names of those candidates who it determines *most* qualified will be submitted to the governor for appointment consideration. This determination is subjective, and has repeatedly led to the rejection of highly qualified candidates. Those occasions have left me and others shaking our heads in bewilderment. Ms. Tompkins-Miller adds: “This process also keeps many good attorneys from applying or they withdraw their name because of the poll being made available to the public. * * * Many with low bar scores likely feel they won’t have the ability to get through the council. It can also be difficult to get a candidate through the process who would be considered by some to be ‘conservative’ in their judicial philosophy.”

By adding that “These rules may be changed by the legislature” following the last sentence of Section 4.8, Article 4, of the Constitution, HJR 33 would provide legislative oversight of this and other Council rules.

In conclusion, I do agree that we have a better plan for selection and appointment of judges than an elective process. The Missouri Plan has made politics in judicial selection less influential --- but also less visible. If at all, politics should come into play only when an elected governor must choose amongst qualified judicial candidates. Expanding the number of public members will offset the remarkable influence of attorneys in this process, but will not vitiate the opportunity for important attorney input, expertise, and wisdom in the selection of judicial candidates. Please feel free to contact me with questions or comments.

Sincerely yours,

Larry D. Wood