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Alaska Voters Consider Fate of ‘Unqualified’ Judge

BRIAN S. AKRE November 5, 1988

JUNEAU, Alaska (AP) _ Karl Johnstone has never been disciplined or censured in his nine years as a judge, but he fears voters may oust him from the bench on Tuesday because a state agency has branded him unqualified.

The agency's recommendation that voters remove the Anchorage Superior Court judge has drawn attention to Alaska's unique system of judicial review.

Alaska is the only state with an official panel that reviews its judges and publishes findings about their judicial fitness. In other states, bar associations sometimes issue ratings.

In the 12 years since the council began making recommendations, Johnstone is the first Superior Court judge found unqualified. Only four other judges, all from lower courts, have received the unwanted distinction.

"The Alaska Judicial Council is used as a model for other jurisdictions which are thinking about adopting some method to evaluate judges already sitting on the bench," said Hal Brown, a former state attorney general and the council's executive director.

"We have been told by the American Bar Association that we give out more information than any other jurisdiction," Brown said. "That's not to say our system is entirely satisfactory, because it isn't."

Alaska's governor appoints judges from a short list of nominees submitted by the council, but all state judges periodically go before voters.

The recommendations about judges up for retention are published in the state voters' pamphlet and in most of the state's daily newspapers.

In Johnstone's case, he scored poorly in integrity, judicial temperament and overall performance, especially as ranked by his fellow jurists.

Source: <https://www.apnews.com/16c33988fb33447c26799d12ff57b934>

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He is the first judge since the surveys began who lawyers and judges have scored less than acceptable in integrity. That, more than anything else, led to the negative recommendation, Brown said.

The council of three lawyers, three non-lawyers and the chief justice of the state Supreme Court usually recommends retention. Of the 17 judges up for retention Nov. 8, only Johnstone was found unworthy of a "yes" vote.

The recommendations are based on a review of court records, complaints, findings of the state Judicial Conduct Commission, interviews, investigations by the council staff, and surveys of lawyers, judges, magistrates, police and probation officers.

Anchorage lawyer Robert Erwin, a former state Supreme Court justice, said it's unclear to voters what is meant by integrity.

"Are you talking about his honesty? Is his work not any good? Are you talking about his character? The thing is, it's not focused," Erwin said.

"When you talk about somebody's integrity, you really strike at the core of his being," Erwin said. "The implication, given the intelligence of the people involved, is that there's something horrendously wrong with Judge Johnstone or his colleagues wouldn't vote this way."

Johnstone noted that his record as a judge and attorney is clean.

"I've never been sanctioned or disciplined or censured, either privately or publicly, by the Judicial Conduct Commission, or by the Alaska Bar Association when I practiced law," he said.

He attributed his poor rating to some lawyers' dissatisfaction with a program he started to speed the disposition of cases and make attorneys more accountable.

Erwin said the rating system encourages "guilt by association."

"The council can't say but in the most general terms what the problem is, and then the accused can't defend himself," he said.

Critics also say survey results often are based on a small number of respondents and can be skewed by anonymous attorneys seeking revenge against a judge.

Brown pointed out that in the Johnstone survey, 528 attorneys and judges and 103 police and probation officers responded.

"The people who are rating Judge Johnstone are giving it thought, and in a sufficient number - in my mind, at least - that it overcomes any real possibility of a conspiracy being engineered," he said.

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The verdict is not yet in on the effect of the council's recommendations on voters. Of the four judges previously found unqualified, two were ousted in their second retention election. The other two were retained but later resigned.

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