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Members of the House Judiciary Committee:

Thank you for the opportunity to testify today on HJR33. Because we were pressed for time, I omitted a few points that I had intended to discuss. I hope you will accept this additional information.

On both Friday and Wednesday, there was testimony about the Bar survey. Although that survey is not directly applicable to our discussion of the issues raised by HJR33, I did feel that I should clear up some misperceptions expressed by the speakers.

Generally

The Bar survey is one tool that the Council uses in its work. When screening applicants for nomination to the governor, the Council invites all active members of the Bar to complete a survey about the applicants' professional competence, temperament, integrity, fairness, suitability of experience for the particular position, and overall rating.

Note that the Council also uses a Bar survey in its evaluation of judges standing for retention. For retention evaluations, the Council also surveys peace and probation officers, jurors, social work professionals, and other groups that regularly appear before sitting judges.

Attorneys Must Certify the Truthfulness of their Ratings

Any attorney who evaluates an applicant must certify that he or she has answered the survey truthfully in accordance with Professional Conduct Rule 8.2, which prohibits an attorney from making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judicial applicant. Failure to certify causes the survey to be rejected. Failure to comply with Professional Conduct Rule 8.2 exposes an attorney to discipline.

Only Ratings Based on Direct Professional Experience are Included in the Main Analysis

The Bar survey is designed to allow the Council to focus on ratings given by attorneys who have worked directly with the applicant, and to segregate out ratings given by attorneys who haven't had that direct experience. On the survey, the attorney is asked to state the basis of his or her evaluation of the applicant. The choices are "direct professional experience", "professional reputation" or "other personal contacts." Unless the lawyer checks "direct professional experience," that lawyer's ratings are not included in the main numerical analysis. "Direct professional experience" is limited to "direct

contact with the applicant's professional work. This includes working with or against the applicant on a legal matter (i.e., a case, arbitration, negotiation...) or as a judicial officer or other dispute resolution role." In other words, we allow attorneys to share second-hand information about the applicants without diluting the main ratings given by attorneys with direct professional experience.

"Block Voting" is both Unethical and Easily Detected

I also wanted to say a word about allegations of "block voting" on the Bar survey. The Council has ways of detecting "block voting" by certain segments of respondents. The Council accomplishes this by asking respondents to supply demographic information (including type of practice, years of practice, cases handled, and location of practice). Most all respondents do supply this information. The survey results can be and are sorted based on this demographic information. So, for example, the technical analysis of the survey results shows whether prosecutors' ratings of a particular applicant are significantly lower or higher than defense attorneys' ratings. Analysis also would show, for example, how many of the people who rated an applicant practiced in that applicant's judicial district or outside Alaska. All this information is made available to the Council members and the applicants.

Staff carefully scrutinizes scores for every applicant and vacancy to screen for these kinds of patterns. If a pattern is detected, staff may request the contractor to perform additional statistical analysis or review. The results of this analysis are reported to Council members. Council members are attentive to these concerns and use scores as only one tool among many that indicate an applicant's performance and qualifications.

Anonymous Comments Cannot be Held Against an Applicant

Attorneys are offered the opportunity to make comments about the applicants, and their comments can be signed or unsigned. Unsigned or anonymous allegations cannot be held against an applicant unless they are corroborated, independently substantiated, or acknowledged by the applicant.

I hope this information is useful. Please let me know if I can assist in any further way.

Sincerely,



Susanne DiPietro
Executive Director
Alaska Judicial Council