

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 5, 2003

2:25 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative John Coghill
Representative Jim Holm
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

Select Committee on Legislative Ethics [Continued from 2/24/03]

Dennis "Skip" Cook - Fairbanks
Herman G. Walker, Jr. - Anchorage

- CONFIRMATIONS ADVANCED

Alaska Judicial Council

Bill Gordon - Fairbanks

- CONFIRMATION ADVANCED

Violent Crimes Compensation Board

Gerad G. Godfrey - Valdez

- CONFIRMATION ADVANCED

HOUSE BILL NO. 64

"An Act relating to court approval of the purchase of structured settlements."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 64

SHORT TITLE: PURCHASE OF STRUCTURED SETTLEMENTS

SPONSOR(S): REPRESENTATIVE(S) FOSTER

Jrn-Date	Jrn-Page		Action
01/27/03	0075	(H)	READ THE FIRST TIME - REFERRALS
01/27/03	0075	(H)	STA, JUD
02/11/03		(H)	STA AT 8:00 AM CAPITOL 102
02/11/03		(H)	Heard & Held MINUTE(STA)
02/20/03		(H)	STA AT 8:00 AM CAPITOL 102
02/20/03		(H)	Moved CSHB 64(STA) Out of Committee MINUTE(STA)
02/24/03	0283	(H)	STA RPT CS(STA) 5DP 1NR 1AM
02/24/03	0283	(H)	DP: GRUENBERG, HOLM, LYNN, DAHLSTROM,
02/24/03	0283	(H)	WEYHRAUCH; NR: BERKOWITZ; AM: SEATON
02/24/03	0283	(H)	FN1: ZERO(CED)
02/24/03	0283	(H)	REFERRED TO JUDICIARY
03/03/03		(H)	JUD AT 1:00 PM CAPITOL 120
03/03/03		(H)	-- Meeting Canceled --
03/05/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

BILL GORDON, Appointee

Alaska Judicial Council (AJC)

Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska
Judicial Council.

GERAD G. GODFREY, Appointee

Violent Crimes Compensation Board (VCCB)

Valdez, Alaska

POSITION STATEMENT: Testified as appointee to the Violent
Crimes Compensation Board.

ACTION NARRATIVE

TAPE 03-16, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 2:25 p.m. Representatives McGuire, Anderson, Holm, Coghill, Samuels, Gara, and Gruenberg were present at the call to order.

CONFIRMATION HEARINGS

Select Committee on Legislative Ethics

Number 0055

CHAIR MCGUIRE announced that the committee would first consider the appointments of Dennis "Skip" Cook and Herman G. Walker, Jr., to the Select Committee on Legislative Ethics. [They, along with Shirley A. McCoy, provided testimony on 2/28/03.]

Number 0103

REPRESENTATIVE SAMUELS made a motion to advance from committee the nomination of Herman G. Walker, Jr., as appointee to the Select Committee on Legislative Ethics. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Number 0110

REPRESENTATIVE SAMUELS made a motion to advance from committee the nomination of Dennis "Skip" Cook as appointee to the Select Committee on Legislative Ethics. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

CHAIR MCGUIRE reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

Alaska Judicial Council

Number 0165

CHAIR MCGUIRE announced that the committee would next consider the appointment of Bill Gordon to the Alaska Judicial Council.

Number 0191

BILL GORDON, Appointee, Alaska Judicial Council (AJC), in response to the question of why he wants to serve on the AJC, noted that the framers of the Alaska State Constitution provided great authority to the AJC [for] the selection of Alaska's judges. He remarked that according to the minutes of the Alaska Constitutional Convention, it is quite clear that the framers wanted to remove any partisanship or political machinations from the selection process; hence the creation of the AJC, the duty of which is to pass on to the governor the [names of the] most qualified people applying for the position of judge. He noted that while working for Governor Jay Hammond, he had an opportunity to experience the selection process from the "governor's point of view," and recognized at that time that the governor was not given much latitude in the selection process and that most of the decision was made at the AJC level, as was the intent of the constitutional framers.

MR. GORDON indicated that because of his prior experience with the selection process, he'd decided to make himself available to Governor Murkowski for a position on the AJC. He noted that he has lived in "all the of areas of the state and visited ... most of the rural areas," and has become familiar with Alaska and its people. He offered his belief he will be able to contribute to the selection process in a meaningful way.

REPRESENTATIVE GARA opined that the AJC's selection process is a good one: it weeds people out to make sure that only the names of the most qualified people are forwarded to the governor. He asked Mr. Gordon whether he is comfortable with that process or disagrees with the AJC's role in that regard.

MR. GORDON said he did not disagree with the process. He posited that there is probably lively debate among council members about the definition of "most qualified," and about who that might be. He noted that the AJC has a lot of tools to help in the selection process: "the bar poll and the poll of public safety people, the poll of social workers, and the interview process, which all lend material for the [AJC] to debate." He said he agrees with the concept that the most qualified should "go up," though he again acknowledged that there may be some disagreement about who that is. "That's certainly why the [AJC] is there and why there are seven members," he added.

Number 0475

REPRESENTATIVE GARA asked Mr. Gordon whether he would be imposing any political litmus tests on the candidates that come before the AJC.

MR. GORDON indicated that the only criteria he would be looking at would be honesty, integrity, judicial temperament, and whether a candidate is hard working. He noted that he would be attempting to discern these qualities from the polls, the interview process, and discussions with other people. With regard to the issue of judicial philosophy, he noted that he himself is a moderate conservative and perhaps has "some bias there." He mentioned that possibly the one litmus test he would give to a judge candidate would be whether he/she is willing to apply laws, rather than make laws.

REPRESENTATIVE SAMUELS thanked Mr. Gordon for volunteering. He then remarked that the concept of "legislating from the bench" gives him concern. He relayed that constituents have opined to him that the "bar association members drove the train," and that the public members got left a little bit behind. He asked Mr. Gordon to comment.

MR. GORDON, after noting that the AJC consists of three bar association members, three public members, and the chief justice acting as an ex officio member, replied that if he were to serve on the AJC, he certainly wouldn't intend for that to happen. He added that he does have some experience in "these processes," and opined that he could hold his own. He ventured that in the selection process, the polling processes are probably the most political part, since they themselves are not completely devoid of politics. He surmised that the three public members need to be strong and look beyond, "who's helped who in the process of litigating in the past."

REPRESENTATIVE GRUENBERG asked Mr. Gordon to describe what his biases are in so far as they would affect his selection of judicial candidates.

MR. GORDON explained that the bias he referred to earlier was his expectation that the candidates ultimately selected as the most qualified would stand out in the areas honesty, integrity, judicial temperament, and willingness to work hard. He reiterated that a candidate's philosophy on the issue of applying law instead of making law would also be a factor in his decision. He remarked that whether a candidate has liberal philosophies versus conservative philosophies would be way down on his list of factors to consider in making a selection.

Number 0763

REPRESENTATIVE GRUENBERG noted that a lot of court decisions in Alaska follow what is called the common law - "decisional law that is not codified." As a result, he continued, judges have somewhat more discretion in determining the rule of substantive law to be applied. In a large number of decisions, when there isn't a specific statutory law nor any binding precedent, [judges] can select the rule of law that is the most persuasive in light of precedent, policy, and "something like ... 'common sense' - it's from Guin v. Ha." He asked Mr. Gordon to share his thoughts on "how they should exercise their discretion in determining, in our relatively new state, what type of common law to adopt in given cases. "Or would you leave that up to them?" he asked.

MR. GORDON said that at this time, he could not speak to the specifics just stated. He offered instead that he does respect a judge who is willing to make a decision in a timely manner, based on the facts, to the best of his/her ability. "I think that's the standard you have to hold them to," he added. He noted that the duties of the AJC are multifaceted: all levels of judicial appointments, recommendation for public defender, retention of judges, and studies of the status of the judiciary in Alaska.

REPRESENTATIVE GRUENBERG asked Mr. Gordon whether he has had any experience personally, or through family or friends, with the judicial system or the justice system - civil, criminal, or any other manner - that would influence him in the performance of his duties.

MR. GORDON replied that he has not had any such personal experience; he added, however, that he has friends who've been passed over by the AJC. He remarked, "That's where you apply the 'very qualified' versus the 'most qualified' standard, and [this] sometimes leaves very good people in the lurch."

REPRESENTATIVE GRUENBERG said that for a period of time, what used to happen with great regularity was that the AJC would only send to the governor one more candidate than there were vacancies to be filled, thereby leaving the governor with a relatively small number of choices and leaving the AJC in a much more powerful role than it had assumed in the past. He opined that the governor should receive all qualified candidates. He asked Mr. Gordon to comment.

Number 1040

MR. GORDON relayed that in the process of selecting judges when he worked for Governor Hammond, he was very frustrated because he felt that some very good people did not get sent up. However, after reading the minutes from the Alaska Constitutional Convention, he indicated that he'd come to realize that the framers had very specifically imposed a "most qualified" standard on the AJC, although this standard has been a subject of much debate ever since. He offered that if the AJC is to stay with the intent of the Alaska State Constitution, its role is to send only those "most qualified" to the governor - which, incidentally, also limits his/her latitude - even if doing so means that many very qualified candidates do not get selected to go forth. In response to a further question, he said that he would, albeit reluctantly, follow this practice in order to keep with the intent of the framers.

REPRESENTATIVE GARA, in an effort to allay Representative Samuels's concerns about the makeup of the AJC's membership, explained that the reason the constitutional framers put three bar association members on the AJC was that they wanted somebody on the AJC to have some professional experience with the candidates who were being sent up for nomination, and it was thought that to have somebody who had practiced law - from different regions of the state, and three regions, specifically - there would therefore be someone on the AJC who would know something about the people being reviewed, and the AJC could therefore have a more intelligent discussion. He expressed confidence in Mr. Gordon's ability to do the job. He offered the following in conclusion:

I've practiced before judges who philosophically disagree with me who've turned out to be the greatest judges in the world. I think Milt Souter is somebody who, philosophically, is somebody I didn't share very much with, but who I thought was great judge because he worked hard. I came up here and I started working for Justice Jay Rabinowitz, and I came up here with a set of politics in my mind and I always wondered why the judge [didn't just] follow his political views, and he always convinced me that was the wrong thing to do as a judge. So, ... as a judge he didn't follow his political philosophy, he followed what he thought he had to do as a judge, and that was something very different.

Number 1162

So, I hope that you are not so concerned with maybe the party affiliation of the judges you review, and that you're concerned with other matters. And the one matter I would really ask you to pay attention to is, it makes the judicial system work much better when we have judges who are willing to work long hours - longer hours, weekends here and there - when they have to. And most judges I've ever run across have done that, and they make the system work much better. There was a judge, quite a while back, who had a reputation for not working so hard, and that turned out to be a burden on the system. So I hope that you'll help us all by making sure that becomes one of -- if you have any litmus test, it's that they'll work hard for us.

MR. GORDON said he agreed with Representative Gara on that issue. He reiterated that his litmus tests are honesty, integrity, judicial temperament, and willingness to work hard, adding that if all judges could live up to the standards of Justice Rabinowitz, "we'd all be better off."

CHAIR McGUIRE thanked Mr. Gordon. She then mentioned that in addition to those traits, "thinking outside the box" - for example, as is done in mediation and therapeutic courts - would be a good factor to consider.

REPRESENTATIVE GRUENBERG remarked that during his campaign, Governor Murkowski said, "I will appoint [Alaska] Judicial Council members who will nominate candidates for judgeships who are more interested in law enforcement than in coddling criminals." Representative Gruenberg said that this statement makes it sound as though the governor will look to appoint people to the AJC who'll tend to favor judges with a political philosophy. He asked Mr. Gordon whether it is his intent to favor any political philosophy in judicial candidates.

Number 1326

MR. GORDON replied:

Well, as I said, it's way down my list. ... When the other things have been -- I think that the cream of the crop will rise on the honesty, integrity, hard

working, ... temperament. And judicial philosophy is down there. I'm not quite sure how you measure that, Representative Gruenberg. ... I couldn't tell by a party affiliation, necessarily, that you get what you're looking for there. I think you'll find under the "most qualified" requirement that these other things will take over and move people to the top of the list. I can't hide my own philosophy, here. My own philosophy is, the hardest working judges [are] the ones who'll put criminals away and protect the public. But I ... don't think ... that if you looked across the board, that you could look for those people who have a history of doing that - stronger judges - and find any difference in political affiliation. I really don't.

So, I know Governor Murkowski - or [then-candidate] Murkowski - made a statement along those lines. I don't know that he ascribed it to the [Alaska] Judicial Council, but he certainly wanted to appoint judges that would impose more of what he felt as more of a law-and-order kind of an approach. Since I've worked with him in the campaign I guess I'm sort of guilty of anything he said, but that certainly is not my purpose to impose my philosophy on anybody in the process of selecting judges.

REPRESENTATIVE COGHILL thanked Mr. Gordon for volunteering. He said that he did not know that he would apologize too much for having a political philosophy. After all, he added, politics is just a way of forming policy as a society. He said he appreciated Mr. Gordon's comments regarding following the intent of the constitutional framers. "It certainly is a good system, and it's not devoid of politics, whether it's the [AJC] or whether it's within the legal practice itself, so there have to be rules to follow and it seems that you have articulated that you'll follow those rules," he remarked.

REPRESENTATIVE COGHILL indicated that it would be alright with him if Mr. Gordon were to at least bring his political philosophy to the discussion. He suggested that both the legislature and the judiciary are feeling a little bit of dissatisfaction in that, many times, "we are soft on crime." Another area of concern, he noted, is that there are judges that are overruling public policy - often, social policy, which involves tender topics - as determined by the legislature. "I

don't know that we want to shrink from that, do you, Bill?" he asked.

Number 1491

MR. GORDON said:

No, I think you'll find me to be very aggressive and forthright in my approach to offering what I bring to the table, and it is a long history of involving myself in [the] Alaskan way of life and Alaskan politics and Alaskan general philosophies, which is somewhat different than other places in the country. I wouldn't shrink from that, at all. But I do think that the other criteria is even more important, Representative Coghill, and I can't get back to it enough.

I won't let anybody get by me who doesn't have ... a history of utmost honesty and integrity, temperament for [working hard], and can conduct a courtroom with good decorum, is a decision maker, et cetera. And then we'll get to the actual application of the law in the appropriate manner. And that's something that ... you don't see sometimes 'til they get on the bench, and then you may have a chance to promote somebody from district court to superior court, or superior court to supreme court, and then we'll look at some of those other things, certainly.

Number 1546

REPRESENTATIVE SAMUELS made a motion to advance from committee the nomination of Bill Gordon as appointee to the Alaska Judicial Council. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Violent Crimes Compensation Board

Number 1577

CHAIR McGUIRE announced that the committee would next consider the appointment of Gerad G. Godfrey to the Violent Crimes Compensation Board.

Number 1596

GERAD G. GODFREY, Appointee, Violent Crimes Compensation Board (VCCB), in response to the questions of why he wanted to serve on the VCCB and what his qualifications are, said:

I think everyone's probably aware of what happened with my dad and my mother - Glenn and Patricia Godfrey - back in August [2002]. And although ... no one, obviously, would have asked for something like that to happen to themselves or their family or any loved ones, when it does, [an] individual can't help but gain a new perspective and insight. Regardless of how compassionate they may have been towards victims of crimes - violent crimes, in particular - you garner a new perspective when something like this happens. And to the point where, even though you may have been idealistic towards your views on victims and perpetrators of violent crimes, you can't help but almost think you were apathetic, after the fact, when you have a loved one or very close family member that suffers from a violent crime.

So, with that, I've gained insight and perspective that I did not previously have. I studied criminal justice and counseling psychology in college, and, ironically enough, I think both those have some application here, in light of what happened to my family, in coping and dealing with that - for all members of my family, my mother in particular. Even with that, even with growing up in a [family] where my dad was [an Alaska State Trooper] since before I was even born, and having a brother who's [an Alaska State Trooper], and a brother-in-law who's [an Alaska State Trooper], until it happens to you or your family, you just can't appreciate the gravity of what it's like and the perspective.

And with that comes a certain degree of drive and a desire, possibly even a selfish one, to ... go through any avenues available to help others, and maybe throughout that, it's therapeutic for yourself as well. But you certainly have [an] ability to be empathetic towards people that have suffered, possibly not to the same extent or a greater extent; you can thereby relate. And so I believe I would be able to lend some insight that I otherwise would not have had - had this not have happened to my family - to victims and those that would come before the [VCCB]. And, as

well, I think it would be good for me personally, and that, in part, may be ... somewhat selfish, just in the regard that [it is] a cathartic process, I guess.

Number 1718

MR. GODFREY continued:

But there's a desire to do something constructive with something that was very unfortunate, very unnecessary, that happened to my family and my mother and my dad. And to try to find something positive or make something positive out of that, in as much as possible, is some consolation, I guess. Currently, I'm sitting on a taskforce appointed by the mayor of Anchorage that is overseeing the E-911 system, which we contended ..., due to it's shortcomings, further victimized my mom beyond what an individual perpetrator of a crime did.

And, in doing that, there's a certain amount of drive that exists that possibly would not have been there, to put in the time and effort and energy into this. The taskforce is probably at the halfway point right now, and it's required investing a great deal of time and energy while working fulltime, as with most other members on the [taskforce]. ... In the light of what we're doing and why we're there, it's really not difficult; ... the compensation, when all is done and over, is that the one system in Anchorage certainly should be improved and upgraded.

And what my mother needs to know and what she needs to feel, is that any foreseeable improvements have been made to prevent this from happening to anyone else in the future, because she just said she can't live with herself if she doesn't do anything - she has a civic duty, she feels - if she doesn't do something. And I've been doing that primarily on her behalf. Certainly we have a long ways to go since what happened back in August, but ... being a victim [of a] violent crime is certainly a far-reaching -- ... it's with her for life, no doubt. But ... it's six months and just [this] past Friday she just had her last major surgery, and she's still in the hospital today; she's doing well.

Number 1812

MR. GODFREY added:

But ... the scope, the gravity of what happened, physically, is with her and may be with her for life, as far as her rehabilitation goes. And certainly there's countless variables that go into any violent crime that's committed on anybody, and any scenario could be different, but I think I've certainly gained the ability to relate to those that would come before the [VCCB]. And, like I said, it may seem somewhat ironic at this point - I mean the whole thing seems kind of ironic - what happened, given the fact that he devoted his life to over 30 years of public service in law enforcement, and the fact that I studied criminal justice and counseling psychology. So I think that lends itself well, also.

But, primarily, I think what I bring to the table, to summarize, would be some perspective and insight of what it's like to have a loved one victimized in a violent crime. And ... the drive and the desire to make something constructive come of this is why I think I would like to serve on [the VCCB], and I'd be honored to be able to do so for the three years to come. So, I think that probably is the gist of my feelings, Madam Chair.

CHAIR McGUIRE thanked Mr. Godfrey. She indicated that [she] appreciates his willingness to try to make the system better. She surmised that he would be eminently qualified to serve on the VCCB.

REPRESENTATIVE GARA said:

I just wanted to make a comment and ... a commendation on your behalf: You're going to add an amazing amount of insight into this process. And I thank you ... for remaining so active that you actually have already gotten one law changed that needed to be changed. I thank you for what seems to be boundless energy that now you're involved in two more issues that could use your insight. At some point, everybody's going to be asking for your time, and feel free, at some point, to say no. But your insight will be much appreciated.

Number 1927

I guess I'm a little bit moved, in part, because what's happened to you has some personal meaning for me because I went through a very similar circumstance when I was younger. And so I have a perspective that says your perspective is needed; you shouldn't apologize at all for helping the community the way you've offered to help the community. Just be jealous of your private time at some point. But as long as you want to do this, I want you to do it. So, thank you very much.

MR. GODFREY said he appreciated the comments and the advice.

REPRESENTATIVE GRUENBERG asked, "Are you or any member of your family seeking compensation from the [VCCB]?"

MR. GODFREY said no. In response to another question, he replied that it is his understanding that the VCCB determines whether victims and their families are entitled to compensation from the state and, if so, how much.

REPRESENTATIVE GRUENBERG asked Mr. Godfrey whether his recent, horrible experience would cause him to have any bias that would prevent him from making fair decisions in cases coming before him.

MR. GODFREY said he did not believe so, though he acknowledged that he could not predict what would happen prior to it happening. He elaborated:

I believe that I can maintain a great degree of objectivity, and I believe that I would maintain a high level of discernment - would expect that I would. Furthermore, I believe that I would hope to be able to tell the ... real deal, so to speak, from the fake, in that if somebody's just cruising for a free meal - once again, so to speak - I would certainly hope that I would be aware [of] that. I don't believe that I am ... going to look through this with ... stained glass, always on the behalf of anyone that [can even] remotely be construed a victim of ... violent crime. So, as it stands right now, I ... believe I'll maintain objectivity and still have [a] level of compassion and empathy towards those that come before the [VCCB].

Number 2117

MR. GODFREY remarked, furthermore, that he would be able to withstand any accusations of, "you can't relate" from people denied compensation.

REPRESENTATIVE SAMUELS thanked Mr. Godfrey for volunteering, and said he would like to echo Representative Gara's comments. Representative Samuels, too, said that he thinks that Mr. Godfrey is eminently qualified to serve on the VCCB. He noted that the VCCB also assists with funeral expenses and travel expenses related to funerals.

REPRESENTATIVE GRUENBERG asked which department the VCCB falls under.

CHAIR MCGUIRE said it fell under the Department of Public Safety (DPS).

REPRESENTATIVE GARA asked Mr. Godfrey to give thought to the concept of having the VCCB seek reimbursement from perpetrators, rather than from the victims themselves, for any advances given to victims.

MR. GODFREY thanked Representative Gara [for that suggestion], and said he would keep that concept in mind.

Number 2263

REPRESENTATIVE SAMUELS made a motion to advance from committee the nomination of Gerad G. Godfrey to the Violent Crimes Compensation Board. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

HB 64 - PURCHASE OF STRUCTURED SETTLEMENTS

Number 2275

CHAIR MCGUIRE announced that the committee would next bring up HOUSE BILL NO. 64, "An Act relating to court approval of the purchase of structured settlements." She noted that at this time the committee would merely be placing the House State Affairs Standing Committee version before it.

Number 2283

REPRESENTATIVE SAMUELS moved to adopt CSHB 64(STA) as the working document. There being no objection, CSHB 64(STA) was before the committee.

CHAIR McGUIRE announced that HB 64 would be held over and heard on 3/7/03.

ADJOURNMENT

Number 2298

The House Judiciary Standing Committee meeting was recessed at 3:15 p.m., to be continued at 8:00 a.m. on March 7, 2003.