

**ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE JUDICIARY STANDING COMMITTEE
HOUSE JUDICIARY STANDING COMMITTEE**

February 20, 2009

1:39 p.m.

MEMBERS PRESENT

SENATE JUDICIARY

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Kim Elton
Senator Gene Therriault

HOUSE JUDICIARY

Representative John Coghill
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

SENATE JUDICIARY

Senator Lesil McGuire

HOUSE JUDICIARY

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto

COMMITTEE CALENDAR

CONFIRMATIONS

Violent Crimes Compensation Board

Regina C. Chennault

CONFIRMATION ADVANCED

Board of Governors of the Alaska Bar

David L. Eichler

CONFIRMATION ADVANCED

Alaska Judicial Council

William F. Clarke
Kathleen R. Tompkins-Miller
CONFIRMATIONS ADVANCED

Commission on Judicial Conduct
Jan S. Ostrovsky
CONFIRMATION ADVANCED

Chris Brown (absent)

PREVIOUS COMMITTEE ACTION

No previous action to report.

WITNESS REGISTER

REGINA C. CHENNAULT, Appointee
Violent Crimes Compensation Board
Anchorage AK

POSITION STATEMENT: Answered questions from the committee.

DAVID EICHLER, Appointee
Board of Governors
North Pole AK

POSITION STATEMENT: Answered questions from the committee.

WILLIAM F. CLARKE, Appointee
Alaska Judicial Council
Chugiak AK

POSITION STATEMENT: Answered questions from the committee.

KATHLEEN TOMPKINS-MILLER, Appointee
Alaska Judicial Council
Fairbanks AK

POSITION STATEMENT: Answered questions from the committee.

JAN OSTROVSKY, Appointee
Commission on Judicial Conduct
Anchorage AK

POSITION STATEMENT: Answered questions from the committee.

ACTION NARRATIVE

[1:39:03 PM](#)

CHAIR HOLLIS FRENCH called the joint meeting of the Senate and House Judiciary Standing Committees to order at 1:39 p.m. Senators Therriault, Wielechowski, Elton, and French and

Representatives Lynn, Gruenberg, Holmes, and Coghill were present at the call to order.

CONFIRMATION HEARINGS

CHAIR FRENCH announced the business before the Senate and House judiciary committees is to conduct a series of confirmation hearings.

[1:39:35 PM](#)

CONFIRMATION: Regina Chennault -- Violent Crimes Compensation Board

REGINA C. CHENNAULT, Appointee, Violent Crimes Compensation Board, Anchorage, said she is a general surgeon and has served four or five years on the board already. She puts a lot of time into it and really enjoys working on the board. The term is four years and there are three members: one physician, one attorney, and one public member.

CHAIR FRENCH said he has met her many times and is thrilled that she is continuing on the board. It is extremely necessary work. People who are victimized in Alaska need someone like Dr. Chennault looking out for them.

[1:41:05 PM](#)

REPRESENTATIVE COGHILL said he has met with Dr. Chennault. The board sees some of the toughest things. He believes she has a good perspective.

REPRESENTATIVE GRUENBERG noted that her resume says her practice is in Soldotna.

DR. CHENNAULT said she moved to Anchorage about two years ago.

REPRESENTATIVE LYNN said he has visited with her on some interesting matters, and she is forthright and knowledgeable.

REPRESENTATIVE COGHILL moved to forward the name Regina Chennault to the full body for confirmation. Hearing no objection, it was so ordered.

CONFIRMATION: David Eichler -- Board of Governors

[1:43:02 PM](#)

DAVID EICHLER, Appointee, Board of Governors, North Pole, Alaska, said he has been a practicing dentist for 16 years. He

has been active in the community and is a member of the Board of Dental Examiners. His term on that board will expire in a couple of years, and he wants to do some other service.

CHAIR FRENCH noted that he would be a new appointee.

DR. EICHLER said the committee has his old application, although he did submit an updated one.

REPRESENTATIVE GRUENBERG asked if there is anything significantly different on the updated resume.

DR. EICHLER said no, except for his membership on the dental board. He also does examinations throughout the country at dental schools for initial licensure. His term on the dental board will end in 2011, so he will be on two boards.

SENATOR THERRIAULT noted that Dr. Eichler reported that a member of the family could be affected financially by this appointment.

DR. EICHLER said that answer related to his position on the Dental Board because it is a professional board that is self-governed. There is no potential for conflict on the bar board.

REPRESENTATIVE LYNN said Dr. Eichler has an interesting background. He worked in animal science, he has a degree in nursing, and he is a dentist. "That is quite a trip through the health sciences." Now he will do legal work at the bar.

DR. EICHLER said that is just the surface of his experience.

SENATOR THERRIAULT noted that he is also a pilot. All citizens of Representative Coghill's district are extraordinary.

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CHAIR FRENCH said the Alaska Bar Association sets annual dues for all the lawyers in the state, and it has been his contention that the dues for new entrants should be lower. Most states have tiered bar dues so that young lowers pay less than lawyers who have been earning a living for some time. He has brought this up, and the bar has shot his idea full of holes, but it is still of interest to Chair French.

REPRESENTATIVE HOLMES asked if he wants to accomplish anything in particular.

DR. EICHLER said he enjoyed the process of regulation on the dental board. He will be a public member on the Board of Governors, so he won't be bringing any professional expertise. He has no agenda.

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CHAIR FRENCH noted that people who are new to a board are motivated by a desire to serve, but are not so familiar with the board. He suggested that it may be beneficial to have the executive director at these hearings to answer questions.

SENATOR THERRIAULT said unlike the dental board, the bar association operates outside the normal budgeting process whereby the commission has to come to the legislature to spend money. The dues that it collects are supposed to pay for the operation of the board and any sanctions on people. The bar association operates off budget, and the legitimacy of that has been questioned. Senator Therriault has heard individual attorneys complain about the level of bar dues "when the association rolls forward \$1 million." The Board of Governors hasn't seen fit to reduce the dues. The topic of "operating outside the bounds of all other boards and commissions" may come before Dr. Eichler.

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CHAIR FRENCH said Representative Stoltz and Chair French have worked on that issue. The dues did come down about \$100 this year, but he doesn't know if it was from those efforts.

REPRESENTATIVE COGHILL moved to forward the name David Eichler to the full body for confirmation. Hearing no objection, it was so ordered.

CONFIRMATION: William F. Clarke -- Alaska Judicial Council

[1:52:26 PM](#)

WILLIAM F. CLARKE, Appointee, Alaska Judicial Council, Chugiak, Alaska, said he came to Alaska as a pilot in the air force and retired in 1984. He then worked for an engineering firm for 16 years. He joined the Anchorage rotary club and enjoys serving the public. He feels that his life experiences as a senior citizen work well in the judicial council. He is the oldest member. His son, a lawyer and a judge in Pennsylvania, encouraged him to take this job. He believes seniors should be more active in the public process.

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CHAIR FRENCH said today's hearings include confirmation for the Alaska Judicial Council and the Alaska Commission on Judicial Conduct. The roles of the two often get confused. He asked Mr. Clarke to explain what the council does.

MR. CLARKE said it is an advisory body to the governor. It takes members of the bar who have applied for judicial positions and evaluates them. It then presents the most qualified list to the governor. Self biases and judgments cannot be used. The intent is to give the governor the broadest spectrum of candidates to choose from.

CHAIR FRENCH surmised that Mr. Clarke will be part of the judicial selection process and asked if he has done this before.

MR. CLARKE said he has been doing that since November, and the last group that the council screened was for the Supreme Court of Alaska. The judicial council is the finest group he has ever worked with, and they made the job comfortable.

CHAIR FRENCH asked how many members are on the council, and Mr. Clarke told him there are six. Chair French said he admired him for having a bachelor's degree in English literature.

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SENATOR THERRIAULT asked how many applicants were reviewed for that opening on the bench and how many were forwarded.

MR. CLARKE said there were six applicants and two were forwarded.

SENATOR THERRIAULT said there is a debate on whether the council should forward all of the names that meet a certain threshold in proficiency and expertise or whether it is the council's job to narrow the field down to only two or three names.

MR. CLARKE said the governor should be given the largest list that the council can reasonably present. Anyone can apply, but the council must screen for capable candidates. The list should be as broad as possible.

SENATOR THERRIAULT said there are concerns that the process is so bruising that candidates won't try again even though they scored highly. That is a shame. He asked about ideas to make the process gentler. Tough questions are OK, but the anonymous comments may be an opportunity to savage folks and not make meaningful comments. The person commenting may have crossed the

applicant in litigation in the past and it becomes an opportunity to "just get 'em".

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MR. CLARKE said he agrees with him regarding anonymous comments. Many members don't use the anonymous comments, but they are available and known to the applicant. He personally discounts them. If a person can't sign a comment, Mr. Clarke won't bring it up in an interview. Council members go out of their way to make the interviews user friendly. They are very courteous and encouraging. No one has been pilloried. It is a cordial atmosphere. The bar polls can be skewed, but it is easy to identify and take into account. When members come up a second or third time, they are told they are glad to see them again. It is not out of line for the judicial council to encourage people to apply again. He has been truly impressed by the professionalism and cordiality of the other members.

[2:01:46 PM](#)

SENATOR WIELECHOWSKI said there has been some talk on changing the constitution regarding the way Alaska selects judges. He asked if Mr. Clarke has a position on that.

MR. CLARKE said the current method is very good. "I wouldn't change it because it allows the governor to be advised by a group consisting of half professionals and half laymen." It then allows the public to comment by vote on the quality of the judges. It is more balanced than simply electing judges.

SENATOR WIELECHOWSKI asked how he evaluates potential judges.

[2:03:26 PM](#)

MR. CLARKE said the council is provided with a lot of material including a data file. He tries to get a total picture of the person, including education and continuing education in law. Some people are really avid about it. One candidate had a page and a half of courses taken. He looks at how serious the person is educating him or herself. He looks at the pro bono experience and the spectrum of experience as a prosecutor and a defender. The council looks for a balance of civil and criminal experience. These are the major points of discussion.

[2:05:45 PM](#)

SENATOR WIELECHOWSKI asked if he has a litmus test or if he considers political ideology.

MR. CLARKE said that is out of place for the council; that is for the governor. The council's job is to find people who have the professional background to do the job. The board is blind to a person's persuasions. The list presented to the governor is a professional list so the governor can conduct interviews knowing that the people are qualified. The governor can add discriminators as desired.

REPRESENTATIVE GRUENBERG asked if he has had contact with the Alaska Judicial Observers, which is a group that provides information on how judges conduct courtroom proceedings.

2:07:32 PM

MR. CLARKE said no.

REPRESENTATIVE GRUENBERG noted that Mr. Clarke was a director with R&M Engineering Consultants, and he asked if he was a shareholder. He asked if he thought the council should send all nominees to the governor.

MR. CLARKE said he was not a shareholder, and he doesn't submit nominees who aren't viable candidates. When positions come open, anyone can apply, and it is the council's job to set a threshold for the candidates, so the governor is guaranteed that applicants have the adequate background for the job.

2:09:18 PM

REPRESENTATIVE LYNN noted that he served in Vietnam.

MR. CLARKE said his two oldest sons were in the Marine Corps, and he flew combat missions in Vietnam. He was a forward air patroller.

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SENATOR WIELECHOWSKI said he was impressed with Mr. Clarke's answer on who gets submitted to the governor; that it is based on experience, qualification, and professionalism. That is how judges should be selected. If the commission's goal is to submit the best judges, it seems that by presenting less qualified people to the governor opens it up to politics, and that should be avoided.

MR. CLARKE said that is what he was saying. The council can provide a list of qualified professionals without looking at points of view. The governor can conduct interviews and ask what she or he wants to know. The council is doing its job by not

applying political litmus tests, and the governor has the ultimate responsibility for the appointment.

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REPRESENTATIVE COGHILL moved to forward the name William F. Clarke to the full body for confirmation. Hearing no objection, it was so ordered.

CONFIRMATION: Kathleen Tompkins-Miller -- Alaska Judicial Council.

[2:14:12 PM](#)

KATHLEEN TOMPKINS-MILLER, Appointee, Alaska Judicial Council, Fairbanks, said she works part time for her husband's law firm as a secretary/paralegal and she is a part-time student. She is excited about the opportunity to serve on this council because the judiciary is important to Alaskans. Selecting good judges is critical to good government and good communities. She has read about the council and had contact with members. "One thing that actually excites me most is the research projects because I am a firm believer in therapeutic courts."

CHAIR FRENCH noted that she will be new in this position, and he asked if the council meets in Anchorage.

MS. TOMPKINS-MILLER said the council meets wherever the vacancy is open.

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REPRESENTATIVE COGHILL asked if she had something to add about the selection criteria for judges.

MS. TOMPKINS-MILLER said Mr. Clark answered similar to how she would have answered. "We put forth the people that we feel ... are the most qualified for the governor."

CHAIR FRENCH said she probably comes in contact with a fair number of attorneys when working in her husband's law office.

MS. TOMPKINS-MILLER said she does, and she has known a lot of them since they were students at Yale Law School. There will be writing samples to read on the council, and "I've read a few of those from students clear up to today for other attorneys."

CHAIR FRENCH surmised that she is familiar with the legal world. He asked if Mr. Clark said anything that she disagreed with and if she could discuss her role in the selection process.

MS. TOMPKINS-MILLER didn't disagree with Mr. Clarke except there are seven members on the council. The exciting thing is that she will bring a broad perspective. She has lived in Anchorage, Tok, and Fairbanks. She has visited with different Native people, and her husband was a magistrate, "so I have been able to see things through many different eyes." She is a mom and is active in her community. She regularly deals with people and their legal problems, so she may have a better perspective than an attorney.

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REPRESENTATIVE GRUENBERG noted that her husband wrote an article entitled "Op-ed from Lead Attorney in Alaska Troopergate Lawsuit," and asked if those are her views.

MS. TOMPKINS-MILLER said she is somewhat familiar with the article. It doesn't represent her views 100 percent. She is from a very different family, and she is able to stand alone. She believes her husband is very smart, but she makes her own decisions.

REPRESENTATIVE GRUENBERG said he is asking because it relates to the role of the legislature vis-à-vis other branches of government. He asked if she views the role of the judiciary as strict constructionist or otherwise.

MS. TOMPKINS-MILLER said she believes that whoever is most qualified should go forward. She said she would have to look at that article again. "There are so many things that Joe does, that I might briefly look at, but I honestly have quite a life outside of a lot of those things, so I don't remember everything in that piece or what it was about."

[2:21:49 PM](#)

REPRESENTATIVE GRUENBERG said his real question is if a candidate's political or judicial philosophy should influence whether they are sent up to the governor or retained by the public.

MS. TOMPKINS-MILLER said she believes that politics are absolutely out of this. She will not bring any ideology to the council. A judge needs to be able to apply the law fairly with absolutely no biases.

REPRESENTATIVE LYNN said his wife doesn't share all his views.

CHAIR FRENCH said, "Ditto."

REPRESENTATIVE COGHILL moved to forward the name Kathleen Tompkins-Miller to the full body for confirmation. Hearing no objection, it was so ordered.

CONFIRMATION: Jan Ostrovsky -- Commission on Judicial Conduct.

2:24:00 PM

JAN OSTROVSKY, Appointee, Commission on Judicial Conduct, Anchorage, said his resume doesn't include his public service or his service with the bar. He was one of the founders of the bankruptcy section of the Alaska bar. He has been a member of the Committee on Bar Examiners, the Fee Arbitration Panel, and the ABA Task Force on Attorney Discipline. He found them all interesting and rewarding, and this commission should be too. It is a fairly important position in that the Alaska judiciary is a very good one, and a lot of that has to do with the method of selection. The commission's role of seeing to it that the judiciary stays respected, ethical, and impartial is important, "and I would be proud to serve on this commission."

2:26:01 PM

CHAIR FRENCH asked him to draw the distinction between the judicial council and the Commission on Judicial Conduct.

MR. OSTROVSKY said the commission hears complaints against sitting judges - it isn't involved with the appointment of judges. It determines or sets up for a decision by the supreme court issues of complaints against judges. It issues advisory and ethical opinions concerning judicial conduct.

CHAIR FRENCH asked if Mr. Ostrovsky has served yet or appeared before the commission.

MR. OSTROVSKY said he hasn't had anything to do with it.

CHAIR FRENCH said his resume is long and distinguished, and the commission would be lucky to have him as a member.

MR. OSTROVSKY said, in response to Senator Therriault, that Larry Ostrovsky is his brother.

REPRESENTATIVE GRUENBERG asked Mr. Ostrovsky about his Avvo rating. "Is that Martindale Hubbell AV?"

MR. OSTROVSKY said, "Yes, it is."

REPRESENTATIVE GRUENBERG said that is the best rating a lawyer can have.

MR. OSTROVSKY said there are two different ratings [in his resume]. The Martindale Hubbell rating is AV. There is another rating service called Avvo, and his rating is superb in Washington. Avvo doesn't rate Alaska attorneys.

[2:28:59 PM](#)

REPRESENTATIVE COGHILL moved to forward the name Jan Ostrovsky to the full body for confirmation. Hearing no objection, it was so ordered.

CHAIR FRENCH said Mr. Brown [Chris Brown, Appointee to the Commission on Judicial Conduct] is sick and will not be calling in to the hearing today. He doesn't want to hold the other nominees up. So the committee will sign the letter and Chair French will create a new coversheet for the interviewed candidates. Only the interviewed candidates will be forwarded.

[2:30:45 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:30 p.m.