

**SJR**

**21**

<TARGET><BILL>SJR 21</BILL><SUBJECT>SJR  
21</SUBJECT><COMM>SFIN28</COMM></TARGET>

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/24/14

FURTHER:

DATE TURNED \_\_\_\_\_  
IN TO OFFICE: \_\_\_\_\_

**Finance Committee** considered SENATE JOINT RESOLUTION NO. 21

SJR 21 CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council.

and recommends:

- be replaced with CS SJR 21 (2d FIN)  Same Title  New Title
- adopt previous CS \_\_\_\_\_ (\_\_\_\_\_)  Same Title  New Title
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
Gov	✓			1
CRT	✓			2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
<i>Cliff Bishop</i>	Bishop			✓	
<i>Wendell J. Duff</i>	Duff	✗			
<i>John Hoffman</i>	Hoffman	✓			
<i>Orson Olson</i>	Olson	✓			
CO-CHAIR: <i>John Kelly</i>	Kelly	✓			
CO-CHAIR: <i>Mike Meyer</i>	Meyer	✓			

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSJR 21(FIN)  
Fiscal Note Number: 2  
(S) Publish Date: 3/12/14

Identifier: SJR021CS(JUD)-AJC-2-28-14  
Title: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL  
Sponsor: KELLY  
Requester: Senate Judiciary Committee

Department: Alaska Court System  
Appropriation: Judicial Council  
Allocation: Judicial Council  
OMB Component Number: 771

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>					
Personal Services							
Travel	11.0		11.7	11.7	11.7	11.7	11.7
Services	0.2		0.2	0.2	0.2	0.2	0.2
Commodities	1.1						
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>12.3</b>	<b>0.0</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>

**Fund Source (Operating Only)**

1004 Gen Fund	12.3		11.9	11.9	11.9	11.9	11.9
<b>Total</b>	<b>12.3</b>	<b>0.0</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

**Why this fiscal note differs from previous version:**

Revised to reflect changes in resolution passed out of Senate Judiciary Committee on 2/26/14.
---

Prepared By: <u>E. J. Pavsek, Fiscal Officer</u>	Phone: <u>(907)279-2526</u>
Division: <u>Judicial Council</u>	Date: <u>02/28/2014 04:15 PM</u>
Approved By: <u>Susanne DiPietro, Executive Director</u>	Date: <u>02/28/14</u>
Agency: <u>Judicial Council</u>	

## FISCAL NOTE ANALYSIS #2

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSJR 21(FIN)

---

### Analysis

CSSJR21(JUD) proposes a constitutional amendment to increase the membership of the Alaska Judicial Council from seven to ten members. If CSSJR21(JUD) becomes law during this legislative session, the proposal to amend the constitution would be put to the voters on the November 2014 ballot. If the voters approve the amendment, the change would become law during FY2015.

The law would increase costs for AJC members to travel for meetings to nominate applicants for state judgeships. Travel costs would increase for two reasons: (1) a larger number of Council members will need to travel, and (2) the larger number of Council members would cause meetings to last longer, thus incurring additional meal and lodging expenses. The amount is based on an average of our Council member current travel costs. The travel costs will be slightly lower in FY15 than in subsequent years because the new Council members would not be appointed until partway through the 2015 fiscal year.

The three new Council members will need electronic devices for storing and viewing meeting materials. This commodity cost is a one-time cost.

The impact of this change on staff time and conference room space is not able to be determined at this time.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSJR 21(JUD)  
Fiscal Note Number: 1  
(S) Publish Date: 2/28/14

Identifier: SJR021-OOG-DOE-2-14-14  
Title: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL  
Sponsor: KELLY  
Requester: Senate Judiciary

Department: Office of the Governor  
Appropriation: Elections  
Allocation: Elections  
OMB Component Number: 21

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>					
Personal Services							
Travel							
Services	1.5						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

1004 Gen Fund	1.5						
<b>Total</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial Version
-----------------

Prepared By: <u>Guy Bell, Administrative Director</u>	Phone: <u>(907)465-3876</u>
Division: <u>Division of Administrative Services, Office of the Governor</u>	Date: <u>02/14/2014 12:00 PM</u>
Approved By: <u>Guy Bell, Administrative Director</u>	Date: <u>02/14/14</u>
Agency: <u>Division of Administrative Services, Office of the Governor</u>	

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSJR 21(JUD)

**Analysis**

Passage of this resolution would require the constitutional amendment to appear on the 2014 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58, is \$1.5. Should the addition of this resolution require printing an 8-1/2 by 18 inch ballot, the cost will increase to \$22.0.

28-LS1364\P  
Nauman/Wallace  
3/28/14

**CS FOR SENATE JOINT RESOLUTION NO. 21(2d FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

*Adopted*

Sponsor(s): SENATORS KELLY, Giessel, Dunleavy, McGuire

*3/23/14*

**A RESOLUTION**

1 **Proposing amendments to the Constitution of the State of Alaska to increase the number**  
2 **of members on the judicial council; relating to the initial terms of new members**  
3 **appointed to the judicial council; and relating to the confirmation of members of the**  
4 **judicial council.**

5 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 \* **Section 1.** Article IV, sec. 8, Constitution of the State of Alaska, is amended to read:

7 **Section 8. Judicial Council.** The judicial council shall consist of ten  
8 [SEVEN] members. Three attorney members shall be appointed for six-year terms by  
9 the governing body of the organized state bar. Six [THREE] non-attorney members  
10 shall be appointed for six-year terms by the governor. The three attorney members  
11 and six non-attorney members shall be subject to confirmation by a majority of the  
12 members of the legislature in joint session. Vacancies shall be filled for the unexpired  
13 term in like manner. Appointments shall be made with due consideration to area  
14 representation and without regard to political affiliation. The chief justice of the  
15 supreme court shall be ex-officio the tenth [SEVENTH] member and chairman of the

1           judicial council. No member of the judicial council, except the chief justice, may hold  
2           any other office or position of profit under the United States or the State. The judicial  
3           council shall act by a majority vote [CONCURRENCE] of a quorum of at least  
4           seven [FOUR OR MORE] members and according to rules which it adopts.

5           \* **Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new  
6 section to read:

7                       **Section 30. Judicial Council Additional Members.** If the 2014 amendment  
8           increasing the membership of the judicial council (art. IV, sec. 8) is adopted, the first  
9           term for the new non-attorney members of the judicial council shall be for two, four,  
10          and six years respectively.

11          \* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of  
12 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
13 State of Alaska, and the election laws of the state.

Re: Opposition to HJR 33 and SJR 21

Dear Senator Pete Kelly:

Kawerak, Inc. is a Native non-profit consortium providing a wide range of services throughout Nome and the outer-lying communities within the Bering Strait region. Our provision of services includes representation in Child in Need of Aid/Indian Child Welfare Act matters. We also own and operate a Child Advocacy Center which provides a child friendly environment for investigation of child abuse and neglect cases through a Multi-Disciplinary Team approach, and which also works closely with Law Enforcement, the Office of Children's Services, and the Alaska Court System. We are very involved, therefore, with the Alaska judicial system in our region and state-wide.

Senate Joint Resolution 21 (SJR 21) and House Joint Resolution 33 (HJR 33) seek to amend the State Constitution to alter the composition of the Alaska Judicial Council (the Council) by increasing the number of members on the Council. Currently the Council has three attorney-appointees appointed by the Alaska Bar Association and three non-attorney appointees appointed by the Governor. The bills would increase the ratio of non-attorney appointees to attorney-appointees on the Council. The purported reasons for this are to increase regional representation and to guard against attorney dominance on the Council. Kawerak strongly opposes SJR 21 and HJR 33, including any variation of either bill, for the following reasons:

- Increasing the public membership will not guarantee more rural/regional representation on the Council or more Native representation on the bench. Increasing the number of public members chosen by the Governor will only subject the Council, and therefore judicial selections, to a more politicized process which we believe will be detrimental to the process, and to rural Alaska.
  
- There is no evidence to suggest that the lawyer-appointees dominate or control the Council. Almost without exception, over the last 30 years the lawyer-appointees and public-appointees have worked in partnership and come to a consensus on their decisions with respect to judicial appointments. There is no problem that needs to be fixed in the first place.

We are greatly concerned that this legislation is working its way through the Legislature, and request that our opposition to SJR 21 and HJR 33 be noted in the record, and that you vote against this legislation. We also note that there is strong opposition to this legislation throughout rural Alaska, and through Resolution 14-1, the Alaska Federation of Natives Resolution opposing this legislation.

Please do not vote to reconfigure the Alaska Judicial Council so that it is subject to whichever way the political winds are blowing at any given time, in order to fix a problem that does not exist.

Sincerely,

KAWERAK, INC.

Melanie Bahnke

President

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.

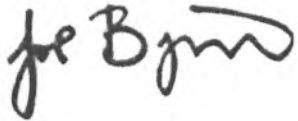
Sincerely yours,

*Larry D. Wood*

**Doniece Gott**

---

**From:** Joseph Byrnes  
**Sent:** Saturday, March 29, 2014 3:17 PM  
**To:** Senate Finance Committee  
**Subject:** FW: SJR21



*Joe Byrnes*  
Staff for Senator Pete Kelly  
907-456-3709



---

**From:** Clara Torrison [<mailto:clarabel@alaska.com>]  
**Sent:** Saturday, March 29, 2014 08:22  
**To:** Sen. Pete Kelly  
**Subject:** SJR21

Dear Sen. Kelly,

I just want to say thank you for supporting SJR21 to help make our court system more accountable.

Sincerely,

Clara Torrison

P.O. Box 671656

Chugiak, AK 99567

## Doniece Gott

---

**From:** Sen. Pete Kelly  
**Sent:** Saturday, March 29, 2014 3:20 PM  
**To:** Senate Finance Committee  
**Subject:** FW: SJR 21

**From:** Dick Zobel [<mailto:spuds1@mtaonline.net>]  
**Sent:** Saturday, March 29, 2014 10:33  
**To:** Sen. Pete Kelly  
**Subject:** SJR 21

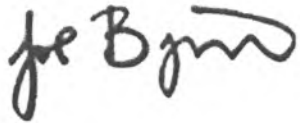
I would like to thank you for your action on SJR 21. I beleive it very well will lead to constitutional rulings in our court system.

**Doniece Gott**

---

**From:** Sen. Pete Kelly  
**Sent:** Saturday, March 29, 2014 3:20 PM  
**To:** Senate Finance Committee  
**Subject:** FW: SJR 21 and HJR22

Public testimony



*Joe Byrnes*

Staff for Senator Pete Kelly  
907-456-3709



---

**From:** Trisha Jones [<mailto:sentrish@gci.net>]  
**Sent:** Saturday, March 29, 2014 13:46  
**To:** Sen. Pete Kelly; Sen. Cathy Giessel; Sen. Mike Dunleavy; Sen. Lesil McGuire  
**Subject:** SJR 21 and HJR22

Senators,

THANK YOU for being the prime sponsors of **SJR21**- this corrective measures bill is long overdue and its passage will benefit all Alaskans in that it will serve to reinforce the rule of law in this state, by promoting more accountability of our judges.

I urge you to also support Bill, **HJR22** , which as you know, calls for Alaska to join (and be a leader in forming) a Convention of States, as outlined in the US Constitution, Article 5. A Convention of States is necessary to preserve Alaska's liberty and state sovereignty and it also is long overdue.

Thank you for your work on matters affecting all Alaskans in positive ways.

Respectfully,

Patricia Jones

## Doniece Gott

---

**From:** Sen. Pete Kelly  
**Sent:** Saturday, March 29, 2014 3:20 PM  
**To:** Senate Finance Committee  
**Subject:** FW: Opposed to SJR21 and HJR33

Public testimony



Joe Byrnes

Staff for Senator Pete Kelly  
907-456-3709



---

**From:** Vicki Otte [<mailto:votte@aci.net>]  
**Sent:** Saturday, March 29, 2014 13:09  
**To:** Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Berta Gardner; Sen. Cathy Giessel; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Pete Kelly; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski  
**Subject:** Opposed to SJR21 and HJR33

Senators,

As a former public member of the Alaska Judicial Council, I take issue with current efforts in the legislature – through SJR 21 and HJR 33 – to change Alaska’s Constitutional framework for selecting judges by dramatically altering the composition of the council. Adding more politically appointed public members will not foster greater diversity or ensure broader representation. The Governor already has the power to appoint council members who are more geographically balanced and ethnically diverse. At least four Alaska Natives have served on the council since Statehood: Mary Jane Fate of Fairbanks (1981-1987); Leona Okakok of Barrow (1987-1993); myself, originally from McGrath (1995-2000); and Gigi Pilcher of Ketchikan (2000-2005). **That no recent Governor has appointed a rural resident or ethnic minority is no fault of our judicial selection process.** The proposed amendment would not ensure a more balanced council. It would instead expand the ability of political leaders to ensure the dominance of their own views on the council, however narrow and unrepresentative they may be. It is a mistake to pass SRJ 21 and HJR 33. **As our “Statesmen and women,” please make the right decision on this issue – vote no.**

Thank you.

Vicki Otte

Wasilla, AK

907-223-3330

ADOPTED  
3/10/14

28-LS1364\O  
Wallace  
3/10/14

**CS FOR SENATE JOINT RESOLUTION NO. 21(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-EIGHTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATORS KELLY, Giessel, Dunleavy, McGuire**

**A RESOLUTION**

1 **Proposing amendments to the Constitution of the State of Alaska to increase the number**  
2 **of members on the judicial council and relating to the initial terms of new members**  
3 **appointed to the judicial council.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **\* Section 1.** Article IV, sec. 8, Constitution of the State of Alaska, is amended to read:

6 **Section 8. Judicial Council.** The judicial council shall consist of ten  
7 [SEVEN] members. Three attorney members shall be appointed for six-year terms by  
8 the governing body of the organized state bar. Six [THREE] non-attorney members  
9 shall be appointed for six-year terms by the governor subject to confirmation by a  
10 majority of the members of the legislature in joint session. Vacancies shall be filled for  
11 the unexpired term in like manner. Appointments shall be made with due  
12 consideration to area representation and without regard to political affiliation. The  
13 chief justice of the supreme court shall be ex-officio the tenth [SEVENTH] member  
14 and chairman of the judicial council. No member of the judicial council, except the  
15 chief justice, may hold any other office or position of profit under the United States or

1 the State. The judicial council shall act by a majority vote [CONCURRENCE] of a  
2 quorum of at least seven [FOUR OR MORE] members and according to rules which  
3 it adopts.

4 \* **Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new  
5 section to read:

6 **Section 30. Judicial Council Additional Members.** If the 2014 amendment  
7 increasing the membership of the judicial council (art. IV, sec. 8) is adopted, the first  
8 term for the new non-attorney members of the judicial council shall be for two, four,  
9 and six years respectively.

10 \* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of  
11 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
12 State of Alaska, and the election laws of the state.

# SENATE FINANCE COMMITTEE REPORT

DATE: 2/28/14

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Finance Committee considered SENATE JOINT RESOLUTION NO. 21

SJR 21-CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council.

and recommends:

- be replaced with CS SJR 21 (FIN) [ Same Title] [ New Title]
- adopt previous CS \_\_\_\_\_ (\_\_\_\_\_) [ Same Title] [ New Title]
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CRT	✓			

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
Gov	✓			1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	Dunbar	✓			
Anna J. Fairclough	FAIRCLOUGH				X
<i>[Signature]</i>	Orson	✓		✓	
CO-CHAIR: <i>[Signature]</i>	Helly	✓			
CO-CHAIR: <i>[Signature]</i>	Meyer	✓			

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: SJR 21  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: SJR021CS(JUD)-AJC-2-28-14  
Title: CONST. AM: MEMBERSHIP OF JUDICIAL  
COUNCIL  
Sponsor: KELLY  
Requester: Senate Judiciary Committee

Department: Alaska Court System  
Appropriation: Judicial Council  
Allocation: Judicial Council  
OMB Component Number: 771

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services							
Travel	11.0		11.7	11.7	11.7	11.7	11.7
Services	0.2		0.2	0.2	0.2	0.2	0.2
Commodities	1.1						
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>12.3</b>	<b>0.0</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>

## Fund Source (Operating Only)

1004 Gen Fund	12.3		11.9	11.9	11.9	11.9	11.9
<b>Total</b>	<b>12.3</b>	<b>0.0</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>	<b>11.9</b>

## Positions

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2015) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

## ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

## Why this fiscal note differs from previous version:

Revised to reflect changes in resolution passed out of Senate Judiciary Committee on 2/26/14.
---

Prepared By: E. J. Pavsek, Fiscal Officer	Phone: (907)279-2526
Division: Judicial Council	Date: 02/28/2014 04:15 PM
Approved By: Susanne DiPietro, Executive Director	Date: 02/28/14
Agency: Judicial Council	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. SJR021CS(JUD)

**Analysis**

CSSJR21(JUD) proposes a constitutional amendment to increase the membership of the Alaska Judicial Council from seven to ten members. If CSSJR21(JUD) becomes law during this legislative session, the proposal to amend the constitution would be put to the voters on the November 2014 ballot. If the voters approve the amendment, the change would become law during FY2015.

The law would increase costs for AJC members to travel for meetings to nominate applicants for state judgeships. Travel costs would increase for two reasons: (1) a larger number of Council members will need to travel, and (2) the larger number of Council members would cause meetings to last longer, thus incurring additional meal and lodging expenses. The amount is based on an average of our Council member current travel costs. The travel costs will be slightly lower in FY15 than in subsequent years because the new Council members would not be appointed until partway through the 2015 fiscal year.

The three new Council members will need electronic devices for storing and viewing meeting materials. This commodity cost is a one-time cost.

The impact of this change on staff time and conference room space is not able to be determined at this time.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSJR 21(JUD)  
Fiscal Note Number: 1  
(S) Publish Date: 2/28/14

Identifier: SJR021-OOG-DOE-2-14-14  
Title: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL  
Sponsor: KELLY  
Requester: Senate Judiciary

Department: Office of the Governor  
Appropriation: Elections  
Allocation: Elections  
OMB Component Number: 21

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services	1.5							
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

### Fund Source (Operating Only)

1004 Gen Fund	1.5						
<b>Total</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

### Positions

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2015) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

### ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

### Why this fiscal note differs from previous version:

Initial Version
-----------------

Prepared By:	Guy Bell, Administrative Director	Phone:	(907)465-3876
Division:	Division of Administrative Services, Office of the Governor	Date:	02/14/2014 12:00 PM
Approved By:	Guy Bell, Administrative Director	Date:	02/14/14
Agency:	Division of Administrative Services, Office of the Governor		

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSJR 21(JUD)

**Analysis**

Passage of this resolution would require the constitutional amendment to appear on the 2014 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58, is \$1.5. Should the addition of this resolution require printing an 8-1/2 by 18 inch ballot, the cost will increase to \$22.0.

CS FOR SENATE JOINT RESOLUTION NO. 21(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS KELLY, Giessel, Dunleavy, McGuire

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska to increase the number  
2 of members on the judicial council and relating to the initial terms of new members  
3 appointed to the judicial council.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. Article IV, sec. 8, Constitution of the State of Alaska, is amended to read:

6 Section 8. Judicial Council. The judicial council shall consist of ten  
7 [SEVEN] members. Three attorney members shall be appointed for six-year terms by  
8 the governing body of the organized state bar. Six [THREE] non-attorney members  
9 shall be appointed for six-year terms by the governor subject to confirmation by a  
10 majority of the members of the legislature in joint session. Vacancies shall be filled for  
11 the unexpired term in like manner. Appointments shall be made with due  
12 consideration to area representation and without regard to political affiliation. The  
13 chief justice of the supreme court shall be ex-officio the tenth [SEVENTH] member  
14 and chairman of the judicial council. No member of the judicial council, except the  
15 chief justice, may hold any other office or position of profit under the United States or

1 the State. The judicial council shall act by a majority vote [CONCURRENCE] of a  
2 quorum of at least seven [FOUR OR MORE] members and according to rules which  
3 it adopts.

4 \* **Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new  
5 section to read:

6 **Section 30. Judicial Council Additional Members.** If the 2014 amendment  
7 ~~increasing the membership of the judicial council (art. IV, sec. 8) is adopted, the first~~  
8 term for the new non-attorney members of the judicial council shall be for two, four,  
9 and six years respectively.

10 \* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of  
11 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
12 State of Alaska, and the election laws of the state.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSJR 21(JUD)  
Fiscal Note Number: 1  
(S) Publish Date: 2/28/14

Identifier: SJR021-OOG-DOE-2-14-14  
Title: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL  
Sponsor: KELLY  
Requester: Senate Judiciary

Department: Office of the Governor  
Appropriation: Elections  
Allocation: Elections  
OMB Component Number: 21

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>					
Personal Services							
Travel							
Services	1.5						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

1004 Gen Fund	1.5						
<b>Total</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 (separate supplemental appropriation required)

(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2015) cost:** 0.0 (separate capital appropriation required)

(discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No

If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial Version
-----------------

Prepared By: Guy Bell, Administrative Director  
Division: Division of Administrative Services, Office of the Governor  
Approved By: Guy Bell, Administrative Director  
Agency: Division of Administrative Services, Office of the Governor

Phone: (907)465-3876  
Date: 02/14/2014 12:00 PM  
Date: 02/14/14

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSJR 21(JUD)

**Analysis**

Passage of this resolution would require the constitutional amendment to appear on the 2014 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58, is \$1.5. Should the addition of this resolution require printing an 8-1/2 by 18 inch ballot, the cost will increase to \$22.0.

## Doniece Gott

---

**From:** Sen. Pete Kelly  
**Sent:** Monday, March 10, 2014 10:23 AM  
**To:** Senate Finance Committee  
**Subject:** FW: SJR21

Public testimony



*Joe Byrnes*

Staff for Senator Pete Kelly  
907-456-3709



**From:** missy nurmi [<mailto:missynurmi@gmail.com>]  
**Sent:** Monday, March 10, 2014 10:10  
**To:** Sen. Kevin Meyer; Sen. Lesil McGuire; Rep. Wes Keller; Sen. Hollis French; Sen. Pete Kelly; Rep. Lindsey Holmes  
**Subject:** SJR21

In regards to SJR 21, I have a number of concerns about this resolution that I would like to voice and have read into the committee record. Please take my concerns seriously and nonpolitically. My concerns are AK Constitutionally based as well as based on the fundamental principles of our country.

- This resolution and subsequent amendment TRANSFERS incredible power to the Executive branch. This may seem prudent today as one party holds both chambers and it is assumed you will work together for a common goal but history has shown us that is actually rare.
- This transfer of power to the Executive is exacerbated by the fact that the Governor in this state is extremely powerful in comparison to other states as the Governor and Lieutenant are the only state wide elected officials and our Legislature sits for only 90 days.
- If the concern is to expand the public's voice or even power into the Judiciary, that is unnecessary as the Judiciary was created as a branch to be above the fray of politics and be beholden to none but the law. The Judicial seats that the Council recommends are predominately trial courts, hardly political in nature and surely all applicants have AK's best in mind.
- Again, if the concern is public input, our Constitution allows for that in our retention system. If the public has concerns about a judge, they have an avenue to voice. As well, it is apparent that there have not been issues with the appointment of unqualified or corrupt judges; in recent history only 1 has been removed.
- If the Legislature or vocal constituents have shared a reservation about the liberalness of the Alaska Bar Association and their power in the selection of the short list to the Governor they are SHORTSIGHTED. The AK Bar Association is made up of ALL attorneys in AK; this would include the corporate, tax, trade, contract and other traditionally more conservative attorneys, not just liberal trial lawyers. For over 50 years we have TRUSTED the guidance of the ELECTED members of the council that represent the Bar Assoc. as they are PROFESSIONALS, not politicians.
- Our merit system is fantastic. There is NO NEED to change it. It is apparent that it is to transfer power to the Executive branch by expanding their power to appoint a super-majority of people to the council that are beholden to them and their political power and whims.

Thanks for your time

Michelle Nurmi

3429 Tanglewood Place

Anchorage AK 99517

# Judicial Merit Selection: Current Status



**Table 1: Characteristics of merit selection plans: Scope of the plans**

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
<b>Alabama</b>						
Baldwin County	1999	Circuit Court District Court	CA	Interim	1	5: 1L; 3N; 1J
Jefferson County <sup>1</sup>	1950	Circuit Court	CA	Interim	1	5: 2L; 2N; 1J
Lauderdale County	2008	Circuit Court District Court	CA	Interim	1	5: 2L; 3E
Madison County	1974, revised 1996	Circuit Court District Court	CA	Interim	1	9: 2L; 6N; 1J
Mobile County	1982	Circuit Court District Court	CA	Interim	1	5: 2L; 2N; 1J
Shelby County	2008	Circuit Court District Court	CA	Interim	1	5: 2L; 2N; 1J
Talladega County	1996	Circuit Court District Court	CA	Interim	1	5: 1L; 3N; 1J
Tuscaloosa County	1990, revised 2002	Circuit Court District Court	CA	Interim	1	9: 5L; 3NL; 1J
<b>Alaska</b>						
	1959	Supreme Court	C	Initial and Interim	1	7: 3L; 3N; 1J
	1959	Superior Court	C	Initial and Interim		
	1980, amended 1985	Court of Appeals	S	Initial and Interim		
	1959	District Courts and Magistrates	S	Initial and Interim		
<b>Arizona</b>						
	1974, amended 1992	Supreme Court Court of Appeals	C	Initial and Interim	1	16: 5L, 10NL, 1J
		Maricopa County Superior Court	C	Initial and Interim	1	
		Pima County Superior Court	C	Initial and Interim	1	
<b>Colorado</b>						
	1967	Supreme Court Court of Appeals District Court	C  C	Initial and Interim  Initial and Interim	1  22	14: 6L, 7NL, 1J  8: 1J; at least 4NL; no more than 3L <sup>2</sup>
		County Court Denver Juvenile Court Denver Probate Court	S	Initial and Interim		
<b>Connecticut</b>						
	1986	Supreme Court Appellate Court Superior Court	C	Initial and Interim	1	12: 6L, 6NL, 0J
<b>Delaware</b>						
	1977; revised 1978 , 1985, 2001, 2009	All Courts, including Magistrates	EO	Initial and Interim	1	11: 5L, 4NL, 2E
<b>D.C.</b>						
	1973, amended 1977, 1984, 1986, 1996	Court of Appeals Superior Court	HR	Initial and Interim	1	7: 2NL, 2L, 2E, 1J
<b>Florida</b>						
	1972; amended 1976, 1984, 1996, 1998	Supreme Court District Court of Appeal Circuit Court County Court	C C C	Initial and Interim Initial and Interim Interim	1 5 20	9: 6L, 3E, 0J
<b>Georgia</b>						
	1972 to present	Supreme Court Court of Appeals Superior Court State Court	EO	Interim	1	18

**Table 1: Characteristics of merit selection plans: Scope of the plans**

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
<i>Hawaii</i>	1959, amended 1978, 1994	Supreme Court Intermediate Court of Appeals Circuit Court District Court <sup>8</sup>	C	Initial, Interim, and Retention	1	9: 4L, 5NL, 0J
<i>Idaho</i>	1967; amended 1985, 1990	Supreme Court Court of Appeals District Court	S	Interim Interim Interim	1	7:2L, 3NL, 2J
<i>Indiana</i>	1970	Supreme Court Court of Appeals	C	Initial and Interim	1	7: 1J, 3L, 3NL
	1985	Tax Court	S	Initial and Interim		
Allen County	1983	Superior Court	S	Interim	1	7: 3L, 3NL, 1J
Lake County	1973	Superior Court	S	Initial and Interim	1	9: 4L, 4NL, 1J <sup>4</sup>
St. Joseph County	1973	Superior Court	S	Initial and Interim	1	7: 3L, 3NL, 1J
<i>Iowa</i>	1962, 1963; amended 1976, 1983	Supreme Court	C	Initial and Interim	1	15: 7L, 7E, 1J <sup>5</sup>
	1962, 1963; amended 1976, 1983	Court of Appeals	S	Initial and Interim		
	1962, 1963; amended 1976, 1983	District Court	C	Initial and Interim	14	11: 5L, 5E, 1J <sup>5</sup>
	1983, amended 1986	District Associate Judges <sup>5</sup>	S	Initial and Interim	99	6: 2L, 3E, 1J
	1983; amended 1989, 1990, 1998	Magistrate Judges <sup>6</sup>	S	Initial and Interim		
<i>Kansas</i>	1958	Supreme Court	C	Initial and Interim	1	9: 5L, 4NL, 0J
	1975	Court of Appeals	S	Initial and Interim		
	1972	District Court (optional)	C	Initial and Interim	17	# of L's / NL's varies according to judicial district; <sup>7</sup> 1J
<i>Kentucky</i>	1976	Supreme Court Court of Appeals Circuit Court District Court	C  C	Interim  Interim	1  56	7: 2L, 4NL, 1J
<i>Maine<sup>8</sup></i>	2003	Supreme Judicial Court Superior Court		Initial and Interim	1	14L
<i>Maryland</i>	1970, revised 1974, 1979, 1982, 1987, 1988, 1991, 1995, 1999, 2003, 2007	Court of Appeals Court of Special Appeals District Court Circuit Court	EO  EO	Initial and Interim  Initial and Interim	1  16	17  9
<i>Massachusetts</i>	1970 to present	Appeals Court Trial Court	EO	Initial and Interim	1	21
<i>Minnesota</i>	1983, revised 1990, 1992	District Court Workers' Compensation Court of Appeals	S	Interim	1	13: up to 8L, at least 5NL, 0J <sup>9</sup>

**Table 1: Characteristics of merit selection plans: Scope of the plans**

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
<b>Missouri</b>	1940, revised 1976	Supreme Court	C	Initial and Interim	1	7: 3L, 3NL, 1J
City of St. Louis	1940, revised 1976	Court of Appeals	C	Initial and Interim	1	5: 2L, 2NL, 1J
Greene County	2008	Circuit Judge	C	Initial and Interim	1	
Jackson County	1940, revised 1976	Associate Circuit Judge	C	Initial and Interim	1	
St. Louis County	1976	Circuit Judge	C	Initial and Interim	1	
Clay & Platte Counties	1976	Associate Circuit Judge	C	Initial and Interim	2	
		Circuit Judge				
		Associate Circuit Judge				
<b>Montana</b>	1973, amended 1977, 1979, 1987, 1991, 1992	Supreme Court	C	Interim	1	7: 2L, 4NL, 1J
	1991	District Court	S	Initial and Interim		
	1987	Worker's Compensation Judge	S	Initial and Interim		
		Chief Water Judge	S	Initial and Interim		
<b>Nebraska</b>	1962, amended 1972	Supreme Court	C	Initial and Interim	7	9: 4L, 4NL, 1J
		Court of Appeals	S	Initial and Interim	6	
		District Court	C	Initial and Interim	12	
		County Court	S	Initial and Interim	4 <sup>10</sup>	
		Juvenile Court	S	Initial and Interim	3	
		Worker's Compensation Court	S	Initial and Interim	1	
<b>Nevada</b>	1976	Supreme Court	C	Interim	1	7:3L, 3NL, 1J
		District Court			1 <sup>11</sup>	9:4L, 4NL, 1J
<b>New Hampshire</b>	2000, 2005	Supreme Court	EO	Initial and Interim	1	11: 6L, 5NL
		Superior Court				
		District Court				
		Probate Court				
<b>New Jersey</b>	2006, amended 2010	Supreme Court	EO	Initial and Interim	1	7 <sup>12</sup>
<b>New Mexico</b>	1988	Supreme Court	C	Initial and Interim	1	14: 8L, 3NL, 3J <sup>13</sup>
	1988	Court of Appeals	C	Initial and Interim	13	14: 8L, 3NL, 3J <sup>13</sup>
		District Court	C	Initial and Interim	1	14: 8L, 3NL, 3J <sup>13</sup>
		Metropolitan Court (Bernalillo County)	C	Initial and Interim	1	
<b>New York</b>	1977	Court of Appeals	C	Initial and Interim	1	12: 4L, 4NL, 4E, 0J
	1975 to present	Appellate Div. of the Supreme Court	EO	Initial and Interim	4	13
		Supreme Court		Interim		
		Court of Claims	EO	Initial and Interim	1	13
		County Court	EO	Interim	4	14
		Surrogate's Court				
New York City	1978 to present	Family Court				
		Criminal Court	EO	Initial and Interim	1	19
		Family Court				
		Civil Court		Interim		
<b>North Dakota</b>	1976; amended 1998	Supreme Court	C	Interim	1	6: 3L/J, 3NL
		District Court			1	9: 3L/J, 3NL, 3E <sup>14</sup>

# Table 1: Characteristics of merit selection plans: Scope of the plans

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
<i>Ohio</i> <sup>15</sup>	2007	Supreme Court Court of Appeals Court of Common Pleas		Interim	1	11
<i>Oklahoma</i>	1967 1987, amended 1996 1980, amended 2001 1977	Supreme Court Court of Criminal Appeals Court of Civil Appeals District Court Workers' Compensation Court	C S S S	Initial and Interim Initial and Interim Interim Initial and Interim	1	15: 6L, 9NL, 0J
<i>Rhode Island</i>	1994	Supreme Court Superior Court Family Court District Court Worker's Compensation Court Administrative Adjudication Court	C	Initial and Interim	1	9: 4L, 4NL, 1E 0J
<i>South Dakota</i>	1980	Supreme Court Circuit Court	C	Initial and Interim Interim	1	7: 3L, 2NL, 2J
<i>Tennessee</i>	1971; amended 1974, 1986, 1994, 1999, 2001 1994	Supreme Court Court of Criminal Appeals Court of Appeals Trial Courts	S S	Initial and Interim Interim	1	17: At least 10L; at least 1N
<i>Utah</i>	1967, amended 1985, 1992, 1994, 2010	Supreme Court Court of Appeals District Court Juvenile Court	C C	Initial and Interim Initial and Interim	1 8	7: 2L, 2NL, 2E, 1J 7: 2L, 2NL, 2E, 1J
<i>Vermont</i>	1967; amended 1969, 1971, 1975, 1979, 1985	Supreme Court Superior Court District Court	C	Initial and Interim	1	11: 3L, 6NL, 2E
<i>West Virginia</i>	2010	Supreme Court of Appeals Circuit Court Family Court	S	Interim	1	11: 6L, 4NL, 1E <sup>15</sup>
<i>Wisconsin</i> <sup>17</sup>	2003	Supreme Court Court of Appeals Circuit Court	EO	Interim	1	9L
<i>Wyoming</i>	1973	Supreme Court District Court Circuit Court	C	Initial and Interim	1	7: 3L, 3NL, 1J <sup>16</sup>

C = Constitutional  
 S = Statutory  
 EO = Executive Order  
 HR = Home Rule  
 L = Lawyer  
 NL = Non-lawyer  
 E = Either Lawyer or Non-lawyer  
 J = Judge

## Table 1: Characteristics of merit selection plans: Scope of the plans

1. **Alabama (Jefferson County).** The Jefferson County Commission nominates candidates for vacancies in the Birmingham Division only.
2. **Colorado.** In judicial districts with populations greater than 35,000, there must be three lawyer and four non-lawyer members. In judicial districts with populations of 35,000 or less, there must be at least four non-lawyer members; a majority vote of the governor, the attorney general, and the chief justice determines how many of the remaining three members must be lawyers.
3. **Hawaii.** The chief justice makes appointments to the district courts.
4. **Indiana (Lake County).** Two lawyer and two non-lawyer members must be men; two lawyer and two non-lawyer members must be women; at least one lawyer and one non-lawyer member must be a minority.
5. **Iowa.** The mandatory ratio of lawyers to non-lawyers is not specified; traditionally, the governor appoints only non-lawyers and the bar elects only lawyers. No more than a simple majority of members appointed by the governor may be of the same gender, and the bar must alternate between electing male and female members.
6. **Iowa.** District judges appoint district associate judges from lists of nominees recommended by the county magistrate appointing commission. The county magistrate appointing commission appoints magistrates.
7. **Kansas.** The number of commission members varies with the number of counties in each judicial district; however, there must be an equal number of lawyers and non-lawyers on each commission.
8. **Maine.** Governor Baldacci established the Judicial Selection Committee to "advise [him] about matters related to judicial appointments and recommend candidates to fill vacancies." Members include a representative from the attorney general's office and practicing attorneys.
9. **Minnesota.** There are nine commission members who serve "at-large" to fill any district court or workers' compensation court of appeals vacancies. In addition, there are four commission members—two lawyers and two non-lawyers—appointed from the district in which the vacancy exists.
10. **Nebraska.** The district court judicial nominating commissions also nominate county court judges, except in Districts 1, 3, 4, and 10, in which there are separate county and district judicial nominating commissions.
11. **Nevada.** Nominations for district court vacancies are made by temporary commissions that are assembled as each vacancy occurs and exist only until nominations have been submitted to the governor. These temporary commissions consist of members of the permanent commission and one lawyer and one non-lawyer resident of the judicial district in which the vacancy occurs.
12. **New Jersey.** Governor Christie's Judicial Advisory Panel consists of up to seven members, including five or more retired judges and up to two public members who are either non-lawyers or non-practicing lawyers.
13. **New Mexico.** The president of the state bar and the judges on the commission are authorized to make the minimum number of additional appointments of members of the state bar as is necessary for equal representation on the commission of the two largest political parties.
14. **North Dakota.** When a vacancy occurs on the district court, the governor, chief judge, and president of the state bar each appoint an additional temporary member, who may or may not be a lawyer, from the judicial district in which the vacancy occurs; these members serve until the vacancy is filled.
15. **Ohio.** Governor Strickland's Judicial Appointments Recommendation Panel evaluates the qualifications of applicants for judicial vacancies and makes non-binding recommendations for appointment.
16. **West Virginia:** The governor (or the governor's designee), the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law serve *ex officio*.
17. **Wisconsin.** Governor Walker's Advisory Council on Judicial Selection screens applicants for interim judicial vacancies and recommends qualified candidates. The governor is not bound by the council's recommendations.
18. **Wyoming.** When a vacancy occurs on a district or circuit court, and that district or county is not represented on the commission, one lawyer and one non-lawyer from that district or county are appointed as temporary, nonvoting advisors to the commission.

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>Alabama</b>					
Baldwin County	6 years	Judge serves ex officio	Baldwin County Bar Association	Baldwin County Commission/ Baldwin County Mayor's Association/Baldwin County legislative delegation	Presiding circuit judge serves
Jefferson County	6 years	No regular chair	Birmingham Bar Association	Jefferson County legislative delegation	Birmingham circuit court judges
Lauderdale County	6 years	Chief justice	Lauderdale County Bar Association	Lauderdale County Commission	N/A
Madison County	6 years	Judge serves ex officio	Madison County Bar Association	Madison County legislative delegation	Madison County circuit court judges
Mobile County	6 years	N/I	Mobile County Bar Association	Mobile County legislative delegation	Mobile County circuit court judges
Shelby County	6 years	Judge serves ex officio	Shelby County Bar Association	Shelby County legislators	Presiding circuit judge serves ex officio
Talladega County	4 years	Judge serves ex officio	Not appointed or elected	Talladega County legislative delegation	Presiding circuit judge serves ex officio
Tuscaloosa County	6 years	Commission members	Tuscaloosa County Bar Association	Tuscaloosa County legislative delegation	Presiding circuit judge serves ex officio
<b>Alaska</b>					
Supreme Court	6 years	Chief justice serves ex officio	State bar association	Governor/ State legislature	Chief justice serves ex officio
<b>Arizona</b>					
Supreme Court and Court of Appeals	4 years	Chief justice serves ex officio	State bar association/ Governor/ Senate	Governor/ Senate	Chief justice serves ex officio
Maricopa County Superior Court and Pima County Superior Court	4 years	Chief justice serves ex officio	State bar association/ Governor/ Senate	Nominating commission/ Governor/Senate <sup>1</sup>	Chief justice serves ex officio
<b>Colorado</b>					
Supreme Court and Court of Appeals	6 years	Chief justice serves ex officio	Governor/ Attorney general/ Chief justice	Governor	Chief justice serves ex officio
District Court, County Court, Juvenile Court of Denver and Probate Court of Denver County	6 years	Supreme court justice serves ex officio	Governor/ Attorney general/ Chief justice	Governor	Supreme court justice serves ex officio
<b>Connecticut</b>					
Supreme Court, Appellate Court and Superior Court	3 years	Commission members <sup>2</sup>	Governor	Legislative leaders	N/A
<b>Delaware</b>					
All Courts, including Magistrates	3 years	Governor	Governor/ State bar president	Governor	N/A
<b>D.C.</b>					
All Courts	6 years <sup>3</sup>	Commission members	President/ Mayor/ Board of governors of DC bar	President/ Mayor/ DC city council	Chief judge of the US District Court for DC
<b>Florida</b>					
Supreme Court, District Court of Appeal, Circuit Court, County Court	4 years	Commission members	Board of governors of Florida bar/ Governor <sup>4</sup>	Governor	N/A

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>Georgia</b>					
Supreme Court, Court of Appeals, Superior Court, and State Court	At Governor's discretion	Governor	Governor	Governor	N/A
<b>Hawaii</b>					
Supreme Court, Intermediate Court of Appeals, Circuit Court and District Court	6 years	Commission members	State bar association/ Senate president/ of the house/ Chief justice	Governor/ Chief justice/ Senate president/ Speaker of the house	N/A
<b>Idaho</b>					
Supreme Court, Court of Appeals and District Court	6 years	Chief justice serves	Board of commissioners of the state bar with senate consent	Governor with senate consent	State bar with senate consent/ Chief justice serves
<b>Indiana</b>					
Supreme Court, Court of Appeals and Tax Court	3 years	Chief justice serves ex officio	State bar members in each district	Governor	Chief justice serves ex officio
Allen County Superior Court	4 years	Chief justice serves ex officio (or designee on the court of appeals or supreme court)	Lawyers residing in Allen County	Governor	Chief justice serves ex officio (or designee on the court of appeals or supreme court)
Lake County Superior Court and County Court	4 years	Chief justice serves ex officio (or designee on the court of appeals or supreme court)	Lawyers residing in Lake County	County board of commissioners	Chief justice serves ex officio (or designee on the court of appeals or supreme court)
St Joseph County Superior Court	4 years	Chief justice serves ex officio	Lawyers residing or practicing law in St. Joseph County	Selection committee <sup>5</sup>	Chief justice serves ex officio
<b>Iowa</b>					
Supreme Court and Court of Appeals	6 years	Senior supreme court justice serves ex officio	Resident members of the bar from each congressional district	Governor with senate consent	Senior supreme court justice serves ex officio
District Court	6 years	Senior district court judge serves ex officio	Resident members of the bar of each judicial election district	Governor with senate consent	Senior district court judge serves ex officio
District Associate Judges and Magistrate Judges	6 years	N/I	Attorneys in the county	County board of supervisors	Chief judge of the judicial district serves ex officio
<b>Kansas</b>					
Supreme Court and Court of Appeals	4 years	Lawyers residing in and licensed in Kansas	Lawyers of each congressional district	Governor	N/A
District Court	4 years	Supreme court justice serves ex officio	Lawyers of the judicial district	Board of county commissioners	Supreme court justice serves ex officio
<b>Kentucky</b>					
Supreme Court and Court of Appeals	4 years	Chief justice serves ex officio	State bar	Governor	Chief justice serves ex officio
Circuit Court and District Court	4 years	Chief justice serves ex officio	Local members of the state bar	Governor	Chief justice serves ex officio

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>Maryland</b>					
Court of Appeals and Court of Special Appeals	Coextensive with governor	Governor	State bar association/ Governor	Governor	N/A
District Court and Circuit Court	Coextensive with governor	Governor	State bar association/ Governor	Governor	N/A
<b>Massachusetts</b>					
Appeals Court and Trial Court	At governor's discretion	Governor	Governor	Governor	N/A
<b>Minnesota</b>					
District Court and Workers' Compensation Court of Appeals	At governor's discretion/ 4 years	Governor	Governor/ Supreme court justices	Governor/ Supreme court justices	Governor/ Supreme court justices
<b>Missouri</b>					
Supreme Court and Court of Appeals	6 years	Commission members	Lawyers residing in each court of appeals district	Governor	Supreme court justice serves ex officio
Circuit Courts	6 years	Commission members	Lawyers residing in the judicial circuit	Governor	Chief judge of court of appeals serves ex officio
<b>Montana</b>					
Supreme Court, District Court, Worker's Compensation Judge and Chief Water Judge	4 years	Commission members	Supreme court	Governor	District court judges
<b>Nebraska</b>					
Supreme Court, Court of Appeals, District Court, County Court, Juvenile Court, Worker's Compensation Court	4 years	Supreme court justice serves ex officio	Lawyers residing in judicial election districts	Governor	Supreme court justice serves ex officio
<b>Nevada</b>					
Supreme Court	4 years	Commission members	State bar	Governor	Chief justice serves ex officio
District Court	Until nominations given to governor	Commission members	State bar	Governor	Chief justice serves ex officio
<b>New Hampshire</b>					
Supreme Court, Superior Court, District Court, Probate Court	Up to 3 years	Governor	Governor	Governor	N/A

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>New Mexico</b>					
Supreme Court & Court of Appeals	N/I	Dean of the University of New Mexico School of Law serves ex officio	Judges on committee and state bar president/ Governor/ Speaker of the house/ Senate president	Governor/ Speaker of the house/ Senate president	Chief justice of the supreme court/ Chief judge of the court of appeals
District Court	N/I	Dean of the University of New Mexico School of Law serves ex officio	Judges on committee and state bar president/ Governor/ Speaker of the house/ Senate president	Governor/ Speaker of the house/ Senate president	Chief justice of the supreme court/ Chief judge of the court of appeals/ Chief judge of the district court
Metropolitan Court	N/I	Dean of the University of New Mexico School of Law serves ex officio	Judges on committee and state bar president/ Governor/ Speaker of the house/ Senate president	Governor/ Speaker of the house/ Senate president	Chief justice of the supreme court/ Chief judge of the court of appeals/Chief judge of the metropolitan court
<b>New York</b>					
Court of Appeals	4 years	Commission members	Governor/ Chief judge of court of appeals/ Legislative leaders	Governor/ Chief judge of court of appeals/ Legislative leaders	N/A
Appellate Division of the Supreme Court, Supreme Court	3 years	Governor	Governor/ Judicial and legislative leaders/ Attorney general/ State bar association	Governor/ Judicial and legislative leaders/ Attorney general/ State bar association	N/A
Court of Claims	3 years	Governor	Governor/ Chairs of departmental committees serve ex officio <sup>6</sup>	Governor/ Chairs of departmental committees serve ex officio <sup>6</sup>	N/A
County Court, Surrogate's Court, and Family Court (outside of NYC)	3 years	Chair of departmental screening committee serves ex officio <sup>6</sup>	County executive	County executive	N/A
New York City Criminal Court, Family Court, and Civil Court	2 years	Mayor	Mayor/ Presiding judges/ Law school deans	Mayor/ Presiding judges/ Law school deans	N/A
<b>North Dakota</b>					
Supreme Court and District Court	3 years	Governor	Governor/ Chief judge/ State bar president	Governor/ Chief judge/ State bar president	Governor/ Chief judge/ State bar president
<b>Oklahoma</b>					
Supreme Court, Court of Criminal Appeals, Court of Civil Appeals, District Court, Workers' Compensation Court	6 years <sup>7</sup>	Commission members	Lawyers from each congressional district	Governor/ Commission members/Legislative leaders	N/A
<b>Rhode Island</b>					
Supreme Court, Superior Court, Family Court, District Court, Worker's Compensation Court, Administrative Adjudication Court	4 years	Governor	Governor/ Legislative leadership <sup>7</sup>	Governor/ Legislative leadership <sup>7</sup>	N/A

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>South Dakota</b> Supreme Court and Circuit Court	4 years	Commission members	State bar president	Governor	Judicial conference
<b>Tennessee</b> Supreme Court, Court of Criminal Appeals, Court of Appeals, Trial Courts	6 years	Commission members	Speaker of the house/ Speaker of the senate	Speaker of the house/ Speaker of the senate	N/A
<b>Utah</b> Supreme Court and Court of Appeals District Court and Juvenile Court	4 years 4 years	Governor Governor	State bar association/Governor State bar association/Governor	Governor Governor	Supreme court chief justice <sup>8</sup> Supreme court chief justice <sup>8</sup>
<b>Vermont</b> Supreme Court, Superior Court and District Court	2 years	Commission members	Vermont lawyers/ Legislature	Governor/ Legislature	N/A
<b>West Virginia</b> Supreme Court, Circuit Court and Family Court	6 years	Commission members	Board of governors of West Virginia Bar/Governor	Governor	N/A
<b>Wyoming</b> Supreme Court, District Court and Circuit Court	4 years	Chief justice serves ex-officio	State bar	Governor	N/A

1. **Arizona.** Maricopa and Pima Counties are each divided into five supervisory districts. Each district has a seven member nominating committee for the purpose of recommending prospective non-lawyer members of the superior court nominating commission to the senate.
2. **Connecticut.** The commission members elect the chair from among the six lawyer members appointed by the governor.
3. **D.C.** All members serve six year terms, except the member appointed by the president, who serves a five year term.
4. **Florida.** The board of governors of the Florida bar submits three recommended nominees for each position. The governor may reject all of the nominees and request a new list of nominees.
5. **Indiana (St. Joseph County).** The non-lawyer members are appointed by a selection committee consisting of the judges of the St. Joseph circuit court, the president of the board of St. Joseph County commissioners, and the mayors in each of the two most populous cities in St. Joseph County.
6. **New York.** The departmental screening committees identify nominees for the supreme court.
7. **Oklahoma.** The three members-at-large serve two-year terms.
8. **Rhode Island.** The governor appoints three lawyers and one non-lawyer of his or her choice. The governor also appoints five additional commission members, one from each of the following lists: a list of at least three lawyers submitted by the speaker of the house; a list of at least three lawyers and/or non-lawyers submitted by the senate majority leader; a list of four non-lawyers submitted jointly by the speaker and the senate majority leader; a list of at least three non-lawyers submitted by the minority leader of the house; and a list of at least three non-lawyers submitted by the minority leader of the senate.
9. **Utah.** The chief justice of the supreme court appoints another member of the Judicial Council to serve as an ex officio, nonvoting member of each commission.

### Table 3: Rules governing submission of list of nominees

State/Court	Days allowed to submit list	Number of names submitted	Order names are submitted	Add'l info. sent to appointing authority	Governor bound by recommendation	Legislative confirmation required	Nominees names made public
<b>Alabama</b>							
Baldwin County	30	3	Alpha	No	Yes	No	Yes
Jefferson County	N/I	3	Alpha	No	Yes	No	Yes
Lauderdale County	30	3	N/I	N/I	Yes	No	Yes
Madison County	N/I	3	N/I	N/I	Yes	No	Yes
Mobile County	N/I	3	N/I	N/I	Yes	No	N/I
Shelby County	N/I	3	N/I	N/I	Yes	No	N/I
Talladega County	N/I	3	N/I	N/I	Yes	No	N/I
Tuscaloosa County	45	3	N/I	No	Yes <sup>1</sup>	No	Yes
<b>Alaska</b>	90 <sup>2</sup>	2 or more	Alpha	Applicant questionnaires, Voting record, Bar survey, Letters of recommendation	Yes	No	Yes
<b>Arizona</b>	60	3 or more	Alpha	Commission file	Yes	No	Yes
<b>Colorado</b>							
Appellate Courts	30	3	Alpha	Applicant questionnaire	Yes	No	Yes
Trial Courts	30	2-3	Varies by judicial district <sup>3</sup>	Varies by judicial district <sup>3</sup>	Yes	No	Yes <sup>4</sup>
<b>Connecticut</b>	N/I	N/I	N/I	N/I	Yes	Yes <sup>5</sup>	N/I
<b>Delaware</b>	60	3	Alpha	None	Yes <sup>6</sup>	Yes	No
<b>D.C.</b>	60	3	N/I	N/I	Yes (President)	Yes	Yes
<b>Florida</b>							
Supreme Court	30	3-6	Alpha	Investigative file	Yes	No	Yes
District Court of Appeal	30	3	Alpha	Investigative file	Yes	No	Yes
Trial Courts	30	3 or more	Alpha	Investigative file	Yes	No	Yes
<b>Georgia</b>	N/I	5 at most	N/I	N/I	No	No	N/I
<b>Hawaii</b>	N/I	4-6	Alpha	Applicant questionnaire	Yes	Yes	No
<b>Idaho</b>	N/I	2-4	N/I	N/I	Yes	No	Yes
<b>Indiana</b>							
Appellate Courts and Tax Court	70	3	N/I	Nominee evaluations	Yes	No	Yes
Allen County	60	3	N/I	Nominee evaluations	Yes	No	Yes
Lake County	60	3	N/I	Nominee evaluations	Yes	No	Yes
St Joseph County	60	5	N/I	Nominee evaluations	Yes	No	Yes
<b>Iowa</b>							
Supreme Court	60	3	Alpha	Applicant questionnaire	Yes	No	Yes
Court of Appeals	60	3	Alpha	Applicant questionnaire	Yes	No	Yes
District Court	60	2	Alpha	N/I	Yes	No	Yes <sup>7</sup>
District Associate Judges	15-30	3	N/I	N/I	Yes <sup>8</sup>	No	N/I
Magistrate Judges	15-30	1	N/I	N/I	N/A <sup>8</sup>	No	N/I

**Table 3: Rules governing submission of list of nominees**

State/Court	Days allowed to submit list	Number of names submitted	Order names are submitted	Add'l info. sent to appointing authority	Governor bound by recommendation	Legislative confirmation required	Nominees names made public
<b>Kansas</b>							
Appellate Courts	60	3	N/I	N/I	Yes	No	N/I
District Court	30	2-3	N/I	N/I	Yes	No	N/I
<b>Kentucky</b>							
	N/I	3	Alpha	N/I	Yes	No	Yes
<b>Maryland</b>							
Appellate Courts	85	at least 3	Alpha	N/I	Yes <sup>9</sup>	Yes	Yes
Trial Courts	85	at least 3	Alpha	N/I	Yes <sup>9</sup>	No	Yes
<b>Massachusetts</b>							
	N/I	3-6	Alpha	N/I	No <sup>10</sup>	No <sup>11</sup>	No
<b>Minnesota</b>							
	60	3-5	N/I	N/I	No	No	Yes
<b>Missouri</b>							
	N/I	3	N/I	N/I	Yes	No	Yes
<b>Montana</b>							
	90	3-5	N/I	Entire applicant file, Commission voting record and recommendations	Yes	Yes	Yes
<b>Nebraska</b>							
	90	3 or more	Alpha	Applicant questionnaire, Investigative file	Yes	No	Yes
<b>Nevada</b>							
	N/I	3	Alpha	Entire file	Yes	No	Yes
<b>New Hampshire</b>							
	N/I	N/I	N/I	N/I	Yes <sup>12</sup>	No <sup>13</sup>	
<b>New Mexico</b>							
	30	2 or more	Alpha	N/I	Yes <sup>14</sup>	No	Yes
<b>New York</b>							
Court of Appeals	120 <sup>15</sup>	3-7	N/I	Entire file, including: commission recommendations, applicant financial statements	Yes	Yes	Yes
Appellate Division of the Supreme Court and Supreme Court; Trial Courts (outside New York City)	N/I	N/I	N/I	Written evaluation, Entire file	Yes	Yes	No
New York City	90	3	N/I	Information re: qualifications	Yes (Mayor)	No	No
<b>North Dakota</b>							
	60	2-7	Alpha	N/I	No	No	Yes
<b>Oklahoma</b>							
	N/I	3	Random	Applicant questionnaire, Writing sample, Investigative file	Yes	No	Yes
<b>Rhode Island</b>							
	90	3-5	Alpha	Entire file	Yes <sup>16</sup>	Yes	Yes

### Table 3: Rules governing submission of list of nominees

State/Court	Days allowed to submit list	Number of names submitted	Order names are submitted	Add'l info. sent to appointing authority	Governor bound by recommendation	Legislative confirmation required	Nominees names made public
<i>South Dakota</i>	N/I	2 or more	Alpha	Investigative file	Yes	No	N/I
<i>Tennessee</i>	60	2-3 <sup>17</sup>	N/I	N/I	Yes <sup>18</sup>	No	Yes
<i>Utah</i>							
Appellate Courts	45	7	Alpha	Investigative file, Applicant questionnaire	Yes	Yes	Yes
Trial Courts	45	5	Alpha	Investigative file, Applicant questionnaire	Yes	Yes	Yes
<i>Vermont</i>	N/I	Open	Alpha	Applicant questionnaire	Yes	Yes	No
<i>West Virginia</i>	90	2-5	Alpha	N/I	No	No	Yes
<i>Wyoming</i>	60	3	Alpha	Entire file	Yes	No	N/I

1. **Alabama (Tuscaloosa County).** If the governor does not select from the list within 60 days, the commission is required to submit a new list.

2. **Alaska.** Time may be extended by the judicial council with the concurrence of the supreme court.

3. **Colorado.** Each of Colorado's twenty-two district judicial nominating commissions has developed its own rules of procedure.

4. **Colorado.** The judicial nominating commissions of two districts do not indicate whether nominees' names are made public.

5. **Connecticut.** The governor selects a nominee from the commission's list, sends the name to the general assembly, and the general assembly makes the appointment.

6. **Delaware.** The governor may refuse to appoint from the first list and may require the commission to submit one supplementary list.

7. **Iowa.** According to Iowa's sample procedures for district judicial nominating commissions, the names of nominees are announced in a press release. However, these sample procedures have not been formally adopted by all of Iowa's 14 judicial districts.

8. **Iowa.** District judges appoint district associate judges from lists of nominees recommended by the county magistrate appointing commission. The county magistrate appointing commission appoints magistrates.

9. **Maryland.** The governor may also fill the vacancy by selecting a person from any list submitted by the appropriate commission for a vacancy on the same court, provided the previous list was submitted within two years of the current vacancy and information on the nominee is updated.

10. **Massachusetts.** The governor may decline to nominate any applicant and seek further recommendations from the commission.

11. **Massachusetts.** Appointment requires advice and consent of the governor's council.

12. **New Hampshire.** The governor may request that the commission engage in a further search for qualified applicants.

13. **New Hampshire.** The governor's nominees must be confirmed by the executive council.

14. **New Mexico.** The governor may make one request to the commission for additional names, and the commission shall comply if a majority of the commission finds that additional persons would be qualified and recommends those persons for appointment.

15. **New York.** For unexpected vacancies, the commission has 120 days to submit a list of nominees. For vacancies that occur through expiration of terms on December 31, the commission has a fixed deadline of December 1, except for terms that expire during non-election years when the deadline is October 15.

16. **Rhode Island.** The governor may also nominate any individual whose name was submitted by the commission within the last five years for a vacancy on the same court.

17. **Tennessee.** For trial courts, if the vacancy exists in one of the five smallest judicial districts, the commission may submit 2 names to the governor.

18. **Tennessee.** For appellate court vacancies, the governor may require the commission to submit a panel of 3 additional nominees.

## Table 4: Rules of confidentiality

State/Court	Identity of applicants	Records	Interviews	External communications to commissioners	Deliberations	Voting	Communications with appointing authority
<b>Alabama</b>							
Baldwin County	No	Yes	Yes	Yes	Yes	Yes	Yes
Lauderdale County							
Jefferson County	No	Yes	Yes	Yes	Yes	Yes	Yes
Madison County							
Mobile County							
Shelby County							
Tuscaloosa County	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Alaska</b>							
	No	No	Yes <sup>1</sup>	Yes	Yes	No	Yes
<b>Arizona</b>							
	No	No	No	Yes	No <sup>2</sup>	No	
<b>Colorado<sup>3</sup></b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Connecticut</b>							
	Yes	Yes	Yes	Yes	Yes		Yes
<b>Delaware</b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>D.C.</b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Florida</b>							
	No	No	No	No	Yes	Yes	Yes <sup>4</sup>
<b>Georgia</b>							
<b>Hawaii</b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Idaho</b>							
	No	Yes	No	Yes	Yes	Yes	Yes
<b>Indiana</b>							
Appellate Courts and Tax Court	No	No	No	No	Yes		No
Allen County	No						
Lake County	No	No	No	No	No	No	No
St Joseph County	No						No
<b>Iowa</b>							
Supreme Court and Court of Appeals	No	Yes	No	Yes	Yes	Yes	Yes
District Court	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District Associate and Magistrate Judges							
<b>Kansas</b>							
			No				
<b>Kentucky</b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Maryland</b>							
	No	Yes	Yes		Yes	Yes	
<b>Massachusetts</b>							
	Yes	Yes	Yes		Yes	Yes	Yes
<b>Minnesota</b>							
<b>Missouri</b>							
	Yes <sup>5</sup>	Yes	No	Yes <sup>6</sup>	Yes	Yes	No
<b>Montana<sup>7</sup></b>							
	No	No	No	No	No	Yes	No
<b>Nebraska</b>							
	No	No	Yes	No	Yes		

Yes = Data/procedure confidential  
 No = Data/procedure not confidential  
 no entry = Not indicated in commission rules

## Table 4: Rules of confidentiality

State/Court	Identity of applicants	Records	Interviews	External communications to commissioners	Deliberations	Voting	Communications with appointing authority
<i>Nevada</i>	No	No <sup>9</sup>	No <sup>9</sup>	Yes	No <sup>9</sup>	No <sup>9</sup>	No
<i>New Hampshire</i>	Yes	Yes			Yes		
<i>New Mexico</i>	No		No	No	Yes	No	
<i>New York</i>							
Court of Appeals	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Appellate Division of the Supreme Court and Supreme Court; Trial Courts (outside New York City)	Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>10</sup>
New York City	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>North Dakota</i>	No	No			No	No	
<i>Oklahoma</i>	No	Yes	Yes	Yes	Yes	Yes	No
<i>Rhode Island</i>	No		No	No	Yes	No	
<i>South Dakota</i>	No	Yes	Yes	Yes	Yes	Yes	Yes
<i>Tennessee</i>	No	No	No	No <sup>11</sup>	No	Yes	Yes
<i>Utah</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Vermont</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>West Virginia</i>	Yes	Yes					No
<i>Wyoming</i>							

Yes = Data/procedure confidential

No = Data/procedure not confidential

no entry = Not indicated in commission rules

1. **Alaska.** Applicant interviews are conducted in executive session unless the applicant requests an interview in public session.
2. **Arizona.** Deliberations may be held in executive session upon a two-thirds vote of commission members.
3. **Colorado.** The rules for two of Colorado's district judicial nominating commissions do not contain complete information on rules of confidentiality.
4. **Florida.** Communications between the governor and the judicial nominating commission for the district court of appeal are not confidential.
5. **Missouri.** The commission releases the names of the applicants it selects to interview.
6. **Missouri.** All communications between a commission member and a non-commission member must be summarized in writing and provided to all other commission members.
7. **Montana.** All meetings, proceedings of the commission, and documents shall be open to the public except when a majority of the commission votes that the demand of individual privacy exceeds the merits of public disclosure.
8. **Nevada.** Information that is ordinarily sensitive and confidential and that proves to be of little or no relevance to a candidate's qualifications is confidential.
9. **Nevada.** The commission may meet in executive session with the approval of a majority of members if it is deemed necessary or appropriate because of the sensitive nature of the matters or information to be discussed.
10. **New York.** The report relating to the governor's appointee is made publicly available upon announcement of the appointment.
11. **Tennessee.** After one public meeting where any member of the public may suggest possible nominees or express approval or disapproval of proposed nominees, the commission may hold such additional public or private meetings as it deems necessary.

## Table 5: Nominating commission procedures

State	Disqualification provision	Ethics provisions	Oath of office	Political activity prohibition	External recruitment provision	Provision for diversity	Rule against discrimination	Judicial performance evaluation available to commission
<i>Alabama</i>				X <sup>1</sup>	X <sup>2</sup>			
<i>Alaska</i>	X		X		X			X
<i>Arizona</i>	X				X	Applicants Commissioners		X
<i>Colorado</i>			X <sup>3</sup>		X <sup>4</sup>		X	
<i>Connecticut</i>				X				X
<i>Delaware</i>	X				X		X	
<i>D.C.</i>								X
<i>Florida</i>	X	X			X			
<i>Georgia</i>		X				Commissioners		
<i>Hawaii</i>	X	X		X	X		X	X
<i>Idaho</i>			X					
<i>Indiana</i>	X <sup>5</sup>			X	X <sup>6</sup>	Applicants Commissioners <sup>6</sup>		
<i>Iowa</i>	X <sup>7</sup>				X <sup>8</sup>	Applicants <sup>8</sup>	X <sup>9</sup>	
<i>Kansas</i>			X	X <sup>10</sup>	X			
<i>Kentucky</i>				X	X			
<i>Maryland</i>	X			X	X	Applicants		
<i>Massachusetts</i>	X	X		X		Commissioners		
<i>Minnesota</i>					X	Applicants		
<i>Missouri</i>	X		X	X	X	Applicants		
<i>Montana</i>								
<i>Nebraska</i>	X		X		X		X	
<i>Nevada</i>	X				X		X	
<i>New Hampshire</i>	X							
<i>New Mexico</i>	X		X		X			
<i>New York</i> New York City				X	X X		X <sup>11</sup>	
<i>North Dakota</i>					X			
<i>Oklahoma</i>	X	X	X	X	X		X	

## Table 5: Nominating commission procedures

State	Disqualification provision	Ethics provisions	Oath of office	Political activity prohibition	External recruitment provision	Provision for diversity	Rule against discrimination	Judicial performance evaluation available to commission
<i>Rhode Island</i>	X	X	X		X	Applicants Commissioners		
<i>South Dakota</i>	X	X			X			
<i>Tennessee</i>				X		Commissioners		
<i>Utah</i>	X				X	Applicants	X	X
<i>Vermont</i>	X				X		X	
<i>West Virginia</i>		X			X			
<i>Wyoming</i>				X	X			

1. **Alabama.** Lauderdale, Shelby, and Tuscaloosa Counties prohibit commission members from holding elective offices or official positions within political parties.

2. **Alabama.** Unlike other jurisdictions with external recruitment provisions that allow or encourage recruitment, Baldwin, Jefferson, and Tuscaloosa Counties forbid commission members from soliciting applicants.

3. **Colorado.** The rules of the nominating commission for the 11th judicial district require commission members to take an oath of secrecy.

4. **Colorado.** There is no external recruitment provision for the supreme court nominating commission, but a majority of the district nominating commissions have such provisions.

5. **Indiana.** The Indiana judicial nominating commission has a disqualification provision and an external recruitment provision.

6. **Indiana.** The nominating commission for Lake County has diversity provisions regarding both commission members and applicants.

7. **Iowa.** A disqualification provision is included in Iowa's sample procedures for district judicial nominating commissions. Although many judicial districts have not yet formally adopted these procedures, most districts utilize them as general guidelines.

8. **Iowa.** The internal rules of the state judicial nominating commission include an external recruitment provision and a diversity provision, as do the sample procedures for district judicial nominating commissions.

9. **Iowa.** The magistrate appointing commission handbook contains rules against discrimination in the nomination of candidates as district associate and magistrate judges.

10. **Kansas.** The Kansas constitution contains a prohibition on political activity for members of the supreme court nominating commission.

11. **New York.** Rules for the appellate division of the supreme court and the trial courts include a rule against discrimination.

**Historical Roster of  
Alaska Judicial Council Members**

	Residence	Appointment Effective	Expiration of Term
<b>Chairperson<sup>1</sup></b>			
Chief Justice Buell A. Nesbett		11/29/59	06/18/70
Chief Justice George F. Boney		06/18/70	11/16/72
Chief Justice Jay A. Rabinowitz		11/16/72	11/16/75
Chief Justice Robert Boochever		11/16/75	11/16/78
Chief Justice Jay A. Rabinowitz		11/16/78	11/16/81
Chief Justice Edmond W. Burke		11/16/81	09/30/84
Chief Justice Jay A. Rabinowitz		10/01/84	09/30/87
Chief Justice Warren W. Matthews		10/01/87	09/30/90
Chief Justice Jay A. Rabinowitz <sup>3</sup>		10/01/90	09/30/92
Chief Justice Daniel A. Moore, Jr.		10/01/92	09/30/95
Chief Justice Allen T. Compton <sup>3</sup>		10/01/95	07/01/97
Chief Justice Warren W. Matthews		07/02/97	06/30/00
Chief Justice Dana Fabe		07/01/00	06/30/03
Chief Justice Alexander O. Bryner		07/01/03	06/30/06
Chief Justice Dana Fabe		07/01/06	06/30/09
Chief Justice Walter L. Carpeneti		07/01/09	06/30/12
Chief Justice Dana Fabe		07/01/12	06/30/15
<b>Attorney Members</b>			
E.E. Bailey <sup>2</sup>	Ketchikan	02/24/59	02/24/62
E.E. Bailey	Ketchikan	02/24/62	02/24/68
Frank M. Doogan <sup>3</sup>	Juneau	10/15/68	04/73
Michael L. Holmes <sup>4</sup>	Juneau	05/73	02/24/74
Michael L. Holmes	Juneau	02/24/74	02/24/80
Walter L. Carpeneti <sup>5</sup>	Juneau	02/24/80	02/81
James B. Bradley <sup>4</sup>	Juneau	04/81	02/24/86
William T. Council	Juneau	02/24/86	02/24/92
Thomas G. Nave	Juneau	02/24/92	02/23/98
Geoffrey G. Currall	Ketchikan	02/24/98	02/23/04
Douglas Baily	Juneau	04/27/04	07/18/07
Louis James Menendez <sup>4</sup>	Juneau	07/19/07	02/23/10
Julie Willoughby	Juneau	04/27/10	02/23/16
Robert A. Parrish <sup>2</sup>	Fairbanks	02/24/59	02/24/64
William V. Boggess <sup>5</sup>	Fairbanks	02/24/64	04/64
Michael Stepovich <sup>4</sup>	Fairbanks	05/64	02/24/70
Michael Stepovich	Fairbanks	02/24/70	02/24/76
Michael Stepovich <sup>3</sup>	Fairbanks	02/24/76	08/78
Marcus R. Clapp <sup>4</sup>	Fairbanks	08/78	02/24/82
Mary E. Greene <sup>3</sup>	Fairbanks	02/24/82	04/82
Barbara L. Schuhmann <sup>4</sup>	Fairbanks	07/82	02/24/88
Daniel L. Callahan	Fairbanks	02/24/88	02/24/94
Christopher E. Zimmerman <sup>5</sup>	Fairbanks	04/14/94	07/17/97
Paul J. Ewers	Fairbanks	07/18/97	02/23/00
Robert B. Groseclose	Fairbanks	04/05/00	02/23/06
James H. Cannon	Fairbanks	02/24/06	02/23/12
Aimee Oravec	Fairbanks	04/10/12	02/23/18

**Historical Roster of  
Alaska Judicial Council Members**

	Residence	Appointment Effective	Expiration of Term
<b>Attorney Members (Continued)</b>			
Raymond E. Plummer <sup>2, 3</sup>	Anchorage	02/24/59	09/26/61
Harold Butcher <sup>4</sup>	Anchorage	11/61	02/24/66
George F. Boney <sup>5</sup>	Anchorage	02/24/66	09/68
Lester W. Miller, Jr. <sup>4</sup>	Anchorage	10/15/68	02/24/72
Eugene F. Wiles <sup>3</sup>	Anchorage	02/24/72	03/75
Joseph L. Young <sup>4</sup>	Anchorage	04/75	02/24/78
Joseph L. Young	Anchorage	02/24/78	02/24/84
James D. Gilmore	Anchorage	02/24/84	02/24/90
Mark E. Ashburn	Anchorage	03/23/90	02/23/96
Robert H. Wagstaff	Anchorage	03/22/96	02/23/02
Susan Orlandy	Anchorage	03/14/02	02/27/08
Kevin Fitzgerald	Anchorage	04/28/08	02/23/14
<b>Non-Attorney Members</b>			
Elmo LeRoy "Roy" J. Walker <sup>2</sup>	Fairbanks	05/18/59	05/18/61
John Cross	Kotzebue	05/18/61	05/18/67
Thomas K. Downes <sup>3</sup>	Fairbanks	05/18/67	Mid-1968
V. Paul Gavora <sup>4</sup>	Fairbanks	10/15/68	05/18/73
Thomas J. Miklautsch <sup>3</sup>	Fairbanks	05/28/73	12/10/74
Robert H. Moss <sup>4</sup>	Homer	12/10/74	05/18/79
Robert H. Moss	Homer	05/18/79	05/18/85
Dr. Hilbert J. Henrickson	Ketchikan	08/13/85	05/18/91
David A. Dapcevich	Sitka	05/19/91	05/18/97
Mary Matthews <sup>3</sup>	Fairbanks	05/19/97	08/23/98
Sandra Stringer <sup>4</sup>	Fairbanks	08/24/98	07/12/99
Katie Hurley	Wasilla	07/13/99	05/18/03
Bill Gordon	Fairbanks	05/19/03	03/01/09
Kathleen Tompkins-Miller	Fairbanks	03/01/09	03/01/15
Jack E. Werner <sup>2</sup>	Seward	05/18/59	05/18/63
Jack E. Werner	Seward	05/18/63	05/18/69
Ken Brady	Anchorage	06/28/69	05/18/75
Ken Brady	Anchorage	05/18/75	05/18/81
Mary Jane Fate	Fairbanks	05/18/81	05/18/87
Leona Okakok	Barrow	07/31/87	05/18/93
Janice Lienhart	Anchorage	05/19/93	05/18/99
Gigi Pilcher	Ketchikan	03/21/00	05/18/05
Christena Williams	Ketchikan	05/19/05	03/01/11
Donald J. Haase <sup>3</sup>	Valdez	03/01/11	04/07/11
Ken Kreitzer	Juneau	07/29/11	03/01/17

Historical Roster of Alaska Judicial Council Members			
	Residence	Appointment Effective	Expiration of Term
<b>Non-Attorney Members (continued)</b>			
Dr. William M. Whitehead <sup>2,3</sup>	Juneau	05/18/59	12/06/62
Charles W. Kidd <sup>4,3</sup>	Juneau	04/63	01/64
H. Douglas Gray <sup>4</sup>	Juneau	04/64	05/18/65
H.O. Smith <sup>6</sup>	Ketchikan	05/18/65	06/65
Pete Meland <sup>4</sup>	Sitka	01/66	05/18/71
Oral Freeman <sup>3</sup>	Ketchikan	11/22/71	01/73
Lew M. Williams, Jr. <sup>4</sup>	Ketchikan	04/73	05/18/77
John Longworth	Petersburg	05/18/77	05/18/83
Renee Murray	Anchorage	08/08/83	05/18/89
Janis Roller <sup>3</sup>	Anchorage	09/01/89	02/14/91
Dr. Paul Dittrich, M.D. <sup>4,3</sup>	Anchorage	04/06/91	10/03/91
Jim A. Arnesen <sup>4</sup>	Anchorage	10/04/91	05/18/95
Vicki A. Otte <sup>3</sup>	Juneau	05/31/95	11/21/00
Eleanor Andrews <sup>4</sup>	Anchorage	11/15/00	05/18/01
Eleanor Andrews	Anchorage	05/18/01	03/01/07
Charles M. Kopp <sup>3</sup>	Kenai	03/02/07	07/13/08
William F. Clarke <sup>4</sup>	Anchorage	10/16/08	03/01/13
Dave Parker	Wasilla	03/01/13	03/01/19

<sup>1</sup> The Judicial Council initially submitted nominations for the position of Chief Justice; the Constitution did not limit the Chief Justice's term. Chief Justice Nesbitt and Chief Justice Boney were nominated and appointed in this manner. Voters amended the Constitution on August 25, 1970 to provide for the election of the Chief Justice by the justices of the Supreme Court for a three-year term; the amendment further provided that a Chief Justice may not be re-elected to consecutive terms.

<sup>2</sup> Appointed to initial staggered term.

<sup>3</sup> Resigned during term.

<sup>4</sup> Appointed to complete unexpired term.

<sup>5</sup> Resigned during term to apply for judicial office.

<sup>6</sup> Denied legislative confirmation.

Kathleen Tompkins-Miller  
POB 83440  
Fairbanks, AK 99708

February 20, 2014

Members of the State Legislature:

I am currently the longest serving public member of the Judicial Council for the State of Alaska. I am supportive of a constitutional amendment that would provide the governor with more qualified candidates from whom he can appointment judges. But I do have some concerns about adding too many members to the AJC.

As you know, the AJC is composed of three public members, three attorney members, and the Chief Justice of the Supreme Court. The Chief Justice casts a vote whenever there is a tie vote of the six attorney and public members.

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. From the selection of specific judges – sometimes retired – to preside over politically-tinged cases to the judiciary's approach to election-related cases, the politicization of members of the judiciary is transparent. When the Chief Justice sides against the public members on the AJC in limiting the number of candidates for the Supreme Court or other judicial positions, a question of political bias naturally arises.

Additionally, the members of the Alaska bar have tremendous influence over the process. Starting with anonymous bar surveys, in which attorneys routinely disparage potential candidates who may have more traditional views, or toward whom they may otherwise have a personal vendetta, the process is simply slanted. It is shocking to see (sometimes) anonymous, degrading comments and scores come from members of a profession purportedly trained in the "rule of law."

This process also keeps many good attorneys from applying or they withdraw their name because of the poll being made available to the public. The fear of damaged reputations, and perhaps the loss of future income, is simply not worth it to some. 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.

Further, there have been occasions where candidates have been criticized for activities or ideas on one side of the philosophical divide, while members on the other side are routinely promoted. 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, and poor bar scores.

While I love my service on the AJC and I have always tried to be as fair as possible in my duties, it has saddened me that the AJC has rejected some judicial candidates even though public members have unanimously voted to advance them to the Governor.

It is my position that the Governor should not be prevented from considering certain qualified candidates. Although there is also risk of political bias from members of the public, I'd feel much more secure with a council whose ultimate decision is within the sound discretion of the public.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen Tompkins-Miller". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Kathleen Tompkins-Miller

## Alaska Judicial Council

### Members

Ken Kreitzer – Juneau (2011 – 2017)

Mr. Kreitzer has many years of public safety experience, including work as an airport safety officer, a corrections officer, a firefighter, EMT, a police officer and a court security officer. He was appointed by Governor Parnell.

Dave Parker – Wasilla (2013 – 2019)

Mr. Parker has been a law enforcement officer in Alaska since 1995. Prior to that he was a pastor in Alaska, France, Washington State, Ivory Coast, and Oregon. He began his professional career as a teacher in Washington State and Yemen. He was appointed by Governor Parnell.

Kathleen Tompkins-Miller – Fairbanks (2009 – 2015)

Ms. Tompkins-Miller is a schoolteacher. She was appointed by Governor Palin.

Aimee Oravec – Fairbanks (2012 – 2018)

Ms. Oravec has practiced law since 1998, and is a shareholder in Oravec Law Group.

Kevin Fitzgerald – Anchorage (2008 – 2014)

Mr. Fitzgerald is a partner in Ingaldson, Maassen & Fitzgerald and is a second generation Alaskan.

Julie Willoughby – Juneau (2010 0 2016)

Ms. Willoughby is in private practice in Juneau. She has practiced law since 1998 and is a second generation Alaskan.

**Alaska Judicial Council**  
Voting Information  
For the Senate Judiciary Committee  
Feb. 20, 2014

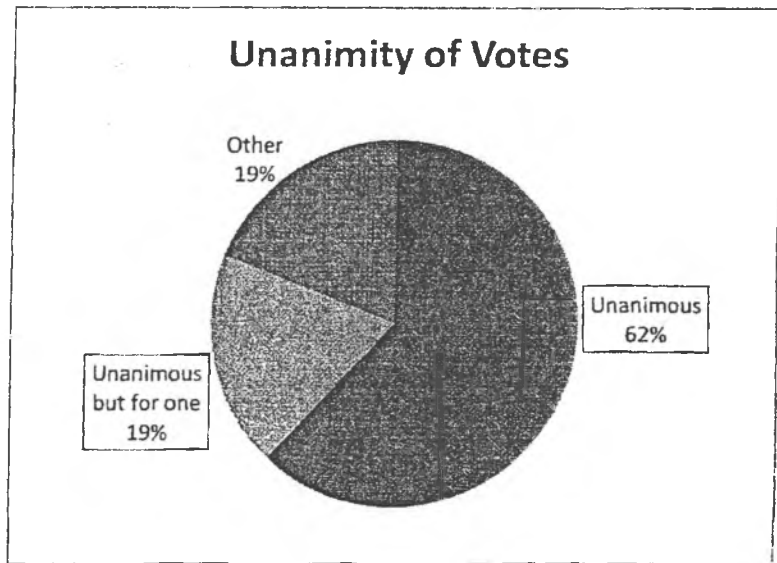
The Council members voted on **1,136 applications** between January 1, 1984 and December 31, 2013. This fact sheet shows how some of those votes were taken.

- **Council members have a high rate of agreement about nomination decisions**

Historically, most Council votes have been unanimous (62%).

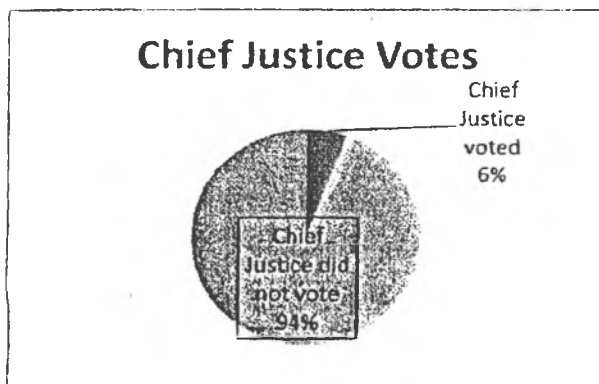
In an additional 19% of all votes, only one person voted differently from the others.

Thus, in 81% of the votes, Council members have been unanimous or nearly so in their assessment of whether an applicant's name should be forwarded to the governor.



- **Attorney/nonattorney vote splits are rare**

Our records show only 15 times (out of 1,136) votes in which disagreements about nomination decisions broke along attorney-nonattorney lines. This situation occurred in less than 2% of all votes.



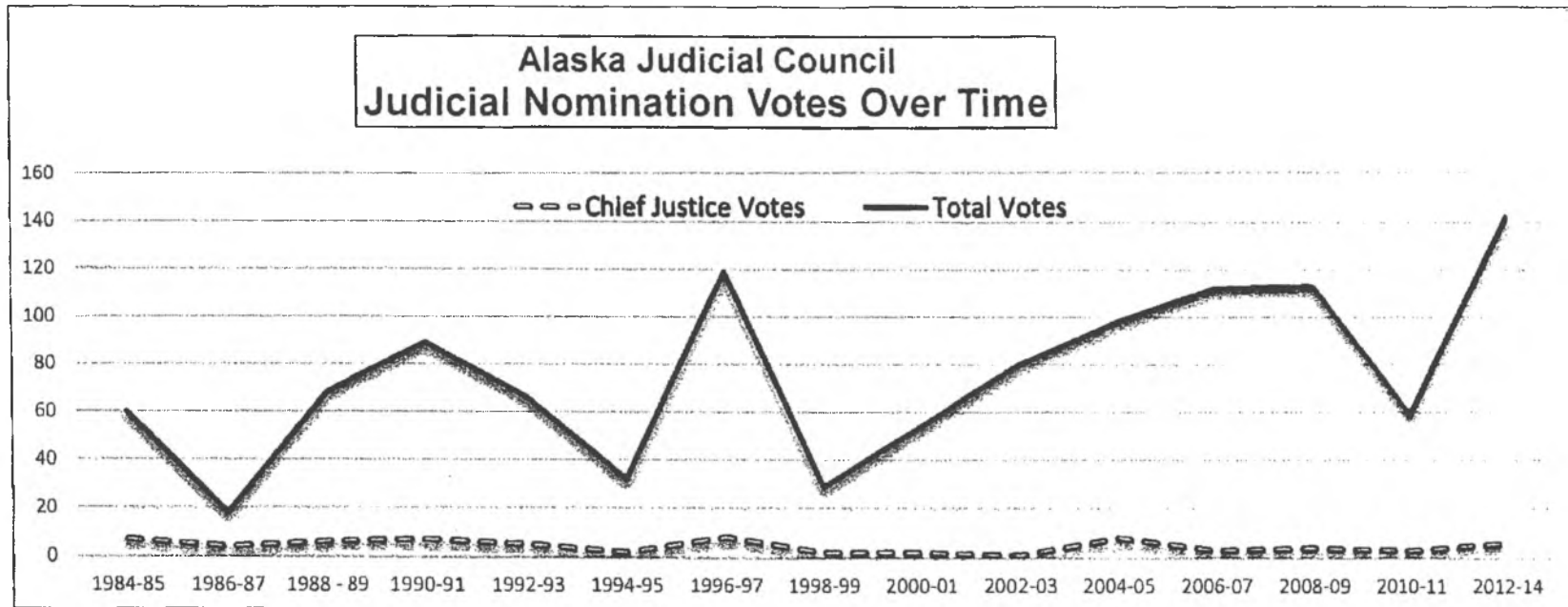
- **The Chief Justice rarely votes**

The Chief Justice votes only when to do so would change the outcome. Over the past 29 years, chief justices have voted only 68 times. Thus, 94% of the time, the chief justice does not vote.

For Senate Judiciary Committee

SJR21

February 20, 2014



The top line is the number of votes taken by the Council.

The bottom, dashed line is the number of votes taken by the Chief Justice.

The chart shows that the frequency of the Chief Justice voting has remained relatively steady over time, even though the total number of votes take by the Council has fluctuated a lot over time.

Notes

Total Votes During This Period: 1,136  
Total Number of Votes by Chief Justice: 68 (6% of all votes)

## Alaska Judicial Council Constitutional Duties

### **Alaska Const. Article IV, Section 8. Judicial Council**

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

### **Alaska Const. Article IV, Section 5. Nomination and Appointment**

The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

### **Excerpts from Constitutional Convention discussion of Article IV:**

“What we are trying to prevent are some of the travesties which have existed in some of the states where our judges are picked and plucked directly from the ward political office.”

“The whole theory of the Missouri Plan is that in substance, a select and professional group, licensed by the state, can best determine the qualifications of their brothers.”

“The intent of the Missouri Plan was in substance to give a predominance of the vote to professional men who knew the foibles, the defects and the qualifications of their brothers. It is unquestionably true that in every trade and every profession the men who know their brother careerists the best are the men engaged in the same type of occupation.”

“The theory on the lay members on the confirmation, they represent the public and they represent the predominant political thought. The theory on the lawyer members of the council, they represent the profession,... they represent a desire to have the best judges on the benches.”

- Delegate McLaughlin

### **Alaska Const. Article IV, Section 9. Additional Duties**

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

# Alaska State Legislature

## Senator Pete Kelly

*Interim*  
1292 Sadler Way Ste. 308  
Fairbanks, Alaska 99701  
Phone - (907) 451-4347  
Fax - (907) 451-4348



*Session*  
State Capitol, Rm 516  
Juneau, AK 99801  
Phone - (907) 465-3709  
Fax - (907) 465-4714

Sen.Pete.Kelly@akleg.gov

---

### Sponsor Statement – SJR 21

*“Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council.”*

Senate Joint Resolution 21 would place a constitutional amendment on the next general election ballot that would allow the voters to decide whether the membership of the Alaska Judicial Council should be expanded to include 10 public members and 5 attorney members.

Expanding the council to 10 public members and 5 attorney members with the Chief Justice serving at the 16<sup>th</sup> and ex-officio member would have Alaska follow a model used in several other states where a majority of the nominating committee consists of public “non-attorney” members. SJR 21 would increase the public’s voice on the Judicial Council through the addition of more members who are selected by democratically accountable officials, i.e., the Governor and the Legislature. In contrast, the attorney members are selected by the Board of Governors of the Bar Association, and are not subject to legislative confirmation, as they would be in many other states.

More importantly, this model would expand the number of highly qualified Alaskans who are involved in vetting an ever-growing number of judicial applicants for a court system that is much larger than at the time of statehood. This split retains solid representation by Alaska Bar Association members while ensuring the public voice in this process is strengthened along with regional diversity. According to the Alaska Constitution, the Governor and the ABA are tasked with making appointments to the council based on regional diversity. Three public members and three attorney cannot begin to offer adequate diversity for a state with as many regional interests and vast differences as Alaska. Offering 7 more public members and 2 more attorney members will allow for a more diverse body, and the ability to allocate representation to more than just traditional urban centers.

SJR 21 will also reduce the likelihood of tie votes occurring and requiring the chief justice to vote since it will move the council from 6 to 15 regular voting members. The Judicial Council bylaws state that the Chief Justice “shall only vote when to do so could change the result.” These changes will greatly lower the likelihood of the Chief Justice voting since there will be an odd number of regular voting members. The Chief Justice will also be protected from the appearance of a conflict of interest with a reduced likelihood of tie votes.

I urge your support for SJR 21 and the strengthening it would provide to the Judicial Council.

# Election

## Partisan

Alabama  
Illinois  
Louisiana  
New Mexico  
Pennsylvania  
Texas  
West Virginia

## Nonpartisan

Arkansas  
Georgia  
Idaho  
Kentucky  
Michigan  
Minnesota  
Mississippi  
Montana  
Nevada  
North Carolina  
North Dakota  
Ohio  
Oregon  
Washington  
Wisconsin

# Democratic Appointment

## Gubernatorial

California  
Maine  
New Jersey

## Legislative

South Carolina  
Virginia

# Judicial Selection in State High Courts

The Federalist Society  
for Law and Public Policy Studies

# Hybrid

Connecticut  
Delaware  
Hawaii  
Maryland  
Massachusetts  
New Hampshire  
New York  
Rhode Island  
Utah  
Vermont

# Missouri Plan

## Role for Bar

Alaska  
Arizona  
Florida  
Indiana  
Iowa  
Kansas  
Missouri  
Nebraska  
Oklahoma  
South Dakota  
Wyoming

## No Role for Bar

Colorado  
Tennessee



## Democratic Appointment

Judges are appointed directly by a democratic body, or appointed by the governor with the advice and consent of some democratic body.

## Hybrid

Judges are appointed by the governor after nomination by a commission and confirmation by a democratic body.

## Missouri Plan

Judges are appointed by the governor after nomination by a commission.

**ALASKA JUDICIAL COUNCIL  
VOTING STATISTICS – APPLICATIONS FOR JUDICIAL POSITIONS**

Six Council Members: three appointed by Bar Association Board of Governors, three appointed by the Governor. Chief Justice is ex officio and votes only when the members do not have a four-person consensus. Alaska Const. art. IV sec. 8.

**1984 – 2013: past 29 years [all years for which data is available]**

Total votes taken on judicial applicants:	1,136
• Number that were unanimous :	704/1,136 (62%)
• Number that were unanimous or “unanimous except for 1” votes:	920/1,136 (81%)
• Number in which the Chief Justice voted, usually because of a 3-3 tie:	68/1,136 (6%)
▪ Number of those in which CJ voted to send the name to the Governor for consideration:	51/68 (75%)
• Number in which the vote was tied, with the attorneys and non-attorneys split:	15/1,136 (1.3%)
▪ Number of those splits in which CJ voted to send the name to the Governor for consideration:	7/15 (46%)
▪ Number of those splits in which the CJ voted with the attorneys, not with the public members:	10/15 (66% of splits); 10/1,136 (.8% of total)
▪ Number of those splits in which the CJ voted with the public members, not with the attorneys:	5/15 (25%)
▪ Number of those split votes in which the CJ voted with the attorneys, such that the name was sent to the Governor for consideration:	2/10 (20%)
• Number in which the vote was tied, with attorneys and non-attorneys split, and the CJ’s vote was with the attorneys not to send the name to the Governor for consideration:	8/1,136 (.7% of total)

### 2010 – 2013: past four years [subset of above 29-year stats]

Total votes taken on judicial applicants:	201
• Number that were unanimous:	110/201(55%)
• Number that were unanimous or “unanimous except for 1” votes:	151/201 (75%)
• Number in which the Chief Justice voted, usually because of a 3-3 tie:	9/201 (4.5%)
▪ Number of those in which CJ voted to send the name to the Governor for consideration:	4/9 (44%)
• Number in which the vote was tied, with the attorneys and non-attorneys split:	7/201 (3.5%)
▪ Number of those splits in which CJ voted to send the name to the Governor for consideration:	2/7 (28.5%)
▪ Number of those splits in which the CJ voted with the attorneys, not with the public members:	6/7 (86% of splits); 6/201 (3% of total)
▪ Number of those splits in which the CJ voted with the public members, not with the attorneys:	1/7 (14%)
▪ Number of those split votes in which the CJ voted with the attorneys, such that the name was sent to the Governor for consideration:	1/7 (14%)
• Number in which the vote was tied, with attorneys and non-attorneys split, and the CJ’s vote was with the attorneys not to send the name to the Governor :	5/201 (2.4% of total)

### 2006 – 2009: previous four years [subset of above 29-year stats]

Total votes taken on judicial applicants:	225
• Number in which the Chief Justice voted, usually because of a 3-3 tie:	7/225 (3%)
▪ Number of those in which CJ voted to send the name to the Governor for consideration:	7/7 (100%)
• Number in which the vote was tied, with the attorneys and non-attorneys split:	2/201 (1%)
▪ Number of those splits in which CJ voted to send the name to the Governor for consideration:	1/2 (50%)
▪ Number of those splits in which the CJ voted with the attorneys, not with the public members:	1/2 (50% of splits); 1/201 (1% of total)
▪ Number of those splits in which the CJ voted with the public members, not with the attorneys:	1/2 (50%)
▪ Number of those split votes in which the CJ voted with the attorneys, such that the name was sent to the Governor for consideration:	1/2 (50%)
• Number in which the vote was tied, with attorneys and non-attorneys split, and the CJ’s vote was with the attorneys not to send the name to the Governor:	0/225 (0% of total)

9440 Patricia Pl.  
Juneau, AK 99801

February 25, 2014

Senator Pete Kelly  
Alaska State Senate  
Juneau, AK 99801

Dear Senator Kelly:

Your efforts to increase the transparency and accountability of the Alaska Judicial Council through SJR 21 are appreciated. Although I don't believe the Council's process is broken, I do believe it can be improved.

During the Constitutional Convention, there was great effort to maintain integrity in selecting judges for the State. I believe the Constitutional framers wanted to balance individual merit with the political concerns of gubernatorial appointment. The simplest way to rectify any appearance of overweighting Judicial/lawyer influence over which names are forwarded to the Governor for consideration, is that whenever there is a tie vote between the attorney and public members, the Supreme Court Justice is not put in the position of breaking that tie. The applicant's name would simply be forwarded to the Governor. Rather than remove the Supreme Court Justice completely as a tiebreaker, he or she could articulate his or her recommendation reasons (either to support the nominee or not) to the Governor where there is a tie vote. This public recommendation would be submitted to the Governor with the forwarded name. I see no downside to providing a Governor with the few additional names that will result from these tie votes.

I don't believe there is a need to increase the membership of the Council for many of the same reasons former Justice Carpeneti stated in his comments. Increasing members would dilute or degrade the vetting process. The vetting process allows each member to question each applicant in depth. With many more members, this process would become superficial and not indepth as it is now.

I have recommended the Council be more vigilant and open in its business. In this regard, we could make all of our votes public and post the votes on our web page.

You might consider removing the restriction prohibiting a state or federal employee as a member on the Council.

The number of applicants we receive per judicial opening has increased substantially. I believe there is a need to amend our Constitution to allow the Council to forward the names of more than two applicants to the Governor when there are more than eight applicants for a judgeship. In my time on the Council and the recent past, there has been controversy over the current requirement that the Council forward at least two names.

Whatever changes may be made to the Alaska Judicial Council, I will uphold my responsibilities under the Constitution and statute to serve my fellow Alaskans.

Sincerely,

Ken Kreitzer

cc: Members of the Alaska Judicial Council  
Senator John Coghill, Chairman Senate Judiciary Committee & Members



Alaska Federation of Natives  
2014 Legislative & Litigation Committee  
Resolution 14-1

- TITLE:** Opposition to SJR 21: Constitutional Amendment to Judicial Council Membership
- WHEREAS:** The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska and its membership includes 151 federally-recognized tribes, 134 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs; and
- WHEREAS:** The mission of AFN is to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and
- WHEREAS:** The Alaska Judicial Council (Council) is an independent citizens' commission created by the Alaska Constitution to screen applicants for judicial vacancies, nominate the most qualified applicants for appointment to the bench by the governor, evaluate the performance of sitting judges, recommend to voters whether certain judges should be retained for another term, and conduct research to improve the administration of justice in Alaska; and
- WHEREAS:** The Alaska Constitution provides that the Council shall have seven members, including three attorneys appointed by the Alaska Bar Association, three non-attorneys appointed by the governor and confirmed by the legislature, and the chief justice of the supreme court, who serves as the Council's chairperson; and
- WHEREAS:** Alaska's Constitution is widely acknowledged as one of the best state constitutions; and, thus, there should be clearly demonstrated reasons to amend the Constitution before undertaking such a process; and
- WHEREAS:** There is no evidence to suggest that the Council has failed to function effectively or efficiently in performing its duties — in fact, Alaska's judiciary has been free of corruption, scandal, and other ills that have plagued other non-merit based systems; and
- WHEREAS:** SJR 21: Constitutional Amendment to the Judicial Council (SJR 21), seeks to triple the Council's membership to five attorneys, ten non-attorneys, and Alaska's Chief Justice, in an effort to purportedly increase regional representation, and guard against attorney dominance; and

WHEREAS: Nothing in SJR 21 addresses regional representation, let alone Alaska Native representation on the Council, and no evidence exists to support the proposition that attorneys out-will non-attorneys in the selection of Alaska judges; and

WHEREAS: SJR 21 would create numerous problems for the Council, including, without limitation, a politicized non-attorney membership that is philosophically and politically aligned with the governor — which will, in turn, tilt the balance in favor of the non-attorneys appointed by the governor, and likely result in the more conservative judges on Alaska's bench; and

WHEREAS: Historically, conservative judges have been less sympathetic to Alaska Native Tribes, tribal organizations, and individual Alaska Natives subjected to Alaska's criminal or civil judicial system; and

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Alaska Federation of Natives, Inc. that SJR 21 conflicts with our mission to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and

BE IT FURTHER RESOLVED that Alaska Federation of Natives strongly opposes SJR 21.

# Alaska State Legislature

## Senator Pete Kelly

*Interim*  
1292 Sadler Way Ste. 308  
Fairbanks, Alaska 99701  
Phone - (907) 451-4347  
Fax - (907) 451-4348



*Session*  
State Capitol, Rm 516  
Juneau, AK 99801  
Phone - (907) 465-3709  
Fax - (907) 465-4714

Sen.Pete.Kelly@akleg.gov

### Summary of Changes – CSSJR 21 (JUD)

*"Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council."*

#### SJR 21 Version U:

**Section 1:** Expands the total number of Judicial Council members to sixteen. Five members will be appointed by the Alaska Bar Association and ten non-attorney members will be appointed by the governor subject to legislative confirmation. The final member remains the chief justice of the supreme court who serves as the chairman and ex-officio member.

#### CS SJR 21 (JUD) Version N:

**Section 1:** Reduces the original proposal from sixteen members to ten members. Version N leaves the attorney membership at three, as is stated in the Alaska Constitution. It reduces the non-attorney membership to six. The final member remains the chief justice of the supreme court.

---

TESTIMONY OF DAVID JENSEN on SJR21

My name is David Jensen, I live at 11533 Tanglewood Lakes Circle, Anchorage, AK 99516

I am testifying in regard to SJR21. I have been an executive in Alaska for 40 years, most of that time with private, for-profit corporations.

I am business executive with no connection to the legal system and no involvement with politics. It is from the viewpoint of a business executive that I offer my testimony regarding SJR21.

I think that SJR21 is a bad idea, and will be bad for private business in Alaska, and here is why. As a business executive, I tried to keep the affairs of the companies that I ran out of court. But sometimes there was no alternative, and when that happened, all I expected was a judge who was impartial and professional.

I was not disappointed by the Alaska court system, because every time that I did have to go to court, I got a judge who was impartial and professional, with no private agendas or axes to grind. I did not agree with every decision made by every judge in every case I was involved in, but I always felt that the judge was impartial and professional.

It was always a comfort to me to know that the judges in Alaska get to be judges in part because they are well regarded by their fellow professionals. I would never go to a doctor unless I knew that he was well regarded by his colleagues in the medical profession, and I feel the same way about lawyers and judges.

The practical effect of SJR21 will be to remove professional qualifications from the selection of judges and to substitute political loyalty for it. In making appointments to the Judicial Council, the governor will appoint people who are loyal to him, to his party, and to his way of thinking. Those people will owe their appointment to him, and will repay him by sending him the names of judicial candidates who are loyal to, and allied with, the governor. And he will appoint those people,

---

---

based on their political loyalties instead of their professional qualifications.

In a complicated commercial dispute, I could care less about a judge's political leanings: I want a judge who is smart enough, and well regarded enough in the profession, to sort through the complicated commercial tangle and come up with a decision that gives certainty to businessmen who are trying to run a business, plan their investments, and make a profit. What I do not want, is a political hack who has no professional qualifications other than that he is a friend of the governor.

If SJR21 is approved and the constitution amended, the effect will be to centralize power over the judiciary into the governor's office. The checks and balances that the framers built into the constitution will be weakened because the judiciary will no longer be a truly independent branch of government.

Finally, the supporters of SJR21 need to remember that the tides of politics come and go. The pendulum will swing one day, to a different group of political thinkers and leaders. When that happens, if power over the judiciary is centralized in the governor's office, the judiciary will change as well.

The private sector is best off if it has professionalism, neutrality and certainty in the judicial system. A judicial system that changes with the changing winds of political thought is a drag on the economy and destructive of true prosperity. When I was the Vice President at Reeve Aleutian Airways, I had occasion to deal with a political judiciary, because Reeve ran routes to Russia. And I bear the scars to prove that the political nature of the Russian judicial system made for an incredibly difficult business environment. Let's not move in that direction here.

Thank You

---

State of Alaska  
myAlaska  
My Government  
Resident  
Business in Alaska  
Visiting Alaska  
State Employees

## Article 4 - The Judiciary

### § 1. Judicial Power and Jurisdiction

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

### § 2. Supreme Court

(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office. [Amended 1970]

### § 3. Superior Court

The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

### § 4. Qualifications of Justices and Judges

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

### § 5. Nomination and Appointment

The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

### § 6. Approval or Rejection

Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

### § 7. Vacancy

The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

### § 8. Judicial Council

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

### § 9. Additional Duties

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

### § 10. Commission on Judicial Conduct

The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law. [Amended 1968 & 1982]

**§ 11. Retirement**

Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

**§ 12. Impeachment**

Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

**§ 13. Compensation**

Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State. [Amended 1968]

**§ 14. Restrictions**

Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

**§ 15. Rule-Making Power**

The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

**§ 16. Court Administration**

The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system. [Amended 1970]

[Return to Alaska Constitution Table of Contents](#)

- [State of Alaska](#)
  - [myAlaska](#)
- [My Government](#)
  - [Resident](#)
- [Business in Alaska](#)
  - [Visiting Alaska](#)
- [State Employees](#)

State of Alaska © 2012 | [webmaster](#)



# **Bylaws of the Alaska Judicial Council**

## **Article I Policies**

### **Section 1. Concerning Selection of Justices, Judges, and Public Defender**

The Judicial Council shall endeavor to nominate for judicial office and for public defender those judges and members of the bar who stand out as most qualified based upon the Council's consideration of their: professional competence, including written and oral communication skills; integrity; fairness; temperament; judgment, including common sense; legal and life experience; and demonstrated commitment to public and community service. The Council shall actively encourage qualified members of the bar to seek nomination to such offices, shall endeavor to prevent political considerations from outweighing fitness in the judicial and public defender nomination processes, and shall consistently strive to inform the public of Alaska's Judicial Council selection process.

### **Section 2. Concerning Retention of Judges**

Pursuant to the provisions of Alaska Statutes Titles 15 and 22, the Council may recommend the retention in judicial office of incumbent justices and judges found to be qualified through appropriate means of judicial performance assessment; and may recommend against retention of justices and judges found to be not qualified through assessment processes. The Council shall endeavor to prevent political considerations from outweighing fitness in the judicial retention recommendation process.

### **Section 3. Concerning Administration of Justice**

The Council shall initiate studies and investigations for the improvement of the administration of justice. These studies and investigations may be conducted by the entire Council, by any of its members or by its staff as directed by the Council. The Council may hire researchers and investigators and may contract for the performance of these functions. A topic for any study or investigation may be proposed at any meeting of the Council by any member without prior notice.

## **Article II Membership**

### **Section 1. Appointment; Limitation of Term**

Members of the Council shall be appointed and shall serve their terms as provided by law; however, a member whose term has expired shall continue to serve until a successor has been appointed. Council members may be appointed to successive terms; however, no Council member should serve more than two full terms or one unexpired term and one full term.

**Section 2. Effective Date of Appointment**

**(A) Non-Attorney Members.** The effective date of a non-attorney member's appointment to the Council shall be the day following the effective date of the vacancy in the seat to which appointed, if appointed before that date; or the date of or specified in the gubernatorial letter of appointment, if appointed after that date. Non-attorney members shall have full voting rights effective upon the appointment date, unless and until denied confirmation by the legislature.

**(B) Attorney Members.** The effective date of an attorney member's appointment shall be the day following the effective date of the vacancy in the seat to which appointed, if appointed before that date; or the date of or specified in the letter of appointment from the board of governors of the Alaska Bar Association, if appointed after that date.

**(C) Chief Justice.** When the supreme court elects a new chief justice, the newly elected chief begins serving as a member and chair of the Council immediately upon assuming the office of chief justice.

**Section 3. Oath of Office**

The chair of the Council shall administer the oath of office to each new member, following a determination by the Council that the person selected has met the qualifications for membership as set forth by law.

**Section 4. Vacancies**

At least 90 days prior to the expiration of the term of any Council member, or as soon as practicable following the death, resignation, or announced intent to resign of any Council member, the executive director shall notify the appropriate appointing authority and request that the appointment process be initiated immediately to fill the vacancy.

**Section 5. Disqualification**

**(A) Candidacy of Council Member.** Any member of the Judicial Council who seeks appointment to a judicial office or the office of public defender must resign from the Council as of the date of the application and should not accept reappointment to the Council for a period of two years thereafter.

**(B) Attendance at Regular Meetings.** Council members shall attend all regular meetings of the Council unless excused by the chair for good cause. If a member is absent without good cause for two consecutive meetings, the chair shall formally request the resignation of that member.

**Section 6. Expenses; Compensation**

Council members shall be reimbursed for travel and other expenses incurred while on Council business and may receive compensation as otherwise provided by law.

## **Article III Officers**

### **Section 1. Officers Specified**

(A) The officers of the Council shall be the chair, vice-chair and executive director.

(B) **Chair.** The Chief Justice of the Alaska Supreme Court is the chair of the Alaska Judicial Council.

(C) **Vice-Chair.** The vice-chair will be the member of the Judicial Council whose current term will first expire.

(D) **Executive Director.** The Council by concurrence of four or more of its members may designate an executive director to serve at the pleasure of the Council.

### **Section 2. Duties and Powers**

(A) **Chair.** The chair shall preside at all meetings of the Council and perform such other duties as may be assigned by the Council. In the absence of an executive director or acting director, the chair will serve as acting director.

(B) **Vice-Chair.** The vice-chair shall preside at meetings of the Council in the absence of the chair. The vice-chair shall perform such other duties as usually pertain to the office of the chair when the chair is unavailable to perform such functions.

(C) **Executive Director.** The executive director shall keep a record of all meetings of the Council; shall serve as chief executive officer of the Council; shall be responsible to the Council for planning, supervising and coordinating all administrative, fiscal and programmatic activities of the Council; and shall perform such other duties as may be assigned. The executive director may receive compensation as prescribed by the Council and allowed by law.

(D) **Acting Director.** In the event of the incapacity, disability, termination or death of the executive director, the Council may appoint an acting director, and may impose such limits on the authority of said acting director as it deems advisable, until such time as a new executive director can be found, or until such time as the incapacity of the executive director can be cured. Should the Council choose not to appoint an acting director or otherwise fail to appoint, the chair of the Council will, ex officio, serve as acting director until a replacement can be found.

## **Article IV Meetings**

### **Section 1. Public Sessions; Public Notice**

All meetings of the Judicial Council shall be open to the public, except as specifically provided. At least three days before any meeting to be held in Anchorage, Fairbanks, or Juneau, public notice of date, time, and place of the meeting and of general topics to be considered shall be

given through paid advertisements in major newspapers of general circulation in all three cities; for meetings to be held elsewhere in the state, paid public notice shall be provided at least three days in advance in the newspaper or newspapers of general circulation in such other areas as well as in the newspapers of general circulation in Anchorage, Fairbanks, and Juneau. Absent sufficient funding or when the notice requirements of this section are determined by the Council to be unreasonable, the Council is authorized to meet after such other period and utilizing such other form of public notice as it deems reasonable under the circumstances and which are consistent with the Council's legal obligations.

### **Section 2. Participation by Telecommunications**

The Judicial Council shall meet in person when practicable. The Council may conduct a teleconference between regularly scheduled meetings with the consent of the chair. A teleconference conducted between regularly scheduled meetings is subject to the notice requirements in Article IV, Section 1 and Article IV, Section 8.

A member may participate telephonically in a regularly scheduled meeting only if the chair has found good cause to excuse the member from attending in person. A member may only participate telephonically if the member has had a substantially equal opportunity to evaluate all meeting materials, testimony, and other evidence related to the meeting.

Teleconferencing may be used to receive public input and to establish a quorum. At least one member or staff person must be present at the time and location publicly announced for any meeting or teleconference conducted by the Council.

### **Section 3. Regular Meetings**

The Council shall hold two or more meetings per year, at times designated by the Council, to consider problems that may affect the Council and concern the administration of justice in the State of Alaska.

### **Section 4. Special Meetings**

When a vacancy in the office of justice, judge, or public defender actually occurs or is otherwise determined to be impending, the chair shall call a special meeting of the Judicial Council within the time-frame required by law. The chair shall also call a special meeting of the Council upon the request of four or more members to consider business specified in the request; at that meeting, the Council may also consider other business that may come before the Council with the consent of four or more of the members present. The chair shall fix the time and place of such meeting not more than thirty days from the date of receipt of such request.

**Section 5. Public Hearings**

The Council may hold public hearings on all matters relating to the administration of justice as it deems appropriate and in such places as it determines advisable.

**Section 6. Executive Sessions**

The Council may decide as permitted by law whether its proceedings will be conducted in executive session. The Council may make this decision by concurrence of four or more members in a session open to the public. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session, unless auxiliary to the main question. The Council may not vote in an executive session.

**Section 7. Place of Meeting**

To the extent practicable, meetings should be held in the area of the State most directly affected by the subject matter under consideration.

**Section 8. Notice of Meeting: Waiver**

Notice of each meeting and teleconference shall be sent to all members of the Council as far in advance as practicable but in any event not less than five days before the date of the meeting or teleconference. Presence at a meeting or teleconference without objection shall constitute waiver of notice. When this notice requirement is determined by the chair to be unreasonable, the Council may meet on shorter notice.

**Article V  
Voting and Quorum**

**Section 1. Voting**

All members of the Council present shall be entitled to vote on all matters coming before the Council, except as provided in Section 2 of this article and except that the chair shall only vote when to do so could change the result. The Council shall act by concurrence of four or more members. All votes shall be taken in public session. Any member can vote in the affirmative or negative or abstain on any matter. A member who wishes to abstain shall indicate the intention to do so prior to the question being called and shall disclose the reasons for the proposed abstention.

**Section 2. Conflict of Interest; Disqualification**

No member may vote on any matter in which he or she has a substantial personal or pecuniary interest. Any member who believes that his or her personal or business relationship to any applicant for a judicial or public defender vacancy or to any judge or justice being evaluated for retention purposes might prevent the member from fairly and objectively considering the qualifications of such person, or might otherwise involve a conflict of interest or create the appearance thereof, shall disclose the circumstances of the actual or apparent conflict to the Council

and shall disqualify himself or herself from discussing or voting on the nomination or retention of that person.

**Section 3. Quorum**

Four members of the Council shall constitute a quorum for the transaction of business at any meeting.

**Section 4. Rules of Order**

Robert's Rules of Order Revised will govern the meetings of the Council to the extent that they do not conflict with these bylaws.

**Article VI  
Committees**

**Section 1. Standing Committees**

The Council may establish such standing committees from time to time when it finds them useful to conduct Council business. The chair may make standing committee assignments annually. The function of each committee shall be to monitor Council activities between meetings, to provide guidance and advice to staff, and to report to the Council at regularly scheduled meetings about the committees' areas of oversight. Each committee shall include at least one attorney and one non-attorney member. To the maximum extent possible, Council members should be permitted to serve on the committee or committees of their choice.

**Section 2. Ad Hoc Committees**

The chair may create ad hoc committees from time to time as needed. Ad hoc committees shall report to the Council on their activities and may make recommendations for Council action.

**Article VII  
Procedure for Submitting Judicial and Public Defender Nominations to the  
Governor**

**Section 1. Notice of Vacancy; Recruitment**

Whenever a vacancy to be filled by appointment exists, or is about to occur, in any supreme court, court of appeals, superior court, or district court of this state, or in the office of public defender, the Council, by mail or by such other publication means as may be appropriate, shall notify all active members of the Alaska Bar Association of the vacancy, and shall invite applications from qualified judges or other members of the bar of this state for consideration by the Council for recommendation to the governor. Council members may also encourage persons believed by such members to possess the requisite qualifications for judicial or public defender office to submit their applications for consideration and may cooperate with judicial selection committees of the state or

local bar associations or of such other organizations as may be appropriate in the identification and recruitment of potential candidates.

**Section 2. Application Procedure**

Each applicant for a judicial or chief public defender position shall obtain and complete an application for appointment provided by the Council and shall comply with all the requirements therein. Such application may request such information as deemed appropriate to a determination of qualification for office, including but not limited to the following: family and marital history; bar and/or judicial discipline history; criminal record; involvement as a party in litigation; credit history; physical and mental condition and history; community activities; academic and employment history; military record; and representative clientele.

**Section 3. Evaluation and Investigation of Applicants' Qualifications**

**(A) Judicial Qualifications Polls.** The Judicial Council may conduct judicial qualifications polls in such form and manner as may be prescribed by the Council and cause the same to be circulated among the members of the Alaska Bar Association. The poll should be relevant to criteria listed in Article 1, Section 1 of these bylaws. If the Alaska Bar Association conducts a qualifications poll satisfactory to the Council, the Council may recognize such poll. The Judicial Council may conduct such other surveys and evaluations of candidates' qualifications as may be deemed appropriate.

**(B) Investigation.** The Council and its staff shall investigate the background, experience, and other qualifications of an applicant under consideration for a judicial or a public defender vacancy, and may call witnesses before it for such purposes.

**(C) Candidate Interviews; Expenses.** The Council may, when and where it deems desirable, conduct a personal interview with one, some, or all applicants for any judicial or public defender vacancy. Candidates requested to appear before the Council for such interviews shall appear in person; when, however, a candidate for good cause shown is unable to personally attend such interview, the Council may arrange for an interview by telephone or other electronic communication means with such applicant, and such alternative interview as may be appropriate, including but not limited to interview of such candidate by a committee of the Council at such other time and place as may be convenient. A candidate may choose to be interviewed publicly or in executive session, to protect the candidate's privacy interests consistent with Alaska's Open Meetings Act. The choice to interview publicly or in executive session will have no bearing on the Council's evaluation of the candidate's qualifications.

A candidate's expenses for judicial or public defender office are that candidate's responsibility. The Council may reimburse candidates for travel expenses in the Council's discretion. The cost of a telephone interview requested by the Council shall be paid by the Council.

**Section 4. Nomination Procedure; Recommendation of Best Qualified Candidates**

The Council shall select two or more candidates who stand out as the most qualified under the criteria set out in Article I, Section 1 of these bylaws, considering (a) other candidates who have applied; (b) the position applied for; and (c) the community in which the position is to be located. The names of the selected candidates shall be submitted to the governor in alphabetical order; but if the Council's vote does not result in selecting at least two applicants who are sufficiently qualified, the Council shall decline to submit any names and will re-advertise the position.

**Section 5. Reconsideration**

The Council will not reconsider the names submitted to the governor after the nominees are submitted unless the disability or death of one or more nominees leaves the governor with less than two names for filling a judicial vacancy. If the governor requests additional nominees in such a situation, the Council will submit additional names so that the governor has at least two nominees for each vacancy. The Council may select additional names from the original applicants for the position or may re-advertise for the position.

**Section 6. Publication and Review of Procedures**

The Council shall establish and follow written forms and procedures for the nomination of attorneys who apply to be justices, judges, and public defender. The Council shall publish the bylaws and procedures in its biennial report to the Alaska Supreme Court and legislature, post them on its website, and provide them to applicants. The Council shall review these procedures at intervals not to exceed three years.

**Article VIII  
Review of Judicial Performance**

**Section 1. Retention Election Evaluation**

Prior to each general election in which one or more justices or judges has expressed the intention to be a candidate for retention election, the Council shall conduct evaluations of the qualifications and performance of such justices and judges and shall make the results of evaluations public. Evaluations may be based upon the results of a judicial performance survey conducted among all active members of the Alaska Bar Association and other members, retired or inactive, that the Council chooses. Evaluations also may be based upon such other surveys, interviews, or research into judicial performance as may be deemed appropriate, including but not limited to, any process that encourages expanded public participation and comment regarding candidate qualifications.

**Section 2. Recommendation**

Based upon the evaluative data, the Council may recommend that any justice or judge either be retained or not be retained. The Council may actively support the candidacy of every incumbent

judge recommended to be retained, and may actively oppose the candidacy of every incumbent judge whom it recommends not be retained. The Council shall publicize its recommendations.

**Section 3. Judicial Performance Evaluation**

The Council may conduct such additional evaluations of judges, other than at the time of retention elections, at such times and in such a manner as may be appropriate, and make the results of such additional evaluations public.

**Section 4. Publication and Review of Procedures**

The Council shall establish and follow written procedures for the evaluation of justices and judges. The Council shall publish the procedures in its biennial report to the Alaska Supreme Court and legislature, post them on its website, and provide them to justices and judges. The Council shall review these procedures at intervals not to exceed four years.

**Article IX  
Extra-Council Communications**

Members of the public may wish to communicate their thoughts about the qualifications of applicants and the performance of judicial officers to individual Council members. All written communications between a Council member and any other person or organization regarding the qualifications of any applicant or the performance of any judicial officer should be forwarded to all other members; all oral communications regarding such matters should be shared with other members. Council members may encourage people to communicate with the Council in writing or at a public hearing.

Council members may discuss their individual views about the qualifications of applicants and the performance of judicial officers with members of the public, including the applicants and judicial officers. Council members may not publicly discuss the views of other Council members about the qualifications of applicants and the performance of judicial officers. Communications and deliberations among Council members that occur in executive session, including discussion about the qualifications of an applicant or the performance of a judicial officer shall be kept confidential in accordance with the law and Council bylaws.

**Article X  
Access to Council Records**

**Section 1. Public Records**

All records of the Judicial Council, unless confidential or privileged, are public as provided in AS 40.25.110. The public shall have access to all public records in accordance with AS 40.25.120.

Public Records include:

1. Council bylaws and policy statements;
2. Minutes of Council meetings;
3. Final Council reports;
4. Financial accounts and transactions;
5. Library materials; and
6. All records other than those excepted in this bylaw.

**Section 2. Right to Privacy**

Materials that, if made public, would violate an individual's right to privacy under Art. I, Section 22 of the Alaska Constitution shall be confidential. Confidential materials are not open for public inspection and include:

1. Solicited communications relating to the qualifications of judicial or public defender vacancy applicants, or judicial officers;
2. Unsolicited communications relating to the qualifications of a judicial or public defender applicant or judicial officer, where the source requests confidentiality;
3. Those portions of the "application for judicial appointment" and "judge questionnaire" that reveal sensitive personal information entitled to protection under law;
4. Investigative research materials and internal communications that reveal sensitive personal information entitled to protection under law; and
5. Contents of Council employees' and members' personnel records, except that dates of employment, position titles, classification and salaries of present and/or past state employment for all employees are public information. In addition, application forms, resumes and other documents submitted to the Judicial Council in support of applications for any position with the Council grade 16 or above are public information.

**Section 3. Deliberative Process**

Materials that are part of the deliberative process of the Judicial Council, including those prepared by Council employees, are privileged and confidential if their disclosure would cause substantial and adverse effects to the Council that outweigh the need for access. These materials generally include drafts and computations prior to final document approval, internal memoranda conveying personal opinions, and other pre-decisional documents not incorporated into public records under this bylaw.

**Section 4. Other Information**

Information required or authorized to be kept confidential by law is not a public record.

**Section 5. Privileged Communications**

Communications that are legally privileged are not public information. These communications include but are not limited to communications between the Council and its attorney made for the purpose of facilitating the rendition of professional legal services to the Council.

**Section 6. Release of Information**

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information will be disclosed. Information that otherwise would not be disclosable may be released to the subject of that information or to the public if it is in a form that protects the privacy rights of individuals and does not inhibit candid debate during the decision-making process.

**Article XI  
Office of Judicial Council**

The Council shall designate an office of the Council in such location as it deems appropriate. Records and files of the Council's business shall be maintained by the Executive Director at this location.

**Article XII  
Appropriations**

The Council will seek such appropriations of funds by the Alaska Legislature and other funding sources as it deems appropriate to carry out its constitutional and statutory functions.

**Article XIII  
Bylaw Review and Amendment**

The Council shall review these bylaws at intervals not to exceed six years. These bylaws may be altered or amended by the Judicial Council by concurrence of four or more members, provided reasonable notice of proposed amendments has been provided to all Council members.

These bylaws adopted by the Alaska Judicial Council, this 15th day of February 1966; amended November 10, 1966; June 18, 1970; March 30, 1972; February 15, 1973; May 26, 1983; December 10, 1986; March 19, 1987; January 14, 1989; November 2, 1993; June 26, 1996; December 9, 1996; September 23-24, 1997; July 6-7, 1998; July 15, 2002; September 22, 2005; November 28, 2005; January 31, 2006; October 14, 2006; January 22, 2012; October 9, 2013.



ROBERT C. BUNDY  
(907) 257-7853  
FAX (907) 276-4152  
bundy.robert@dorsey.com

March 6, 2014

**VIA EMAIL:** Senator.Pete.Kelly@akleg.gov

Senator Pete Kelly  
Co-Chair  
Senate Finance Committee

Re: SJR 21 Public Testimony

Dear Sen. Kelly:

I write in opposition to proposed Senate Joint Resolution 21 (SJR 21) which would seek to amend the Alaska Constitution to increase the number of members on the Judicial Council.

My name is Robert Bundy. I have practiced law in Alaska since 1972. I served the Alaska Department of Law as Chief Assistant District Attorney in Anchorage and District Attorney in Nome. I served as United States Attorney for the District of Alaska from 1994 to 2001. I have been in private practice in Anchorage since 1984 representing individuals and companies in complex federal and state civil and criminal litigation.

Over the last 42 years I have tried over 200 cases to juries in Alaska and have appeared in countless hearings, arguments, settlement conferences and other proceedings before Alaska judges in all four judicial districts. I have had a ring-side seat to observe the quality of judges who passed through the Alaska Judicial Council since statehood and who were appointed by all of Alaska's governors. I have to say, with a few notable exceptions, the quality of men and women before whom I have appeared has been extraordinary. Of course, I didn't always agree with the way the judge interpreted the law or the facts in any particular case, but I never had any reason at all to doubt the judge's overall legal acumen, integrity, work ethic and commitment to the rule of law. Over all, it would be hard to imagine how a better group could have been chosen.

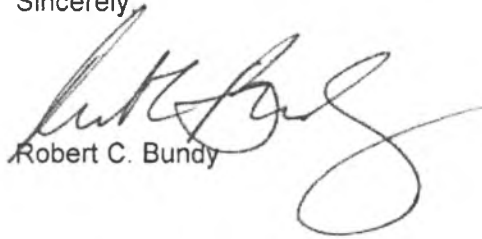
I think the lion's share of credit for the quality of our judiciary can be given to the Alaska Judicial Council and its rigorous screening process. The Council looks not just to the applicant's academic qualifications and breadth of experience, both of which are very important, but also to the other important qualities such as lack of arrogance, judgment, work ethic, life experience in finding not just good candidates, but the best. The result of the Council's rigorous screening is a first rate judicial branch.

It seems to me that the proposal to expand the size of the Council would only serve to politicize and hamper the Council's work. Once politics and ideology enter consideration, the critical focus on the proven characteristics of a good judge become obscured. During my over 15 years as a prosecutor in the courts of Alaska, I was at times unhappy that the Council did not pass to the Governor more people I thought would better understand the prosecutor's

Senator Pete Kelly  
March 6, 2014  
Page 2

perspective, but over time I have come to appreciate the wisdom of the Council's approach of sending the names of the most qualified applicants to the Governor. The proof is in the pudding: we in Alaska have an excellent judiciary. We should not change the way we have achieved that goal by short term political thinking.

Sincerely,



Robert C. Bundy

RCB:snu