

**SJR**

**21**

<TARGET><BILL>SJR 21</BILL><SUBJECT>SJR  
21</SUBJECT><COMM>SJUD28</COMM></TARGET>

# 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 2016	FY 2017	FY 2018	FY 2019	FY 2020
<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>							
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**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If yes, by what date are the regulations to be adopted, amended or repealed?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
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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.

# 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 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							

Change in Revenues							

**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 #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.

## Testimony on SJR21

February 14, 2014

Honorable Senate Judiciary chair John Cohill  
Honorable SJR 21 Sponsor Pete Kelly  
Members of Senate Judiciary,

Thank you for the opportunity to testify regarding Senate Joint Resolution 21. I am Frank Bailey, former Director of Boards and Commissions. During my time with the Boards and Commissions office, no single priority rose above the importance of the appointments of our judges. Its safe to say that over two-thirds of our time was spent vetting and interviewing candidates for judicial appointment. We handled several appointments both to the Alaska Judicial Council, as well as some 13 judicial appointments.

My concern has always been the quantity of impartial judicial nominations given to the Governor's desk for appointment. One significant challenge to this is the makeup of the Alaska Judicial Council. With 3 attorney members, 3 public members and the Chief Justice of the Alaska Supreme Court comprising the Council, this powerful group is a majority of attorneys. This means the public voice is in the minority.

On many occasions, the public members of the council were overruled and Alaskans around the State expressed frustration that more candidates were not sent to the Governor's desk.

Our country and our State are founded on the concept of a **Republic**, which is defined as *"a form of government in which power is held by the people and the representatives they elect, and affairs of state are a "public matter" rather than privately accommodated. "*

Because the 3 attorney members are elected by the Bar, and the Chief Justice is elected by the remaining 4 Justices, the public voice is “trumped” in the process of sending up qualified candidates. The result can be cloning.

With absolute respect to the attorney members on the Senate Judiciary Committee and the attorney members on the Council: any system where a small, closed private membership presides over all citizens of Alaska, is not consistent to the pillars of a Republic.

I urge strong consideration and passage of SJR21.

Thank you.

Frank Bailey

Senate Judiciary,

I served on the Alaska Judicial Council as an attorney member from 2000 to 2006. The work load was such that I can foresee the day when the sheer volume of judicial applicants might require some alternate means for the extensive screening of candidates that the council provides. Because the members are not compensated, personal sacrifice is asked of all members who serve. All members review all candidates. The application materials themselves are commonly extensive, requiring considerable preparation time before the candidate interviews are conducted. Interviews are held depending upon the frequency of judicial vacancies. That number has increased as our state has grown and the number of judicial positions has expanded. The practice since statehood has been for all candidates to be interviewed (at least once). All council members are involved in all decisions on candidates. In addition, there are meetings to review sitting judges who are up for retention. There is also the data collection work assigned to the council.

As our state judiciary has expanded over the past 52 years, the council's work has expanded. There have been surges with certain peak years – commonly those when there have been numerous additional judicial positions created, and when there have been disproportion numbers of retirements. Despite the growth, the seven member council has managed. The compactness of the seven member council recommends itself for certain efficiencies that would be lost with a larger council composition.

I have trouble appreciating how expanding the council to 16 members will make the process more efficient. Coordinating meeting scheduling for 7 members presents a big enough challenge. Getting 16 calendars to line up will present a distinct challenge for any one meeting, let alone the 3 to 5 (or more?) that commonly happen per year. The only arguable advantage I can foresee with using a council as large as 16 members would be if the work load becomes sufficiently overwhelming that there is simply too much work to expect of public service council members. Consider, for example, the workload model used by the the 9<sup>th</sup> Circuit Court of Appeals. That federal court consists of 30 or more appellate judges. The 9<sup>th</sup> Circuit acts through the assignment to a three judge panel, drawn from the 30 sitting judges. Occasions when the full panel considers matters are limited to *en banc* or certain administrative matters. I question whether using the 9<sup>th</sup> Circuit model of "efficiency" is required for our state.

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634 Seward St.  
Juneau, AK 99801  
February 14, 2014

Honorable John Coghill and Members of the Senate Judiciary Committee  
State Capitol  
Juneau, Alaska

Re: SJR 21

Dear Chairman Coghill and Committee Members:

I am writing in opposition to SJR 21. I am sorry not to be able to present my views in person, but I will be traveling away from Juneau during today's hearing and will not return until after Monday's hearing. I will attempt to attend any future hearings so as to be able to respond to any questions that legislators may have about the views I express in this letter.

I oppose SJR 21 both because no need to amend Alaska's Constitution to change the makeup of the Judicial Council has been shown and because the proposed change has numerous problems. Below I set out the reasons for these conclusions.

No need demonstrated to change the Constitution. Alaska's Constitution is widely acknowledged as one of the best state constitutions in America. Before beginning the process of amending it, there should be a clearly demonstrated need to do so. But no reason appears to undertake SJR 21's changes. I could not find a sponsor statement in the legislative materials, but presumably the sponsors feel that in some respect the Judicial Council has not functioned efficiently or effectively. But there is no evidence of such failures. In its work nominating candidates to the governor for judicial appointment, and reviewing judicial performance and making recommendations to the voters for or against retention of judges, the Council has — along with the governor and the voters — helped produced a judiciary that throughout Alaska's statehood has been free of corruption, scandal, judicial intemperance, and the other ills that have been produced by selection systems not based on merit.

I believe that the Framers' vision in constructing our merit selection process was extraordinary in balancing the competing demands. In the first phase, the process looks only to merit and competence: The Alaska Judicial Council seeks to find the best candidates based on character, intellectual capacity, faithfulness to the

rule of law, fairness, temperament, integrity, and the like. Applicants passing the first screen are then sent to the governor for his or her selection. This second phase recognizes that elections have consequences, and that the people's will as expressed in the gubernatorial election is properly reflected in the general makeup of the bench. Finally, the voters have the responsibility at regularly-scheduled elections to pass on the performance of judges.

At the critical first phase, the Framers weighed the value of having those most intimately knowledgeable about the attributes of the candidates — that is, the lawyers who daily work with them, see them perform, litigate with and against them — balanced equally with members of the general public. The Framers correctly understood that no one would know better the true strengths and weaknesses of judicial candidates and no one would have a greater interest in insuring that only the very best candidates — the “tallest timber” in the words of one delegate — would make it through to the governor for final consideration. The sponsors of SJR 21 have not demonstrated why this delicate and successful balance should be upset at this time. I believe that it should not be.

It may be that they believe that lawyers have dominated the process and that the general public's representatives must be increased. There is no evidence for such a belief, and it is not true. I have served twice on the Council, in the early 1980's as one of the lawyer representatives and from 2009 to 2012 as chair ex officio. Both times the public's representatives — people like Jack Longworth from Petersburg, Bob Moss from Homer, Ken Brady from Anchorage, Tena Williams from Ketchikan, Ken Kreitzer from Juneau, and others — were strong and articulate voices for the positions that they held. And beyond this anecdotal evidence, a review of the voting patterns from the perspective of lawyers' votes and public members' votes shows that the instances in which the two “sides” split evenly (that is, public members vote identically and in opposition to the lawyers) almost never occurs: it has happened only 15 times in 1,136 votes in the 30 years from 1984 to 2013, the period for which the data is available. With the public members and lawyers evenly opposing each other on one percent of the total votes in 30 years, there is no statistical basis to presume that the lawyers somehow dominate the process.

I hope that the Committee demands a strong showing that there is a problem with the balance struck by the Framers before it considers approving this legislation. Our Alaska Constitution has served us well in judicial selection since statehood, and the possibility of changing it should not be entertained lightly.

SJR 21 creates numerous problems. I set out below some of the problems that

SJR 21 would create. This list is not exhaustive, because I have been aware of the proposed legislation for only a few days.

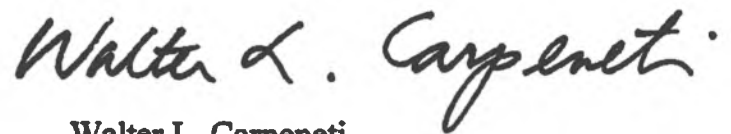
1. SJR 21 would complicate the meeting process. The six regular members of the Judicial Council are all volunteers. They are entirely unpaid (not even receiving honoraria, even though the members of many other state boards and commissions receive such honoraria). They meet frequently (the Council averaged about 15 meeting days per year during the 2009-12 period with which I am most familiar). Co-ordinating the schedules of six busy persons was difficult. Adding 10 members would introduce an unwelcome level of complexity to the process.
2. SJR 21 would risk the cohesive functioning of the Council. It is not difficult to imagine that the Council would be forced to meet in panels not comprising all of the members. It would then lose the cohesion that has characterized its work since statehood, in which all of the members participate in all of the decisions, producing an even and tempered quality to the Council's work.
3. SJR would increase the costs to the state. While it is true that Council members receive no financial compensation for their work, travel and related costs would increase substantially.
4. SJR 21 would risk the quality of the work done by the Council. The burden on Council members is terrific: They must review hundreds and, at times thousands, of pages of material for each new judgeship and for the retention evaluations. (Before switching to digital information delivery, it was not uncommon for the "binders" for a given session to total a foot or more in height when placed on a desk.) Finding the persons willing to make this great of a commitment over a sustained period of years will not be easy. The experience of the Alaska Judicial Council has been of a committed group of persons willing to do the hard work necessary. Tripling the size of the Council may result in a lowering of the quality of its work.

I hope that I have conveyed the depth of my concern about SJR 21. I believe firmly that Article IV is a true gem of our Constitution, and that the Alaska Judicial Council has functioned efficiently and effectively in helping to provide Alaskans with

a judiciary of which they are justifiably proud: dedicated men and women who follow the law without fear or favor, who strive to be fair and impartial, and who leave behind their political beliefs when deciding cases. I worry about tinkering with that system when no reason to do so has been shown and when obvious problems attend the attempt to tinker.

Thank you for considering my views. I am sorry not to be able to appear personally before your Committee, and I would welcome the opportunity to answer your questions in the future should it present itself.

Sincerely,

A handwritten signature in cursive script that reads "Walter L. Carpeneti". The signature is written in dark ink and is positioned to the right of the typed name.

Walter L. Carpeneti

# Alaska State Legislature

## Senator Pete Kelly

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### Sectional Analysis – 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.”*

**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.

**Section 2:** Allows for a transition to add the new members in staggered terms on the Judicial Council.

**Section 3:** Places the constitutional amendment before the voters during the next general election.

State of Alaska  
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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**

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**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
<u>Julle Willoughby</u>	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. Dapcevic	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

<b>Historical Roster of Alaska Judicial Council Members</b>			
	<b>Residence</b>	<b>Appointment Effective</b>	<b>Expiration of Term</b>
<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 Nesbett 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.*

# Alaska State Legislature

## Senator Pete Kelly

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



*Session*  
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Sen.Pete.Kelly@akleg.gov

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### 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.



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.

## TESTIMONY OF DAVID JENSEN

Chairman Coghill, members of the Judiciary Committee:

My name is David Jensen, and 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 COO at Reeve 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.

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 black ink and is positioned to the right of the word "Sincerely,".

Kathleen Tompkins-Miller

# 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



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## 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.

# **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.