

# Bylaws of the Alaska Judicial Council

## Article I Policies

### **Section 1. Concerning Council Member Duties**

Members of the Judicial Council hold positions of public trust. Council members shall conduct themselves in a manner that reflects positively upon the selection and evaluation processes and shall avoid partisanship or partiality in the performance of their constitutional and statutory duties. Council members shall not be influenced other than by facts or information relevant to the qualifications of applicants or judges eligible for retention. Council members shall display courtesy and respect to all applicants and those commenting on applicants, as well as to other Council members.

Council members shall consider each applicant and evaluate each judge in an impartial and objective manner. In considering each applicant and evaluating each judge, a Council member shall not discriminate on any basis prohibited by law.

### **Section 2. Concerning Selection of Justices, Judges, and Public Defender**

The Judicial Council shall nominate for judicial office and for public defender those judges and members of the bar who stand out as most qualified based on the following criteria: professional competence, including written and oral communication skills; diligence and administrative skills; integrity; fairness; temperament; judgment, including common sense; legal and life experience; and demonstrated commitment to public and community service. In making its nominations for the most qualified applicants, the Council shall also consider the following criteria: other candidates who have applied; the position applied for; and the community in which the position is located. The Council shall actively encourage qualified members of the bar to seek nomination to such offices, and shall strive to inform the public of Alaska's judicial and public defender selection process.

### **Section 3. Concerning Retention of Judges**

Pursuant to the provisions of the Alaska Constitution and Alaska Statutes Titles 15 and 22, each judge is subject to approval or rejection by the voters.<sup>1</sup> The Legislature has provided by statute that the Council shall conduct an evaluation of each judge eligible for retention before the retention election, shall provide to the public information about the judge, and may provide a recommendation regarding retention or rejection. When making a recommendation, the Council shall consider the results of its evaluation, as described in Article VIII of these bylaws, to determine whether the judge meets qualification and performance standards.

### **Section 4. 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

1 for any study or investigation may be proposed at any meeting of the Council by any member  
2 without prior notice.

3  
4 **Section 5. Concerning Council Support of Merit Selection and Judicial Retention**  
5 **System, and Recommendations Relating to the Administration of**  
6 **Justice**  
7

8 (A) **Education.** Council members and staff may speak publicly to inform the public about  
9 the Alaska Constitution's merit selection and retention system and the Council's research and  
10 other programs designed to improve the administration of justice.

11  
12 (B) **Recommendations.** The Council shall make recommendations to the Supreme Court  
13 and to the Legislature to improve the administration of justice.<sup>2</sup> Council members, or staff, may  
14 speak publicly about its recommendations at the direction of the Council by a vote of four or more  
15 members.

16  
17 (C) **Individual Council member speech.** If an individual Council member speaks about  
18 matters concerning the Council or matters relating to the administration of justice not at the  
19 direction of the Council, the Council member is encouraged to carefully consider how their  
20 remarks would affect public confidence in the Council's process, the Council's internal comity,  
21 and other Council members. The Council member shall stress that their viewpoint is their own  
22 and not that of the Council. The member shall not misrepresent the Council process or divulge  
23 confidential communications or documents.

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26  
27 **Article II**  
28 **Membership**  
29

30 **Section 1. Appointment; Limitation of Term**  
31

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

36  
37 **Section 2. Effective Date of Appointment**  
38

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

44  
45 (B) **Attorney Members.** The effective date of an attorney member's appointment shall be  
46 the day following the effective date of the vacancy in the seat to which appointed, if appointed  
47 before that date; or the date of or specified in the letter of appointment from the board of governors  
48 of the Alaska Bar Association, if appointed after that date.

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

### 4 5 **Section 3. Oath of Office**

6  
7 The chair of the Council shall administer the oath of office to each new member, following  
8 a determination by the Council that the person selected has met the qualifications for membership  
9 as set forth by law.

### 10 11 **Section 4. Vacancies**

12  
13 At least 90 days prior to the expiration of the term of any Council member, or as soon as  
14 practicable following the death, resignation, or announced intent to resign of any Council member,  
15 the executive director shall notify the appropriate appointing authority and request that the  
16 appointment process be initiated immediately to fill the vacancy.

### 17 18 **Section 5. Disqualification of Member from Application**

19  
20 Any member of the Council who seeks appointment to a judicial office or the office of  
21 public defender should resign at least a year in advance of their application and must resign from  
22 the Council as of the date of the application and should not accept reappointment to the Council  
23 for a period of two years after their resignation.

### 24 25 **Section 6. Disqualification for Public Office**

26  
27 No member of the Council, except the Chief Justice, may hold any other office or position  
28 of profit under the United States or the State pursuant to Article IV, Section 8, of the Alaska  
29 Constitution. Service in the armed forces of the United States or of the State is not an office or  
30 position of profit. <sup>3</sup>

### 31 32 **Section 7. Duties and obligations of members**

33  
34 A member has the following duties and obligations:

35  
36 (A) **Attendance.** Council members shall attend all meetings of the Council unless excused  
37 by the chair for good cause. If a member is absent without good cause for two consecutive  
38 meetings, the chair shall formally request the resignation of that member.

39  
40 (B) **Preparation.** Council members shall complete all necessary preparation for each  
41 meeting.

42  
43 (C) **Compliance.** Council members shall comply with Council bylaws and published  
44 selection and retention procedures.

### 45 46 **Section 8. Disability, Dereliction of Duty, or Misconduct**

47  
48 If a member is unable or unwilling to perform the duties and obligations of a member, or  
49 has committed serious misconduct, the chair, upon a vote of four or more members, may take  
50 appropriate action to protect the integrity of the Council's work. Actions may include, but are not  
51 limited to, the following: restricting the member from receiving confidential materials; limiting or

1 restricting the member from participating in meetings; reprimanding the member; contacting the  
2 appropriate appointing authority; and requesting the member's resignation.

3  
4 **Section 9. Expenses; Compensation**

5  
6 Council members shall be reimbursed for travel and other expenses incurred while on  
7 Council business and may receive compensation as otherwise provided by law.  
8

9 **Article III**  
10 **Officers**

11  
12 **Section 1. Officers Specified**

13  
14 (A) **Officers.** The officers of the Council shall be the chair, vice-chair and executive  
15 director.

16  
17 (B) **Chair.** The Chief Justice of the Alaska Supreme Court is the chair of the Alaska Judicial  
18 Council.

19  
20 (C) **Vice-Chair.** The vice-chair is the member of the Judicial Council whose current term  
21 will first expire.

22  
23 (D) **Executive Director.** The Council by concurrence of four or more of its members may  
24 designate an executive director to serve at the pleasure of the Council.

25  
26 **Section 2. Duties and Powers**

27  
28 (A) **Chair.** The chair shall preside at all meetings of the Council and perform such other  
29 duties as may be assigned by the Council. In the absence of an executive director or acting  
30 director, the chair will serve as acting director.

31  
32 (B) **Vice-Chair.** The vice-chair shall preside at meetings of the Council in the absence of  
33 the chair. The vice-chair shall perform such other duties as usually pertain to the office of the chair  
34 when the chair is unavailable to perform such functions.

35  
36 (C) **Executive Director.** The executive director shall keep a record of all meetings of the  
37 Council; shall serve as chief executive officer of the Council; shall be responsible to the Council  
38 for planning, supervising and coordinating all administrative, fiscal and programmatic activities of  
39 the Council; and shall perform such other duties as may be assigned. The executive director may  
40 receive compensation as prescribed by the Council and allowed by law.

41  
42 (D) **Acting Director.** In the event of the incapacity, disability, termination or death of the  
43 executive director, the Council may appoint an acting director, and may impose such limits on the  
44 authority of said acting director as it deems advisable, until such time as a new executive director  
45 can be found, or until such time as the incapacity of the executive director can be cured. Should  
46 the Council choose not to appoint an acting director or otherwise fail to appoint, the chair of the  
47 Council will, ex officio, serve as acting director until a replacement can be found.  
48  
49

50 **Article IV**

# Meetings

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

All meetings of the Judicial Council, including committee meetings, shall be open to the public, except as specifically provided. At least three days before any meeting, public notice of the date, time, and place of the meeting and of general topics to be considered shall be given by the appropriate means necessary to provide adequate notice to the public including the state on-line public notice system, the Council's website and social media, and digital and traditional media. 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 forms of public notice as it deems reasonable under the circumstances and which are consistent with the Council's legal obligations.

## **Section 2. Remote Participation**

The Judicial Council shall meet in person when practicable. When not practicable, the Council may meet remotely using phone and/or video technology. The Council may meet remotely between regularly scheduled meetings with the consent of the chair. A remote meeting 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 remotely in a regularly scheduled meeting only if the chair has found good cause to excuse the member from attending in person. A member may participate and vote remotely only if the member has had a substantially equal opportunity to evaluate all meeting materials, participate in proceedings, and evaluate all testimony, and other evidence related to the meeting.

Teleconferencing or videoconferencing may be used to receive public input and to establish a quorum.

Council members and staff shall ensure the confidentiality of meetings held with remote participation.

## **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. Regular meetings may be held in conjunction with special meetings.

## **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.

1           **Section 5.     Public Hearings**

2  
3           The Council may hold public hearings on all matters relating to the administration of justice  
4 as it deems appropriate and in such places as it determines advisable. The chair may limit public  
5 comment due to time constraints, or to matters relevant to the purpose of the meeting, in their  
6 discretion and as necessary to ensure the efficient conduct of business.  
7

8           **Section 6.     Executive Sessions**

9  
10          The Council may decide as permitted by law whether its proceedings will be conducted in  
11 executive session. The Council may make this decision by concurrence of four or more members  
12 in a session open to the public. No subjects may be considered at the executive session except  
13 those mentioned in the motion calling for the executive session, unless auxiliary to the main  
14 question. The Council may not vote in an executive session.  
15

16          **Section 7.     Place of Meeting**

17  
18          To the extent practicable, meetings should be held in the area of the state most directly  
19 affected by the subject matter under consideration.  
20

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

22  
23          Notice of each meeting and teleconference shall be sent to all members of the Council as  
24 far in advance as practicable but in any event not less than five days before the date of the meeting  
25 or teleconference. Presence at a meeting or teleconference without objection shall constitute  
26 waiver of notice. When this notice requirement is determined by the chair to be unreasonable, the  
27 Council may meet on shorter notice.  
28  
29

30                               **Article V**  
31                               **Voting and Quorum**

32  
33          **Section 1.     Voting**

34  
35          All members of the Council present shall be entitled to vote on all matters coming before  
36 the Council, except as provided in Section 2 of this Article and except that the chair shall only  
37 vote when to do so would change the result. The Council shall act by concurrence of four or more  
38 members. All votes shall be taken in public session. Any member can vote in the affirmative or  
39 negative or abstain on any matter. A member who wishes to abstain shall indicate the intention  
40 to do so prior to the question being called and shall disclose the reasons for the proposed  
41 abstention.  
42

43          **Section 2.     Conflict of Interest: Disclosure and Disqualification**

44  
45          (A) **Disclosure.** At any Council meeting where the qualifications of applicants, or the  
46 performance of judges or justices will be considered, Council members shall disclose to the  
47 Council any current or former relationship with an applicant or judge or justice (business, personal,  
48 and/or attorney-client). Council members shall also disclose the existence of any other possible  
49 cause for conflict of interest, bias, or prejudice and recuse themselves if required by (B).  
50

1 (B) **Disqualification.** A Council member shall recuse themselves from consideration of  
2 an applicant or judge or justice, or from nominations for an entire vacancy, or from consideration  
3 of any other matter, if their ability to consider the person, vacancy, or matter impartially and  
4 objectively might reasonably be questioned.

5  
6 **Section 3. Quorum**  
7

8 Four members of the Council shall constitute a quorum for the transaction of business at  
9 any meeting. The chair is a member of the Council for all purposes, including the establishment  
10 of a quorum.

11  
12 **Section 4. Rules of Order**  
13

14 Robert's Rules of Order Newly Revised, 11<sup>th</sup> ed., will govern the meetings of the Council  
15 to the extent that they do not conflict with these bylaws. The chair may, in their discretion, establish  
16 time limitations, call members to order, and take other actions intended to further the work of the  
17 Council during a meeting.  
18

19  
20 **Article VI**  
21 **Committees**  
22

23 The Council may establish committees when it finds them useful to conduct Council  
24 business. The chair may make committee assignments as needed. Each committee shall include  
25 at least one attorney and one non-attorney member. Committees shall report to the Council on  
26 their activities and may make recommendations for Council action.  
27

28  
29 **Article VII**  
30 **Procedure for Submitting Judicial and Public Defender Nominations**  
31 **to the Governor**  
32

33 **Section 1. Notice of Vacancy; Recruitment**  
34

35 Whenever a vacancy to be filled by appointment exists, or is about to occur, in any  
36 supreme court, court of appeals, superior court, or district court of this state, or in the office of  
37 public defender, the Council, by mail or by such other publication means as may be appropriate,  
38 shall notify all active members of the Alaska Bar Association of the vacancy, and shall invite  
39 applications from qualified judges or other members of the bar of this state for consideration by  
40 the Council for nomination to the governor. Council members may also encourage persons  
41 believed by such members to possess the requisite qualifications for judicial or public defender  
42 office to submit their applications for consideration and may cooperate with judicial selection  
43 committees of the state or local bar associations or of such other organizations as may be  
44 appropriate in the identification and recruitment of potential candidates. If a Council member  
45 encourages a person to apply, the Council member shall not commit in advance to vote for any  
46 applicant and shall make clear to the applicant that no commitment or support for nomination is  
47 implied. A Council member shall disclose to the Council that they have encouraged an applicant  
48 to apply when that applicant is first considered by the Council.  
49

1           **Section 2.     Application Procedure**

2  
3           Each applicant for a judicial or the public defender position shall obtain and complete an  
4 application for appointment provided by the Council and shall comply with all the requirements  
5 therein. Such application may request such information as deemed appropriate to a determination  
6 of qualification for office, including but not limited to the following: family and marital history for  
7 the purpose of identifying possible conflicts of interest; bar and/or judicial discipline history;  
8 criminal record; involvement as a party in litigation; credit history; physical and mental ability to  
9 perform the duties of the office; community activities; academic and employment history; legal  
10 and litigation experience; military record; representative clientele; and possible conflicts of  
11 interest.

12  
13           **Section 3.     Evaluation and Investigation of Applicants' Qualifications**

14  
15           **(A) Judicial Qualifications Polls.** The Judicial Council may conduct judicial qualifications  
16 polls in such form and manner as may be prescribed by the Council and cause the same to be  
17 circulated among the members of the Alaska Bar Association. The poll should be relevant to  
18 criteria listed in Article I, Section 2 of these bylaws. If the Alaska Bar Association conducts a  
19 qualifications poll satisfactory to the Council, the Council may recognize such poll. The Judicial  
20 Council may conduct such other surveys and evaluations of candidates' qualifications as may be  
21 deemed appropriate.

22  
23           **(B) Investigation.** The Council and its staff shall investigate the background, experience,  
24 and other qualifications of an applicant under consideration for a judicial or a public defender  
25 vacancy, and may call witnesses before it for such purposes.

26  
27           **(C) Candidate Interviews; Expenses.** The Council may, when and where it deems  
28 desirable, conduct interviews with one, some, or all applicants for any judicial or public defender  
29 vacancy. The Council will conduct interviews in person but when a candidate is unable to attend  
30 the in-person interview, the Council may arrange for a telephonic or other alternative interview.  
31 The Council may conduct interviews by a committee of the Council at other times and places  
32 when necessary. A candidate may choose to be interviewed publicly or in executive session, to  
33 protect the candidate's privacy interests consistent with Alaska law. The choice to interview  
34 publicly or in executive session will have no bearing on the Council's evaluation of the candidate's  
35 qualifications.

36  
37           A candidate's interview expenses for judicial or public defender office are that candidate's  
38 responsibility. The Council may reimburse candidates for travel expenses in the Council's  
39 discretion. The cost of a telephone interview or other alternative interview requested by the  
40 Council shall be paid by the Council.

41  
42           **Section 4.     Nomination Procedure; Recommendation of Most Qualified**  
43                           **Candidates**

44  
45           As required by the Alaska Constitution Article IV, Section 5, and Alaska law,<sup>4</sup> the Council  
46 shall select two or more candidates who stand out as the most qualified under the criteria set out  
47 in Article I, Section 2 of these bylaws. The names of the selected candidates shall be submitted  
48 to the governor in alphabetical order; but if the Council's vote does not result in selecting at least  
49 two applicants who are sufficiently qualified, the Council shall decline to submit any names and  
50 will re-advertise the position.



1           **Section 5.     Multiple Vacancies**

2  
3           (A) **Same position.** In the case of multiple vacancies at a single court location on the  
4 same court, the Council may accept applications for all positions, and interview and vote on  
5 nominees during the course of one meeting. Applicants may apply and be considered for more  
6 than one vacancy. The Council shall endeavor to nominate at least one more applicant than there  
7 are vacancies, to provide the governor with a choice of at least two nominees for each vacancy.<sup>5</sup>  
8 If the Council is unable to nominate sufficient applicants for all vacancies, considering the most  
9 qualified standard in Article I, Section 2, and Article VII, Section 4, the Council may decline to  
10 send any nominees, or may send nominees to fill a specific vacancy while declining to send  
11 nominees for another. If the Council does not submit names for a vacancy or vacancies due to its  
12 inability to nominate sufficient applicants, it shall re-advertise the position(s).  
13

14           (B) **Different positions.** In the case of multiple vacancies at different court locations,  
15 and/or on different courts, the Council may accept applications for all positions, and interview and  
16 vote on nominees during the course of one meeting. Applicants may apply and be considered for  
17 more than one vacancy. The Council shall endeavor to nominate sufficient applicants to provide  
18 the governor with a choice of at least two nominees for each vacancy. An applicant who is  
19 nominated for more than one vacancy shall be considered a nominee for each vacancy separately  
20 for the purpose of submitting two nominees for each vacancy.  
21

22           **Section 6.     Reconsideration**

23  
24           The Council will not reconsider the names submitted to the governor after the nominees  
25 are submitted unless the disability, death, withdrawal, or unavailability due to appointment to  
26 another position of one or more nominees leaves the governor with fewer than two names for  
27 filling a judicial vacancy. If the governor requests additional nominees in such a situation, the  
28 Council may submit additional names so that the governor has at least two nominees for each  
29 vacancy. The Council may select additional names from the original applicants or re-advertise the  
30 position.  
31

32           **Section 7.     Publication and Review of Procedures**

33  
34           The Council shall establish and follow written forms and procedures for the nomination of  
35 attorneys who apply to be justices, judges, and public defender. The Council shall publish the  
36 bylaws and procedures in its biennial report to the Alaska Supreme Court and Legislature, post  
37 them on its website, and provide them to applicants. The Council shall review these procedures  
38 at intervals not to exceed three years.  
39  
40

41                           **Article VIII**  
42                           **Review of Judicial Performance**

43  
44           **Section 1.     Retention Election Evaluation**

45  
46           The Council shall conduct evaluations of the qualifications and performance of justices  
47 and judges eligible for retention and shall make the results of evaluations public. Evaluations may  
48 include the following: a survey of members of the Alaska Bar Association; surveys of court  
49 employees and other court users; interviews; records of any disciplinary action from the Alaska  
50 Commission on Judicial Conduct and the Alaska Supreme Court; data from the Administrative

1 Office of the Alaska Court System; records of any salary withholding by the Department of  
2 Administration for untimely decisions; review of a judge's record on appeal; credit reports; any  
3 other investigation of matters brought to the Council's attention, and public comment. The Council  
4 shall encourage expanded public participation and comment regarding judicial retention  
5 candidates' qualifications and performances.

## 6 7 **Section 2. Criteria and Performance Standards**

8  
9 The Council shall determine whether a judge has met performance standards by  
10 examining a judge's performance against the following criteria:

11  
12 1. **Legal Ability.** The judge demonstrates knowledge of substantive law, evidence, and  
13 procedure, and clarity and precision in their work.

14  
15 2. **Impartiality/Fairness.** The judge demonstrates a sense of fairness and justice and  
16 treats all parties equally.

17  
18 3. **Integrity.** The judge's conduct is free from impropriety or the appearance of impropriety,  
19 and the judge makes decisions without regard to possible public criticism.

20  
21 4. **Judicial Temperament.** The judge is courteous and free from arrogance, and the judge  
22 manifests human understanding and compassion.

23  
24 5. **Diligence and Administrative skills.** The judge is prepared for court proceedings,  
25 works diligently, and is reasonably prompt in making decisions.

## 26 27 **Section 3. Recommendation and Evaluation Information**

28  
29 Based upon the evaluation and its determination whether a judge has met performance  
30 standards, the Council may provide a recommendation regarding retention or rejection. The  
31 Council may actively support the candidacy of every incumbent judge recommended to be  
32 retained, and may actively oppose the candidacy of every incumbent judge whom it recommends  
33 be rejected. The Council shall publicize its evaluation information and recommendations at least  
34 60 days before the election. The Council shall also provide the information and any  
35 recommendation to the office of the lieutenant governor in time for publication in the election  
36 pamphlet under AS 15.58.050.

## 37 38 **Section 4. Other Judicial Performance Evaluations**

39  
40 The Council may conduct such additional evaluations of judges, other than at the time of  
41 retention elections, at such times and in such a manner as may be appropriate, and may make  
42 the results of such additional evaluations public.

## 43 44 **Section 5. Misconduct or Disability of a Judge or Justice**

45  
46 (A) **Notification.** If the Council has reason to believe that a judge suffers or may be  
47 suffering from a disability that is or may become permanent, or has violated the Judicial Code of  
48 Conduct, the Council shall notify the Alaska Commission on Judicial Conduct.

49  
50 (B) **Independent investigation.** If any complaint against a judge, or petition for disability  
51 from the judge, is pending with the Commission on Judicial Conduct during the judge's evaluation,

1 the Council may independently investigate the facts of the complaint or petition and may take its  
2 investigation findings into consideration when recommending for or against retention of that judge.  
3 In the event the Council concludes that it is unable to adequately evaluate the performance of a  
4 judge, it will inform the public about its decision.

## 5 6 **Section 6. Publication and Review of Procedures**

7  
8 The Council shall establish and follow written forms and procedures for the evaluation of  
9 justices and judges. The Council shall publish the procedures in its biennial report to the Alaska  
10 Supreme Court and Legislature, post them on its website, and provide them to justices and  
11 judges. The Council shall review these procedures at intervals not to exceed four years.

## 12 13 14 15 16 **Article IX** 17 **Confidentiality**

18  
19 Neither Council members nor Council staff shall discuss or disclose, except among  
20 themselves, any matters or materials classified as confidential under these bylaws, or information  
21 discussed in executive session. This mandate of confidentiality survives Council terms of office  
22 and must be observed in perpetuity.

## 23 24 25 **Article X** 26 **External Council Communications**

### 27 28 **Section 1. Prior to Council decisions**

29  
30 (A) **Communications with applicants or judges.** Council staff shall conduct all pre-  
31 application communications with an applicant about the application or the process. Individual  
32 Council members should as much as possible avoid substantive communications pertaining to  
33 the process with applicants or with judges eligible for retention from the time the applications or  
34 judge questionnaires are submitted until completion of the nomination or retention  
35 recommendation vote.

36  
37 (B) **Communications with the public.** Members of the public may wish to communicate  
38 their thoughts about the qualifications of applicants and the performance of judicial officers to  
39 individual Council members. All written communications between a Council member or Council  
40 staff and any other person or organization regarding the qualifications of any applicant or the  
41 performance of any judicial officer should be forwarded to all other members; all oral  
42 communications regarding such matters should be shared with other members. Council members  
43 may encourage people to communicate with the Council in writing or at a public hearing.

### 44 45 **Section 2. After Council Decisions**

46  
47 (A) **Individual Council member viewpoints.** Council members may discuss their  
48 individual views about the qualifications of applicants and the performance of judicial officers with  
49 members of the public, including the applicants and judicial officers. Council members may not  
50 disclose the views of other Council members about the qualifications of applicants and the

1 performance of judicial officers. Communications and deliberations among Council members that  
2 occur in executive session, including discussion about the qualifications of an applicant or the  
3 performance of a judicial officer shall be kept confidential in accordance with the law and Council  
4 bylaws. In no circumstance shall a Council member make any representation regarding an  
5 applicant's future chances of nomination, an individual Council member's intentions regarding  
6 future votes, or any other topics held confidential by these bylaws. The Council may designate a  
7 Council member or staff person to convey recommendations to applicants regarding steps they  
8 could take to improve their qualifications and to judges to convey recommendations regarding  
9 steps they could take to improve their judicial performance.

10  
11 (B) **Communication of Council decisions.** The Council may designate one or more  
12 Council members and/or staff members to communicate the Council's votes on nominees to  
13 applicants and on retention recommendations to judges.

14  
15 (C) **Communications with the Governor.** After the list of nominees has been submitted  
16 to the governor, no Council member, either directly or indirectly, shall initiate contact with the  
17 governor or any member of the governor's office or staff for the purpose of influencing the  
18 governor's decision. However, if contacted by the governor or a member of the governor's office  
19 or staff, Council members may discuss their own views about the qualifications of applicants as  
20 well as publicly available information.

## 21 22 23 **Article XI** 24 **Access to Council Records**

### 25 26 **Section 1. Public Records**

27  
28 All records of the Judicial Council, unless confidential or privileged, are public as provided  
29 in AS 40.25.110. The public shall have access to all public records in accordance with AS  
30 40.25.120. Public Records include:

- 31
- 32 1. Council bylaws and policy statements;
- 33 2. Minutes of Council meetings;
- 34 3. Final Council reports;
- 35 4. Financial accounts and transactions;
- 36 5. Library materials; and
- 37 6. All records other than those excepted in this bylaw.

### 38 39 **Section 2. Right to Privacy**

40  
41 Materials that, if made public, would violate an individual's right to privacy under Art. I,  
42 Section 22, of the Alaska Constitution, shall be confidential. Confidential materials are not open  
43 for public inspection and include:

- 44
- 45 1. Solicited communications relating to the qualifications of judicial or public defender
- 46 vacancy applicants, or judicial officers, including confidential comments received by the
- 47 Council in response to its surveys, responses to counsel questionnaires, responses to
- 48 solicited reference letters, and other investigative materials;
- 49

- 1 2. Unsolicited communications relating to the qualifications of a judicial or public defender  
2 applicant or judicial officer, where the source requests confidentiality;  
3  
4 3. Those portions of the "application for judicial appointment" and "judge questionnaire" that reveal  
5 sensitive personal information entitled to protection under law. Although not public, the  
6 confidential sections of nominees' judicial applications may be provided to the governor;  
7  
8 4. Investigative research materials and internal communications that reveal sensitive personal  
9 information entitled to protection under law; and  
10  
11 5. Contents of Council employees' and members' personnel records, except that dates of  
12 employment, position titles, classification and salaries of present and/or past state employment  
13 for all employees are public information. In addition, application forms, resumes and other  
14 documents submitted to the Judicial Council in support of applications for any position with the  
15 Council grade 16 or above are public information.

### 16 17 **Section 3. Deliberative Process** 18

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

### 25 26 **Section 4. Other Information** 27

28 Information required or authorized to be kept confidential by law is not a public record.  
29

### 30 **Section 5. Privileged Communications** 31

32 Communications that are legally privileged are not public information. These  
33 communications include but are not limited to communications between the Council and its  
34 attorney made for the purpose of facilitating the rendition of professional legal services to the  
35 Council.  
36

### 37 **Section 6. Release of Information** 38

39 If a record contains both disclosable and nondisclosable information, the nondisclosable  
40 information will be deleted and the disclosable information will be disclosed. Information that  
41 otherwise would not be disclosable may be released to the subject of that information or to the  
42 public if it is in a form that protects the privacy rights of individuals and does not inhibit candid  
43 debate during the decision-making process.  
44  
45

## 46 **Article XII** 47 **Office of Judicial Council** 48

1 The Council shall designate an office of the Council in such location as it deems  
2 appropriate. Records and files of the Council's business shall be maintained by the executive  
3 director at this location.  
4  
5  
6

### 7 **Article XIII** 8 **Appropriations** 9

10 The Council will seek such appropriations of funds by the Alaska Legislature and other  
11 funding sources as it deems appropriate to carry out its constitutional and statutory functions.  
12  
13  
14

### 15 **Article XIV** 16 **Bylaw Review and Amendment** 17

18 The Council shall review these bylaws at intervals not to exceed six years. These bylaws  
19 may be altered or amended by the Judicial Council by concurrence of four or more members,  
20 provided reasonable notice of proposed amendments has been provided to all Council members.  
21  
22

23 These bylaws adopted by the Alaska Judicial Council, this 15th day of February 1966; amended  
24 November 10, 1966; June 18, 1970; March 30, 1972; February 15, 1973; May 26, 1983;  
25 December 10, 1986; March 19, 1987; January 14, 1989; November 2, 1993; June 26, 1996;  
26 December 9, 1996; September 23-24, 1997; July 6-7, 1998; July 15, 2002; September 22, 2005;  
27 November 28, 2005; January 31, 2006; October 14, 2006; January 22, 2012; \_\_\_\_\_, 2020.  
28  
29  
30  
31

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<sup>1</sup> Alaska Const. Art. IV, § 6; AS 22.05.100 (Approval or rejection of supreme court justices); AS 22.07.060 (Approval or rejection of court of appeals judges); AS 22.10.150 (Approval or rejection of superior court judges); AS 22.15.195 (Approval or rejection of district court judges); see also AS 15.15.030(10) (specifying that "the question of whether the justice shall be approved or rejected shall be set out in substantially the following manner: (A) Shall . . . be retained . . .?").

<sup>2</sup> Alaska Const. Art IV, § 9. ("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.")

<sup>3</sup> Alaska Const. Art. XII, § 3. See Begich v. Jefferson, 441 P.2d 27, 32. ("[W]e conclude that the term was intended to prohibit all other salaried nontemporary employment under the United States or the State of Alaska.")

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<sup>4</sup> See AS 22.05.080 (Supreme Court Vacancies), 22.07.070 (Court of Appeals Vacancies), 22.10.100 (Court of Appeals Vacancies), and 22.15.170 (Selection of District Court Judges).

<sup>5</sup> See Delahay v. State of Alaska, 476 P.2d 908, 914 (Alaska 1980) (holding that the Judicial Council's sending one more nominee than the number of positions to be filled constituted compliance with the statutory requirements).