

# 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 ~~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~~ 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 ~~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 judicial and public defender selection process.

### Section 23. 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 ~~may recommend the~~ shall conduct an evaluation of each judge eligible for retention in judicial office of incumbent justices and judges found to be qualified through appropriate means of judicial performance assessment; and ~~may recommend against~~ before the retention of justices and judges found ~~election~~, shall provide to be not qualified through assessment processes. The Council shall ~~endeavor to prevent political considerations from outweighing fitness in the judicial retention~~ the public information about the judge, and may provide a recommendation process 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.

1  
2 **Section 34. Concerning Administration of Justice**  
3

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

10  
11 **Section 5. Concerning Council Support of Merit Selection and Judicial Retention**  
12 **System, and Recommendations Relating to the Administration of**  
13 **Justice**  
14

15 (A) **Education.** Council members and staff may speak publicly to inform the public about  
16 the Alaska Constitution's merit selection and retention system and the Council's research and  
17 other programs designed to improve the administration of justice.  
18

19 (B) **Recommendations.** The Council shall make recommendations to the Supreme Court  
20 and to the Legislature to improve the administration of justice.<sup>2</sup> Council members, or staff, may  
21 speak publicly about its recommendations at the direction of the Council by a vote of four or more  
22 members.  
23

24 (C) **Individual Council member speech.** If an individual Council member speaks about  
25 matters concerning the Council or matters relating to the administration of justice not at the  
26 direction of the Council, the Council member is encouraged to carefully consider how their  
27 remarks would affect public confidence in the Council's process, the Council's internal comity,  
28 and other Council members. The Council member shall stress that their viewpoint is their own  
29 and not that of the Council. The member shall not misrepresent the Council process or divulge  
30 confidential communications or documents.  
31  
32  
33

34 **Article II**  
35 **Membership**  
36

37 **Section 1. Appointment; Limitation of Term**  
38

39 Members of the Council shall be appointed and shall serve their terms as provided by law;  
40 however, a member whose term has expired shall continue to serve until a successor has been  
41 appointed. Council members may be appointed to successive terms; however, no Council  
42 member should serve more than two full terms or one unexpired term and one full term.  
43

44 **Section 2. Effective Date of Appointment**  
45

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

1  
2 (B) **Attorney Members.** The effective date of an attorney member's appointment shall be  
3 the day following the effective date of the vacancy in the seat to which appointed, if appointed  
4 before that date; or the date of or specified in the letter of appointment from the board of governors  
5 of the Alaska Bar Association, if appointed after that date.  
6

7 (C) **Chief Justice.** When the ~~supreme court~~ Supreme Court elects a new chief justice, the  
8 newly elected chief begins serving as a member and chair of the Council immediately upon  
9 assuming the office of chief justice.  
10

### 11 **Section 3. Oath of Office**

12  
13 The chair of the Council shall administer the oath of office to each new member, following  
14 a determination by the Council that the person selected has met the qualifications for membership  
15 as set forth by law.  
16

### 17 **Section 4. Vacancies**

18  
19 At least 90 days prior to the expiration of the term of any Council member, or as soon as  
20 practicable following the death, resignation, or announced intent to resign of any Council member,  
21 the executive director shall notify the appropriate appointing authority and request that the  
22 appointment process be initiated immediately to fill the vacancy.  
23

### 24 **Section 5. Disqualification of Member from Application**

25  
26 ~~(A) Candidacy of Council Member.~~ Any member of the ~~Judicial~~ Council who seeks  
27 appointment to a judicial office or the office of public defender ~~should resign at least a year in~~  
28 ~~advance of their application and~~ must resign from the Council as of the date of the application  
29 and should not accept reappointment to the Council for a period of two years ~~thereafter~~ after their  
30 resignation.  
31

### 32 ~~(B)~~ **Section 6. Disqualification for Public Office**

33  
34 No member of the Council, except the Chief Justice, may hold any other office or position  
35 of profit under the United States or the State pursuant to Article IV, Section 8, of the Alaska  
36 Constitution. Service in the armed forces of the United States or of the State is not an office or  
37 position of profit. <sup>3</sup>  
38

### 39 **Section 7. Duties and obligations of members**

40  
41 A member has the following duties and obligations:  
42

43 (A) ~~Attendance at Regular Meetings.~~ Council members shall attend all ~~regular~~ meetings  
44 of the Council unless excused by the chair for good cause. If a member is absent without good  
45 cause for two consecutive meetings, the chair shall formally request the resignation of that  
46 member.  
47

48 (B) **Preparation.** Council members shall complete all necessary preparation for each  
49 meeting.  
50

1 (C) **Compliance.** Council members shall comply with Council bylaws and published  
2 selection and retention procedures.

3  
4 **Section 8. Disability, Dereliction of Duty, or Misconduct**

5  
6 If a member is unable or unwilling to perform the duties and obligations of a member, or  
7 has committed serious misconduct, the chair, upon a vote of four or more members, may take  
8 appropriate action to protect the integrity of the Council's work. Actions may include, but are not  
9 limited to, the following: restricting the member from receiving confidential materials; limiting or  
10 restricting the member from participating in meetings; reprimanding the member; contacting the  
11 appropriate appointing authority; and requesting the member's resignation.

12  
13 **Section 9. Expenses; Compensation**

14  
15 Council members shall be reimbursed for travel and other expenses incurred while on  
16 Council business and may receive compensation as otherwise provided by law.

17  
18 **Article III**  
19 **Officers**

20  
21 **Section 1. Officers Specified**

22  
23 (A) **Officers.** The officers of the Council shall be the chair, vice-chair and executive  
24 director.

25  
26 (B) **Chair.** The Chief Justice of the Alaska Supreme Court is the chair of the Alaska Judicial  
27 Council.

28  
29 (C) **Vice-Chair.** The vice-chair ~~will be~~ is the member of the Judicial Council whose current  
30 term will first expire.

31  
32 (D) **Executive Director.** The Council by concurrence of four or more of its members may  
33 designate an executive director to serve at the pleasure of the Council.

34  
35 **Section 2. Duties and Powers**

36  
37 (A) **Chair.** The chair shall preside at all meetings of the Council and perform such other  
38 duties as may be assigned by the Council. In the absence of an executive director or acting  
39 director, the chair will serve as acting director.

40  
41 (B) **Vice-Chair.** The vice-chair shall preside at meetings of the Council in the absence of  
42 the chair. The vice-chair shall perform such other duties as usually pertain to the office of the chair  
43 when the chair is unavailable to perform such functions.

44  
45 (C) **Executive Director.** The executive director shall keep a record of all meetings of the  
46 Council; shall serve as chief executive officer of the Council; shall be responsible to the Council  
47 for planning, supervising and coordinating all administrative, fiscal and programmatic activities of  
48 the Council; and shall perform such other duties as may be assigned. The executive director may  
49 receive compensation as prescribed by the Council and allowed by law.

1 (D) **Acting Director.** In the event of the incapacity, disability, termination or death of the  
2 executive director, the Council may appoint an acting director, and may impose such limits on the  
3 authority of said acting director as it deems advisable, until such time as a new executive director  
4 can be found, or until such time as the incapacity of the executive director can be cured. Should  
5 the Council choose not to appoint an acting director or otherwise fail to appoint, the chair of the  
6 Council will, ex officio, serve as acting director until a replacement can be found.  
7  
8

## 9 **Article IV** 10 **Meetings**

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

12 All meetings of the Judicial Council, including committee meetings, shall be open to the  
13 public, except as specifically provided. At least three days before any meeting ~~to be held in~~  
14 ~~Anchorage, Fairbanks, or Juneau~~, public notice of the date, time, and place of the meeting and of  
15 general topics to be considered shall be given ~~through paid advertisements in major newspapers~~  
16 ~~of general circulation in all three cities; for meetings by the appropriate means necessary to~~  
17 ~~provide adequate notice to be held elsewhere in the public including the state, paid public notice~~  
18 ~~shall be provided at least three days in advance in the newspaper or newspapers of general~~  
19 ~~circulation in such other areas as well as in the newspapers of general circulation in Anchorage,~~  
20 ~~Fairbanks, on-line public notice system, the Council's website and Juneau social media, and digital~~  
21 ~~and traditional media.~~ Absent sufficient funding or when the notice requirements of this section  
22 are determined by the Council to be unreasonable, the Council is authorized to meet after such  
23 other period and utilizing such ~~other form~~ forms of public notice as it deems reasonable under the  
24 circumstances and which are consistent with the Council's legal obligations.  
25  
26  
27

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

29 The Judicial Council shall meet in person when practicable. ~~When not practicable, the~~  
30 ~~Council may meet remotely using phone and/or video technology.~~ The Council may ~~conduct a~~  
31 ~~teleconference~~ meet remotely between regularly scheduled meetings with the consent of the chair.  
32 A ~~teleconference~~ remote meeting conducted between regularly scheduled meetings is subject to  
33 the notice requirements in Article IV, Section 1 and Article IV, Section 8.  
34  
35

36 A member may participate ~~telephonically~~ remotely in a regularly scheduled meeting only if  
37 the chair has found good cause to excuse the member from attending in person. A member may  
38 ~~only~~ participate ~~telephonically~~ and vote remotely only if the member has had a substantially equal  
39 opportunity to evaluate all meeting materials, ~~participate in proceedings, and evaluate all~~  
40 testimony, and other evidence related to the meeting.  
41

42 Teleconferencing ~~or videoconferencing~~ may be used to receive public input and to  
43 establish a quorum. ~~At least one member or~~  
44

45 Council members and staff ~~person must be present at~~ shall ensure the time and location  
46 ~~publicly announced for any meeting or teleconference conducted by the Council~~ confidentiality of  
47 meetings held with remote participation.  
48

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

1 The Council shall hold two or more meetings per year, at times designated by the Council,  
2 to consider problems that may affect the Council and concern the administration of justice in the  
3 State of Alaska. Regular meetings may be held in conjunction with special meetings.

#### 4 5 **Section 4. Special Meetings**

6  
7 When a vacancy in the office of justice, judge, or public defender actually occurs or is  
8 otherwise determined to be impending, the chair shall call a special meeting of the Judicial Council  
9 within the time-frame required by law. The chair shall also call a special meeting of the Council  
10 upon the request of four or more members to consider business specified in the request; at that  
11 meeting, the Council may also consider other business that may come before the Council with  
12 the consent of four or more of the members present. The chair shall fix the time and place of such  
13 meeting not more than thirty days from the date of receipt of such request.

#### 14 15 **Section 5. Public Hearings**

16  
17 The Council may hold public hearings on all matters relating to the administration of justice  
18 as it deems appropriate and in such places as it determines advisable. The chair may limit public  
19 comment due to time constraints, or to matters relevant to the purpose of the meeting, in their  
20 discretion and as necessary to ensure the efficient conduct of business.

#### 21 22 **Section 6. Executive Sessions**

23  
24 The Council may decide as permitted by law whether its proceedings will be conducted in  
25 executive session. The Council may make this decision by concurrence of four or more members  
26 in a session open to the public. No subjects may be considered at the executive session except  
27 those mentioned in the motion calling for the executive session, unless auxiliary to the main  
28 question. The Council may not vote in an executive session.

#### 29 30 **Section 7. Place of Meeting**

31  
32 To the extent practicable, meetings should be held in the area of the State most directly  
33 affected by the subject matter under consideration.

#### 34 35 **Section 8. Notice of Meeting: Waiver**

36  
37 Notice of each meeting and teleconference shall be sent to all members of the Council as  
38 far in advance as practicable but in any event not less than five days before the date of the meeting  
39 or teleconference. Presence at a meeting or teleconference without objection shall constitute  
40 waiver of notice. When this notice requirement is determined by the chair to be unreasonable, the  
41 Council may meet on shorter notice.

## 42 43 44 **Article V** 45 **Voting and Quorum**

#### 46 47 **Section 1. Voting**

48  
49 All members of the Council present shall be entitled to vote on all matters coming before  
50 the Council, except as provided in Section 2 of this Article and except that the chair shall only  
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1 vote when to do so would change the result. The Council shall act by concurrence of four or more  
2 members. All votes shall be taken in public session. Any member can vote in the affirmative or  
3 negative or abstain on any matter. A member who wishes to abstain shall indicate the intention  
4 to do so prior to the question being called and shall disclose the reasons for the proposed  
5 abstention.

## 6 7 **Section 2. Conflict of Interest; Disclosure and Disqualification**

8  
9 ~~— No member may vote on any matter in which he or she has a substantial personal or~~  
10 ~~pecuniary interest. Any member who believes that his or her personal or business relationship to~~  
11 ~~any applicant for a judicial or public defender vacancy or to any judge or justice being evaluated~~  
12 ~~for retention purposes might prevent the member from fairly and objectively considering the~~  
13 ~~qualifications of such person, or might otherwise involve a conflict of interest or create the~~  
14 ~~appearance thereof, shall disclose the circumstances of the actual or apparent conflict to the~~  
15 ~~Council and shall disqualify himself or herself from discussing or voting on the nomination or~~  
16 ~~retention of that person.~~

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

22  
23 (B) **Disqualification.** A Council member shall recuse themselves from consideration of  
24 an applicant or judge or justice, or from nominations for an entire vacancy, or from consideration  
25 of any other matter, if their ability to consider the person, vacancy, or matter impartially and  
26 objectively might reasonably be questioned.

## 27 28 **Section 3. Quorum**

29  
30 Four members of the Council shall constitute a quorum for the transaction of business at  
31 any meeting. ~~The chair is a member of the Council for all purposes, including the establishment~~  
32 ~~of a quorum.~~

## 33 34 **Section 4. Rules of Order**

35  
36 Robert's Rules of Order ~~Newly~~ Revised, 11<sup>th</sup> ed., will govern the meetings of the Council  
37 to the extent that they do not conflict with these bylaws. ~~The chair may, in their discretion, establish~~  
38 ~~time limitations, call members to order, and take other actions intended to further the work of the~~  
39 ~~Council during a meeting.~~

# 40 41 42 **Article VI** 43 **Committees**

## 44 45 ~~Section 1. Standing Committees~~

46  
47 The Council may establish ~~such standing~~ committees ~~from time to time~~ when it finds them  
48 useful to conduct Council business. The chair may make ~~standing~~ committee assignments  
49 ~~annually. The function of each committee shall be to monitor Council activities between meetings,~~  
50 ~~to provide guidance and advice to staff, and to report to the Council at regularly scheduled~~

~~meetings about the committees' areas of oversight, as needed.~~ 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~~ **nomination** 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. **If a Council member encourages a person to apply, the Council member shall not commit in advance to vote for any applicant and shall make clear to the applicant that no commitment or support for nomination is implied. A Council member shall disclose to the Council that they have encouraged an applicant to apply when that applicant is first considered by the Council.**

### **Section 2. Application Procedure**

Each applicant for a judicial or ~~chief the~~ 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 **for the purpose of identifying possible conflicts of interest**; bar and/or judicial discipline history; criminal record; involvement as a party in litigation; credit history; physical and mental ~~condition and history~~ **ability to perform the duties of the office**; community activities; academic and employment history; **legal and litigation experience**; military record; ~~and~~ representative clientele; **and possible conflicts of interest.**

### **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 ~~4~~**1**, Section ~~4~~**2** of these bylaws. If the Alaska Bar Association conducts a qualifications poll satisfactory to the Council, the Council may recognize such poll. The Judicial

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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~~ interviews with one, some, or all applicants for any judicial or public defender vacancy. ~~Candidates requested to appear before the~~ The Council ~~for such~~ will conduct interviews ~~shall appear~~ in person; but when, ~~however,~~ a candidate ~~for good cause shown~~ is unable to ~~personally~~ attend ~~such~~ the in-person interview, the Council may arrange for an ~~interview by telephone~~ a telephonic or other ~~electronic communication means with such applicant,~~ and ~~such~~ alternative interview ~~as~~. The Council may ~~be appropriate, including but not limited to~~ interview of such candidate ~~conduct~~ interviews by a committee of the Council at ~~such~~ other times and ~~place as may be convenient~~ places when necessary. 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.~~ Alaska law. 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 ~~interview~~ 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 ~~or other alternative interview~~ requested by the Council shall be paid by the Council.

#### **Section 4. Nomination Procedure; Recommendation of ~~Be~~ Most Qualified Candidates**

~~—The~~ As required by the Alaska Constitution Article IV, Section 5, and Alaska law,<sup>4</sup> 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.~~ ~~2 of these bylaws.~~ 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. Multiple Vacancies**

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

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

## **Section 6. Reconsideration**

The Council will not reconsider the names submitted to the governor after the nominees are submitted unless the disability~~or~~, death, ~~withdrawal, or unavailability due to appointment to another position~~ of one or more nominees leaves the governor with ~~less~~**fewer** than two names for filling a judicial vacancy. If the governor requests additional nominees in such a situation, the Council ~~will~~**may** 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 67. 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 ~~L~~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~~**The** Council shall conduct evaluations of the qualifications and performance of ~~such~~ justices and judges **eligible for retention** and shall make the results of evaluations public. Evaluations may ~~be based upon~~**include** the ~~results of~~**following**: a ~~judicial performance survey conducted among all active~~**of** members of the Alaska Bar Association; ~~surveys of court employees and other members, retired or inactive, that the Council chooses. Evaluations also may be based upon such other surveys,~~**court users**; interviews, ~~or research into judicial performance as may be deemed appropriate, including but not limited to;~~**records** of any ~~process that encourages~~**disciplinary** action from the Alaska Commission on Judicial Conduct and the Alaska Supreme Court; data from the Administrative Office of the Alaska Court System; records of any salary withholding by the Department of Administration for untimely decisions; review of a judge's record on appeal; credit reports; any other investigation of matters brought to the Council's attention, and public comment. The Council shall encourage expanded public participation and comment regarding ~~candidate~~**judicial retention candidates'** qualifications and performances.

### **Section 2. —Recommendation Criteria and Performance Standards**

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

3  
4 1. **Legal Ability.** The judge demonstrates knowledge of substantive law, evidence, and  
5 procedure, and clarity and precision in their work.

6  
7 2. **Impartiality/Fairness.** The judge demonstrates a sense of fairness and justice and  
8 treats all parties equally.

9  
10 3. **Integrity.** The judge's conduct is free from impropriety or the appearance of impropriety,  
11 and the judge makes decisions without regard to possible public criticism.

12  
13 4. **Judicial Temperament.** The judge is courteous and free from arrogance, and the judge  
14 manifests human understanding and compassion.

15  
16 5. **Diligence and Administrative skills.** The judge is prepared for court proceedings,  
17 works diligently, and is reasonably prompt in making decisions.

### 18 19 **Section 3. Recommendation and Evaluation Information**

20  
21 Based upon the ~~evaluative data~~ evaluation and its determination whether a judge has met  
22 performance standards, the Council may ~~recommend that any justice or judge either be~~  
23 ~~retained~~ provide a recommendation regarding retention or ~~not be retained~~ rejection. The Council  
24 may actively support the candidacy of every incumbent judge recommended to be retained, and  
25 may actively oppose the candidacy of every incumbent judge whom it recommends ~~not be~~  
26 ~~reject~~ed. The Council shall publicize its evaluation information and recommendations ~~at least~~  
27 60 days before the election. The Council shall also provide the information and any  
28 recommendation to the office of the lieutenant governor in time for publication in the election  
29 pamphlet under AS 15.58.050.

### 30 31 **Section ~~3.~~ 4. Other Judicial Performance Evaluations**

32  
33 The Council may conduct such additional evaluations of judges, other than at the time of  
34 retention elections, at such times and in such a manner as may be appropriate, and ~~may~~ make  
35 the results of such additional evaluations public.

### 36 37 **Section 45. Misconduct or Disability of a Judge or Justice**

38  
39 (A) **Notification.** If the Council has reason to believe that a judge suffers or may be  
40 suffering from a disability that is or may become permanent, or has violated the Alaska Code of  
41 Judicial Conduct, the Council shall notify the Alaska Commission on Judicial Conduct.

42  
43 (B) **Independent investigation.** If any complaint against a judge, or petition for disability  
44 from the judge, is pending with the Commission on Judicial Conduct during the judge's evaluation,  
45 the Council may independently investigate the facts of the complaint or petition and may take its  
46 investigation findings into consideration when recommending for or against retention of that judge.  
47 In the event the Council concludes that it is unable to adequately evaluate the performance of a  
48 judge, it will inform the public about its decision.

### 49 50 **Section 6. Publication and Review of Procedures**

1  
2 The Council shall establish and follow written **forms and** procedures for the evaluation of  
3 justices and judges. The Council shall publish the procedures in its biennial report to the Alaska  
4 Supreme Court and ~~L~~Legislature, post them on its website, and provide them to justices and  
5 judges. The Council shall review these procedures at intervals not to exceed four years.  
6  
7  
8  
9

## 10 **Article IX** 11 **Confidentiality**

12  
13 Neither Council members nor Council staff shall discuss or disclose, except among  
14 themselves, any matters or materials classified as confidential under these bylaws, or information  
15 discussed in executive session. This mandate of confidentiality survives Council terms of office  
16 and must be observed in perpetuity.  
17  
18

## 19 **Article X** 20 **~~Extra-~~ External Council Communications**

### 21 22 **Section 1. Prior to Council decisions**

23  
24 (A) **Communications with applicants or judges.** Council staff shall conduct all pre-  
25 application communications with an applicant about the application or the process. Individual  
26 Council members should as much as possible avoid substantive communications pertaining to  
27 the process with applicants or with judges eligible for retention from the time the applications or  
28 judge questionnaires are submitted until completion of the nomination or retention  
29 recommendation vote.  
30

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

### 39 **Section 2. After Council Decisions**

40  
41 (A) **Individual Council member viewpoints.** Council members may discuss their  
42 individual views about the qualifications of applicants and the performance of judicial officers with  
43 members of the public, including the applicants and judicial officers. Council members may not  
44 ~~publicly discuss~~**disclose** the views of other Council members about the qualifications of applicants  
45 and the performance of judicial officers. Communications and deliberations among Council  
46 members that occur in executive session, including discussion about the qualifications of an  
47 applicant or the performance of a judicial officer shall be kept confidential in accordance with the  
48 law and Council bylaws. **In no circumstance shall a Council member make any representation**  
49 **regarding an applicant's future chances of nomination, an individual Council member's intentions**

1 regarding future votes, or any other topics held confidential by these bylaws. The Council may  
2 designate a Council member or staff person to convey recommendations to applicants regarding  
3 steps they could take to improve their qualifications and to judges to convey recommendations  
4 regarding steps they could take to improve their judicial performance.

5  
6 (B) **Communication of Council decisions.** The Council may designate one or more  
7 Council members and/or staff members to communicate the Council's votes on nominees to  
8 applicants and on retention recommendations to judges.

9  
10 (C) **Communications with the Governor.** After the list of nominees has been submitted  
11 to the governor, no Council member, either directly or indirectly, shall initiate contact with the  
12 governor or any member of the governor's office or staff for the purpose of influencing the  
13 governor's decision. However, if contacted by the governor or a member of the governor's office  
14 or staff, Council members may discuss their own views about the qualifications of applicants as  
15 well as publicly available information.

## 16 17 18 **Article XI** 19 **Access to Council Records**

### 20 21 **Section 1. Public Records**

22  
23 All records of the Judicial Council, unless confidential or privileged, are public as provided  
24 in AS 40.25.110. The public shall have access to all public records in accordance with AS  
25 40.25.120. Public Records include:

- 26  
27 1. Public Records include: Council bylaws and policy statements;  
28 2. Minutes of Council meetings;  
29 3. Final Council reports;  
30 4. Financial accounts and transactions;  
31 5. Library materials; and  
32 6. All records other than those excepted in this bylaw.

### 33 34 **Section 2. Right to Privacy**

35  
36 Materials that, if made public, would violate an individual's right to privacy under Art. I,  
37 Section 22, of the Alaska Constitution, shall be confidential. Confidential materials are not open  
38 for public inspection and include:

- 39  
40 1. Solicited communications relating to the qualifications of judicial or public defender vacancy  
41 applicants, or judicial officers; ~~including confidential comments received by the Council in~~  
42 ~~response to its surveys, responses to counsel questionnaires, responses to solicited reference~~  
43 ~~letters, and other investigative materials;~~  
44  
45 2. Unsolicited communications relating to the qualifications of a judicial or public defender  
46 applicant or judicial officer, where the source requests confidentiality;  
47  
48 3. Those portions of the "application for judicial appointment" and "judge questionnaire" that reveal  
49 sensitive personal information entitled to protection under law. ~~Although not public, the~~  
50 ~~confidential sections of nominees' judicial applications may be provided to the governor;~~

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 XII 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~~ executive director at this location.





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<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).