New language is underlined. Deleted language is ~~strikethrough.~~

Alaska Judicial Council
Procedures for Nominating Judicial Candidates

The Alaska Judicial Council is a constitutionally created state agency that evaluates the applications of persons seeking judicial appointment and nominates two or more qualified applicants to the governor for appointment to fill existing or impending vacancies.[1] This paper summarizes the judicial selection process - the steps that an applicant must take in order to be considered for a judicial appointment and the steps that are taken by the Judicial Council to ensure that applicants are fairly evaluated and that the most qualified are nominated. These procedures are published in the Council's biennial reports to the supreme court and to the legislature and are posted on the Council's website. Every applicant is directed to the Council's website to review the most current version of these procedures.

I. Application Procedures

A. Notice of Vacancy; Recruitment

i. Notice of Vacancy

As soon as possible after learning that a vacancy exists or is about to occur in the supreme court, court of appeals, superior court, or district court, the Council issues a press release announcing the vacancy, posts a notice on its website, and sends notice of the vacancy to all active members of the Alaska Bar Association. The notice describes the judicial vacancy, states the statutory requirements for the position, invites all qualified attorneys to apply, tells interested attorneys how to obtain applications, and sets the deadline for applying. The notice may also state that the Council has the discretion to use applications to make nominations for other pending or impending vacancies at the same level of court in the same location. The application deadline is typically four to five weeks after the Council announces the vacancy.

ii. Recruitment

Council members and staff may actively encourage qualified persons to apply for a judicial position. The Council may cooperate with selection committees of the state bar or local bar associations, or other appropriate organizations to identify and recruit potential applicants. The Council may extend an application deadline to encourage more applications.

B. Application Forms

Application forms for open judicial positions may be requested from the Council's office and are also available on the Council's website. Each applicant seeking to be considered for nomination by the Council to an open judicial position must file a completed Judicial Council application form and must comply with all requirements described in the form.

---

[1] Article IV, Section 5 of the Alaska Constitution; Titles 15 and 22 of the Alaska Statutes.

i. Background Information

The application form asks for information that may be relevant to determine qualifications for office, including but not limited to: academic and employment history; bar and/or judicial discipline history; community service and pro bono activity; community activity and non-legal interests; involvement as a party in litigation; criminal record; credit history; military record; the addresses of all of the applicant's residences in the past five years; and the applicant's ability to perform essential job functions with or without reasonable accommodation. The Council asks each applicant to provide a photograph to assist members in recalling the interviews. The Council also asks whether an applicant prefers to be interviewed in public session or in executive session.

ii. References

The Council requires an applicant to submit the names of three professional references and two character references. The Council asks the applicant to submit the names of attorneys and judges involved in three of the applicant's cases in the past three years that went to trial and three of the applicant's cases in the past three years that did not go to trial but in which the applicant did substantial work. If an applicant does not have three recent cases that have gone to trial, the applicant may submit additional non-trial cases, or may submit less recent trial cases. An applicant must submit the names of persons who can verify and comment about the applicant's past and present employment.

iii. Nature of Law Practice

An applicant is asked to provide detailed information about the applicant's practice of law, including the percentage of practice in state versus federal court, the percentage of practice in civil versus criminal matters, and the percentage of practice at the appellate versus trial court level. An applicant must describe how often the applicant appears in court and must provide an estimate of how many jury and non-jury trials, appellate matters, and administrative hearings the applicant has handled.

iv. Writing Sample

The Council requires a sample of the applicant's writing ten to twenty pages in length, prepared solely by the applicant within the past five years. The Council also asks the applicant to provide a list of any legal publications the applicant has authored. Writing samples must be from closed cases, and any confidential information should be redacted.

v. Information Needed to Determine Potential Conflicts

An applicant is asked to provide the amount and source of the applicant's income for the past three years and the names and occupations of the applicant's immediate family members. The applicant is asked to identify any public or political office the applicant has held. The applicant is asked to provide information about his or her membership in legal and non-legal organizations and other information bearing on potential conflicts of interest.

vi. Short Biography to Post on Council Website

Each applicant submits a brief written summary of his or her background, legal education, and legal experience. The Council posts these summaries on its website and invites attorneys to

review them when responding to Council surveys. Applicants may choose to have their photograph posted on the website with their biographical summary.

vii. Submission of Application; Re-Use of Applications

Applicants must submit the completed application (including the writing sample) and one photograph to the Council on or by the date set forth in the notice of vacancy. An applicant who recently submitted a photo for a prior application may ask to re-use the earlier photo.

An applicant who applies for another judicial position within six months of a prior application may request to rely on his or her most recent application to apply for the new vacancy. The request must be submitted to the Council in writing. The Council may approve the request, but will require the applicant to update the application with any supplemental information.

C. Confidentiality of Application

i. Non-Public Materials

The Council maintains the confidentiality of sensitive and highly personal information in applications, including but not limited to: home and e-mail addresses; home and mobile telephone numbers; social security number; income; names and occupations of immediate family members; formal disciplinary or ethical complaints, charges or grievances brought against the applicant as an attorney or judge that did not result in public discipline; medical and health history; and the financial interests of the applicant. The Council maintains as non-public material all solicited counsel questionnaires, reference letters, and employment verifications. A solicited reference, questionnaire, or employment verification is provided to the governor only if the author states in writing that it can be provided to the governor, and only if the subject of the solicited item is nominated. The Council maintains as non-public material all unsolicited comments and letters for which the author requests confidentiality or which the Council in its discretion believes should remain confidential to protect third parties.

ii. Public Materials

Information not described above as non-public material is set forth in a separate part of the application and is available to the public.

II. Initial Review of Applications; Background Investigation

A. Initial Review for Completeness and Compliance with Statutory Requirements

As soon as possible after applications are received, Council staff review the applications for completeness and may reject non-conforming applications. Staff review applications to determine whether the applicant meets the minimum statutory requirements for the position, including active practice of law and residency requirements. Staff may request additional information from an applicant to resolve any potential problems in meeting statutory requirements. If the additional information does not resolve the problem, staff will refer the issue to the Council to make the determination. The Council may choose to determine the applicant's eligibility immediately, to request further investigation, or to defer a decision pending completion of the interview process. In deciding whether an applicant meets an active practice requirement, the Council will consider whether the applicant has substantially complied with the requirement.

B. Background Investigation

i. Reference Check

Council staff investigate information provided by the applicant. The Council contacts all the applicant's references and former employers. References and prior employers are asked to comment on the applicants' qualifications under the criteria set forth in Article 1, Section 2 of the Council's bylaws and Section VI of these procedures, among other things. Attorneys and judges identified by the applicant as having had recent experience with the applicant are asked to complete questionnaires. The questionnaires ask about the applicant's qualifications and the respondent's opinion of the applicant's suitability for nomination. Questionnaires may be submitted electronically via the Council's website or returned to the Council through the mail. Questionnaire respondents are provided with the option of signing their name or commenting anonymously. The Council does not share with applicants the materials it solicits, including reference letters, employment verification letters, or questionnaires. However, the Council may share with applicants the substance of a solicited comment. The Council does not reveal the identity of the respondent unless the respondent waives anonymity. The reference check takes about six weeks to complete.

ii. Background Investigation

Council staff review bar files for the applicant's history with and standing in the bar, and fee arbitration and grievance histories, whether action was taken or not. It further investigates the allegations if necessary. An applicant's credit report is obtained. Staff investigate whether the applicant has been a party to any civil litigation and if so, what the applicant's involvement was in that litigation and how it was resolved. Staff investigate whether the applicant has had any criminal history, traffic violations, or administrative actions against his or her driver's license. Staff review the applicant's potential conflicts of interest as indicated on the application, or from attorney or public comment or other sources that could pose a significant problem for the proper functioning of the courts if the applicant were appointed. Staff members obtain and/or verify information on pro bono or other legal service activity. Staff members may otherwise investigate any specific verifiable information obtained from any source about an applicant's fitness for office. This may include speaking with the source of that information, researching the internet, newspapers, court files, transcripts, hearing records, or otherwise attempting to ascertain the veracity of the information. In the event this research reveals an issue of concern, Council staff may contact the applicant to offer the opportunity to provide a more detailed written explanation of the issue.

The background investigation normally takes about two months to complete. Because the Council continually solicits and receives public feedback about applicants, a background investigation can extend until the time the Council votes on its nominations.

iii. Evaluation of Writing Samples

After the application deadline, staff evaluate applicant writing samples for organization, use of language, correct grammar and syntax and other characteristics of good writing. Staff also review the samples for the quality of the applicant's legal research and analysis.

III. Bar Survey; Public Comment

A. Bar Survey

i. Form of Survey

The Council surveys all active in-state members of the Alaska Bar Association. The Council also surveys inactive in-state members and in-state retired members and active out-of-state members if those members have made their e-mail addresses available.

The survey asks attorneys to rate each candidate on a five point scale [1 (Poor) to 5 (Excellent)] on six criteria: professional competence, integrity, judicial temperament, fairness, suitability of experience, and overall professional qualifications. Survey respondents indicate whether they based their numerical ratings on direct professional experience, other personal contacts, or professional reputation, or whether they are declining to evaluate a particular candidate due to insufficient knowledge. Respondents with direct professional experience with an applicant are asked to specify whether that experience includes experience within the past five years and whether that experience is substantial, moderate, or limited. Respondents are asked to provide demographic information including their length, location, and type of law practice, and their gender.

The Council asks respondents to write narrative comments about an applicant on the bar survey. Respondents are not required to provide their names with each comment but are encouraged to do so. Respondents are reminded of their ethical obligation to be truthful in all comments submitted. Respondents are assured that their names, if provided, will not be given to applicants and will not be used by the Council to identify the respondent's survey ratings. Sample pages of a bar survey are appended (Attachment A).

ii. Method of Polling

The Council uses an electronic survey ~~and a paper survey~~ to poll attorneys. Surveys are distributed within one week after the application deadline. Attorneys have three to four weeks to respond to the survey.

The Council maintains an updated list of active members, in state inactive members and retired members of the Alaska Bar Association. Immediately after the application deadline, the Council sends the complete list to an independent contractor. The contractor ~~receives paper surveys,~~ administers the electronic survey, analyzes all survey data, and writes a report on the results.

a. Electronic Bar Survey

The contractor sends an email invitation to participate in the bar survey to attorneys on the Council's email list. The invitation provides an attorney with an encoded link to access the survey. The link is specific to the particular attorney's email address, so it cannot be used by anyone other than the intended recipient to access the survey. Attorneys receiving electronic surveys are sent an email reminder before the response deadline, if they have not yet responded to the survey. The contractor ensures the confidentiality and anonymity of the responses. Confidentiality is preserved by encrypting electronic survey data during transmission. To preserve anonymity, the contractor strips each response of its e-mail address, and identifies the electronic

survey response by a randomly assigned control number for each selection. The same ID number is assigned for contemporaneous surveys.

~~b. Paper Bar Survey~~

~~The Council sends paper surveys to in-state active members who have indicated a preference for paper surveys. The paper survey reminds an attorney not to respond to the electronic survey if the attorney responds to the paper survey. Respondents are instructed to place the completed survey inside a plain envelope that is provided by the Council and marked "confidential." That envelope then is placed inside a pre-paid postage return envelope addressed to the Council's contractor, on which the respondent puts his or her name, address, and signature. Upon receipt, the contractor separates the outside envelope from the survey form. Thereafter, the contractor identifies the paper survey response by its control number.~~

iii. Method of Evaluating Survey Results

a. Review of Duplicate Responses

The contractor eliminates the possibility of duplicate responses by comparing the control numbers of ~~paper and~~ electronic survey responses. If the contractor identifies duplicate responses, the contractor discards the survey that is less complete.

b. Numerical Ratings

The contractor prepares a report containing statistical analyses of all survey responses, including average ratings for each quality for each candidate by range. Ratings based on personal contacts or professional reputation are not included in most average ratings. The report provides detailed information about ratings by different demographic groups. The Council may use these data to identify patterns in survey results. The Council may ask the contractor to analyze the report for statistical or other anomalies in the data. The report includes a discussion of methodology and data management procedures. The Council publishes the report of numerical ratings on its website.

c. Bar Survey Comments

The contractor also prepares a separate report that includes a transcription of all respondent survey comments about applicants. If a respondent signed a comment, the respondent's name is transcribed with the comment. If a respondent did not sign a comment, the comment is associated with the new control number assigned by the contractor. The assignment of a new control number precludes the Council from identifying the author of a bar survey comment from a survey respondent who wants to remain anonymous. Staff may investigate substantive comments submitted in the bar survey.

iv. Distribution of Bar Survey Results

The contractor provides the Council with its draft analysis and a transcript of all bar survey comments two to three weeks after the survey response deadline. Shortly thereafter Council staff inform applicants of their draft survey results.

a. Numerical Ratings

Staff inform each applicant of his or her draft ratings and give a general idea of the spectrum of ratings received by other applicants. Staff do not identify the ratings of other applicants.

About one week after staff have contacted all applicants about their ratings, the Council finalizes the draft report and publicly announces the numerical ratings received by applicants who have not withdrawn. An applicant's ratings are not released publicly if the applicant withdraws sufficiently in advance of publication. All applicants who have not withdrawn receive a copy of the complete survey rating analysis. The Council posts the survey rating analysis on its website. The survey rating analysis remains on the Council website for six months after a judicial vacancy has been filled.

b. Bar Survey Comments

Council staff edit the transcribed bar survey comments to remove information that might compromise the identities of respondents. When staff send an applicant his or her numerical ratings, staff include the edited comments pertaining to that applicant. The edited comments indicate whether the comments were signed or unsigned, but all identifying information about the survey respondent is removed. Bar survey comments about applicants are not released publicly, and applicants are not permitted to share them outside the interview room.

To ensure the confidentiality of the written bar survey comments, an applicant is asked to destroy or return to the Council his or her edited comments at the conclusion of the selection process. Comments may be returned at or after the interview, or when the applicant withdraws his or her application.

B. Solicitation of Public Comment

Immediately after the application deadline has passed, the Council issues a press release announcing the names of applicants; it also publicizes and posts on its website the place and approximate date of the Council meeting to interview candidates and vote. In its press release and on its website, the Council invites comments from the public about applicants. The public is invited to write, telephone, email, or fax comments to the Council. The public is also invited to submit comments via the Council's website. The Council also publishes the names of the applicants and information about the public hearing on its ~~Facebook~~ social media platform(s) ~~page~~.

The Council holds a public hearing to receive public comments, normally in the community where the judge will sit. The hearing typically coincides with the meeting to interview applicants. Subject to available funding, the Council advertises its public hearing through paid advertisements in major newspapers in Anchorage, Fairbanks, and Juneau, and in the location of the vacancy if it is outside of these communities. The Council may take public comments telephonically at the Council's expense.

IV. Distribution of Applicant Materials to Council Members

Council staff compile all solicited materials and any unsolicited materials about applicants. Approximately one month before the Council's meeting to interview applicants, Council staff send a packet of materials to each Council member about the applicants. This packet includes:

1. copies of the written applications

2. applicant writing samples and a memo prepared by staff analyzing the samples

3. a staff memorandum summarizing the applicant's discipline files, credit, civil, and criminal history, and conflicts of interest

4. memoranda concerning any other matters investigated by staff

5. a report of the complete bar survey numerical ratings and statistical analysis

6. an unedited transcription of attorney comments submitted in the bar survey, and the edited version received by each applicant

7. if applicable, bar survey ratings received by the applicant in prior applications or judicial retention elections

8. all letters of reference

9. all responses to questionnaires solicited by the Council from attorneys and judges with recent experience with the applicant

10. all public comments

11. any unsolicited materials concerning the applicant

These materials typically exceed one hundred pages of written materials per applicant. Council members review all of these materials before meeting to interview applicants. Staff may supply Council members with electronic versions of these materials instead of, or in addition to, paper copies.

V. Interview Procedures

A. Before the Interview

i. Scheduling

Within a few days after bar survey results are publicly released, the Council schedules specific interview times for applicants. The Council sends letters to applicants notifying them of the date, time, and location of their interview. Applicants are given about four to six weeks' notice of their specific interview time. The Council posts a schedule of interview times on its website. In its notices about the Council meeting to interview applicants, the public is invited to contact the Council or review the Council's website for an interview schedule.

The Council typically interviews all applicants. If an applicant applies for multiple judicial openings that are simultaneously pending, the applicant is interviewed only once for all vacancies.

Interviews usually occur in the location of the vacancy. The Council interviews applicants in person or may arrange an interview by telephone or other electronic means, at its discretion. Expenses incurred by the applicant are the applicant's responsibility, although the Council has the discretion to reimburse applicants for travel expenses or the cost of a telephone interview.

ii. Public and Private Interviews

The application gives applicants a choice between an interview in public session or an interview in executive session. Applicants may change their request at any time before the interview starts. An applicant's choice of a public or private interview has no bearing on the Council's determination of the applicant's qualifications or on the questions the Council may ask. The Council notes on its schedule which interviews are expected to be in public session and which are expected to be in executive session. To the extent possible, the Council schedules public interviews consecutively.

iii. Communicating Comments about Applicants

Without identifying the source, staff inform an applicant of comments about the applicant that were not included in the bar survey comments forwarded to the applicant.

iv. Disclosures by Council Members

When the Council is in public session, each Council member discloses any current or former relationship with an applicant, and the existence of any possible cause for conflict of interest, bias, or prejudice. Members also disclose written communications and any material oral ~~conversations~~ communications the member has had with an applicant or another individual about a past or present judicial application, as required by Article X, Section 1(B) of the Bylaws.

B. The Interview

i. Length of Interview

An interview usually lasts about forty-five minutes.

ii. The Interview Process

The interview is preceded by an introduction of the applicant to all Council members and any Council staff present. The chief justice typically begins the interview by asking the applicant to provide an opening statement concerning the applicant's interest in and qualifications for the position(s). Each Council member is then given an opportunity to question the applicant. After all Council members have completed the first round of questioning, any Council member may ask additional questions. The chief justice also has an opportunity to ask questions. At the conclusion of the interview, and when time permits, applicants may make a brief closing statement and address any matters not raised during the interview.

iii. Focus of Interview Questions: Selection Criteria

The Council's interview questions will focus on matters relevant to determining the applicant's qualifications under the criteria set out in Article I, Section 2 of the Council's bylaws. Council members may inquire about any relevant concerns raised in the materials provided to the Council, any issues raised at the public hearing, or any issues arising from the applicant's testimony before the Council.

Members will not ask questions designed to elicit views on issues likely to be litigated before the applicant, if appointed. Nor will Council members ask about an applicant's political affiliations, religious beliefs, or other "prohibited considerations" listed in its bylaws, except when

reliable evidence or the applicant's own testimony suggests that questions relating to these topics may be reasonably necessary to address specific concerns about the applicant's qualifications. Thus, for example, if the Council received credible and specific information indicating that an applicant's actions on the bench might be influenced by religious bias, Council members could ask questions about the applicant's ability to act fairly and impartially as a judge. Similarly, if an applicant made statements about having strong political affiliations or views, Council members could ask follow-up questions to confirm that these affiliations and views would not carry over to the applicant's judicial performance.

iv. Questions Based on Confidential or Anonymous Sources

When questioning an applicant about information received from a source who was promised confidentiality, Council members phrase their questions to avoid revealing the confidential source's identity, and the Council will not otherwise disclose the source to the applicant during the interview or at any other time. When a Council member asks a question concerning unfavorable information received from a confidential or anonymous source and it appears that the confidentiality or anonymity of the Council's source might impair the applicant's ability to answer the question, the applicant's inability to respond fully will be taken into account. If the applicant can shed any light on the allegation, the Council will consider the applicant's explanation; if not, the applicant's failure to explain will have no negative effect on the Council's decision. An applicant who is asked such a question has no "burden" to defend against the confidential or anonymous allegation; and the mere fact that a Council member asks about a confidential or anonymous allegation does not imply that the Council member or the Council as a whole assume that the allegation is true. Although Council members may ask such questions to determine if the applicant might be able to shed light on the issue, members always bear in mind that, ultimately, anonymous allegations cannot be held against an applicant unless they are corroborated, independently substantiated, or acknowledged by the applicant.

VI. Nomination Procedures

A. Criteria for Evaluating Qualifications of Individual Applicants

Article I, Section 2 of the Council's Bylaws requires Council members to determine the qualifications of individual judicial applicants by considering the following selection criteria:

- Professional Competence, Including Written and Oral Communication Skills. When addressing professional competence, Council members consider intellectual capacity, legal judgment, and substantive and procedural knowledge of the law, and the ability to work well with a variety of types of people. Because communications play a vital role in any judge's work, Council members assess an applicant's ability to communicate in writing and speaking. Members consider the applicant's ability to discuss factual and legal issues in clear, logical, and accurate legal writing. They also consider the applicant's effectiveness in communicating orally in a way that will readily be understood and respected by people from all walks of life.

- Diligence and Administrative Skills. Council members consider the applicant's diligence and organizational and administrative skills.

- Integrity. In evaluating integrity, Council members consider whether the applicant has demonstrated a consistent history of honesty and high moral character in the applicant's professional and personal life. Members also consider the applicant's respect for

professional duties arising under the codes of professional and judicial conduct, as well as the applicant's understanding of the need to maintain propriety and the appearance of propriety.

- Fairness. To assess an applicant's fairness, Council members examine whether the applicant has demonstrated the ability to be impartial to all persons and groups of people. Members look for applicants who have shown themselves to be open-minded and capable of deciding issues according to the law, even when the law conflicts with their personal views.

- Temperament. In assessing an applicant's temperament, Council members consider whether the applicant possesses compassion and humility; whether the applicant has a history of courtesy and civility in dealing with others; whether the applicant has shown an ability to maintain composure under stress; and whether the applicant is able to control anger and maintain calmness and order.

- Judgment, Including Common Sense. To determine an applicant's judgment and common sense, Council members look for a sound balance between abstract knowledge and practical reality: members consider whether, in making decisions in the legal arena or in other spheres of life, the applicant has demonstrated the ability to make prompt decisions that resolve difficult problems in a way that makes practical sense within the constraints of any applicable rules or governing principles.

- Legal and Life Experience. Council members consider both legal and life experience. They evaluate the amount and breadth of an applicant's legal experience and the suitability of that experience for the position sought, including trial and other courtroom experience and administrative skills. At the same time, Council members look for broader qualities reflected in the applicant's life experiences, such as the diversity of the applicant's personal and educational history, exposure to persons of different ethnic and cultural backgrounds, and demonstrated interests in areas outside the legal field.

- Demonstrated Commitment to Public and Community Service. In assessing an applicant's commitment to public and community service, Council members consider the extent to which an applicant has demonstrated a commitment to the community generally and to improving access to the justice system in particular.

- Demonstrated Commitment to Equal Justice and the Legal Needs of the Diverse Communities of Alaska. Council members consider each applicant's demonstrated commitment to equal justice and the legal needs of the diverse communities of Alaska.

B. Initial Discussion of Individual Applicant's Qualifications

Immediately after concluding an individual applicant's interview, the Council discusses that applicant to enable each Council member to evaluate the applicant's qualifications under the selection criteria described above and in Article I, Section 2 of the Council's Bylaws. The Council holds the discussion in executive session to promote candid discussion about the qualifications of applicants. Each Council member is given an opportunity to comment on that member's assessment of the applicant; the order of discussion follows the order in which Council members questioned the applicant.

At this stage, the discussion centers on the individual applicant's strengths and weaknesses under the selection criteria. Council members do not decide which applicants rank as most qualified among all the applicants. Each Council member independently assesses the individual applicant's qualifications. The Council does not attempt to reach a consensus, and no vote occurs.

After each member has spoken, all members have an opportunity to make further comments. The discussion then ends, and the Council turns to the next applicant interview, if any is scheduled. The Council repeats the same procedure until all candidates have been interviewed and their individual qualifications have been discussed.

C. Deliberation to Determine Most Qualified Applicants

After all applicants have been interviewed, the Council deliberates on the entire slate of candidates. By this time, each Council member has evaluated the individual qualifications of all applicants under the criteria described in Article I, Section 2 of the bylaws; the deliberations now turn to comparing and ranking all applicants so that each member can identify the candidates whose overall qualifications, in that member's view, make them most qualified to be nominated. The procedure for making this determination is spelled out in Article VII, Section 4 of the Council's bylaws. This section requires Council members to select the candidates who are most qualified under the criteria described in Article I, Section 2 by considering:

- All Candidates Who Have Applied. Each Council member compares the relative standing of all applicants, relying on that member's independent judgment as to each candidate's individual qualifications according to Article 1, Section 2's selection criteria.
- The Position Applied For. Each Council member takes into account the specific level of judgeship applied for and considers the ability of each candidate to serve at that level.

- The Community in Which the Position is Located. Each Council member considers the needs of the particular community where the new judge will serve.

In all cases, then, each Council member's final choice of the most qualified applicants will reflect a relative determination that depends in part on the strength of the entire slate of applicants, the nature of the open position, and the needs of the community to be served.

With these procedures in mind, the Council begins its deliberations. It deliberates in executive session to promote candid discussion about the qualifications of applicants in order to determine the most qualified applicants. The order of discussion usually follows the order in which Council members questioned the first applicant for the position; any comments from the chief justice come last. After each Council member has spoken, all members may engage in additional discussion until no member wishes to make further comments.

Although all members consider the views of other members and strive for consensus if possible, each ultimately makes an independent decision as to which candidates are most qualified under the Council's selection standards, voting on the basis of the member's personal judgment and conscience. No vote is taken in executive session. The Council has no policy regarding the ideal or “target” number of applicants who should be named as most qualified — either generally or for any given judicial position. In each case, the number of candidates nominated is simply determined by how many candidates receive four or more affirmative votes — a determination that occurs in the public session after the Council ends its deliberations.

D. Vote to Nominate Most Qualified Applicants

As soon as practicable after the Council completes its deliberations in executive session, it goes into public session and takes its formal vote to nominate the most qualified applicants. Each Council member votes according to that member's personal assessment of the applicants' qualifications as determined under the criteria and procedures set out in this statement of procedures. The vote consists of a roll call vote taken for each applicant individually, in alphabetical order. The Council's executive director ordinarily calls the roll. After the roll call is completed as to all applicants for a vacancy, the person administering the voting confirms that no further voting by regular members is needed and declares voting by regular members closed. At any time during the voting on a vacancy until the person administering the voting declares voting by regular members closed, Council members may change their vote for or against any applicant. Once voting by regular members is closed, the chief justice votes if the vote might affect the outcome.

To be nominated, a candidate must receive four or more affirmative votes. If the Council votes to nominate fewer than two applicants, it will decline to submit any names. Typically, the Council will re-advertise the position immediately.

E. Prohibited Considerations in Determining Qualifications and Voting

i. Anonymous Comments

Council members do not rely on anonymous comments unless they are corroborated, independently substantiated, or acknowledged by the applicant.

ii. Discrimination

The Council refrains from any form of discrimination prohibited under state and federal law.

iii. Religious and Political Beliefs

The Council does not consider an applicant's political or religious beliefs, but will consider whether the applicant's personal beliefs indicate a substantial bias or conflict of interest that could impede the proper functioning of the courts or show that the applicant would be unable to apply the law impartially.

iv. Likelihood of Appointment

The Council does not consider an applicant's likelihood of appointment by the governor.

VII. Post-Nomination Procedures

A. Notification of Applicants

At the interview, applicants are asked for contact numbers where they can be reached immediately after the Council's vote. As soon as possible after the Council completes its vote, the Council's executive director or designee telephones applicants about the Council's vote. The Council also sends each applicant written notice of its decisions. Nominations are posted on the

Council's website as soon as possible after the meeting. The Council issues a press release about its nominations. The vote tally sheet is attached to the press release.

B. Council Member Materials

Each Council member returns all meeting materials to staff at the conclusion of each meeting. Any member who received an electronic copy of the meeting materials, deletes the electronic copy.

C. Transmittal to the Governor

i. Preparation of List of Nominated Candidates and Press Release

As soon as possible after the Council meeting, staff prepare a list of nominated candidates compiled in alphabetical order. Staff also prepare a press release listing the Council's nominees.

~~ii. Call to Governor's Office~~

~~Except for cause, as soon as possible after individual applicants are notified, Council staff contact the governor's office to communicate the Council's nominations.~~

~~iii.~~ ii. Written Notification to Governor

Except for cause, on the first business day after the Council's vote and the conclusion of the meeting, the Council sends the governor a letter listing the nominees in alphabetical order, accompanied by the following materials: the Council's vote tally; each nominee's application, including the confidential sections; the results of any qualification surveys, without comments provided to the Council in confidence; written responses solicited by the Council from persons identified by the nominee in his or her application as references, former employers, and attorneys and judges who had recent experience with the nominee, but only if these persons gave written permission to send their responses to the governor; and any unsolicited materials received by the Council about the nominee, unless the source requested, in writing, that the material be kept confidential. The Council also sends an electronic recording of the public hearing, if one is available.

D. Requests for Additional Names; Reconsideration

The Council does not reconsider its nominees after the names are submitted except in the case of death, disability, or withdrawal of a nominee. If the death, disability, or withdrawal of one or more nominees leaves the governor with fewer than two names for filling a vacancy, the Council may, upon request of the governor, submit enough additional names so that the governor has at least two nominees for the vacancy. The Council will vote to determine if there are additional applicants who can be nominated from the original list of applicants. If no candidate receives sufficient votes to be nominated, the Council will re-advertise the position.

Effective date: October 3, 2005, amended October 17, 2009, amended June 20, 2012, amended October 9, 2013, amended January 16, 2015, amended January 15, 2019, amended January 28, 2021, amended March 4, 2021; ____, 2027.

Attachment A

Sample Judicial Council selection survey document

alaska judicial council

510 L Street, Suite 450, Anchorage, Alaska 99501-1295 (907) 279-2526 FAX (907) 276-5046
http://www.ajc.state.ak.us E-Mail: postmaster@ajc.state.ak.us

January 12, 2021

Dear Member of the Alaska Bar Association:

Seven individuals have applied to the Alaska Supreme Court. The Alaska Judicial Council is required by law to evaluate applicants for judicial positions. Applicant biographies can be accessed on the Council's website: http://ajc.alaska.gov/selection/bios.html#may2021

The Council is seeking your help in rating and providing comments about the applicants' professional competence, integrity, and suitability to serve in the position. Given your experience as an attorney in Alaska and the potential that you know and/or have worked directly with one or more applicants, your input is highly valued. Participation from as many attorneys as possible will ensure that the survey findings are representative. As part of the merit-based selection process, the Council relies on survey findings as an important part of its review of each applicant's qualifications.

The survey is short; we estimate that it will take 2-3 minutes per applicant to complete. In addition to requesting numerical ratings, the Council encourages narrative comments. Please refer to Professional Conduct Rule 8.2 concerning your obligation to provide truthful and candid opinions on the qualifications and integrity of these applicants.

It is possible you may have rated these applicants in the past. The Council can only consider responses obtained through the current survey. Therefore, we ask that you rate any applicant for whom you have basis, even if you may have rated the individual in a previous survey.

We ask that you complete and return the survey no later than **February 8, 2021**. You may also receive an email invitation to complete the survey online. If you respond to the electronic survey, please do not respond to this paper survey.

On behalf of the Council, thank you for your time. The Council appreciates your willingness to share your opinions and experience.

Susanne DiPietro

Susanne DiPietro
Executive Director

Attachment A - Continued

Sample Judicial Council selection survey document

Introduction

Validation of Responses. A postage-paid business reply envelope is enclosed for the return of your completed evaluations. Place the completed survey inside the envelope marked "Confidential" and seal the envelope. Place that envelope inside the business reply envelope, being sure to sign in the space provided. The return envelope **MUST BE SIGNED** in order for your survey to be counted.

Confidentiality. All responses will be aggregated for statistical analysis. The identity of individual respondents will remain strictly confidential. Responses to the demographic questions also are confidential. Demographic data are critical to our analysis; strict guidelines are followed to protect the identities of all respondents.

The Council gives attorneys the option of identifying their written comments to the Council by signing comment pages. While optional, providing your name tends to give comments more credibility with the Council. The Council does not consider unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant. Your name will not be provided to the applicant, and it cannot be used by the Council to identify your ratings or your unsigned comments on other applicants. Survey comments will be shared with an applicant only after the comments have been edited to remove information that might identify the respondent. Note that you must write your name on each comment page for which you wish to identify yourself to the Council.

Return Date. Please complete and return this survey no later than **February 8, 2021**, to:

UAA - Institute of Social and Economic Research
P.O. Box 230952
Anchorage, AK 99523

Questions. If you have questions about the survey, please contact Ashley Hannigan at UAA Institute of Social and Economic Research at (907)786-5441 or ahannigan@alaska.edu. If you have questions for the Alaska Judicial Council, please contact Susanne DiPietro at postmaster@ajc.state.ak.us.

Attachment A - Continued

Sample Judicial Council selection survey document

Demographic Questions

1. Type of Practice. Which of the following best describes your practice? (CIRCLE ONE)

    1. Private, solo
    2. Private, office of 2-5 attorneys
    3. Private, office of 6 or more attorneys
    4. Private corporate employee
    5. Judge or judicial officer
    6. Government
    7. Public service agency or organization (not government)
    8. Retired
    9. Other (specify) _____

2. Length of Alaska Practice. How many years have you practiced law in Alaska?
_____ years

3. Gender. _____Male _____Female _____Another identity

4. Cases Handled. The majority of your practice consists of (CIRCLE ONE)

    1. Prosecution
    2. Criminal
    3. Mixed criminal and civil
    4. Civil
    5. Other (specify) _____

5. Location of Practice. In which judicial district is most of your work conducted? (CIRCLE ONE)

    1. First District
    2. Second District
    3. Third District
    4. Fourth District
    5. Outside Alaska

Certification

I certify that I will answer this survey truthfully in accordance with Professional Conduct Rule 8.2.

□ Yes □ No

Attachment A - Continued

Sample Judicial Council selection survey document

Alaska Supreme Court

REQUIRED A-B Basis for Evaluation

A. Which of the following best describes the basis for your evaluation of this applicant? Direct professional experience is limited to direct contact with the applicant's professional work. This includes working with or against the applicant on a legal matter (i.e., a case, arbitration, negotiation. . .) or as a judicial officer or other dispute resolution role. (check one)

□ Direct professional experience □ Professional reputation □ Other personal contacts □ Insufficient knowledge to evaluate this applicant (go to next applicant)

B. If you selected direct professional experience:

1. Does your experience with this applicant include experience within the last five years? □ Yes □ No
2. Please describe the amount of your experience with this applicant. □ Substantial □ Moderate □ Limited

C. Please rate the applicant on each of the following qualities by circling the number that best represents your evaluation. Applicants should be evaluated on each quality separately. Use the ends of the scales as well as the middle. The tendency to rate an applicant "excellent" or "poor" on every trait should be avoided since each person has strengths and weaknesses. If you cannot rate the applicant on any one quality, leave that one blank.

	1	2	3	4	5
1 PROFESSIONAL COMPETENCE	POOR Lacking in knowledge and/or effectiveness	DEFICIENT Below-average performance occasionally	ACCEPTABLE Possesses sufficient knowledge and required skills	GOOD Usually knowledgeable and effective	EXCELLENT Meets the highest standards for knowledge and effectiveness
2 INTEGRITY	POOR Unconcerned with propriety and/or appearance, or acts in violation of codes of professional conduct	DEFICIENT Appears lacking in knowledge of codes of professional conduct and/or unconcerned with propriety or appearance at times	ACCEPTABLE Follows codes of professional conduct, respects propriety and appearance of propriety at all times	GOOD Above average awareness of ethics, holds self to higher standard than most	EXCELLENT Outstanding integrity and highest standards of conduct
3 FAIRNESS	POOR Often shows strong bias for or against some person or groups	DEFICIENT Displays, verbally or otherwise, some bias for or against groups or persons	ACCEPTABLE Free of substantial bias or prejudice towards groups or persons	GOOD Above average ability to treat all people and groups impartially	EXCELLENT Unusually fair and impartial to all groups
4 JUDICIAL TEMPERAMENT	POOR Often lacks compassion, humility, or courtesy	DEFICIENT Sometimes lacks compassion, humility, or courtesy	ACCEPTABLE Possess appropriate compassion, humility, and courtesy	GOOD Above average compassion, humility, and courtesy	EXCELLENT Outstanding compassion, humility, and courtesy
5 SUITABILITY OF THIS APPLICANT'S EXPERIENCE FOR THIS VACANCY	POOR Has little or no suitable experience	DEFICIENT Has less than suitable experience	ACCEPTABLE Has suitable experience	GOOD Has highly suitable experience	EXCELLENT Has the most suitable experience possible for this position
6 OVERALL RATING FOR THIS POSITION	POOR Has few qualifications for this position	DEFICIENT Has insufficient qualifications for this position	ACCEPTABLE Has suitable qualifications for this position	GOOD Has highly suitable qualifications for this position	EXCELLENT Has exceptionally high qualifications for this position

Attachment A - Continued

Sample Judicial Council selection survey document

Comments

Please add any comments you believe would aid the Judicial Council in its evaluations. The Council is particularly interested in your assessment of the applicant's professional competence, including written and oral communication skills; integrity; fairness; temperament; diligence; judgment, including common sense; legal and life experience and demonstrated commitment to public and community service. Please refer to Professional Conduct Rule 8.2 concerning your obligation to provide truthful opinions. If you need more space, please attach additional pages. Write the applicant's name on each additional page.

Please use the pages provided at the end of the survey, or another sheet of paper, for additional comments.

Print Name (Optional)

Anonymity

To promote a candid response, your comments remain anonymous to the applicant whether or not you sign your name. Providing your name is optional but does give your comments added credibility with Council members. The Council does not consider unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant. Your name will not be given to the applicant. Survey comments will be shared with an applicant only after the comments have been edited to remove information that might identify the respondent. The survey contractor provides the Council with a separate comment section on each applicant. Thus, you will have to write your name on each comment page for which you wish to identify yourself to the Council. Survey comments are not released publicly.