

# **Selecting and Evaluating Alaska's Judges: 1984 - 2007**

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## Acknowledgments

The list of people who have volunteered their time to serve on the Judicial Council reads like a Who's Who of distinguished Alaskans. (See Appendix A.) Council staff would like to recognize their considerable efforts. The chief justice's term on the Council corresponds to his or her term as chief justice, usually three years. Other members serve six year terms. The number of judicial vacancies and the number of applicants per vacancy have increased substantially, particularly in recent years. The Council has had to meet more frequently and for longer periods of time. Currently, members meet about fifteen days each year in several locations throughout the state. Meeting time is only a portion of the time donated by Council members. In advance of each judicial selection and retention meeting, members must review about 100 pages of materials about each judicial applicant or judge. Each member averages about 150 volunteer hours per year, not including the travel time and non-meeting time members must spend in communities away from home. Unlike members of some boards and commissions, Council members receive no form of compensation, other than reimbursement for their travel expenses. The high quality of Alaska's judiciary, noted in this report, is a testament to their efforts.

We would also like to acknowledge the work of Kathy Grabowski, a member of our staff, whose meticulous entry of data about judicial applicants and judges enabled our analysis.

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## **Executive Summary**

The Judicial Council, a citizens' commission of three non-attorneys, three attorneys, and the chief justice, was established in Alaska's constitution at statehood. When there is a judicial vacancy, attorneys must apply to the Council, which nominates two or more most qualified applicants to the governor for appointment. Following appointment, judges periodically stand for election on the general ballot. By law, the Council evaluates their performance and reports its evaluations to voters.

The Council prepared this report to identify the factors most closely associated with applicants for judicial positions, nominees, and appointees. The report documents the substantial changes that have occurred in the characteristics of the bar and applicants in the years between 1984 and 2007, and notes changes in the numbers of vacancies and applications during that period.

This report will better inform the public, bar members, prospective applicants, and the judiciary about the Council's practices, the performance of Alaska's judges, and the applicant qualifications associated with nomination by the Council and appointment by the governor. The report also provides information to the Judicial Council about its own performance and promotes the Council's ability to fulfill its constitutional and statutory responsibilities in the best way possible.

## **Summary of Findings**

### **Judicial selection process**

#### **Judicial vacancies and applicants**

[pp. 5-8 ]

- Judicial vacancies have increased substantially.
- The average number of applicants for each vacancy has increased substantially.
- The Council nominated about 38% of judicial applicants.
- The Council nominated more than the minimum number of applicants 75% of the time.

#### **Demographic characteristics of applicants, nominees and appointees**

[pp. 8-12; pp. 23-24]

- Applicants are older, but age was not associated with the likelihood of nomination.
- Applicants have more years of Alaskan residency and legal practice than in the past.
- A higher percentage of applicants are women, tracking a similar change among the Alaska bar membership. The percentage of women nominated tracked the percentage at which they applied, but the percentage of women appointed has declined substantially.
- Trial court judges' salaries are higher than the average incomes of bar members and applicants, suggesting that salaries and benefits have been an incentive for attorneys to apply.

### **Legal experience of applicants, nominees and appointees**

[pp. 12-19 ]

- Most applicants had practiced in both the public and private sectors. Applicants with only private sector experience were less likely to be nominated and appointed.
- More applicants between 2003-2007 were employed in the public sector at the time of their application than in earlier years.
- Over half of the applicants had worked as public defenders or prosecutors.
- The Council nominated about the same number of applicants with prosecutorial experience as it did applicants with public defense attorney experience. It nominated applicants with public defense experience at a higher rate than they applied, and prosecutors at about the same rate at which they applied.
- Private practitioners and attorneys who practiced mainly civil law were more likely to apply for superior court, while prosecutors were more likely to apply for district court. Public criminal defense attorneys applied about equally for both types of courts.
- Most applicants appeared in court regularly during the five years immediately preceding their applications. Two-thirds of them had substantial jury trial experience in that same period.

### **Relationship of bar survey scores to nomination and appointment**

[pp. 25-29]

- Applicants with higher survey scores (3.5 and above) were more likely to be nominated. A high score, or high rank in the bar survey for a particular vacancy, did not guarantee nomination.
- There was little difference between nominees and appointees on bar survey scores.
- Appellate applicants, nominees and appointees had higher average scores than the corresponding trial court groups.

### **Relationship of other applicant information to nomination and appointment**

[p. 24; pp. 29-30]

- Higher writing sample scores were associated with a greater chance of nomination and appointment for all levels of court.
- The Council examination of each applicant included a review of reference letters, credit and criminal histories, disciplinary records, and community, bar and pro bono service. The Council also sought public comment and held a public hearing before making its nominations.
- The Council did not consider unsubstantiated unsigned comments on the bar survey, the likelihood of appointment by the governor, or any factor prohibited by state or federal law.

- Council members believed that counsel questionnaires and signed comments on bar surveys were important factors to consider. They believed that the interview was one of the most important aspects of the selection process.

### **The retention evaluation process**

[pp. 31-36]

- About two-thirds of Alaska's voters approve of Alaska judges when the judges stand for retention, with a higher percentage of "yes" votes in the First and Second Judicial Districts.
- Most voters – 84%-87% of them – cast a vote on judges when they are voting.
- The Council surveyed several thousand Alaskans for each retention evaluation, including police and probation officers, bar members, jurors, court employees, and social workers.
- Attorney ratings of judges have improved since 1984.

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## Introduction

The constitution emphasizes public participation in the process of choosing and retaining judges, through the governor's appointment of non-attorney members to the Council, and through the requirement that judges appear on the general ballot periodically for retention. To give citizens the most information possible about its work, the Council publishes a wide variety of material on its website.<sup>1</sup> Brief biographies of judicial applicants, copies of their applications, survey scores and other public materials, and a detailed description of the Council's procedures all are available on the Internet. Equally detailed information is available about every judge standing for retention. Periodically, Council staff speak to the bar or public about selection and retention. And, as described later in the report, the Council holds public hearings and solicits public comments for each judicial selection process, and during each retention evaluation period.

This report provides a different sort of information about judicial selection and retention.<sup>2</sup> Using data about each application, and each judge standing for retention, the Council looked in detail at the factors that might be considered by its members when it makes its decisions. Using standard statistical techniques, it found that some factors appeared less important, while others were closely associated with greater or lesser chances of nomination, appointment, and high ratings as a judge.

The report also notes the substantial changes that have occurred both in the bar and among applicants since it began collecting data in 1984. More bar members are employed by government than was the case twenty years earlier. Finally, the report documents the substantial changes that have occurred in the numbers of vacancies and applications between 1984 and 2007.

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<sup>1</sup> The Council's web site is [www.ajc.state.ak.us](http://www.ajc.state.ak.us). It includes links to all of its reports, links to historical documents about judicial selection, and links to a wide variety of state and federal agencies and organizations.

<sup>2</sup> This report builds on the work done by the Council in its 1999 report, FOSTERING JUDICIAL EXCELLENCE: A PROFILE OF ALASKA'S JUDICIAL APPLICANTS AND JUDGES, available at the Council's website under "Publications."

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# Part 1

## Merit Selection and the Alaska Judicial Council

### A. Background

Delegates to Alaska’s constitutional convention identified the merit selection system<sup>3</sup> as the best way to appoint the most qualified applicants to judicial positions<sup>4</sup> and to maintain an appropriate balance between judicial independence and judicial accountability to the public. The constitution they adopted in 1956 established the Alaska Judicial Council to implement the merit selection system.<sup>5</sup> The constitution includes a separate section that required the Council to “conduct studies for improvement of the administration of justice,” and to report periodically to the supreme court and the legislature.<sup>6</sup>

The seven-member Council includes three non-attorney members appointed by the governor and confirmed by the legislature, and three attorney members appointed by the Alaska Bar Association, all of whom serve staggered six-year terms. The Chief Justice serves as chair ex officio during the three years of the chief justice’s term.

The constitution and state law require each judge to stand periodically for an unopposed retention election.<sup>7</sup> In 1975, the legislature enacted legislation that required the Council to evaluate judges on the ballot.<sup>8</sup> It also authorized the Council to recommend whether the public should vote to retain each judge in office.

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<sup>3</sup> Alaska’s system is usually known as the “Missouri Plan,” named after the first state to use it. Alaska is one of thirty-seven states that use merit selection for some or all of their judges.

<sup>4</sup> Mr. Ralph Rivers, a member of the Judiciary Committee at Alaska’s Constitutional Convention said that merit selection would provide “an orderly screening process” in which the “Judicial Council will seek for the best available timber . . .” *Alaska Constitution Convention Minutes*.

<sup>5</sup> Alaska Constitution Article IV, Section 8.

<sup>6</sup> Alaska Constitution Article IV, Section 9.

<sup>7</sup> Judges appointed to the bench serve a short initial term before their first retention election. District court judges stand for retention at the first general election more than two years after the date of their appointment (AS 15.35.100); all other judges and the supreme court justices stand for retention election at the first general election more than three years after the date of appointment, Alaska constitution, Art. IV, Sec.6; AS 15.35.030; AS 15.35.053; AS 15.35.060. They then stand periodically in unopposed retention elections. District court judges serve four-year terms. Superior court judges serve for six years, court of appeals judges for eight years, and supreme court justices for ten years.

<sup>8</sup> AS 15.58.050.

## **B. Judicial selection**

When a vacancy occurs, the Judicial Council solicits applicants for the position over a one month period.<sup>9</sup> The Council then conducts a comprehensive investigation of the applicants. The Council asks the public for comments; reviews criminal and credit records; examines any litigation involving the applicant; looks at bar or judicial disciplinary records; sends out requests for more detailed information to attorneys/judges in recent cases handled by the applicant; checks references supplied by the applicants; contacts all former employers; surveys Alaska Bar Association members about legal skills; integrity and other qualities; and conducts any other investigation.

Council members meet to conduct a public hearing and interview every applicant for the vacancy.<sup>10</sup> Most meetings are in the location of the vacancy to encourage public participation. At the end of the interviews, the Council discusses the applicants, and votes on the two or more most qualified to nominate for appointment.<sup>11</sup>

Although the Council's collective decisions are examined in the report, it is important to note that each Council member votes separately. It takes four votes for an applicant to be nominated. The chief justice only votes when his or her vote affects the outcome. Typically Council members agree about the most qualified applicants.<sup>12</sup>

## **C. Judicial retention**

The Council conducts a thorough evaluation of the performance of judges on the ballot. The Council solicits public feedback; reviews appellate affirmance rates of trial judges; conducts statewide public hearings; surveys attorneys, peace and probation officers, social workers, court employees, and jurors about the performance of these judges; requests more detailed information from attorneys in recent cases handled by the judge; reviews bar and disciplinary records; examines disqualification and peremptory challenge rates; looks at any conflicts of interest; and investigates further if needed. The Council votes in public session whether to recommend each judge's retention. Each Council member votes whether to recommend a judge for retention. Judges receiving four or more votes in favor are recommended for retention. The Council's recommendations and summaries of its evaluation are published in the lieutenant governor's statewide voters' pamphlet,<sup>13</sup> posted on the Council's website, and advertised statewide.

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<sup>9</sup> A detailed description of Alaska's merit selection process, examples of forms used by applicants, and the Council's bylaws that govern the details of the process are found on the Council's website. See "Judicial selection," at [www.ajc.state.ak.us](http://www.ajc.state.ak.us).

<sup>10</sup> The Council occasionally interviews by phone. Interviews are public or private, at the choice of the applicant.

<sup>11</sup> Rarely, not enough qualified attorneys apply for a position, and the Council cannot find two nominees. In that situation, the Council re-advertises the position and repeats the selection process.

<sup>12</sup> Out of more than 700 votes on judicial applicants in the past twenty years, the Council has divided five times along attorney/non-attorney lines. On three of those occasions, the chief justice voted with the non-attorneys. Only two times (1/4 of one percent) have attorneys decided the Council's vote.

<sup>13</sup> AS 15.58.020 (2).

## Part 2 Judicial Selection

### A. The selection process

#### 1. Number of vacancies

From 1984-2007, Alaska averaged 4.8 judicial vacancies per year.<sup>14</sup> Judicial vacancies have increased, particularly since 2002. The average number of vacancies per year was:

- 3.8 vacancies per year from 1984-1988;
- 4.2 vacancies per year from 1989-2002;
- 7.2 vacancies per year from 2003-2007.<sup>15</sup>

Between 1984 and 2007, there were 115 vacancies including 108 trial court vacancies (63 superior court and 45 district court) and seven appellate court vacancies.

#### 2. Average number of applicants per vacancy

##### a. Historically

In addition to an increasing rate of judicial vacancies per year, the average number of applicants per vacancy rose. The average number of applicants per vacancy was:

- 6.2 applicants per vacancy from 1984-1988;
- 8.5 applicants per vacancy from 1989-2002;
- 10.6 applicants per vacancy from 2003-2007.

Since 1984, the number of attorneys eligible to apply for judgeships has increased at a faster rate than the rate at which new judicial positions have been created.

- In 1984, there were 53 judicial positions and 1,528 active attorneys in Alaska, a ratio of 29 active attorneys per judicial position.
- In 2007, there were 69 judicial positions and 2,406 active attorneys in Alaska, a ratio of 35 active attorneys per judicial position.<sup>16</sup>

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<sup>14</sup> The Council also evaluated applicants for one Chief Administrative Law judge vacancy in 1996, and three public defender vacancies between 1984 and 2007 (1989, 1996, and 2005).

<sup>15</sup> These time frames represent the first and last five years covered in this report and the intervening years.

<sup>16</sup> The numbers of active attorneys were provided by the Alaska Bar Association.

As indicated below, in 2007, the average member of the Alaska bar was considerably older and had many more years of active practice than in earlier years. Many more attorneys were eligible under the statutory minimum qualifications for appointment to the bench than in the past.

**b. Level of court**

The average number of applicants per district court vacancy increased substantially while a smaller increase was observed in the average number of applicants for superior court. The average number of applicants per vacancy:

- increased from 6.0 in 1984-1988 to 10.1 in 2003-2007 for district court positions;
- increased from 7.4 in 1984-1988 to 8.1 in 2003-2007 for superior court positions;
- was 7.7 for appellate court positions from 1984-2007.<sup>17</sup>

**c. Location**

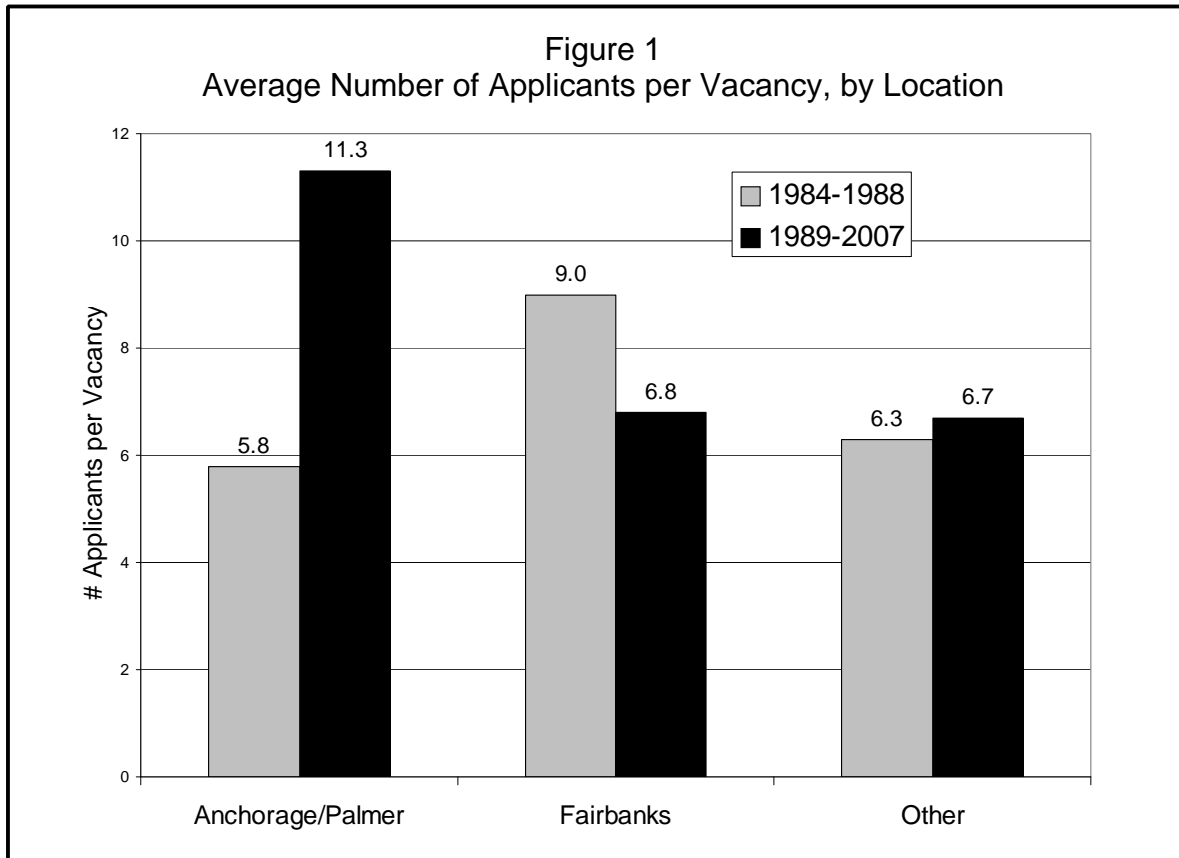
The increase in the average number of applicants per vacancy could be traced largely to more applicants for Anchorage and Palmer positions. The average number of applicants per vacancy:

- nearly doubled in Palmer and Anchorage from 5.8 in 1984-1988 to 11.3 in 1989-2007;
- decreased in Fairbanks from 9.0 in 1984-1988, to 6.8 in 1989 -2007;
- increased slightly in most other locations from 6.3 in 1984-1988 to 6.7 in 1989-2007.

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<sup>17</sup> The number of appellate vacancies was too small to make a meaningful comparison between time periods.

The following chart shows the increase in the average number of applicants per vacancy by location in the state.



### 3. Percentage of applicants nominated

Despite regular changes in Council membership,<sup>18</sup> the percentage of applicants nominated remained remarkably consistent during the 1984-2007 period.

#### a. Historically

- 39% of all applicants were nominated from 1984-1988.
- 37% of all applicants were nominated from 1989-2002.
- 38% of all applicants were nominated from 2003-2007.

Seventy-five percent of the time the Council has nominated more than the minimum number of applicants. In one quarter of its votes, the Council has nominated the minimum number of applicants. These votes have often occurred on rural judgeships for which there have been fewer applicants.

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<sup>18</sup> See *supra*, Council membership, Part 1.

**b. Level of court**

From 1984-2007,

- 38% of superior court applicants were nominated;
- 37% of district court applicants were nominated;
- 44% of appellate court applicants were nominated.

**c. Location**

- 43% of applicants were nominated for vacancies in Southeast Alaska (the highest rate in the state) as compared to 31% for vacancies in Palmer (the lowest rate).
- Over time, the percentage of applicants nominated decreased in Palmer and increased in Fairbanks. Other areas of the state demonstrated more consistency.

**B. Characteristics of applicants**

This section describes the characteristics of the 951 applicants for judicial positions between 1984 and 2007. The discussion shows trends in applicant characteristics, and the relationships between applicant characteristics and the likelihood of nomination and appointment during the 23 years covered by this report.

The report analyzes the characteristics of applicants for judicial positions in the context of the Alaska bar membership to see how applicants differ from typical bar members. In 1989, the Alaska Judicial Council partnered with the Alaska Bar Association to survey members of the Alaska bar to collect demographic and other information.<sup>19</sup> In 2007, the Judicial Council conducted another survey of bar members.<sup>20</sup> Information gained in these two surveys is cited in the following sections to provide context for the applicant characteristics reported below.

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<sup>19</sup> ALASKA BAR MEMBERSHIP SURVEY, 1989; published jointly by the Judicial Council, the Alaska Bar Association, and the court system, with the cooperation of the Juneau and Tanana Valley Bar Associations. Available at <http://www.ajc.state.ak.us/reports/barmem.pdf>.

<sup>20</sup> The 2007 survey results were published in *The Alaska Bar Rag*, Vol. 32, No. 1, January - March 2008, page 1. The response rates for the 1989 and 2007 surveys among attorneys in-state were 56% and 44% respectively. These are considered to be very good survey response rates. In addition to the bar survey in 2007, the Alaska bar provided some information for all members, including those who did not respond to the survey. Survey results in 2007 tracked available data from the Alaska Bar Association suggesting that the 2007 survey responses were representative of the bar at large.

## 1. Age<sup>21</sup>

### a. Applicant age by level of court

Applicants for superior court positions tended to be older than those for district court positions and slightly younger than those for appellate court positions. Average applicant ages have increased. The increase in the ages of judicial applicants, nominees, and appointees tracked the increase in the ages of members of the Alaska bar. In 1989, the average age of members of the Alaska bar was 40 years old. In 2007, the average age of Alaska bar members increased to 51 years old.<sup>22</sup>

District court applicants were younger than the average bar member. The average age of district court applicants was:

- 37 years old in 1984-1988;
- 44 years old in 1989-2002;
- 47 years old in 2003-2007.

The average age of superior court applicants was very close to the average age of bar members:

- 41 years old in 1984-1988;
- 45 years old in 1989-2002;
- 50 years old in 2003-2007.
- From 1984-2007, the average age of appellate applicants was 50 years old.<sup>23</sup>

### b. Nominees and appointees

The average age of nominees and appointees did not vary from the average age of applicants for any level of court for any period of time analyzed. However, the likelihood of nomination for some age groups varied between time periods. Younger applicants were more likely to be nominated in early years and older applicants were more likely to be nominated in later years.

- From 1984-88, youthful applicants (ages 29-34 years) had a much better chance of nomination than at any later time, and 64% of the nominees were between 35 and 44 years old.

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<sup>21</sup> District judges must be “at least 21 years of age.” There are no statutory age requirements for other judicial appointments. AS 22.15.160(a).

<sup>22</sup> Unless otherwise noted, characteristics of the bar at large reported below do not include out-of-state members of the bar. In the context of this report, in-state bar membership is more useful because most out-of-state bar members are ineligible to apply for judgeships due to residency requirements.

<sup>23</sup> The numbers of appellate applicants, nominees and appointees were too small to make a meaningful comparison between time periods.

- From 1989-2002, 67% of the nominees were between 40 and 49 years old.
- From 2003-2007, applicants aged 55 and older had a better chance of nomination than during the earlier years.

## **2. Gender**

In 1989, 25% of the members of the Alaska bar were female. By 2007, the percentage of female members of the Alaska bar had increased to 35%.<sup>24</sup>

### **a. Applicants**

The percentage of female applicants increased over time.

- 15% of all applicants were female in 1984-1988.
- 25% of all applicants were female in 1989-2002.
- 28% of all applicants were female in 2003-2007.

A disproportionately lower percentage of females applied for judicial positions considering the percentage of females in the bar at large. One factor that appeared to contribute to this disproportion was years of practice. As discussed below, females in the bar at large were younger than males, and averaged 14.8 years of practice, compared to 17.4 years for men.

In 2007, a higher percentage of females than males did not have the requisite number of years of practice to qualify for appointment. In 2007, 6% of males and 15% of females had fewer than the five years of active practice required for appointment to the superior court while 3% of males and 8% of females had fewer than the three years of active practice required for appointment to the district court.

### **b. Nominees**

Overall, the analysis did not find any significant differences by gender in the likelihood of nomination. Because the Council nominated female applicants at the same rate as male applicants, the numbers of female nominees increased and closely tracked the increases in female applicants.

- 42% of female applicants were nominated in 1984-1988 compared to 39% of male applicants.
- 38% of female applicants were nominated in 1989-2002 compared to 37% of male applicants.
- 36% of female applicants were nominated in 2003-2007 compared to 38% of male applicants.

### **c. Appointees**

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<sup>24</sup> 2007 data provided by Alaska Bar Association.

The percentage of female nominees increased but the percentage of female appointees decreased.

- In 1984-1988, 9% of nominees were female and 26% of appointees were female.
- In 1989-2002, 25% of nominees were female and 21% of appointees were female.
- In 2003-2007, 27% of nominees were female and 16% of appointees were female.

#### **d. Gender and age**

Female applicants and nominees for the district and superior courts<sup>25</sup> tended to be younger than male applicants and nominees.<sup>26</sup> For superior court positions, female appointees were noticeably younger than male appointees.

In 1989, in the bar at large, the average age of females was 37 years old and the average age of males was 41 years old. In 2007, the average ages of females and males were noticeably higher. Increasing percentages of female admittees to the bar contributed to an increasing gap in ages between men and women. In 2007, the average age of females was 47 years old and the average age of males was 53 years old.

#### **e. Gender and income**

For the bar members, income differed significantly between male and female practitioners.<sup>27</sup> In 2007, 20% of women, but only 10% of men earned \$50,000 or less. At the other end of the scale, 16% of the men, but 4% of the women earned \$200,001 or more. Fourteen percent of the women earned \$130,001, compared to 40% of the men.

Applicants' incomes also varied by gender. Looking at the 2003-2007 group, 22% of the male applicants earned \$130,001 or more, compared to 1% of the female applicants. In 2007, 14% of the women bar members earned \$130,001, and 40% of the men. This suggests that while some men earning higher salaries will apply for judicial positions, almost no women do so.

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<sup>25</sup> There were too few female applicants for appellate courts to analyze the data.

<sup>26</sup> *Supra*, note 19. Data from the 1989 BAR MEMBERSHIP SURVEY (Table 7, page 21) showed that the females' average age for all bar members was 37.2 years; males averaged 41.4 years.

<sup>27</sup> The Council was not able to control for full or part-time work, and did not have the resources for a more complex analysis that could have shown the independent contribution of several variables to the income differences. Men and women differed by age, years of practice and types of practice; all of these variables probably contributed to the income differences, but may not have explained them entirely. In 1987, males significantly out-earned females in every type of practice, and when holding years of practice equal. *Supra*, note 19, page 21, Table 7.

### 3. Ethnicity

The state has relatively few minority attorneys and too few minority applicants for judicial positions to carry out a statistical analysis. In 2007, 93% of the members of the Alaska bar were Caucasian. Fewer than 2% of bar members were Alaska Native/American Indian. Blacks, Hispanics, and Asian/Pacific Islanders; each comprised less than 1% of the bar membership.<sup>28</sup> At the end of 2007, Alaska had two minority judges.

- 13 minority attorneys have applied for 27 judicial positions since 1984.<sup>29</sup>
- 8 were nominated one or more times and 4 were appointed.
- Minority attorneys were more likely to apply for superior court positions than for district or appellate courts. They were more likely to be from Anchorage, and to apply for Anchorage court positions.

### 4. Career legal experience

More than two thirds of applicants had both public sector and private sector experience during their legal careers.<sup>30</sup> Eight percent of applicants had *only* public sector experience. About 20% of applicants had *only* private sector experience.

#### a. Combination of public sector and private sector experience

Applicants with a combination of public sector and private sector experience were nominated and appointed at slightly higher rates than at which they applied. From 1984-2007:

- 70% of applicants had both public sector and private sector experience;
- 76% of nominees had both public sector and private sector experience;
- 72% of appointees had both public sector and private sector experience.

These percentages were very consistent over the three time periods analyzed. The percentage of applicants and nominees with both public sector and private sector experience increased slightly while the percentage of appointees with both public sector and private sector experience slightly decreased in 2003-2007.

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<sup>28</sup> Attorneys describing themselves as “other” comprised less than 2% of the bar membership. Five percent of the bar membership had unknown ethnicity.

<sup>29</sup> Throughout the report, the unit of analysis is an application: one attorney applying for one position. There were 951 applications in the database, coming from 461 individual attorneys.

<sup>30</sup> Private sector experience was defined as non-governmental work as an attorney. It included private practice law firms, corporate counsel, and public interest non-profits. Public sector experience included work as a prosecutor, public defender, public advocate, attorney general, judge, or magistrate, as well as work for the University, bar association, local, federal, and military work, and agency work that did not fit into the previously listed categories.

**b. Only public sector experience**

Applicants with only public sector experience were nominated and appointed at slightly higher rates than at which they applied.<sup>31</sup> From 1984 -2007:

- 8% of applicants had only public sector experience;
- 11% of nominees had only public sector experience;
- 12% of appointees had only public sector experience.

**c. Only private sector experience**

Applicants with only private sector experience were nominated and appointed at lower rates than at which they applied. From 1984-2007:

- 21% of applicants had only private sector experience;<sup>32</sup>
- 13% of nominees had only private sector experience;
- 16% of appointees had only private sector experience.

**d. Specific types of employment**

The Council examined applicants' careers to see if specific job experience was associated with higher rates of application, nomination, or appointment. With few exceptions, specific job experience was not associated with higher rates of nomination or appointment. When the specific job experiences of district court applicants, nominees, and appointees were compared to those for superior court, little difference was observed.

- More than half (53%) of applicants had worked as public criminal law attorneys either as public defenders or advocates, or as prosecutors.
- The Council nominated applicants who had worked as public defenders or public advocates at higher rates than they applied.
- The Council nominated virtually the same number of applicants who had prosecutorial experience as it did applicants who had worked as public defenders or public advocates.<sup>33</sup>

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<sup>31</sup> Little variation in these rates was observed over the time periods analyzed.

<sup>32</sup> The percentage of applicants with only private sector experience declined from 25% in 1984-1988 to 18% in 2003-2007.

<sup>33</sup> Among the Council's nominees, 125 had worked as public defenders or advocates; 121 had worked as prosecutors; and 17 had done both types of work.

- Governors appointed applicants with prosecution experience at higher rates than they were nominated.
- From 1984-2002, governors appointed applicants who had worked as public defenders or public advocates at the same rate they were nominated. From 2003-2007, governors appointed these applicants at less than half the rate they were nominated.
- The Council nominated applicants with judicial or magistrate experience at higher rates than they applied.

Table 1 shows the percentages of applicants, nominees and appointees who had specific experience at some point during their legal careers.

Table 1 Work Experience of Applicants, Nominees and Appointees			
	Applicants	Nominees	Appointees
Private Practice <sup>34</sup>	86%	83%	84%
Public Defender/Advocate	23%	35%	31%
Prosecutor	35%	34%	42%
Attorney General	23%	26%	29%
Judge	13%	21%	19%
Magistrate/Law Clerk <sup>35</sup>	35%	37%	35%

Among appointees:

- 84% had private practice experience.
- 42% had prosecution experience, compared to 31% who had public defender or public advocate experience.

## 5. Employment at time of application

In addition to analyzing applicants' career experience, the Council reviewed applicants' employment at the time they applied for a judicial position.

### a. Public v. private sector

- The majority of applicants were employed in the public sector when they applied for a judicial position. In recent years, the percentage of applicants employed in the public sector has increased from 55% in 1984-88 to 62% in 2003-07.

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<sup>34</sup> Private practice experience in this report (and on Table 1) included only work for a private law firm, whether solo or with other attorneys. Private sector experience, a term also used in the report, included private practice, work with a private non-profit firm, corporate counsel, and other non-governmental work.

<sup>35</sup> Law clerk refers to clerkship with a state or federal judge.

- From 1984-2007, the Council consistently nominated applicants from the public sector at a rate 16% higher than the rate they applied.<sup>36</sup> The governor appointed applicants employed in the public sector at about the rate they applied.

**b. Specific types of employment at time of application**

Table 2 shows the percentages of applicants, nominees and appointees by their type of employment at the time of application.

Table 2 Employment at Time of Application			
	<b>Applicants</b>	<b>Nominees</b>	<b>Appointees</b>
<b>Private Practice<sup>37</sup></b>	45%	37%	45%
<b>Public Defender/Advocate</b>	6%	10%	5%
<b>Prosecutor</b>	16%	14%	17%
<b>Attorney General</b>	11%	14%	14%
<b>Judge</b>	9%	15%	14%
<b>Magistrate/Law Clerk<sup>38</sup></b>	8%	7%	4%
<b>Corporate/Public Interest/Other</b>	5%	3%	1%

**1) Private practice**

- The percentage of private practitioners in the Alaskan Bar decreased from 67% in 1989 to 58% in 2007.<sup>39</sup>
- Private practitioners comprised 51% of superior court applicants but only 38% of district court applicants.
- Attorneys in private practice, particularly sole practitioners,<sup>40</sup> were nominated (23%) and appointed (27%) at lower rates than they applied (38%) for district court.
- Private practitioners were appointed (58%) at higher rates than they applied (51%) or were nominated (49%) for superior court.

**2) Public defender/advocates**

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<sup>36</sup> There was no variation between time periods analyzed.

<sup>37</sup> Private practice experience in this report (and on Table 1) included only work for a private law firm, whether solo or with other attorneys. Private sector experience, a term also used in the report, included private practice, work with a private non-profit firm, corporate counsel, and other non-governmental work.

<sup>38</sup> Law clerk refers to clerkship with a state or federal judge.

<sup>39</sup> Another 8% were retired, and 3% were in public service organizations, all of which were private.

<sup>40</sup> Data are available from the Judicial Council.

- Attorneys with a mainly criminal defense practice increased from 4% of the Alaska Bar in 1989 to 6% in 2007 (this could have included a small number of private practitioners).
- Defense attorneys applied for judgeships in numbers representing their proportion among the bar members in general.
- Public defenders and public advocates were nominated at higher rates than they applied.
- Governors appointed public defenders and public advocates at lower rates than they were nominated but at about the same rates at which they applied.

### **3) Prosecutors**

- The percentage of prosecutors among the Alaskan Bar increased from 5% in 1989 to 6% in 2007.
- Prosecutors applied for judicial positions at rates much higher than their representation in the Alaska bar.
- Prosecutors comprised a higher percentage of applicants, nominees and appointees for district court than for superior court.
- Prosecutors were appointed at a higher rate (34%) than they applied (22%) or were nominated (23%) for district court.
- Prosecutors were appointed (5%) at a lower rate than they applied (12%) or were nominated (8%) for superior court.

### **4) Attorneys general**

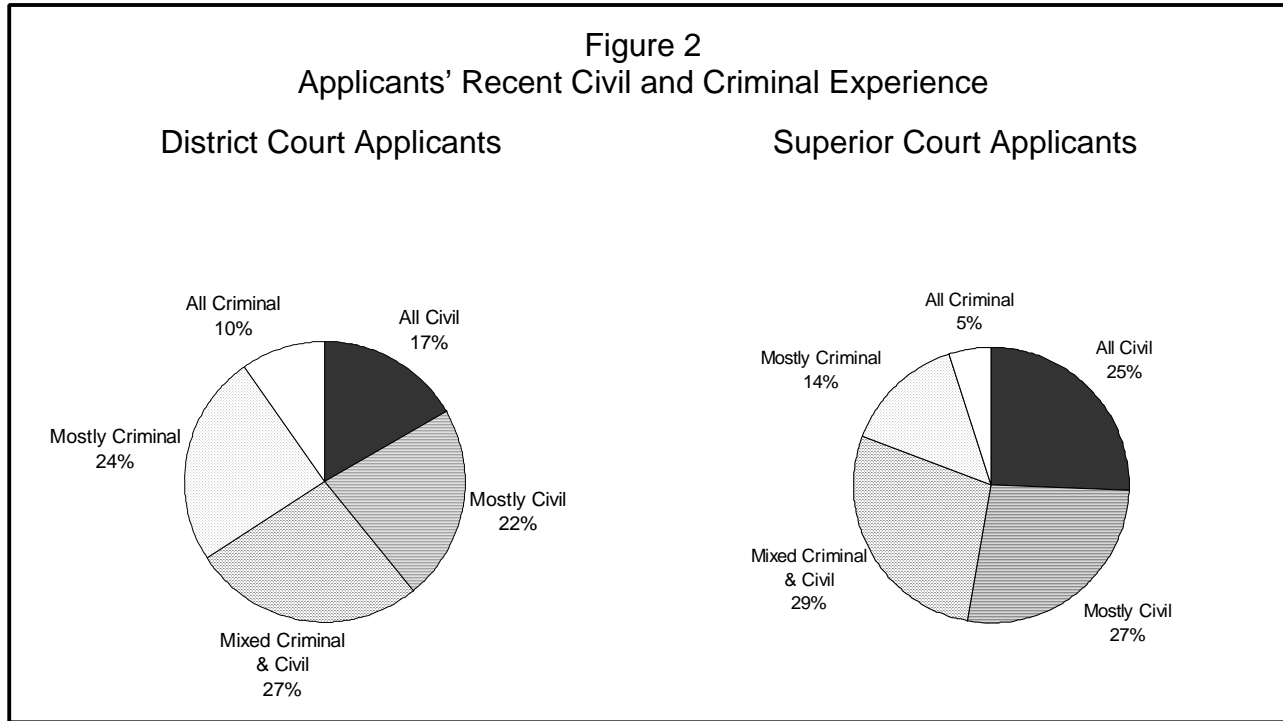
- Attorneys working in the attorney general's office were nominated (19%) and appointed (20%) at higher rates than they applied (12%) for district court.
- Attorneys working in the attorney general's office were nominated and appointed at about the same rate at which they applied (14%) for superior court.

### **5) Judges and magistrates**

- Judges were nominated for and appointed to superior court positions at a higher rate than they applied.
- Magistrates were nominated at a higher rate but appointed at a lower rate than they applied for district court.

## **6. Caseload during five most recent years**

Figure 2 shows that district court applicants tended to have more criminal legal experience during the five years before their applications, while superior court applicants tended to have more civil legal experience. Most applicants had a mixture of civil and criminal legal experience, both during their entire legal careers (see discussion above, section 4), and during the five years preceding their applications.



- Attorneys who practiced all or mostly criminal law in the five years preceding their application were more likely to apply for district court than for superior court.
- Attorneys who practiced all or mostly civil law in the five years preceding their application were more likely to apply for superior court than for district court.
- District court applicants whose recent practices were all or mostly criminal law were nominated and appointed at higher rates than they applied, from 1984-1988 and from 2003-2007. Otherwise, the presence or absence of *recent* civil or criminal experience did not affect nomination and appointment in district or superior courts.

**a. No criminal law experience in five most recent years**

From 1984-2007, within the five years preceding their application:

- 17% of district court applicants had no criminal law experience;
- 25% of superior court applicants had no criminal law experience. The percentage of superior court applicants without criminal law experience in their five most recent years increased from 19% in 1984-1988 to 29% in 2003-2007.

**b. No civil law experience in five most recent years**

Even smaller percentages of trial court applicants had no civil law experience within the five years preceding their application (10% of district court and 5% of superior court applicants). The percentage of applicants with no civil law experience in the five years preceding their application:

- Decreased from 18% in 1984-1988 to 9% in 2003-2007 for district court applicants;
- Decreased from 10% in 1984-1988 to 4% in 2003-2007 for superior court applicants.

**c. Mostly<sup>41</sup> criminal or civil law experience in five most recent years**

- 34% of district court applicants had all or mostly criminal law experience in their five most recent years compared to 19% of superior court applicants.
- 52% of superior court applicants compared to 39% of district court applicants practiced all or mostly civil law in the five years preceding application.

**7. Trials and court appearances in recent years**

Two-thirds (68%) of all applicants, nominees and appointees had substantial trial experience – six or more trials – in the five years immediately preceding their applications. Applicant, nominee and appointee recent trial experience, including jury trial experience, declined significantly between the 1984-1988 period and the 2003-2007 period. This may be a result of the increasing years of experience for bar members, and changes in the types of cases handled. Many attorneys may have had substantial trial experience during their early years of practice, but at the time of their applications may have been practicing in different fields.

The great majority of applicants, nominees, and appointees reported that they appeared in court regularly during the past five years. District court applicants were the most likely to say that they appeared in court regularly (78%), followed by superior court applicants (75%) and appellate applicants (70%).

- About two-thirds of those nominated or appointed had six or more trials in the five years immediately preceding nomination and appointment.
- About one-third of the applicants with five or fewer trials in the previous five years were nominated.<sup>42</sup>
- Only 9% of the nominees had no trial experience in the five years immediately preceding their application.
- Twenty-two percent of the nominees had no jury trial experience in the five years immediately preceding their applications.

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<sup>41</sup> “Mostly” was defined as 71% to 99% of an applicant’s caseload.

<sup>42</sup> This did not differ significantly from applicants who were not nominated. However, it may be that nominees had more trials in their earlier careers.

## **8. Bar and judicial discipline and actions**

The Council investigates all reports of grievances filed with the Alaska Bar Association, all fee arbitrations involving an applicant, and all publicly reported instances of judicial discipline.<sup>43</sup> None of the applicants for judicial positions in this report had public allegations of judicial misconduct filed against them, or had public judicial discipline.

### **a. Grievances**

Grievances may be filed with the bar association against an attorney by any person. The bar reviews the allegations, and in most cases, decides that there is no basis for investigation. In the small number of investigated grievances, the attorney is given an opportunity to respond to the complaints, and after investigation, most complaints are dismissed. Grievances may result in a private reprimand or admonition, a public reprimand or admonition, or in sanctions such as suspension or disbarment.

Factors affecting the number of grievances filed against an attorney include the number of cases an attorney handles, the types of cases, the length of time an attorney has practiced, and whether the attorney has worked as a public criminal defense attorney. The great majority of grievances were either not investigated because the bar found no merit in the allegations, or were dismissed following investigation with no action against the attorney. Given the number of variables affecting how many grievances are filed, and the likelihood that most grievances will not be investigated or are dismissed after a brief investigation, the Council does not report the information about them in detail in this report.

Just under half (47%) of applicants have one or more grievances filed against them in the course of their legal careers. Staff members investigate patterns of grievances and specific grievances that resulted in further action by the bar association. The Council considers all of this information in making its final decision about nomination.

### **b. Fee arbitrations**

Clients of private attorneys who disagree with the fees charged by their attorneys may ask the bar association for assistance in arbitrating the fees. Attorneys volunteer to serve on fee arbitration panels as a service to the bar and community. Many fee arbitrations result in some adjustment of the fees charged.

Few of the applicants – 15% – had experienced one or more fee arbitrations. Many factors can affect the number of fee arbitrations filed against an attorney and the outcome of a fee arbitration case. An attorney's type of practice, the size of a law firm, and the length of time an attorney has practiced are among the most important. The Council staff investigates all reported fee arbitrations, and Council members consider the information when they review materials about each applicant.

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<sup>43</sup> The Council also investigates any suspension of an applicant's license to practice law. Occasionally, attorneys' licenses are suspended for failure to promptly pay Bar dues; less commonly, licenses are suspended for other reasons. These events happened too infrequently to report statistically and were not included in this report.

Three or more fee arbitrations for an applicant were associated with a lower likelihood of nomination and appointment.

## **9. Income**

The Council asks applicants about their income<sup>44</sup> for each of the three years immediately preceding the application. The Bar Membership surveys in 1989 and 2007 asked bar members about their incomes during the preceding year. The analysis compares the salaries of applicants and members of the bar with judicial salaries.<sup>45</sup>

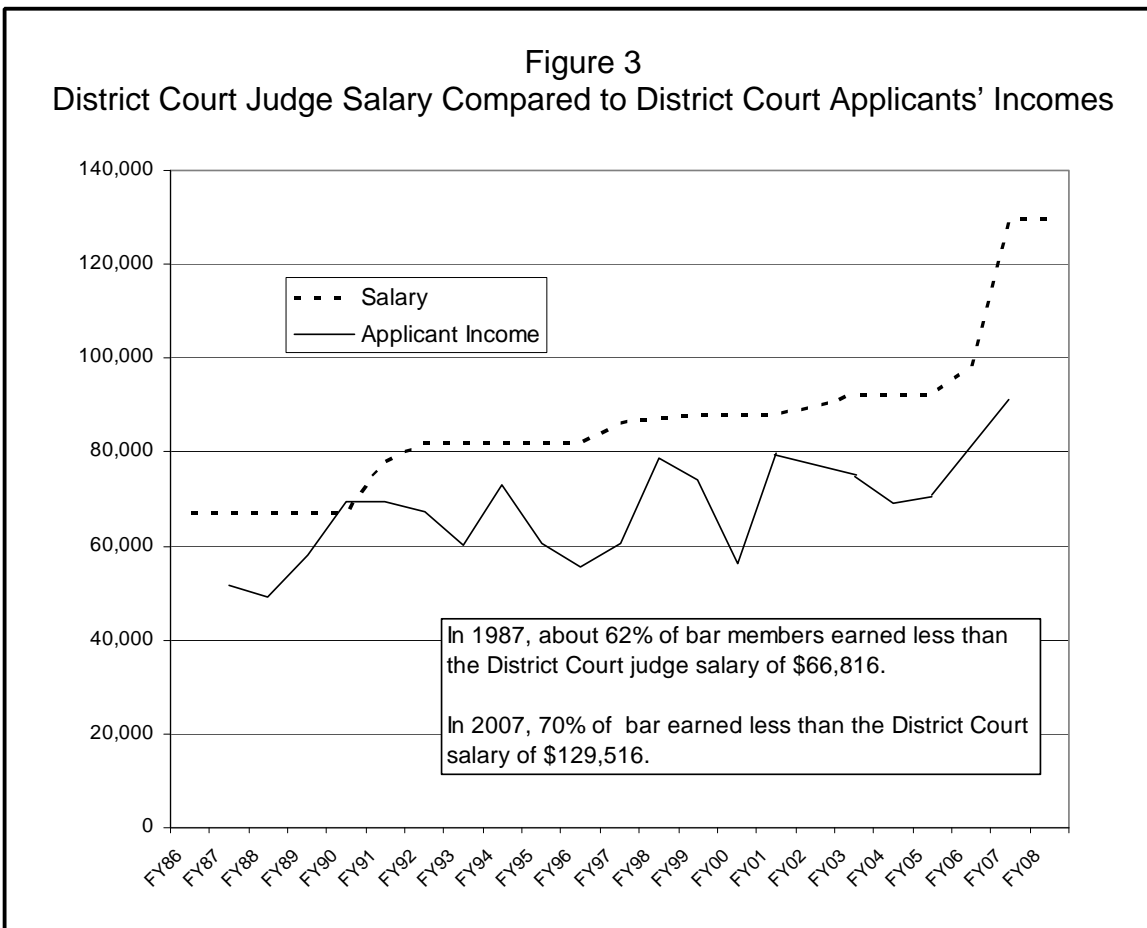
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<sup>44</sup> The application form says: "Please estimate your total income\* (\*This is your 'adjusted gross income' as defined on your 1040 tax form, but should not include income attributable to a spouse or other person) for each of the three years immediately preceding the date of this application. This information is used to evaluate active practice of law and potential conflict of interest issues."

<sup>45</sup> The judicial retirement system also tends to encourage some attorneys to apply for a judicial position.

**a. District court**

The data suggest that, except for the first few years, district court salaries may have been an incentive to members of the bar to apply for a position on the district court. Most members of the bar and most applicants for the district court earned less than a district court judge in 1987 and in 2007.<sup>46</sup> The differences between the salary of a district court judge and the average salary of district court applicants and members of the bar at large increased considerably when the legislature raised judicial salaries effective July 1, 2006. The following graph compares applicant income<sup>47</sup> with the salary of a district court judge.<sup>48</sup>



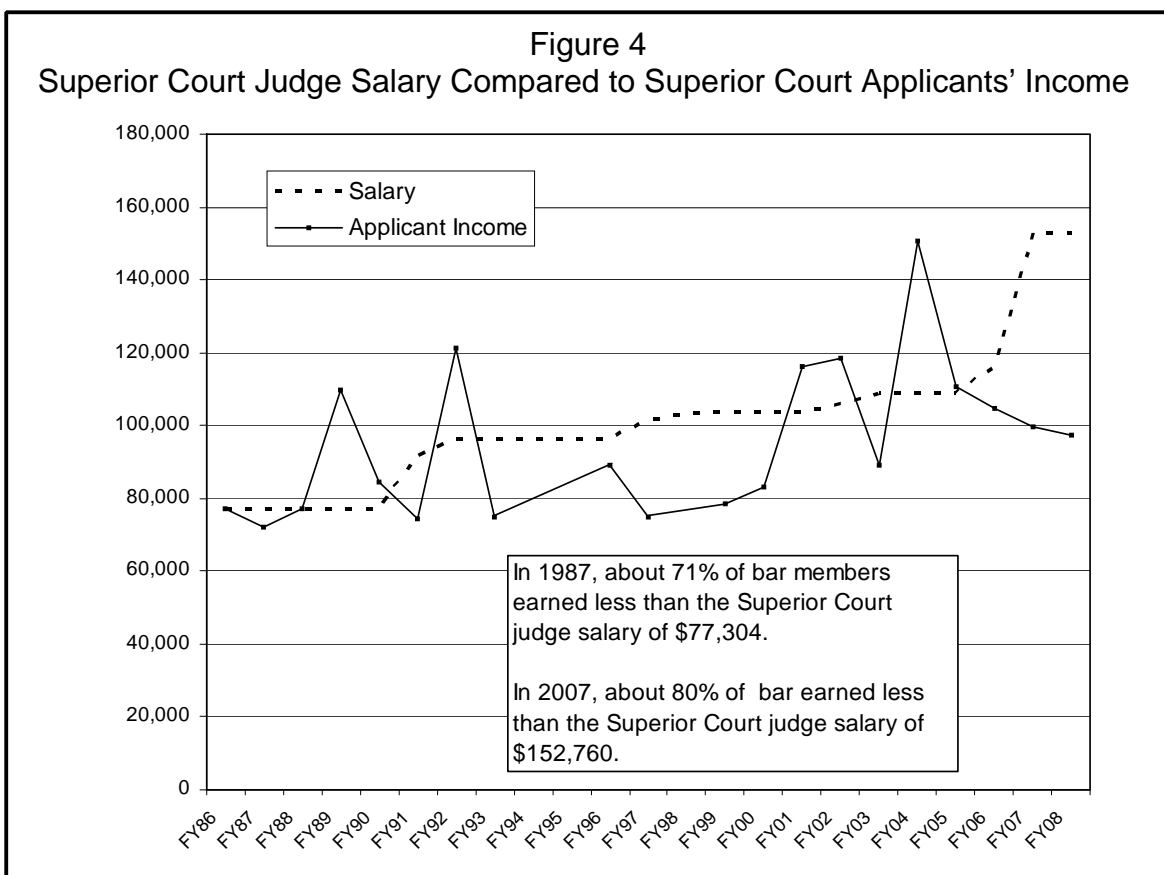
<sup>46</sup> The bar membership surveys included attorneys who did not meet the minimum years of active practice to be eligible for appointment to the bench. These attorneys likely make less money than more experienced attorneys. The average income of a member of the bar eligible for appointment to the bench was probably slightly higher than the average income for the bar at large.

<sup>47</sup> Applicants report their incomes for the three years immediately preceding their applications. The figure used throughout this report is the average for each applicant of these three years.

<sup>48</sup> The judicial salaries used in the graph are for Anchorage. Some of the rural communities have cost-of-living increases for district and superior court judges serving them.

**b. Superior court**

In 1987 and in 2007, most members of the bar earned less than a superior court judge. However, except for the judicial salary increases in 2006 and 2007, the salaries of applicants for superior court positions have more or less tracked the salary of a superior court judge. These increases widened the gap, at least temporarily, between the average salary of a superior court applicant and the salary of a superior court judge. The following graph compares applicant income with the salary of a superior court judge.<sup>49</sup>



**c. Appellate court**

The pattern of salary increases for the appellate courts followed that shown for district and superior courts. During the period covered by this report, 1984-2007, the Council made nominations for two court of appeals vacancies and five supreme court vacancies. For the court of appeals vacancies, the average income of applicants was below or similar to the judicial salary. For the supreme court, the average applicant income exceeded the judicial salary three out of the five times. For appellate applicants, salary did not seem to be as an important consideration as it may have been for trial court applicants.

<sup>49</sup> The judicial salaries used in the graph are for Anchorage. Some of the rural communities have cost-of-living increases for district and superior court judges serving them.

## **C. Statutory requirements for judicial applicants**

Alaska's Constitution requires that "Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the state, and possessing any additional qualifications prescribed by law."<sup>50</sup> Statutes mandate that all judges shall be residents of Alaska for the five years immediately preceding their appointment, and that they have engaged in the active practice of law<sup>51</sup> for differing periods, depending on the position.<sup>52</sup>

### **1. Years of residence in Alaska**

From 1984 through 2007, the mean number of years that applicants, nominees, and appointees resided in Alaska immediately preceding their judicial application was slightly more than 20 years. Applicants for lower courts resided in Alaska for fewer years than applicants for higher courts. Years of residency for applicants for all court levels increased from 1984 to 2007.

- The mean number of years that applicants resided in Alaska immediately preceding application was 19.3 years for district court, 21.2 years for superior court, and 27.8 years for appellate courts.
- From 1984-1988, applicants resided in Alaska for an average of 14 years. From 1989-2002, applicants resided in Alaska for 20 years. From 2002-2007, applicants resided in Alaska for 25 years.
- Higher percentages of nominees for judgeships in Fairbanks (52%) and Southeast (43%) had more than twenty years of Alaskan residence in Alaska than in Anchorage (36%).

### **2. Years of practice in Alaska**

Applicants between the years of 1984-88 had an average of 11 years of practice. Between 1989 and 2002, the mean increased to 16 years of practice, and in 2003-2007, it rose to a mean of 20 years of practice. Applicant years of practice tracked the trend among bar members whose mean years of practice increased from 11.6 years in 1989 to 20.6 years in 2007.

- Few applicants with fewer than 5 years of practice in Alaska experience applied for district court positions, and few were nominated or appointed.

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<sup>50</sup> Alaska Constitution, Article IV, Section 4. Additional requirements for the different levels of courts are spelled out in AS 22.05.070 (supreme court); AS 22.07.040 (court of appeals); AS 22.10.090 (superior court); and AS 22.15.160 (district court).

<sup>51</sup> Defined in AS 22.05.070.

<sup>52</sup> Supreme court justices and court of appeals judges are required to have eight years active practice; superior court judges five years, and district court judges three years. District court judges also may have served as a magistrate for seven years and graduated from an accredited law school; further information is available in AS 22.15.160 and Alaska Court Administrative Rule 19.1.

- The percentage of nominees with substantial legal experience in Alaska increased considerably over time. From 1984 to 1988, 20% of the nominees had 16 or more years of experience in Alaska. Between 1989-2002, the percentage increased to 61%, and between 2003-2007, the percentage rose to 77%. In 2003-2007, 50% of all nominees had 20 or more years of experience in Alaska.
- The percentage of nominees with sixteen or more years of legal experience in Alaska increased for the higher courts. It was 46% for district court, 68% for superior court, and 96% for appellate courts.<sup>53</sup>
- The applicants' years of practice tended to vary by location. A larger percentage of Southeast practitioners had 20 or more years of practice than did applicants in other locations. Fairbanks applicants were less likely than other groups to have more than 20 years of practice.

#### **D. Writing sample**

Staff evaluate each writing sample for clarity, grammar, proofing, and other indicators of ability to communicate in writing. Writing samples are evaluated on a "1" to "5" scale, with "5" being "Excellent," and "1" being "Below Acceptable."

On average, applicants for higher courts received higher writing sample scores. As shown below, higher mean writing sample scores were associated with nomination, and to a lesser extent, appointment. The distinctions among scores for applicants, nominees and appointees were greatest for the superior court.<sup>54</sup>

- Mean scores for district court applicants were 3.5; for district court nominees, 3.9; and for district court appointees, 3.9.
- Mean scores for superior court applicants were 3.7; for superior court nominees, 4.0; and for superior court appointees, 4.1.
- Mean scores for appellate court applicants were 4.1; for appellate court nominees, 4.3; and for appellate court appointees, 4.3.

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<sup>53</sup> For district court applicants, 40% had 16+ years of experience; for superior court, 64% of applicants; and for appellate courts, 85% of applicants.

<sup>54</sup> The differences among scores for applicants, nominees, and appointees were statistically significant.

## E. Bar survey ratings

Since 1980, the Council has surveyed Alaska bar members<sup>55</sup> about each applicant for each position.<sup>56</sup> The Council is not bound to make any decisions based on the results of the surveys. The Council does not rank applicants based on survey results. Council members use the survey as one tool, among many, to gauge the applicants' abilities. The Council releases survey ratings to the public several weeks before making its final decision.

The Council asks for information about an applicant's professional competence, integrity, fairness, judicial temperament, suitability of this applicant's experience for this vacancy, and the overall rating for this position. If an applicant is applying for two or more different vacancies simultaneously, which happens fairly frequently, the bar members rate them separately for each vacancy. An applicant may be more qualified for one position than another, depending on the level and location of the court.

The rating scale uses ratings from 1 to 5 (Likert scale), with 1 being the lowest rating and 5 the highest. Each numerical rating is tied to a verbal description.<sup>57</sup> A 3 is an Acceptable rating. In general, a tenth of a point difference among scores is not meaningful. If one applicant is scored 3.9 and another 4.0, there is no significant difference between their scores.

Surveyed attorneys are asked to provide demographic information about themselves. They indicate whether they are in private practice or the public sector, their length of practice, the size of their law firm (for private practitioners), their gender, their type of caseload, and the location of their practice. Survey results are analyzed using this demographic information. These data can reveal how an applicant is perceived by different groups of attorneys. For example, Council members are able to examine how an applicant was rated by judges, or government attorneys, or men versus women, or prosecutors versus criminal defense attorneys.

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<sup>55</sup> Active in-state members may complete a paper survey or an on-line survey. Active out-of-state members, inactive in-state members and retired members may respond to the electronic survey. Alaska has a mandatory bar for attorneys wishing to appear in state courts, although attorneys who practice in federal court and those whose positions don't require appearances in court may maintain their memberships as inactive, or may drop membership altogether.

<sup>56</sup> During the early 1960's the Council administered a simple survey itself. At some point, the Alaska Bar Association started doing the survey, and continued until early 1980. The Alaska Bar Association sent out a survey that asked whether the applicant was "unqualified," "qualified," or well-qualified." In mid-1980, the Council took over the survey process, and since that time has contracted with an independent organization to conduct the survey. The questions have changed somewhat over the years, but have always focused on legal ability, integrity, impartiality, fairness, and temperament. Usually the survey has included a variable for an overall evaluation of performance.

<sup>57</sup> 1=poor; 2=deficient; 3=acceptable; 4=good; 5=excellent. Each value also has a descriptive statement: 1 (poor) Seldom meets minimum standards of performance for this court; 2 (deficient) Does not always meet minimum standards of performance for this court; 3 (acceptable) Meets minimum standards of performance for this court; 4 (good) Often exceeds minimum standards of performance for this court; and 5 (excellent) Consistently exceeds minimum standards for this court. Respondents also may check "Insufficient knowledge to rate this judge on this criterion."

Demographic data also help Council members identify the effects of “bloc voting.” Although survey respondents must affirm that they have completed their survey in conformity with their professional responsibilities, some ratings may be affected by groups of attorneys who may favor one applicant over another for reasons more related to factors other than merit.

In addition to the numerical ratings, attorneys have the opportunity to comment about an applicant. Signed attorney comments tend to be quite useful to Council members; (see below at section F.) Attorneys have the option of signing their names to their comments. Council members do not consider unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant. Survey comments are shared with applicants after they have been edited to remove information that might identify individual survey respondents.

Attorneys can complete their surveys on-line, or on paper, although most prefer to use on-line forms. A detailed description of the bar survey methodology is available from the Judicial Council.<sup>58</sup>

The analysis shows the extent to which survey scores are associated with the likelihood of nomination and appointment, and how they differ by court level and period of time. When reviewing this analysis, it is important to consider the following:

- Although Council members do not use survey ratings to rank applicants, the ratings for individual applicants are considered in relation to ratings for other applicants. For example, an overall rating of 3.5 could be the highest rating among applicants for one position and the lowest rating among applicants for another position.
- Overall bar survey ratings can mask concerns suggested by more detailed analysis. For example, an applicant may receive a reasonably good overall rating, but analysis of the demographic data may indicate substantial concern among some groups of attorneys.
- The bar survey ratings typically provide another lens for viewing an applicant’s characteristics. A high rating in Professional Competence may be supported by a high rating on the writing sample, publications, and the reference letters and counsel questionnaires. The applicant’s Suitability of Experience bar rating may correlate with type of practice, and other information considered by the Council.

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<sup>58</sup> For an on-line description, go to <http://www.ajc.state.ak.us/selection/procedur.htm>.

## 1. Ranges of overall ratings for applicants and likelihood of nomination and appointment

Applicants receiving overall ratings of 3.5 or higher from other bar members were more likely to be nominated than those with ratings of 3.4 or lower. Those with ratings of 4.0 or higher were the most likely to be nominated and appointed.<sup>59</sup> While few applicants with low bar survey ratings were nominated, high ratings on the bar survey did not guarantee nomination or appointment. Nominees, as a group, had noticeably higher mean scores on all variables on the bar survey than did applicants. The differences between nominees and appointees, when they existed, were not more than a tenth of a point, which is not a significant difference.

- 14% of applicants received an overall rating below 3.0. Two percent of these applicants (two applicants) were nominated by the Council. None were appointed.
- 26% of applicants received an overall rating between 3.0 and 3.4. Twelve percent of these applicants were nominated.
- 44% of applicants received an overall rating between 3.5 and 3.9. Fifty percent of these applicants were nominated.
- 17% of applicants received an overall rating between 4.0 and 5.0. Eighty-eight percent of these applicants were nominated.
- Of the applicants rated highest in the bar survey for the specific vacancy, 89% were nominated, and 39% were appointed. Of those with the second highest overall survey ratings, 74% were nominated, and 18% were appointed. Of those ranked third, 52% were nominated and 12% were appointed. Of those ranked fourth, 51% were nominated and 11% were appointed. Of those ranked 5-9, 18% were nominated and 6% were appointed. The conclusion is that receiving the highest or second highest overall survey rating gives an applicant a statistically significant greater likelihood of being nominated or appointed but does not guarantee nomination or appointment. Receiving the third or fourth highest overall survey rating still provides an edge, but not as great. Those with lower overall ratings had a much lower chance of nomination, and only a 6% chance of appointment.

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<sup>59</sup> The differences among ratings were statistically significant.

## 2. Mean scores on individual variables for applicants, nominees, and appointees

Nominees, as a group, had noticeably higher mean scores on all variables on the bar survey than did applicants. The differences between nominees and appointees, when they existed, were not more than a tenth of a point, which is not a significant difference.

Bar Category	All Applicants	Nominated	Appointed
Professional Competence	3.6	3.9	4.0
Fairness	3.7	3.9	4.0
Integrity	3.8	4.1	4.1
Temperament	3.6	3.9	3.9
Suitable Experience	3.5	3.9	3.9
Overall Rating	3.5	3.9	3.9

## 3. Mean scores for applicants, nominees, and appointees by court level

The mean scores on “overall rating for this position” for all applicants varied by court level, and generally was higher for nominees and appointees than for applicants. District court and superior court mean scores resembled each other closely. Appellate scores were higher than trial court scores for applicants, nominees and appointees.

Court Level	All Applicants	Nominated	Appointed
District	3.5	3.8	3.9
Superior	3.5	3.9	3.9
Appellate	3.7	4.0	4.2

#### **4. Mean scores for applicants, nominees, and appointees by year**

The mean scores for all applicants increased over time. Other evidence in this report suggests that the quality of applicants has improved over time. The number of attorneys eligible to apply for judgeships has increased at a faster rate than the rate at which new judicial positions have been created leading to increased competition for appointment to the bench.<sup>60</sup> Applicants in later years tended to have more experience, more varied experience practicing law, and were older with more life experience.<sup>61</sup>

- Between 1984 and 1988, the mean score for all applicants was 3.3.
- Between 1989 and 2002, the mean score for all applicants was 3.5.
- Between 2003 and 2007, the mean score for all applicants was 3.6.

#### **F. Other information**

The Council investigates applicant's bar and judicial discipline histories, potential conflicts of interest, credit and criminal records, all court cases in which the applicant was a party, and additional information as needed. Applicants' pro bono work, and service to the bar and the community are reported to the Council. Finally, the Council interviews each applicant before making its decisions about nominations.

Council members who served since 1999, after the last report was published, responded to a survey asking them to assess the importance of the non-quantifiable information that they reviewed. Separately, they commented on the relative importance of the interview to them.

##### **1. Community and bar service; pro bono**

Council members believed that pro bono and community service were important for applicants. They thought that bar service was not as important.

##### **2. Counsel questionnaires, bar survey comments, reference letters, and public comments**

Counsel questionnaires and signed bar survey comments were among the most valued information to Council members, followed by reference letters. The Council member procedures require members to disregard unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant (see below). As a result, unsigned survey comments were ranked low on the list of useful information.

##### **3. Law school**

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<sup>60</sup> *Supra*, pages 5, 6.

<sup>61</sup> Bar members could have, over time, begun to use the ratings system more generously. This phenomenon has been observed in other contexts, including rising grades for U.S. students. See e.g., [http://en.wikipedia.org/wiki/Grade\\_inflation](http://en.wikipedia.org/wiki/Grade_inflation)

About half of the members thought that the applicant's law school was somewhat important. The other half thought it was neutral, or not as important.

#### **4. Public comment**

The Council encourages public comment about the applicants throughout the process. It issues at least three press releases during each application process inviting comments. For each vacancy, it holds a public hearing, nearly always in the location of the judicial position. The hearings coincide with the meeting to interview applicants, and to vote on nominations. When the Council receives comments in time, it will investigate any concerns raised by members of the public.

#### **5. Conflicts of interest, credit and criminal histories, other investigative information**

Council members consider this information in appropriate cases. The weight given to it depends on the specific circumstances in each application.

#### **6. Interview**

All of the Council members except one found the interview to be very important. Many commented that it was among the most important factors in the selection process. One member thought that it was somewhat important.

### **G. Prohibited considerations**

Council procedures preclude the Council from considering certain information.<sup>62</sup>

- As noted above, members may not consider unsigned comments unless they are corroborated, independently substantiated, or acknowledged by the applicant.
- The Council refrains from any discrimination prohibited under state and federal law.
- 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.
- The Council does not consider an applicant's likelihood of appointment by the governor.

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<sup>62</sup> *Alaska Judicial Council Procedures for Nominating Judicial Candidates*, Sec. VI(E).  
<http://www.ajc.state.ak.us/selection/procedur.htm>

## Part 3 Judicial Retention

### A. Retention vote

Judges in Alaska periodically stand for retention on the ballot in the general elections.<sup>63</sup> Voters may vote “yes” or “no” to retain a judge. Trial court judges are voted on by residents of the judicial district in which they serve, while appellate judges are voted on statewide. The percentage of “yes” votes received by a judge shows some correlation with judicial performance, but many other factors play a role also.

#### 1. Vote by year

Table 5 shows the number of judges standing for retention each year in the years covered by this report, and the average “yes” vote percentage for each year. In 1986 and 2004, the average “yes” vote rose to 70% or higher. During the other years, it ranged between 64% and 69%.

Table 5 Vote Percentages by Year		
Year	Number of Judges	Percent Yes Vote
<b>1984</b>	20	69%
<b>1986</b>	18	71%
<b>1988</b>	17	69%
<b>1990</b>	15	68%
<b>1992</b>	15	64%
<b>1994</b>	25	66%
<b>1996</b>	13	69%
<b>1998</b>	13	68%
<b>2000</b>	30	64%
<b>2002</b>	16	69%
<b>2004</b>	10	70%
<b>2006</b>	31	64%
	223*	

\*Five judges who were eligible to stand for retention were evaluated, but retired without filing to be retained. They are not included here or on Table 6.

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<sup>63</sup> Statutes establish a shorter period for service before the judge’s first retention election, and longer terms if the judge is retained. District court judges eligible for their first retention stand at the first general election more than two years after their appointment (*supra*, note 7). Superior court and appellate judges stand at the first general election more than three years after the date of appointment. After their first retention by voters, district court judges serve four year terms; superior court judges six year terms; court of appeals judges eight year terms; and supreme court justices ten year terms.

## 2. Vote by judicial district

Judges in some districts typically receive a higher percentage of “yes” votes than those in other districts. Overall, the First Judicial District judges received an average of 73% of “yes” votes, while the Second Judicial District judges received 70%. Fourth Judicial District judges received an average of 69% of the “yes” votes, and the Third Judicial District and appellate judges typically received 65% “yes” votes.

One hypothesis is that in judicial districts with smaller populations (the First and Second districts), voters have more chances to be acquainted with their judges and are inclined more favorably toward them. Voters in the Third Judicial District and those voting for appellate judges who ran statewide did not view them quite as positively. Still, nearly two-thirds of the votes cast for judges, on the average, were “yes” votes, indicating general approval of the judges’ performances.

Judicial District	Number of Judges	Percent Yes Vote
First	30	73%
Second	12	70%
Third	123	65%
Fourth	38	69%
Appellate	20	65%
All	223	67%

## B. Retention surveys

The Council invites attorneys, peace and probation officers, court employees, jurors, and social workers, guardians ad litem and volunteer children's case workers (CASAs)<sup>64</sup> to complete surveys about the performance of trial court judges standing for retention elections.<sup>65</sup> The format and number of questions asked in the surveys has changed during the years covered in this report (1984-2006). Throughout, all groups have used the same 1 to 5 scale<sup>66</sup> used in the selection surveys. The different groups used similar criteria to evaluate the judges: fairness, integrity, diligence, temperament, and overall evaluation of the judge. Lawyers also evaluated judges on legal ability, and evaluated appellate court judges in addition to trial court judges.<sup>67</sup>

### 1. Attorney surveys overall

Table 7 shows the ratings by bar members for each survey criterion at the district court, superior court, and appellate court levels, for all years combined. The average Legal Ability score increases with court level, from 3.8 for district court, to 3.9 for superior court and 4.0 for appellate court. In general, appellate judge scores are higher than those for the trial courts. Integrity receives the highest average scores for all court levels.

	District Court	Superior Court	Appellate	All
<b>Legal Ability</b>	3.8	3.9	4.0	3.9
<b>Impartiality</b>	3.9	3.9	4.0	3.9
<b>Integrity</b>	4.1	4.1	4.3	4.1
<b>Temperament</b>	3.9	4.0	4.1	4.0
<b>Diligence</b>	3.9	4.0	4.2	4.0
<b>Overall Evaluation</b>	3.9	3.9	4.1	3.9

\*Five judges who were eligible to stand for retention were evaluated, but retired without filing to be retained. They are included on Tables 7 and 8.

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<sup>64</sup> The CASA program is operated by the Office of Public Advocacy, a state agency in the Department of Administration. The CASAs, Court Appointed Special Advocates, are community volunteers trained by OPA to work with guardians ad litem in CINA cases; each CASA handles one to three cases and is supervised by an OPA GAL.

<sup>65</sup> The Council has conducted attorney and peace and probation officer surveys since 1976 when the legislation authorizing judicial performance evaluations took effect.

<sup>66</sup> 5=Excellent, 4=Good, 3=Acceptable, 2=Deficient, 1=Poor. See note 57, *supra*, for definitions for these values.

<sup>67</sup> See the Council's web site, <http://www.ajc.state.ak.us/retention/retent.htm> for more information about the surveys and more detailed results for each year.

Most judges received high scores from attorneys, and the ratings have improved since 1984. In the 1984 retention evaluations, the mean score for district court and superior court judges was 3.6. In 2006, the district and superior court means had risen to 4.1. This may suggest that the quality of Alaska's judges, high to start with, has improved over time. Information in Part 2, section E. 4, also supports this possibility.<sup>68</sup>

## **2. Attorney surveys by court level and judicial district**

Overall mean scores varied slightly by court level and judicial district.<sup>69</sup> The 93 district court judge and the 115 superior judge evaluations both had a mean of 3.9.<sup>70</sup> The fifteen appellate evaluations<sup>71</sup> had an overall performance mean score of 4.1. The scores did not vary substantially by judicial district, although First District superior court judges were rated slightly higher than others, at 4.1 on overall performance.

## **3. Relationship between retention evaluations, and the characteristics of applicants and nominees**

The Council had enough data for about 65% of the judges who are included in this retention analysis<sup>72</sup> to look at any association between a judge's characteristics at the time of application, and that judge's scores on retention from the attorneys and peace and probation officers. The analysis showed that:

- For evaluations where the judge was a public defense attorney at the time of appointment (N=9), attorneys rated the judge high – 4.0 or above – 77% of the time, while peace and probation officers rated the judge 4.0 or higher only 33% of the time.
- For evaluations where the judge was a prosecutor at the time of appointment (N=24), peace and probation officers rated the judge high – 4.0 or above – 56% of the time, while attorneys rated the judge 4.0 or higher 46% of the time.
- Judges who had been public defense attorneys or judges (in a different position than the one evaluated) at any time in their careers received higher than average retention scores

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<sup>68</sup> *Supra*, page 29.

<sup>69</sup> The Second District which includes Nome, Kotzebue and Barrow superior courts has no district court positions. The First District has one district court position in Juneau and one in Ketchikan. The Third Judicial District has nine positions in Anchorage, three in Palmer, and one each in Kenai, Homer, and Valdez. The Fourth District has three district court positions in Fairbanks and one in Bethel.

<sup>70</sup> The scores for five judges who retired without standing for retention were included in this analysis.

<sup>71</sup> In five appellate evaluations, the survey instruments did not include a variable to evaluate overall performance of the judge.

<sup>72</sup> 144 of the 223 retention evaluations reported in this section were for judges for whom the Council had selection information. The remaining 79 retention evaluations occurred for judges who had been appointed before 1984, and no selection information was available.

from attorneys, but not from peace and probation officers.<sup>73</sup> Experience as a prosecutor at any time in their careers did not affect the retention ratings that judges received from either attorneys or peace and probation officers.

- The amount of criminal experience that a judge had during the five years immediately preceding appointment was not related to the judge’s ratings from either the attorneys or the peace and probation officers.
- High bar survey scores during the selection process correlated well with high performance evaluation scores at retention. Sixty-nine percent of the applicants who were rated 4.3 or higher on the selection survey also were rated 4.3 or higher on their retention surveys. The other 31% with high selection survey marks were rated between 4.0 and 4.2 on retention evaluations.
- Writing sample evaluations from the selection process were closely correlated with overall scores from attorneys in retention evaluations. Judges with retention scores below 3.5 all had writing sample evaluations of “acceptable;” none had “good” or “excellent” writing samples. Almost all judges with retention evaluation scores of 4.0 or above had selection writing sample evaluations of “good” or “excellent.”

#### 4. Peace and probation officer surveys

Peace and probation officers tended to give judges high evaluations. They rated district court judges slightly higher than superior court judges, perhaps because they were likely to have more contact with district courts. There were no significant differences among the judicial districts.

Table 8 Retention Police and Probation Officer Ratings by Survey Categories and Court Level			
Rating Category	District Court	Superior Court	All
Impartiality	3.9	3.8	3.9
Integrity	4.1	4.0	4.0
Temperament	4.0	3.9	3.9
Diligence	4.0	3.9	3.9
Overall Performance	3.9	3.8	3.9

#### 5. Court employee, juror, and social worker/GAL/CASA surveys

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<sup>73</sup> In the Council’s 1999 report, *supra* note 2 at page 48, peace and probation officers were reported to have given judges who were not public defense attorneys at the time of their appointment, but who had been public defense attorneys at some time in the past, significantly higher scores than other judges. The present analysis showed a different finding: that past experience as a public defense attorney resulted in a higher score for the judge from attorneys, but made no difference to peace and probation officers. Prior work as a prosecutor did not make any difference in a judge’s retention scores from either attorneys or peace and probation officers.

The Council has surveyed three other groups about judicial performance. Juror surveys which had been conducted in the 1970s and early 1980s were dropped, then resumed in 1996. Court employees were added in 1996, and the social worker/GALs/CASAs were added in 1998. All of these groups were smaller than the bar and peace and probation officer groups, and all tended to rate the judges more highly than the larger groups. The mean scores from jurors for both district and superior court judges were 4.8. The mean scores for social workers/GALs/CASAs for both district and superior court judges were 4.3. Court employees evaluated appellate judges as well as trial court judges. They rated district court judges at 4.3, and superior court and appellate judges at 4.4.

### **C. Council recommendations**

The Council may make recommendations to the voters about whether to vote for a specific judge, based on its evaluations.<sup>74</sup> Since 1984, the Council has recommended non-retention of a judge only twice, once in 1988 and once in 2006.<sup>75</sup> The judge in 1988 was retained by a much smaller margin than the other judges standing that year; the judge in 2006 was not retained.

### **D. Voter participation**

The Council analyzes the information available from each retention election after the vote totals have been certified as official by the Lieutenant Governor's office. The purpose is to discern voting patterns, to be alert to public concerns, and to assess the usefulness of the Council's recommendations. Voter participation in judicial races is compared to voter turnout for the biannual U.S. House race,<sup>76</sup> and to the gubernatorial race every four years. Typically, 98% to 99% of all people voting participate in those races. In appellate retention elections that are statewide, 84% to 87% of all voters participate. Rates of voting for trial court judges in each judicial district were in the same range in 2006, up substantially since 2000.

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<sup>74</sup> Although the statute establishing the retention evaluation responsibility for the Council makes recommendations optional, the Council has always made recommendations.

<sup>75</sup> The Council recommended against judges several times between 1976 and 1982. In 1982, the two judges on whom the Council recommended a "no" vote were not retained. In the other instances, the judges were retained, but by substantially smaller margins than the judges for whom the Council recommended a "yes" vote.

<sup>76</sup> Alaska's population entitles it to only one Congressional position; it also has two U.S. Senators.

## **Part 4 Conclusion**

The Judicial Council's purpose in making this report has been to provide more information about the judicial selection and retention processes in Alaska's merit selection system. Building on the Council's 1999 report, *Fostering Judicial Excellence* (1984-1998 selection and retention data), the Council was able to show the increasing number of judicial vacancies, and the rising number of applicants for each vacancy, as well as changes in the characteristics of attorneys applying for judgeships.

This report, as did the earlier report, found that most of Alaska's judges were highly rated when they ran for retention by attorneys, peace and probation officers, jurors, court employees and social workers and guardians ad litem. Voters also supported judges strongly when they appeared on the ballot. The quality of applicants and judges appeared to have continued to improve over time. The high ratings suggested that the merit selection system adopted at statehood has served the state well.

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## **Appendix A**

**Judicial Council members serving from 1984 - 2007**

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## Appendix A

### Judicial Council members serving from 1984 - 2007

#### Chief Justices

**Edmond W. Burke** - 1981 - 1984

**Jay A. Rabinowitz** - 1984 - 1987 *and* 1990 - 1992

**Warren W. Matthews** - 1987 - 1990 *and* 1997 - 2000

**Daniel A. Moore, Jr.** - 1992 - 1995

**Allen T. Compton** - 1995 - 1997

**Dana Fabe** - 2000 - 2003 *and* 2006 - 2009

**Alexander O. Bryner** - 2003 - 2006

The following list includes brief biographies of former Council members at the time of their appointment to serve on the Judicial Council.

#### Former Attorney Members

**Joseph L. Young** - Anchorage - 1978 - 1984

Mr. Young was in private practice in Anchorage, with the firm of Young and Sanders.

**James B. Bradley** - Juneau - 1981 - 1986

Mr. Bradley was in private practice in the Juneau firm of Robertson, Monagle, Eastaugh and Bradley.

**Barbara L. Schuhmann** - Fairbanks - 1982 - 1988

Ms. Schuhmann was in private practice in Fairbanks with the firm of Staley, DeLisio, Cook & Sherry.

**James D. Gilmore** - Anchorage - 1984 - 1990

Mr. Gilmore was in private practice in Anchorage with the firm of Gilmore and Feldman.

**William T. Council** - Juneau - 1986 - 1992

Mr. Council was in private practice in the Juneau firm Council and Crosby.

**Daniel L. Callahan** - Fairbanks - 1988 - 1994

Mr. Callahan was in private practice in Fairbanks with the firm of Schendel and Callahan.

**Mark E. Ashburn** - Anchorage - 1990 - 1996

Mr. Ashburn was in private practice in Anchorage with the firm of Ashburn and Mason.

**Thomas G. Nave** - Juneau - 1992 - 1998

Mr. Nave was a sole practitioner in Juneau with a general civil and criminal practice.

**Christopher E. Zimmerman** - Fairbanks - 1994 - 1997

Mr. Zimmerman was a Fairbanks district court judge from 1985 - 1990, and was a partner in the law firm Call, Barrett & Burbank with a general civil and criminal practice during the time he served on the Judicial Council.

**Robert H. Wagstaff** - Anchorage - 1996 - 2002

Mr. Wagstaff was a sole practitioner with a general civil trial practice.

**Paul J. Ewers** - Fairbanks - 1997 - 2000

Mr. Ewers was a Deputy City Attorney with the City of Fairbanks.

**Geoffrey G. Currall** - Ketchikan - 1998 - 2004

Mr. Currall was a partner in the law firm of Keene and Currall. Mr. Currall served many years as a prosecutor before entering private practice.

**Robert B. Groseclose** - Fairbanks - 2000 - 2006

Mr. Groseclose was a partner in the law firm of Cook, Schuhmann and Groseclose.

**Susan Orlansky** - Anchorage - 2002 - 2008

Ms. Orlansky was a partner in the law firm of Feldman & Orlansky.

**Douglas Baily** - Juneau - 2004 - 2007

Mr. Baily served as Attorney General for Governor Cowper, was in private practice in Juneau and practiced law in Alaska for nearly 40 years.

### **Former Non-Attorney Members**

**Robert H. Moss** - Homer 1979 - 1985

Mr. Moss was a fisherman from Homer. He was appointed by Governor Hammond.

**Mary Jane Fate** - Fairbanks - 1981 - 1987

Ms. Fate served on the board of Alaska Airlines, and on non-profit boards. She was appointed by Governor Hammond.

**Renee Murray** - Anchorage - 1983 - 1989

Ms. Murray was the manager of Scott Wetzel Services, an insurance adjustment firm, in Anchorage. She was appointed by Governor Sheffield.

**Dr. Hilbert J. Henrickson** - Ketchikan - 1985 - 1991

Dr. Henrickson practiced general medicine in Ketchikan. He was appointed by Governor Sheffield.

**Leona Okakok** - Barrow - 1987 - 1993

Ms. Okakok served as the liaison officer for the Inupiat History, Language and Culture Commission of the North Slope Borough. She was appointed by Governor Cowper.

**Janis Roller** - Anchorage - 1989 - 1991

Ms. Roller was a federal court reporter in Anchorage from 1982 to 1988. She was appointed by Governor Cowper.

**Dr. Paul Dittrich, M.D.** - Anchorage - 1991 - 1991

Dr. Dittrich was an orthopedic surgeon in Anchorage. He was appointed by Governor Hickel.

**David A. Dapceovich** - Sitka - 1991 - 1997

Mr. Dapceovich was an accountant who specialized in tax preparation and served as election judge for several Alaska native corporations. He was appointed to the Council by Governor Hickel.

**Jim A. Arnesen** - Anchorage - 1991 - 1995

Mr. Arnesen was a real estate broker and president of the Alaska Family Support Group, a non-profit organization. He was appointed by Governor Hickel.

**Janice Lienhart** - Anchorage - 1993 - 1999

Ms. Lienhart was the director of Victims for Justice, a non-profit agency dedicated to supporting victims of crime and advancing their interests. She was appointed by Governor Hickel.

**Vicki A. Otte** - Juneau - 1995 - 2000

Ms. Otte was the President of the non-profit Native Justice Center. She was appointed by Governor Knowles.

**Mary Matthews** - Fairbanks - 1997- 1998

Ms. Matthews was the Executive Director of the Literacy Council of Alaska. She was appointed by Governor Knowles.

**Sandra Stringer** - Fairbanks - 1998 - 1999

Ms. Stringer was a special assistant to the Fairbanks North Star Borough Mayor, a non-attorney member of the Alaska Bar Association's Board of Governors, and a member of the Fairbanks Borough Assembly. She was appointed by Governor Knowles.

**Katie Hurley** - Wasilla - 1999 - 2003

Ms. Hurley was a retired life-long Alaskan, who was the clerk to the Alaska Constitutional Convention, and who served in the legislature prior to her appointment to the Council. She was appointed by Governor Knowles.

**Gigi Pilcher** - Ketchikan - 2000 - 2005

Ms. Pilcher ran a small business, directed non-profit service organizations, and served on several state commissions. She was appointed by Governor Knowles.

**Eleanor Andrews** - Anchorage - 2000 - 2007

Ms. Andrews served as commissioner of the Department of Administration under Governor Sheffield, and employee relations director for the Municipality of Anchorage. She was owner and CEO of Andrews Group in Anchorage. She was appointed by Governor Knowles.

**Charles M. Kopp** - Kenai - 2007 - 2008

Chief Kopp was the Chief of Police in Kenai. He was appointed by Governor Palin.

## **Current Council Members**

### **Attorney Members**

**James H. Cannon** - Fairbanks - 2006 - 2012

Mr. Cannon is in private practice in Fairbanks. He previously served as a public defender in Fairbanks from 1980-2005. He has practiced law since 1975.

**Kevin Fitzgerald** - Anchorage - 2008 - 2014

Mr. Fitzgerald is an attorney member of the Council from Anchorage. He is a partner in Ingaldson, Maassen & Fitzgerald.

**Louis James Menendez** - Juneau - 2007 - 2010

Mr. Menendez was an attorney member of the Council from Juneau. He is in private practice in Juneau.

### **Non-Attorney Members**

**Bill Gordon** - Fairbanks 2003 - 2009

Mr. Gordon served as Executive Assistant to Governor Hammond, as chair of the Alcohol Beverage Control Board, and is a semi-retired consultant and part owner of public water and wastewater companies in interior Alaska. He was appointed by Governor Murkowski.

**Christena Williams** - Ketchikan - 2005 - 2011

Ms. Williams is a third generation Alaskan and newspaper co-publisher. She and her family own and operate Pioneer Printing Co., Inc. and the Ketchikan Daily News. She was appointed by Governor Murkowski.

At the time of this report, one non-attorney member position was vacant.