

Opening Remarks  
Chief Justice Joel Bolger  
Alaska Judicial Council  
March 22, 2019

We called this meeting to address two communications the council received from the **governor's office yesterday**. **In the first** letter, the governor refuses to appoint a judge from the nominees we provided for the Palmer Superior Court position. The governor suggests that the council should nominate all qualified candidates for the position and provide the reasoning supporting the nominations. In the second letter we received, **the governor's chief of staff requests access to the confidential information** the council solicited during the nomination process.

**I believe the governor's office does not understand the constitutional requirements for these nominations**. So I'm going to spend some time outlining the requirements of the constitution and the bylaws and procedures the council has adopted to follow the constitution.

**Article IV, section 5 of the constitution provides that "The governor shall fill any vacancy in an office of . . . superior court judge by appointing one of two or more persons nominated by the judicial council."**

During the convention debates, the members of the judiciary committee were questioned about whether the governor had any authority to refuse to appoint from the candidates nominated by the council. Delegate Rivers **stated that the governor "has no alternative but to pick one of the names that are presented to him by the judicial council."** Delegate McLaughlin, who chaired the committee, later emphasized this requirement, stating that **"under this article, the governor has no right of refusal."** So it is clear that the founders intended this provision to mean exactly what it says: The governor must appoint one of the candidates nominated by the council.

**The governor's letter to the council suggests that the council should** nominate all the candidates who are qualified for each vacancy. For appointment to the superior court, a judge must be licensed to practice law,

engaged in the active practice of law for five years, and a resident of the state. All of the applicants for the Palmer superior court had these minimum qualifications. Indeed, it is very rare that the council would receive an application from an attorney who does not have these minimum qualifications. But the founders of our constitution did not intend that the citizens would be required to have their cases decided by a judge with minimal qualifications. Instead they intended that the council would “**seek for the best available timber,**” **that is to nominate only the applicants who** are *most* qualified for the position. And the Alaska Supreme Court has determined that the council may discharge its constitutional duty by nominating at least one more candidate than the number of judicial positions to be filled.

The judicial council has accordingly adopted detailed bylaws that provide for a comprehensive four to five month application process by which the council endeavors to nominate the most qualified applicants. Notice of a vacancy is published widely and sent directly to all active attorneys in the state. Each candidate must fill out a detailed application including public information, such as academic and employment history, community service, and recent litigation experience, and also private **information, including the candidate’s** recent income, any conflicts of interest, medical history, and any disabilities that may require accommodation.

The council also solicits information from other attorneys and judges who have been involved in litigation with the applicant, personal and professional references, and employment verifications. When requesting this information the council makes it clear that the responses will be confidential so that the response will not be colored by the fear of public exposure. But the council also gives the responding party the option to have the information forwarded to the governor in the event the applicant is nominated. And any reference letters that are not solicited by the council are public information.

The council also conducts a survey of all members of the Alaska Bar Association. The survey asks the attorneys to rate each candidate on six

criteria: professional competence, integrity, judicial temperament, fairness, suitability of experience, and overall professional qualifications. The results of the survey are collated and available to the public.

The survey also allows individual attorneys to make comments about the applicants. But again, the council wants to ensure that the attorneys are free to comment on sensitive issues. If an applicant is prone to angry outbursts, or inappropriate comments, or other character flaws, we want to learn about that and investigate during the application process. So the council maintains the source of these comments as confidential, and only the substance of the comments is released to the judicial candidate.

Many years ago, the judicial council asked for an opinion on whether we could maintain the confidentiality of some of this sensitive application material. **The attorney general's office advised that** the Alaska Constitution granted the council the power to adopt rules regarding the confidentiality of its own records. That is exactly what the council has done. **The confidentiality rules I am describing are all laid out in the council's bylaws.**

After the application and survey have been completed, the council schedules a public hearing and interviews, usually in the location of the court vacancy. The candidates can choose to have a public or private interview. My experience is that there has not been much attendance, even when an applicant chooses a public interview. But we often get a lot of information about the applicants during the public hearing process.

After the hearing and interviews are complete, the council meets in executive session to determine the most qualified applicants. Each council member considers the selection criteria **set forth in the council's bylaws:** professional competence, including written and oral communication skills; integrity; fairness; temperament; judgment, including common sense; legal and life experience; and demonstrated commitment to public and community service and then determines the candidates who are most qualified by considering all the candidates who have applied, the position applied for, and the community in which the position is located. The council deliberates in executive session to promote candid discussion about the qualifications of the applicants.

**The governor's letter asked about the council's reasoning** for its nomination decisions. But each council member votes independently on the candidates in a subsequent public vote. Although the council members discuss the qualifications of each of the applicants, there is no necessity to reach a consensus about the **council's reasoning because there is no** requirement for the council to reach a consensus. Instead, if a candidate receives four votes, then their name is forwarded to the governor.

**The governor's letter** questions the council's decision to nominate a candidate for one position and not for another position. But this is not uncommon because the council members consider more than the **individual candidate's qualifications. Their votes are also determined by** the strength of the other candidates, the nature of the open position, and the community the judge will serve.

Let me give you an example from my own experience. In 2007, I applied for the Alaska Supreme Court. I was nominated by the judicial council, but I was not appointed by Governor Palin. In 2012, I submitted another application. This time I was not nominated. But I applied again in 2013, and I was then nominated and appointed by Governor Parnell. My experience does not mean the council was arbitrary. I was not nominated in 2012 because there were more highly qualified candidates for the position at that time.

I believe the Alaska Judicial Council maintains more public information about the candidates for judicial selection and judicial retention than any other state agency involved in an appointment process. Sometimes I think that my entire **professional life is on the council's web** site. And I believe the Alaska Judicial Council maintains a more neutral nomination process than any other State in the country. But I am likewise convinced that the procedures I have outlined are necessary for the public to be served by the most qualified candidates for judicial positions.