

MAR 19 2012

ALASKA JUDICIAL COUNCIL

Alaska Judicial Council Application for Judicial Appointment

Position(s) for which you wish to be considered:

Anchorage Superior Court

Date: March 19, 2012

I. Public Information (Questions 1-24)

Personal

1. (a) State full name* Erin B. Marston

Name as it should appear on bar survey: Erin B. Marston

* Unless otherwise specified, this is how your name will appear on the bar survey.

(b) Have you ever used or been known by any other name? If so, please identify.

No.

2. How long have you been a resident of the State of Alaska immediately preceding the date of this application? **

52 years 3 months
Total 52 years 3 months

3. How long have you been engaged in the active practice of law immediately preceding the date of this application? **

26 years 5 months
Total 26 years 5 months

Nonlegal Education

4. State names and dates of attendance of all colleges and professional schools (other than law schools) ever attended and degrees and dates conferred. List any honors.

Colby College, Waterville, Maine. September 1978-May 1982. Bachelor of Arts Degree in Political Science. Dean's Honor List.

Wroxton College, Fairleigh Dickinson University, Oxfordshire, England. Attended in 1981. Dean's Honor Roll.

** See AS 22.10.090; see also 1984 Inf. Op. Atty. Gen. (July 19; 366- 624-84).

Legal Education

5. List all law schools, dates attended and degrees conferred. If you did not receive a degree from any law school, please indicate.

University of the Pacific, McGeorge School of Law. September 1982 to May 1985. Graduated with a Juris Doctorate degree.

6. (a) Did you receive any honors in law school or belong to any honorary societies or groups?
 Yes No If yes, please give details.

I did help establish the Alaska Law Students' Association at McGeorge School of Law, but it was a social rather than an honorary society.

(b) Have you taken any CLE (continuing legal education) courses during the past five years?
 Yes No

Please describe or list. Please do not attach individual certificates of attendance.

I take continuing legal education courses every year including ethics and at least two or three courses in my areas of practice. I have also attended programs on law practice management which I enjoy. In 2010, I attended a multi-day CLE in Washington, D.C. as part of the National Transportation Safety Board Bar Association Conference. I also attended a five day CLE in Houston, Texas put on by the Rocky Mountain Mineral Law Foundation on oil and gas law.

Military

7. Have you served in the armed forces (reserves or otherwise)? Yes No

If so, please provide the following information:

- (a) Dates of service: _____
- (b) Branch of service: _____
- (c) Rank at time of discharge: _____
- (d) Type of military discharge: _____
- (e) Awards or citations: _____

(f) Have you ever been refused admission to or released from any of the armed services for reasons other than honorable discharge? Yes No If so, state the details.

Nonlegal Employment

8. Describe major nonlegal working experience. If you had a business or association that has been discontinued, please note whether there are unpaid debts or claims pending litigation.

I went directly to law school after college and then started work as a lawyer. The only non-legal working experience I have is working for a construction company and for a property management firm during summer months while at school.

Legal Experience

9. Describe chronologically your legal employment since admission to law school. **Please provide dates and location of employment, name of employer, name AND CURRENT ADDRESS OF supervisor or person who can verify AND COMMENT ON YOUR employment, the reason you left the position, and a brief description of type of practice (i.e., insurance defense, criminal, appellate, general, litigation, etc.) for each position listed below.** IF YOU ARE CURRENTLY A TRIAL COURT JUDGE, PLEASE LIST YOUR PRESIDING JUDGE. FOR PAST JUDGESHIPS, PLEASE LIST THE JUDGE WHO LAST PRESIDED DURING YOUR TIME ON THE BENCH.

The Council will ask for comments from your current and former employers about your employment and your judicial qualifications. You may choose to list other persons as character and professional references in response to Question 20 of this application.

If the supervisor or contact person asks (in writing) that the letter be shared with the governor, the Council will send designated letters for each nominee. The applicant should not request a copy of the letter from the reference. References or letters not solicited by the Council are considered public (with few exceptions) and will be sent to the governor for all nominees.

Current Employer: Law Office of Marston & Cole, P.C.

Supervisor or name of contact person who can verify employment: Brent Cole

Current address of this person: 821 N Street, Suite 208

City Anchorage State Alaska Zip 99501

Dates and location of Employment: From 11/94 To Present City Anchorage State Alaska

Description:

Partner in Anchorage based law firm practicing civil litigation with an emphasis in insurance defense and aviation law.

Previous Employers: *(In chronological order, most recent first)*

Employer: Koval & Featherly, P.C.

Supervisor or name of contact person who can verify employment: Walter Featherly

Current address of this person: 605 W. 5th Avenue

City Anchorage State Alaska Zip 99501

Dates and Location of Employment: From 1991 To 1994 City Anchorage State Alaska

Description: Associate attorney practicing insurance defense, real estate law and commercial litigation.

Reason for Leaving: Desire to be self-employed.

Employer: Stafford, Frey, Cooper & Stewart

Supervisor or name of contact person who can verify employment: Traeger Machetanz

Current address of this person: 745 W.4th Avenue, Suite 502

City Anchorage State Alaska Zip 99501

Dates and Location of Employment: From 1990 To 1991 City Anchorage State Alaska

Description: Associate in surety and construction law firm.

Reason for Leaving: Opportunity to work for an Alaskan firm with a broader practice.

Previous Employers (continued)

Employer: State of Alaska, District Attorney's Office
Supervisor or name of contact person who can verify employment: Dwayne McConnell
Current address of this person: 120 Trading Bay Road, Suite 200
City Kenai State Alaska Zip 99611
Dates and Location of Employment: From 1987 To 1990 City Anchorage State Alaska
Description: Assistant District Attorney in Anchorage. Also handled Sand Point and Cordova calendars.
Reason for Leaving: Desire to go into civil practice.

Employer: Law Office of Erin B. Marston
Supervisor or name of contact person who can verify employment: self-employed
Current address of this person: 4109 Tazlina Avenue
City Anchorage State Alaska Zip 99517
Dates and Location of Employment: From 1985 To 1987 City Anchorage State Alaska
Description: Self-employed lawyer handling real estate and family law matters.
Reason for Leaving: Desire to obtain jury trial experience.

Employer: Kemppel, Huffman & Ginder
Supervisor or name of contact person who can verify employment: Peter Ginder
Current address of this person: 810 N Street
City Anchorage State Alaska Zip 99501
Dates and Location of Employment: From June '84 To Sept. '84 City Anchorage State Alaska
Description: Summer law clerk in a firm emphasizing utility work.
Reason for Leaving: Return to third year of law school.

Employer: _____
Supervisor or name of contact person who can verify employment: _____
Current address of this person: _____
City _____ State _____ Zip _____
Dates and Location of Employment: From _____ To _____ City _____ State _____
Description: _____
Reason for Leaving: _____

Employer: _____
Supervisor or name of contact person who can verify employment: _____
Current address of this person: _____
City _____ State _____ Zip _____
Dates and Location of Employment: From _____ To _____ City _____ State _____
Description: _____
Reason for Leaving: _____

10. During your legal career, please indicate (approximately) the following:

(a) Percent of your practice that was: Civil 98
Criminal 2
Other _____
= 100%

Comment: _____

(b) Percent: State 90
Federal 10
Other _____
= 100%

Comment: _____

(c) Of practice in state courts, percent: Supreme Court 3
Court of Appeals _____
Superior Court 85
District Court 12
= 100%

Comment: _____

(d) Frequency of appearance in court:
 Regularly Occasionally Infrequently Not at All
 Comment: I routinely appear in court in civil and criminal matters.

(e) Number of trials (by court or jury) you conducted:
 None 1-5 6-15 16-30 31 or more
 Comment: _____

(f) Percent of these trials which were: Jury 40 Non-Jury 60
 Comment: _____

(g) Approximate number of appellate matters handled: 10
 Comment: I argued Schiel v. Union Oil Co. of California in April, 2009.

(h) Approximate number of arbitrations or administrative hearings:
 None 1-5 6-15 16-30 31 or more
 Briefly describe type of matters heard:

UM/UIM insurance issues, hospital privileges cases, surety fund, fee arb

(i) Please briefly summarize any *pro bono* work that you have done and indicate whether the work was done through a *pro bono* legal service provider (e.g. Alaska Legal Services, Alaska Network on Domestic Violence and Sexual Assault, etc.).

As a younger lawyer I took several cases referred by Alaska Legal Services, including a contentious business dissolution case. More recently I have assisted several individuals on a pro bono basis simply because I believed justice required that they receive representation.

Much of my pro bono work assists community causes. I represent the Iditarod Air Force, a group of pilots and volunteers that support the Iditarod Race. I have spent many pro bono hours working with the Federal Aviation Administration to keep the Iditarod Air Force in compliance with the Federal Aviation Regulations.

I also volunteer my time to several 501(c)(3) non-profits including an alumni association, an association of pilots, and rural gardening. My efforts have been corporate and tax work related to the structuring of the entities to maintain compliance with State and Federal laws. I have also done two fee arbitrations for the Alaska Bar Association.

11. List all the courts and administrative tribunals in the United States or elsewhere to which you are or have been admitted to practice, and the dates of admission.

Alaska State Courts-December 2, 1985
 United States District Court for Alaska-December 3, 1985
 United States Court of Appeals for the Ninth Circuit-April 22, 1986

Public Service

12. List bar associations, and sections and committees of which you are or have been a member or officer.

Alaska Bar Association, American Bar Association, Anchorage Bar Association
 International Aviation and Transportation Safety Bar Association-Regional V.P.
 Lawyer-Pilots Bar Association
 DRI (Defense Research Institute)
 Defense Attorneys of Alaska
 Aircraft Owners & Pilots Association Legal Plan-Panel Attorney

13. List legal publications, if any (give title, subject and date of publications). Please include publications you have co-authored and the name(s) of the co-author(s).

None.

14. Have you ever applied for a judgeship? Yes No
 Please list dates and judgeships applied for, as well as whether you were nominated by the Judicial Council and appointed.

Judgeship	Date	Nominated By Council (Y/N)	Appointed By Governor (Y/N)

15. Have you ever held public or political office, elective or appointive? Yes No
If so, state office, manner selected, and when and where held.

Although not a public or political office, Mayor Begich appointed me to serve as a member of the Municipal Airports Aviation Advisory Commission. I served until October of 2010 and during my tenure I was elected Chairman for two years.

16. Please provide the Council with information that you would like the Council to consider about other legal and nonlegal organizations and clubs of which you are a member, including civic, charitable, religious, educational, social and fraternal organizations. Please indicate whether you participate in the organization's activities, or simply hold a membership. Your involvement in the community is one of the criteria the Council uses in its evaluations. The Council does not use affiliation with a particular group as a criterion except to the extent that it might raise questions of conflict of interest or would affect an applicant's ability to impartially apply the law.

I volunteer for several non-profit community organizations. I am the treasurer of the West High Alumni Association and have been so for several years. We provide funding to West High organizations that benefit students. We also provide 10 to 20 student scholarships each year, depending on our funding. I have been on the scholarship committee the last two years, a job that is very satisfying.

My grandfather was very interested in gardening in the arctic and established the Marston Foundation to promote gardening in western Alaska. I am the secretary-treasurer and assist in the operation of the non-profit including doing legal and bookkeeping work necessary to insure the organization retains its non-profit status with the Internal Revenue Service.

For the last two years I have been active in the Iditarod Air Force flying volunteers and supplies in support of the race. During this year I also served as the Iditarod Air Force's lawyer, working with the Federal Aviation Administration and the Iditarod Air Force management to insure the Iditarod Air Force maintains the exemption necessary to legally operate both before and during the Iditarod race.

I am also a past board member of the Alaska Airmen's Association. I served two terms on the Municipal Airports Aviation Advisory Commission on its behalf.

17. Indicate (Yes or No) whether you have ever:

- (a) been arrested, charged with, pled guilty or *nolo contendere* to, or been convicted of the violation of any law or ordinance, or been requested to appear before any prosecuting or investigative agency in connection with any matter in any jurisdiction, including all traffic offenses, unless the fine was less than \$50 and there were no other sanctions?
 Yes No
- (b) failed to answer any summons or other legal process served upon you personally at any time? Yes No
- (c) as a member of any armed forces, been the subject of any charges which may have resulted in disciplinary action or court martial? Yes No

- (d) had any proceedings brought to have you declared a ward of any court or adjudged an incompetent? Yes No
If your answer is "yes" to any part of this question, state the facts in detail. Give the name and place of the court or agency, dates of the beginning and end of any action or proceeding, case numbers, and the judgment or other disposition.

18. (a) Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? Yes No
In particular, have you been the subject of any proceeding, criminal or civil, initiated against you by the Internal Revenue Service or a State Tax Office? Yes No
If so, give particulars, including case numbers.

- (b) Have you ever been sued by a client? Yes No
If so, give particulars, including case numbers.

- (c) Have you ever been a party in any other legal proceeding? Yes No
If so, give the particulars. Include all legal proceedings in which you were a party in interest, including petitioner or respondent in dissolution or divorce proceedings; a material witness; a named co-conspirator or correspondent; and subject or witness in any grand jury proceedings. Do not list proceedings in which you were sued only in a representative capacity (e.g. guardian ad litem, or as Commissioner of Natural Resources).

19. State the nature and disposition of any of the following actions which apply to you:

- (a) Are there any unsatisfied judgments against you? Yes No
Have you ever defaulted in the performance of any court-imposed obligation, including payment of alimony or child support or compliance with another court order or decree?

Yes No

In each case, list the name and address of the creditor, the court which rendered the judgment, the case number, the date, the amount of the judgment, and the circumstances on which such claim was based.

Has property owned by you been either judicially or non-judicially foreclosed?

Yes No

Please state the circumstances and outcome of any such unsatisfied or default judgment, or of any foreclosure.

- (b) Have you ever made an assignment for the benefit of creditors? Yes No
Have you ever filed any petition in bankruptcy? Yes No
If so, state the circumstances, case number, and the outcome.

References and Counsel Questionnaires*

- * **Please Note:** Letters of reference from these persons are confidential and will not be given to the applicant. If the reference asks (in writing) that the letter be shared with the governor, the Council will send designated letters and counsel questionnaires for each nominee. The applicant should not request a copy of the letter from the reference. (You **should not** list the Chief Justice of the Alaska Supreme Court.)

References or letters not solicited by the Council are considered public (with few exceptions) and will be sent to the governor for all nominees.

20. (a) List the names, addresses, **including zip codes**, and **phone numbers** of two persons whom the Judicial Council may contact who can discuss your general character and background.

Name: John Bodick
Address: 1203 S Street
City/State/Zip: Anchorage, Alaska 99501 Phone: 907 279-7893

Name: Joe Schierhorn
Address: 3931 Moonstar Circle
City/State/Zip: Anchorage, Alaska 99516 Phone: 907 261-3308

- (b) List the names, addresses, **including zip codes**, and **phone numbers** of three other persons whom the Judicial Council may contact who can discuss your professional competence and qualifications for a judicial position.

Name: Mike Hanson
Address: 250 H Street
City/State/Zip: Anchorage, Alaska 99501 Phone: 907 258-8864

Name: Bill Ingaldson
Address: 813 W. 3rd Avenue
City/State/Zip: Anchorage, Alaska 99501 Phone: 907 258-8750

Name: Roger Holmes
Address: 3948 Clay Products Drive
City/State/Zip: Anchorage, Alaska 99517 Phone: 907 248-8013

References and Counsel Questionnaires (continued)

(c) List the names, addresses, including zip codes, and suite numbers where applicable, and phone numbers of each attorney involved in your three most recent cases that have gone to trial. Please do not list cases pending in the trial courts. (Applicants who are currently judges should list the three most recent trials they presided over.) List only those cases that have gone to trial within the past three years. Please include the judge's name and case names and numbers. (*Attach additional pages if necessary.*)

Case Number 1

Case Name: A-1 Timber Consultants, Inc. **Case Number:** 3AN-11-6481 Civil
v. Leisnoi Inc, et al. (Prelim.Inj) **Judge Name:** Sharon Gleason

Attorneys Involved:

Name: <u>William Ingaldson</u>	Name: <u>Matthew W. Claman</u>
Address: <u>813 W.3rd Avenue</u>	Address: <u>301 W.Northern Lights, Ste 301</u>
City, State, Zip: <u>Anchorage, Alaska 99501</u>	City, State, Zip: <u>Anchorage, Alaska 99503</u>
Name: <u>Ronald Offret</u>	Name: _____
Address: <u>733 W. 4th Avenue, Ste. 206</u>	Address: _____
City, State, Zip: <u>Anchorage, Alaska 99501</u>	City, State, Zip: _____

Case Number 2

Case Name: J.Randolph Babbit, Admin. **Case Number:** NTSB Docket No. SE-19122
v. Mark William Agnew **Judge Name:** William R. Mullins (NTSB)

Attorneys Involved:

Name: <u>Cheryl Jones,</u>	Name: _____
Address: <u>222 W.7th Avenue, #14</u>	Address: _____
City, State, Zip: <u>Anchorage, Alaska 99513-7587</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 3

Case Name: J. Randolph Babbit, Admin. **Case Number:** NTSB Docket No. SE-18946
v. Gary N. Carlos **Judge Name:** William R. Mullins (NTSB)

Attorneys Involved:

Name: <u>Glenn H. Brown</u>	Name: _____
Address: <u>222 West 7th Avenue, #14</u>	Address: _____
City, State, Zip: <u>Anchorage, Alaska 99513-7587</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

References and Counsel Questionnaires (continued)

(d) List the names, addresses, including zip codes, and suite numbers where applicable, and phone numbers of each attorney involved in your three most recent cases that did not go to trial but in which you did significant work. Please do not list cases pending in the trial courts. (Applicants who are currently judges should list the three most recent cases they presided over that did not go to trial but in which they did significant work.) Please include the judge's name and case names and numbers. (Attach additional pages if necessary.)

Case Number 1

Case Name: Martha "Diane" Robinson **Case Number:** 1JU-10-401 Civ
v. Tiara Wall, David Wall, et al. **Judge Name:** Phillip Pallenberg

Attorneys Involved:

Name: <u>Mark Clayton Choate</u>	Name: <u>Michael Hanson</u>
Address: <u>424 North Franklin Street</u>	Address: <u>250 H Street</u>
City, State, Zip: <u>Juneau, Alaska 99801</u>	City, State, Zip: <u>Anchorage, Alaska 99501</u>

Name: <u>Rebecca J. Hozubin</u>	Name: _____
Address: <u>310 K Street, Suite 405</u>	Address: _____
City, State, Zip: <u>Anchorage, Alaska 99501</u>	City, State, Zip: _____

Case Number 2

Case Name: Joseph Dilley **Case Number:** 3AN-08-5765 Civil
v. Crowley Alaska, Inc., et al. **Judge Name:** Stephanie Joannides

Attorneys Involved:

Name: <u>Frank Schlehofer</u>	Name: _____
Address: <u>800 E. Dimond, Ste. 3-640</u>	Address: _____
City, State, Zip: <u>Anchorage, Alaska</u>	City, State, Zip: _____

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 3

Case Name: Linda Bailey **Case Number:** 3AN-10-5472 Civil
v. Sheldon Naslund **Judge Name:** Andrew Guidi

Attorneys Involved:

Name: <u>George Kapolchok</u>	Name: _____
Address: <u>360 K Street, Suite 100</u>	Address: _____
City, State, Zip: <u>Anchorage, Alaska 99501</u>	City, State, Zip: _____

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Writing Sample

21. Attach one example of a brief, memorandum of law, or legal opinion or similar example of legal writing (10-20 pages in length; 15-25 pages for appellate positions) prepared solely by you within the last five years. Please choose a sample that reflects your ability to do legal research and analysis. If you do not have a good sample of this length, include an excerpt from a longer writing. Make sure the sample contains sufficient facts to make it understandable. (Some reply briefs may not meet these requirements.)

Please do not submit: (a) coauthored writing samples, (b) samples with confidential information unless redacted to remove such information, (c) longer writing samples.

22. Has any **public** sanction been imposed against you in response to a complaint, charge or grievance brought against you as an attorney or a judge? Yes No
- Have formal grievance procedures been brought against you? Yes No
- See Bar Rule 22(b) & (e) concerning public bar grievance procedures against attorneys, and AS 22.30.011(b) and .060(b)(3) concerning public disciplinary grievance procedures against judges.
- Have you ever been held in contempt of court? Yes No
- Have you ever been fined or otherwise sanctioned by a judge? Yes No
- In each case, state in detail the circumstances and the outcome.

Additional Comments (Non-Confidential)

23. Please make any additional comments that you wish to bring to the Council's attention about your experience and suitability for this judgeship.

From my twenty-six years as a lawyer I have a breadth of experience that ranges from family law to criminal prosecution, from real estate to commercial litigation, and from administrative hearings to mediation. This background has been helpful in my career as a lawyer and contributes to my capabilities in many areas of law. In particular my experiences as an arbiter, a mediator and a hearing officer all contribute to my suitability to serve as a judge.

During the last ten years I have participated in many arbitrations as an arbiter. Although my civil practice has largely been defense oriented, I routinely am picked to be the "neutral arbiter" by both sides of the personal injury bar. I believe this reflects on my commitment to be fair and to judge the evidence without bias or prejudice. Although not all litigants are happy with the results, I appreciate that lawyers continue to use me, both as an arbiter and mediator, and value my judgment and abilities to obtain a fair and just result.

Additional Comments (Continued)

In addition to arbitrations, in the last five years I have been given the opportunity to work as a mediator and as a hearing officer. My hearing officer experience has been related to hospital privileges cases both in Anchorage and in Homer. Because the financial stakes are high, the matters are usually well litigated by good lawyers. I enjoy the challenge of conducting the hearing so that all sides have an opportunity to put on their case, but also getting the case completed in a timely manner.

I also serve as a mediator. It is immensely satisfying working to reach a settlement that allows parties to move forward without contentious litigation.

Finally, I fully realize the tremendous amount that can be expected of Superior Court judges. While family law cases can be difficult, civil cases can equally be demanding. I recently represented a plaintiff in a hotly contested multi-party dispute over a North Slope contracting business. At the trial court every issue that could be litigated was litigated and fully briefed by both sides. As a result, the trial judge had to rule on every procedural and substantive issue in the case prior to trial. It was an enormous work load that the judge diligently handled. I understand that justice requires this level of commitment by a judge and I am willing to accept that responsibility.

24. Please indicate whether you prefer to be interviewed in public session or in private session. Your choice of a public or private interview has no bearing on the Council’s determination of your qualifications or on the questions the Council may ask. You may change your request in writing at any time before the interview starts.

Public Interview

Private Interview

25. Please prepare a brief biographical statement (*limited to 150 words*) about your background, legal education, and legal experience. Please do not list personal information about minor children. Your picture and a copy of this statement will be scanned and posted on the Council’s website after the application deadline. In its bar survey, the Council will invite attorneys to review the information if they wish to become more familiar with your background and experience. Use the form on the following page for your biographical statement. Please leave the box at the top empty. The Council will use this space for your scanned picture. *To be fair to all applicants, the Council will strictly enforce the 150 word limit.*

If you object to the posting of your picture on the Council’s website, please indicate your objection below. If you object, we will not post your picture, although you still must submit twelve photographs of yourself with your application.

If you check this box we will not post your picture on the website.

Biographical Statement

Name Erin B. Marston

Position(s) for which you wish to be considered:

Anchorage Superior Court

Please leave this area blank

Date: March 19, 2012

I was born and raised in Anchorage, Alaska. Along with my wife, I have enjoyed the opportunity of raising my children in Anchorage while pursuing a rewarding career.

Alaska has provided a great opportunity to practice law and I have taken advantage of it. Early in my career I practiced real estate and family law and then spent almost three years working for the State of Alaska as a trial lawyer in Anchorage and across Alaska. For the last twenty years I have primarily represented clients in personal injury litigation and pilots in FAA enforcement matters.

In the last ten years I also have served as an arbiter, a mediator and a hearing officer in numerous matters. This most recent work is satisfying and productive. I believe these experiences have given me the skills to serve as a Superior Court judge and I would like the opportunity to serve Alaska.