

Alaska Judicial Council
Application for Judicial Appointment

RECEIVED
JUL 8 2002
ALASKA
JUDICIAL COUNCIL

Anchorage Superior Court

Date: July 7, 2002

Position(s) for which you wish to be considered

I. PUBLIC INFORMATION (Qs. 1-24 & 35)

PERSONAL

1. (a) State full name* Jack Wheten Smith
Name as it should appear on bar survey: Jack W. Smith
* 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. Date and place of birth March 25, 1950 St. Maries, Idaho Age 52
3. How long have you been a resident of the State of Alaska immediately preceding the date of this application? ** 8 years 0 months
Total years 8 months 0
4. How long have you been engaged in the active practice of law immediately preceding the date of this application? ** 23 years 5 months
Total years 23 months 5

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

NONLEGAL EDUCATION

5. 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.

Idaho State University 6/67 - 8/67; US Air Force Academy 6/68 - 6/72 BS '72;
University of Montana 8/73 -10/73; University of Southern California 10/73 -
7/75 MS '75 (4.0 GPA); Squadron Officer School 11 weeks in '74; Air Command
and Staff College 40 weeks in '82; Air War College 40 weeks in '87

LEGAL EDUCATION

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

University of Idaho 8/76 - 12/78 JD '78

7. (a) Did you receive any honors in law school or belong to any honorary societies or groups?
Yes. If so, please give details.

Phi Alpha Delta honor society.
Graduated 11th out of 75.

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

Alaska Bar review course covering criminal law and procedure, torts, contracts, evidence, civil procedure, property, family law, business organizations and constitutional law; guide to federal court rules and procedures in Alaska; trying the automobile injury case in Alaska; cont.

7.(b)

Trial Advocacy (one week course conducted by the National District Attorney's Association); annual three day Alaska District Attorney's conference in 98, 99, '00, and 01 (topics included appellate and legislative updates; voir dire; cross examination; forensic evidence; use of technology in the courtroom; and use of DNA in the courtroom); Mediation in Business Disputes; Mandatory Ethics: Professionalism in Alaska; and Mediation and Structured Settlements in Employment Law Cases.

MILITARY

8. Have you served in the armed forces (reserves or otherwise)? Yes.

If so, please provide the following information:

(a) Dates of service: 6/72 - 8/97

(b) Branch of service: US Air Force

(c) Rank at time of discharge: Colonel

(d) Type of military discharge: Honorable

(e) Awards or citations:

Legion of Merit; Meritorious Service Medal (5); Air Force
Commendation Medal (2); Air Force Achievement Award

(f) Have you ever been refused admission to or released from any of the armed services for reasons other than honorable discharge. If so, state the details.

No.

NONLEGAL EMPLOYMENT

9. Describe major nonlegal working experience, if any.

Farm laborer-irrigation pipe mover, hay buckler, potato-harvester.
Intercontinental ballistic missile launch officer-crewmember on minuteman
missile launch crew.

10. Describe major nonlegal business or professional experience, if any. If your association has been discontinued, please note whether there are unpaid debts or claims pending litigation.

Air Force officer for 25 years. No unpaid debts or claims pending.

LEGAL EXPERIENCE

11. Describe chronologically your legal employment since admission to law school. Please provide dates, name of employer, name of supervisor, addresses, the reason you left the position, and a brief description of type of practice (i.e., insurance defense, criminal, appellate, general, litigation, etc.). **Also, provide the name and current address of a person, preferably your supervisor, who can verify your employment *for each position listed below.***

3/79 - 5/82; USAF; Paul Black; 380 Bomb Wing, Plattsburgh, NY; transferred; criminal prosecution; claims and insurance defense; environmental compliance; labor and personnel law; government contracts; legal assistance.

5/82 - 6/85; USAF; Marion Williams; USAF Medical Center, Scott AFB, IL; transferred; tort claims; medical malpractice; risk management; legal assistance; employment law; government contracts.

7/85 - 6/88; USAF; Gaillard Peck; 26 Tactical Reconnaissance Wing, Germany; transferred; criminal prosecution; criminal appellate law; claims and insurance defense; government contracts; labor and personnel law; international law; ethics; supervisory attorney; tax law.

6/88 - 7/91; USAF; Edward Grillo; 410 Bomb Wing, KI Sawyer AFB, MI; transferred; criminal prosecution; criminal appellate law; claims and insurance defense; personnel and labor law; ethics; environmental law; government contracts; supervisory attorney; legal assistance; tax law.

7/91 - 6/92; USAF; Roger Jones; HQ Strategic Air Command, Offutt AFB, NE; transferred; personnel law; ethics; general law.

6/92 - 7/94; USAF; Thomas Keck; 55 Wing, Offutt AFB, NE; transferred; criminal prosecution and appeal; environmental law; government contract law; personnel and labor law; ethics; claims and insurance law; supervisory attorney; legal assistance; tax law.

7/94 - 8/97; USAF; Patrick Gamble; 11th Air Force, Elmendorf AFB, AK; transferred; criminal appeals; environmental law; personnel and labor law; ethics; government contracts; supervisory attorney.

9/97 - 1/98; self-employed; 27635 Raven Court, Chugiak, AK; hired by state; family law; torts; insurance claims; labor law.

1/98 - 1/00; State of Alaska; John Vacek; District Attorney's Office, Kotzebue, AK; transferred; criminal prosecution; juvenile prosecution; criminal appeals; post-conviction relief.

1/00 - present; State of Alaska; Roman Kalytiak; District Attorney's Office, Palmer, AK; criminal prosecution.

11. (additional information):

3/79 - 5/82: I was an assistant staff judge advocate. Major Paul Black was my supervisor; the address was Staff Judge Advocate 380th Bomb Wing, Plattsburgh AFB, NY 12901. Col. Black is now retired. During the last year at this assignment, Lt.Col. Richard Novak was my supervisor. He is retired in Texas. Plattsburgh AFB has closed.

5/82 - 6/85: I was the medical law consultant, Col. (Dr.) Marion Williams was my supervisor the last two years in this assignment. His address was Commander, USAF Medical Center, Scott AFB, IL 62225. Col. Williams has retired. For approximately one year, my supervisor was Col. (Dr.) Lawrence Smith. He has also retired from the military.

7/85 - 6/88: I was the Staff Judge Advocate. Col. Gaillard Peck was my supervisor. He has retired from the military. His address was Commander, 26th Tactical Reconnaissance Wing, Zweibrucken AB, (then West Germany) APO, NY. This base has closed.

6/88 - 7/91: I was the Staff Judge Advocate. Col. Edward Grillo was my supervisor. His address was Commander, 410th Bomb Wing, K.I.Sawyer AFB, MI. The last I heard he was a Major General, although I believe he has probably retired. This base has closed.

7/91 - 6/92: Brig. Gen. Roger Jones was my supervisor. His address was Staff Judge Advocate, Headquarters Strategic Air Command, Offutt AFB, NE 68113. General Jones retired in Utah. Strategic Air Command no longer exists. Strategic Command has assumed some of the responsibilities of Strategic Air Command and Staff Judge Advocate, Stratcom/JA, Offutt AFB, NE 68113 would be the mailing address.

6/92 - 7/94: I was the Staff Judge Advocate. Brigadier General Thomas Keck was my supervisor. His address was Commander, 55th Wing, Offutt AFB, NE 68113. He has retired. Colonel William Manire was the Commander of the 55th Wing for part of my assignment. He retired in the Omaha, Nebraska area.

7/94 - 8/97: I was the Staff Judge Advocate. Lt. Gen. Patrick Gambel was my supervisor. His address was Commander, 11th Air Force and Alaskan Command, Elmendorf AFB, AK 99506. Gen. Gamble has retired and is now the President of the Alaska Railroad. Lt. Gen. Lawrence Boese, who also supervised me, retired in Alabama.

1/98 - 1/00: John Vacek was my supervisor. I was the Assistant District Attorney assigned to Kotzebue, AK. John Vacek is the District Attorney in Nome, Alaska. His mailing address is District Attorney, Box 160, Nome, AK 99762.

1/00 - Present: Roman Kalytiak is my supervisor. I am an Assistant District Attorney in the Palmer District Attorney's Office. The mailing address for Roman Kalytiak is District Attorney, 800 W. Evergreen, Palmer, AK 99645.

Given the number of retired military supervisors, it may be beneficial to contact Maj. Gen. Thomas Fiscus, The Judge Advocate General, HQUSAF, 1420 Air Force, The Pentagon, Washington D.C. 20330-1420. He has known me for over twenty years and is familiar with my work from several of the assignments mentioned. His work phone is (703) 614-5732.

12. For the past five years, please indicate (approximately) the following:

(a) Percent of your practice that was

Civil	<u>5</u>
Criminal	<u>90</u>
Other	<u>5</u>

= 100%

Comment: _____

(b) Percent

State	<u>90</u>
Federal	<u>10</u>
Other	_____

= 100%

Comment: _____

(c) Of practice in state courts, percent:

Supreme Court	_____
Court of Appeals	_____
Superior Court	<u>70</u>
District Court	<u>30</u>

= 100%

Comment: _____

(d) Frequency of appearance in court: Regularly x; Occasionally _____;
Infrequently _____; Not at All _____

Comment: _____

(e) Number of trials (by court or jury) you conducted in the past 5 years:
_____ None _____ 1 to 5 x 6 to 16 _____ 16 to 30 _____ 31 or more

Comment: _____

(f) Percent of these trials which were: Jury 95 Non-Jury 5

Comment: One bench trial.

(g) Approximate number of appellate matters handled: 8;

Comment: Appellate briefs written, but OSPA processed the cases.

(h) Approximate number of arbitrations or administrative hearings: x None
_____ 1 to 5 _____ 6 to 16 _____ 16 to 30 _____ 31 or more

Briefly describe type of matters heard:

(i) Have you undertaken any pro bono work during this period?

Yes _____ No X

Describe: _____

13. 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.

Supreme Court of Idaho 1979

Court of Military Appeals 1979

Supreme Court of Alaska 1996

US District Court of Alaska 1996

PUBLIC SERVICE

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

Idaho State Bar Association

Alaska State Bar Association

American Bar Association

National District Attorneys Association

15. List legal publications, if any (give title, subject and date of publications):

None.

16. Have you ever applied for a judgeship? 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)
Anchorage Superior Court	10/00	No	No
Anchorage District Court	10/00	No	No

17. Have you ever held public or political office, elective or appointive? No.

If so, state office, manner selected, and when and where held.

18. List all other legal and any nonlegal organizations and clubs of which you are a member, including civic, charitable, religious, educational, social and fraternal. (Please indicate whether you participate in the organization's activities, or simply hold a membership.)

- American Inns of Court - membership

- Retired Judge Advocates Association - membership

- Retired Officers Association - membership

- Air Force Association - membership

- Association of Graduates, US Air Force Academy - membership

- Anchorage Concert Association - membership

- Cousteau Society - membership

- Ducks Unlimited - membership

19. 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 other than minor traffic offenses (those for which a fine of \$50.00 or less, and no other sanctions were imposed)? No.

- (b) failed to answer any summons or other legal process served upon you personally at any time? 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? No.

- (d) had any proceedings brought to have you declared a ward of any court or adjudged an incompetent? 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.

20. (a) Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? 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? If so, give particulars, including case numbers.

No.

- (b) Have you ever been sued by a client? If so, give particulars, including case numbers.

No.

- (c) Have you ever been a party in any other legal proceeding? If so, give the particulars. Include all legal proceedings in which you were a party in interest, including divorce/dissolution proceedings; a material witness; a named co-conspirator or correspondent; and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness. 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).

I was a witness in two post trial hearings for the 1993 military court-martial of Msgt Paul Miller at Offutt AFB, NE. The hearings were held in March 1994 and April 1998. The hearings were to ascertain whether the president of the court asked me as the Staff Judge Advocate questions about increased security measures during the trial, and if he did, whether that had any effect on the deliberations of the court members. The Court of Military Appeals determined the jury had heard there were increased security measures for the trial and why, but that information did not effect their deliberations or sentence.

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

- (a) Are there any unsatisfied judgments against you? 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? 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? Please state the circumstances and outcome of any such unsatisfied or default judgment, or of any foreclosure.

No.

- (b) Have you ever made an assignment for the benefit of creditors? Has any petition in bankruptcy ever been filed by you? If so, state the circumstances, case number, and the outcome.

No.

REFERENCES*

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

(1) NAME: Harry Kieling
ADDRESS: Municipal Manager, 632 West 6th Avenue
CITY/STATE/ZIP: Anchorage, AK 99519 PHONE: 907-343-4433

(2) NAME: Maj. Gen. Phillip Oates
ADDRESS: P.O. Box 5800
CITY/STATE/ZIP: Ft. Richardson, AK 99505-0800 PHONE: 907-428-6003

(b) List the names, addresses, 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. (You should not list the Chief Justice of the Alaska Supreme Court.)

(1) NAME: Roman Kalytiak
ADDRESS: District Attorney, 800 W. Evergreen, Suite 102
CITY/STATE/ZIP: Palmer, AK 99645-6546 PHONE: 907-745-5027

(2) NAME: John Vacek
ADDRESS: District Attorney, Box 160
CITY/STATE/ZIP: Nome, AK 99762 PHONE: 907-443-2296

(3) NAME: Maj. Gen. Thomas Fiscus
ADDRESS: The Judge Advocate General, 1420 A.F. Pentagon
CITY/STATE/ZIP: Washington, D.C. 20330-1420 PHONE: 703-614-5732

* **Please Note:** Letters of reference from these persons are confidential and will not be given to the applicant. The applicant should not request a copy of the letter from the reference.

REFERENCES (continued)

(c) List the names, addresses and phone numbers of attorneys involved in your three most recent cases that have gone to trial. (Applicants who are currently judges should list the three most recent trials they presided over.) List only those cases which 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.)

1 *Case Name:* State of Alaska
v. Foltz and Welsh

Case Number: 3PA-S00-703CR and 830CR
Judge Name: Beverly Cutler

Attorneys Involved:

Name: Karen Bretz
Address: P.O. Box 91457, Anchorage, AK
99509 907-277-5847

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

2 *Case Name:* State of Alaska
v. Joshua Watford

Case Number: 3PA-S99-2440 CR
Judge Name: Eric Smith

Attorneys Involved:

Name: Verne Rupright
Address: 322 Main Street, Wasilla, AK
99654 907-373-3215

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

3 *Case Name:* State of Alaska
v. James Perkins

Case Number: 3PA-S00-909 CR
Judge Name: Suzanne Lombardi

Attorneys Involved:

Name: Verne Rupright
Address: 322 Main Street, Wasilla, AK
99654 907-373-3215

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

REFERENCES (continued)

(d) List the names, addresses and phone numbers of attorneys involved in your three most recent cases that did not go to trial but in which you did significant work. (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.)

1 **Case Name:** State of Alaska
v. Tyrone Hopkins

Case Number: 3CO-S01-94 CR
Judge Name: Joel Bolger

Attorneys Involved:

Name: Paul Malin
Address: 900 W. 5th Ave., Suite 200
Anchorage, AK 99501 334-4400

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

2 **Case Name:** State of Alaska
v. Debra Badger

Case Number: 3PA-S01-241 CR
Judge Name: Beverly Cutler

Attorneys Involved:

Name: Lance Wells
Address: 733 W. 4th Ave., Suite 308
Anchorage, AK 99501 274-9696

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

3 **Case Name:** State of Alaska
v. Darin Jones

Case Number: 3PA-S00-1786 CR
Judge Name: Dan Hensley

Attorneys Involved:

Name: Darrel Gardner
Address: OPA, 900 W. 5th Ave., Ste 525
Anchorage, AK 99501 269-3500

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

WRITING SAMPLE

23. Attach as Appendix A 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. If you do not have a good sample of this length, include an excerpt from a longer writing. **Please do not submit longer writing samples.** Make sure the sample contains sufficient facts to make it understandable. Please do not submit coauthored writing samples.
24. 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? Have formal grievance procedures been brought against you? See Bar Rule 22(b) & (e) concerning public grievance procedures against attorneys, and AS 22.30.011(b) and .060(b)(3) concerning public grievance procedures against judges. Have you ever been held in contempt of court? In each case, state in detail the circumstances and the outcome.

No.