

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

MICHAEL MILLER, KENNETH KIRK)
and CARL EKSTROM,)

Plaintiffs,)

vs.)

CHIEF JUSTICE WALTER)
CARPENETI, in his official capacity)
as *ex officio* Member of the Alaska)
Judicial Council; JAMES H. CANNON,)
in his official capacity as Attorney)
Member of the Alaska Judicial)
Council; KEVIN FITZGERALD, in his)
official capacity as Attorney Member)
of the Alaska Judicial Council; LOUIS)
JAMES MENENDEZ, in his official)
capacity as Attorney Member of the)
Alaska Judicial Council; WILLIAM F.)
CLARKE, in his official capacity as)
Non-Attorney Member of the Alaska)
Judicial Council; KATHLEEN)
THOMPkins-MILLER, in her official)
capacity as Non-Attorney Member of)
the Alaska Judicial Council; and)
CHRISTENA WILLIAMS, in her official)
capacity as Non-Attorney Member of)
the Alaska Judicial Council,)

Defendants.)

3:09-cv-00136-JWS

ORDER AND OPINION

[Re: Motions at Dockets 4 and 36]

I. MOTIONS PRESENTED

At docket 4, plaintiffs Michael Miller, Kenneth Kirk, and Carl Ekstrom (“Plaintiffs”) ask the court to enjoin the three attorney members of the Alaska Judicial Council (“Council”), defendants James H. Cannon, Kevin Fitzgerald, and Louis James Menedez (“attorney members”), from exercising their powers under Article IV, §§ 5 and 8 of the Alaska Constitution and AS 22.05.080, which require them to take part in the deliberations and voting for nominees to fill the vacancy on the Alaska Supreme Court created by the retirement of Justice Robert L. Eastaugh. Plaintiffs also ask the court to enjoin the remaining Council members, defendants William F. Clarke, Kathleen Thompkins-Miller, Christena Williams (“non-attorney members”), and Chief Justice Walter Carpeneti (collectively with the attorney members “Defendants”) from observing the requirement of Article IV, § 8, that they act by the concurrence of four or more members in order to enable them to make nominations by majority vote. Defendants oppose the motion, and Plaintiffs reply.¹

At docket 36, Defendants move to dismiss Plaintiffs’ complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that the decisions upon which plaintiffs’ case rests are “inapposite, because they apply only when a state decides to select officials through elections. They are irrelevant when the state has chosen a non-election method to select certain officials.”² Defendants also contend that Plaintiffs “consistently blur the discussion of the entities whose powers and selection processes are at issue.”³ As Defendants see things, “the only election Plaintiffs address is the election of the attorney members of the bar Board of Governors—and Plaintiffs expressly do not contest the constitutionality of allowing only lawyers to vote for the lawyer members who serve on the governing board of their association.”⁴ Plaintiffs oppose the

¹Docs. 34 and 38.

²Doc. 35 at 3.

³*Id.*

⁴*Id.*

motion and Defendants reply.⁵ Oral argument on both motions was heard on September 11, 2009. At the end of the proceeding, the court ruled from the bench, granting the motion to dismiss and denying the motion for injunctive relief as moot. This order sets forth the rationale for the decision announced on September 11, 2009.

II. BACKGROUND

Michael Miller is a citizen of and registered voter in the State of Alaska. Kenneth Kirk, also a citizen and registered voter, is an active member of the Alaska Bar Association and a former and potentially a future applicant for vacant positions on the Alaska Supreme Court and the Alaska Superior Court. Carl Ekstrom is a non-attorney member of the Alaska Bar Association (“Bar”) Board of Governors (“Board”), as well as a citizen and registered voter. Plaintiffs challenge the process by which supreme court justices, and appellate, superior, and district court judges are selected on Equal Protection grounds.⁶

The Alaska Judicial Selection Plan (“Plan”) empowers the Council to select the nominees for vacancies to the various courts of Alaska. The Governor then appoints a new justice or judge from the Council’s nominees. Periodically thereafter, the justice or judge must stand for a retention election in which all registered voters may participate. The Plan is a merit selection system based on the “Missouri Bar Plan” for judicial appointments.⁷ The Plan was crafted by the delegates to Alaska’s Constitutional Convention in 1955-56, adopted by the Convention on February 5, 1956, ratified by the people of the state on April 24, 1956, set forth in Article IV, and used for more than fifty years without any challenge—until now. Every sitting appellate, superior, and district

⁵Docs. 42 and 43.

⁶See Alaska Const. Art. IV, § 5; AS 22.05.080 (Supreme Court); AS 22.07.070 (Court of Appeals); AS 22.10.100 (Superior Court); and AS 22.15.170 (District Court).

⁷See *generally* Alaska Constitutional Convention Minutes (“ACCM”), Days 32 and 35 (Dec. 9 and 12, 1955), *available at* http://www.law.state.ak.us/doclibrary/cc_minutes.html (copy attached as Appendix A). The court takes judicial notice of the ACCM as a matter of public record under Federal Rule of Evidence 201. See *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

court judge, and supreme court justice in the state has been selected pursuant to the Plan.

The composition of the Council is dictated by Alaska Constitution Article IV, § 8, which provides as follows:

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.”⁸

At Alaska’s Constitutional Convention, the Plan’s chief supporter, George M. McLaughlin, who was Chairman of the Judiciary Committee and a former municipal magistrate judge for the City of Anchorage, said of the Plan:

“The theory is you have a select group. The lawyers know who are good and they know who are bad. The laymen represent in substance the public in order to protect them in substance from the lawyers, but they are confirmed by the senate for one reason. The laymen in the committee insisted upon it so that we would have a broader base and the governor himself would not necessarily be able to nominate to the judicial council, his own house.”⁹

⁸Alaska Const. art. IV, § 8. Defendants point out that, in addition to Alaska, 17 other states and the District of Columbia vest the election or appointment of judicial selection commission members in the state bar association without legislative or gubernatorial confirmation or approval. Doc. 35 at 3-4 and n.3 (collecting states). Plaintiffs contend that there are only 13 states whose process is akin to that in Alaska because in New York, North Dakota, and Vermont, the governor or legislature may reject the nominations of the nominating commission, while in Maryland, the governor may reject the appointments to the commission made by the bar. Doc. 42 at 21 n.1.

⁹ACCM, Day 32 (Dec. 9, 1955).

In response to critics of the Plan advocating an amendment to provide for legislative confirmation of the attorney members of the Council, McLaughlin responded that the lay members of the Council would adequately “represent the public and . . . the predominant political thought . . . [while] the lawyer members of the council . . . represent the profession . . . [and] the best interests of the profession.”¹⁰ McLaughlin’s fear of legislative confirmation was based on his perception that such a process would favor partisanship over qualifications:

“[i]f political correctness enters into the determination of the selection of those professional members who are to be placed upon the judicial council, the whole system goes out the window. All you have is one other political method of selection of your judges. The theory, and it is the only way it can possibly work, is that the lawyers are put on there to get the best man and not to take a man on the basis of his politics.”¹¹

Ultimately, the proposed amendment to provide for legislative confirmation of the attorney members of the Council was defeated 49 to 4, with two members absent.¹² After the Plan was ratified by Alaska voters, it was approved by Congress, which found Alaska’s Constitution to be “in conformity with the Constitution of the United States.”¹³

Under the Plan, the Council is entrusted with evaluating and recommending qualified individuals to vacant seats on the various courts of Alaska. When a vacancy on any court arises, either by departure of a sitting judicial officer or by legislative creation, the Council invites and accepts applications to fill the vacancy.¹⁴ After receiving and verifying the applications, the Council reviews them, interviews the candidates, deliberates, and nominates two or more candidates, whose names are then

¹⁰ACCM, Day 35 (Dec. 12, 1955).

¹¹*Id.*

¹²*Id.*

¹³Alaska Statehood Act § 1, Pub. L. 85-508, 72 Stat. 339 (July 7, 1958).

¹⁴Alaska Judicial Council Bylaws (“AJC Bylaws”), Article VII, § 1, *available at* <http://www.ajc.state.ak.us/Reference/Bylaws09.pdf> (copy attached as Appendix B). The court takes judicial notice of the AJC Bylaws as a matter of public record under Federal Rule of Evidence 201. *See supra* note 4.

sent to the governor.¹⁵ Each applicant who receives four or more votes by Council members becomes one of the nominees.¹⁶ If fewer than two applicants receive the requisite four votes, the Council will not submit any names to the governor; and typically will re-advertise the position.¹⁷ “The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.”¹⁸ The governor must make the appointment within 45 days of receiving the nominations.¹⁹

Judicial officers initially obtain their positions by appointment, but to remain on the bench they must be approved by a vote of the people. Alaska Supreme Court justices are subject to retention elections “at the first general election held more than three years after the justice’s appointment. If approved, the justice shall thereafter be subject to approval or rejection in a like manner every tenth year.”²⁰ Similarly, judges of the Alaska Court of Appeals are subject to an initial election after three years, and subsequent elections every eight years.²¹ Judges of the Alaska Superior Court are subject to an initial election after three years, and subsequent elections every six years.²² Alaska District Court judges are subject to an initial election after two years, and subsequent elections every four years.²³ Unless a justice or judge withdraws his or

¹⁵AJC Bylaws, Article VII, § 4.

¹⁶Alaska Judicial Council Selection Procedures (“AJC Selection Procedures”) § VI(D), *available at* <http://www.ajc.state.ak.us/selection/procedures/selectionprocedures7-24-07.pdf> (copy attached as Appendix C). The court takes judicial notice of the AJC Selection Procedures as a matter of public record under Federal Rule of Evidence 201.

¹⁷*Id.*

¹⁸Alaska Const. art. IV, § 5.

¹⁹AS 22.05.080(a).

²⁰AS 15.35.030; *see also* AS 22.05.100.

²¹AS 15.35.053; *see also* AS 22.07.060.

²²AS 15.35.060; *see also* AS 22.10.150.

²³AS 15.35.100; *see also* AS 22.15.195.

her candidacy at least 48 days before the general election, the name must appear on the general election ballot.²⁴ Prior to a general election, the Council conducts an evaluation of each judge or justice and may provide a recommendation regarding retention or rejection, which is made public at least 60 days prior to the election.²⁵

As noted above, and of particular relevance to the pending litigation, three of the seven members of the Council are selected by the Board - the "governing body of the organized state bar" - whose powers and duties, in addition to selecting the three attorney Council members, include approving and recommending to the Alaska Supreme Court rules "(1) concerning admission, discipline, licensing, continuing legal education, and defining the practice of law; (2) providing for continuing legal education and for certification of a continuing legal education program; [and] (3) establishing a program for the certification of attorneys as specialists."²⁶ The Board may also adopt bylaws and regulations "(1) concerning membership and the classification of membership in the Alaska Bar; (2) fixing the annual membership fees; [and] (3) concerning annual and special meetings."²⁷ Finally, the Board has the power to "(1) provide for employees of the Alaska Bar, the time, place and method of their selection, and their respective powers, duties, terms of office, and compensation; (2) establish, collect, deposit, invest, and disburse membership and admission fees, penalties, and other funds; (3) sue in the name of the Alaska Bar in a court of competent jurisdiction to enjoin a person from doing an act constituting a violation of this chapter; [and] (4) provide for all other matters affecting in any way the organization and functioning of the Alaska Bar."²⁸

²⁴AS 15.35.135.

²⁵AS 22.15.195.

²⁶AS 08.08.080(a)(1)-(3).

²⁷AS 08.08.080(b)(1)-(3).

²⁸AS 08.08.080(c)(1)-(4).

The Board consists of 12 members - nine attorney members elected by the Bar membership and three non-attorney members appointed by the governor.²⁹ The Bar is an instrumentality of the government of the State of Alaska.³⁰ The breakdown of the Board membership and the method of its members' selection is as follows:

Two members of the board shall be elected by and from among the members of the association resident in the first judicial district; four members of the board shall be elected by and from among the members of the association resident in the third judicial district; two members by and from among the members of the association resident in the combined area of the second and fourth judicial districts; and one member at large from the entire state. Three members who are not attorneys shall be appointed by the governor and are subject to confirmation by the legislature in joint session.³¹

Board members serve three-year terms. They are selected in a triennial rotation specified by statute.³²

After Justice Robert L. Eastaugh announced his retirement from the Alaska Supreme Court effective November 2, 2009, the Council sent an invitation to members of the Bar to apply for Justice Eastaugh's soon-to-be-vacant position on the court.³³ The Council's letter set the deadline for applications as May 15, 2009, which was later extended to May 28, 2009. This lawsuit followed. Plaintiffs ask the court for two injunctions. First, Plaintiffs seek an injunction preventing the three attorney members of the Council that were selected by the Board from engaging in deliberations and voting on the candidates who have applied for the vacant Alaska Supreme Court position. Second, Plaintiffs seek an injunction prohibiting the Chief Justice and the three non-

²⁹See AS 08.08.040.

³⁰AS 08.08.010.

³¹AS 08.08.050(b).

³²AS 08.08.050(c)(1)-(3).

³³Letter dated April 15, 2009 from the Alaska Judicial Council to Members of the Alaska Bar Association, *available at* <http://www.ajc.state.ak.us/selection/supreme092/annsuprm09.pdf> (copy attached as Appendix D). The court takes judicial notice of the this letter as a matter of public record under Federal Rule of Evidence 201.

attorney members of the Council from observing the requirement that the Council act by a concurrence of four or more members, in order to permit the remaining four members of the Council to proceed with the nomination of a new justice by majority vote.

Plaintiffs contend that because only members of the Bar are permitted to elect some members of the Board, the public's right to vote is deprived in violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution.³⁴ Plaintiffs believe that the Plan excludes non-attorney citizens of Alaska from voting for a controlling majority of the Board, which appoints the three attorney members of the Council, and therefore indirectly excludes the general public from an equal vote in selecting Council members and, ultimately, Alaska's judges and justices. Plaintiffs acknowledge that there are some elections in which the selection of government officials may be restricted to a limited group of citizens when the official or government entity has a "special limited purpose" whose activities have a "disproportionate effect" on the limited group of voters.³⁵ However, Plaintiffs contend that the election of the Board, and the Board's subsequent selection of the attorney members of the Council, is not such an election and the right to vote for the Board must be extended to all citizens of Alaska.³⁶

Defendants argue in their motion to dismiss that because Alaska selects its judges by an appointive, not elective, process, the "one person, one vote" rule announced in *Reynolds v. Sims* and elaborated in its progeny does not implicate Alaska's judicial selection procedure, including the election of the Board and the layered appointment structure of the Council. Specifically, Defendants argue that Plaintiffs "repeatedly disregard the distinctions between the election of Boards members, the

³⁴Doc. 32, ¶¶ 45 and 46 citing *Hadley v. Junior College Dist. Of Metro. Kansas City*, 397 U.S. 50, 52 (1970), and *Reynolds v. Sims*, 377 U.S. 533, 554 (1964)).

³⁵*Id.*, ¶¶ 68-69 (quoting *Ball v. James*, 451 U.S. 355, 360 (1981) and *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 727-28 (1973)).

³⁶*But see* Docket 4 at 24 ("Neither do Plaintiffs challenge the constitutionality of permitting only attorneys to vote for the members of the Board of Governors of the Alaska Bar.").

appointment of Judicial Council members, and the appointment of judges by the Governor.”³⁷ Because Plaintiffs concede the election of the Board is a limited purpose election, Defendants continue, their Equal Protection claims are aimed at the appointment of the Council, not the election of the Board. As a result, Defendants argue, the proposition that an election forming part of an appointive process must be one consistent with the “one person, one vote” rule is not supported by any legal authority. Plaintiffs oppose Defendants’ motion on the same grounds advanced in their motion for injunctive relief.

III. STANDARD OF REVIEW

A motion to dismiss for failure to state a claim made pursuant to Rule 12(b)(6) tests the legal sufficiency of the claims in the complaint.³⁸ In reviewing a Rule 12(b)(6) motion to dismiss, “[a]ll allegations of material fact in the complaint are taken as true and construed in the light most favorable to the nonmoving party.”³⁹ “Conclusory allegations of law, however, are insufficient to defeat a motion to dismiss.”⁴⁰ A dismissal for failure to state a claim can be based on either “the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”⁴¹ “To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed factual allegations; rather, it must plead ‘enough facts to state a claim to relief that is plausible on its face.’”⁴² “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

³⁷Docket 35 at 19.

³⁸*De La Cruz v. Tormey*, 582 F.2d 45, 48 (9th Cir. 1978).

³⁹*Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir. 1997).

⁴⁰*Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001).

⁴¹*Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

⁴²*Weber v. Dept. of Veterans Affairs*, 521 F.3d 1061, 1065 (9th Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

misconduct alleged.”⁴³ “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’”⁴⁴

In *Winter v. Natural Resources Defense Council, Inc.*, the Supreme Court rejected the Ninth Circuit’s long-standing legal standard governing motions for a preliminary injunction.⁴⁵ Since *Winter*, “[p]laintiffs seeking a preliminary injunction in a case in which the public interest is involved must establish that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest.”⁴⁶ Plaintiffs seeking preliminary relief must demonstrate that irreparable injury is *likely* in the absence of an injunction.⁴⁷ “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”⁴⁸

IV. DISCUSSION

A. Motion at Docket 36

The primary issue to be addressed in defendants’ motion is whether the “one person, one vote” rule announced in *Reynolds v. Sims* applies to the Plan. As Plaintiffs frame the issue, this court must decide “whether the incorporation of the election for the Board of Governors into the Alaska judicial selection process can be justified because

⁴³*Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937, 1949 (2009).

⁴⁴*Id.* (quoting *Twombly*, 550 U.S. at 557).

⁴⁵*Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129 S.Ct. 365, 376 (2008).

⁴⁶*California Pharmacists Ass’n v. Maxwell-Jolly*, 563 F.3d 847, 849-50 (9th Cir. 2009) (citing *Winter*, 129 S.Ct. at 376)).

⁴⁷*Winter*, 129 S.Ct. at 375.

⁴⁸*Id.* at 375-76.

that election is one of ‘special purpose.’”⁴⁹ Plaintiffs contend that “[i]f the entity doing the appointing is not itself elected consistent with Equal Protection, then the court must consider whether the system is ‘necessary to promote a compelling state interest.’”⁵⁰ Defendants counter that because the system for selecting Alaska’s justices and judge is appointive, not elective, the “one person, one vote” principle does not apply.⁵¹ Furthermore, Defendants contend that, even if the process were elective in nature, “one person, one vote” does not apply to the judicial branch because judges do not represent people.⁵² In the alternative, Defendants argue that the election of the Board falls within the limited purpose election exception to the “one person, one vote” rule.⁵³

1. Jurisprudential Framework

In *Reynolds v. Sims*, the Supreme Court held that qualified citizens have a right to vote in state and federal elections which is protected by the Constitution of the United States, adding that “[t]he right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”⁵⁴ The Court also recognized that “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”⁵⁵ As the Court in *Hadley v. Junior College District of Metropolitan Kansas City* summarized, “whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in

⁴⁹Docket 42 at 5.

⁵⁰Docket 42 at 6 (quoting *Kramer*, 395 U.S. at 627).

⁵¹Docket 35 at 11-18.

⁵²*Id.* at 18.

⁵³*Id.* at 18-23.

⁵⁴*Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

⁵⁵*Id.*

that election.”⁵⁶ Since *Reynolds*, the Court has applied the “one person, one vote” principle in a line of cases concerning various types of elections in which the franchise has been selectively distributed, including junior college trustee elections,⁵⁷ school district board elections,⁵⁸ and revenue bond elections.⁵⁹

One exception to the “one person, one vote” rule - the “limited purpose exception” - dictates that the rule does not apply to the election of a governmental entity that (1) exercises only narrow, limited governmental powers, and (2) conducts activities that disproportionately affect only a specific group of individuals.⁶⁰ Accordingly, the Court has said that any classification restricting or limiting the franchise to certain members of the public, except those involving residence, age, or citizenship, is unconstitutional “unless the district or State can demonstrate that the classification serves a compelling state interest.”⁶¹ Such a limitation may only be upheld if it is demonstrated that “all those excluded are in fact substantially less interested or affected than those the (franchise) includes.”⁶² Where the governmental entity whose members are subject to the selective franchise performs a vital governmental function that has sufficient impact throughout the state, a limited franchise will not comport with the

⁵⁶*Hadley v. Junior College Dist. of Metropolitan Kansas City*, 397 U.S. 50, 56 (1970).

⁵⁷*Id.*

⁵⁸*Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626-27, 632 (1969).

⁵⁹*Cipriano v. Houma*, 395 U.S. 701, 705-06 (1969).

⁶⁰See *Ball v. James*, 451 U.S. 355, 363-72 (1981); *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 731 (1973); *Hadley*, 397 U.S. at 56.

⁶¹*Hill v. Stone*, 421 U.S. 289, 29 (1975) (giving power to property owners alone “can be justified only by some overriding interest of those owners that the State is entitled to recognize”); *Kramer*, 395 U.S. at 626-27 (“if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.”)

⁶²*Kramer*, 395 U.S. at 632.

principle set forth in *Reynolds*.⁶³ On the other hand, where the strictures of *Reynolds* do not apply to a challenged election, the state need only show that the voting scheme bears a reasonable relationship to its statutory objectives.⁶⁴

Of course, Alaska judges are not selected in an election. This forces plaintiffs to contend that *Reynolds* applies even where the state has chosen to select judges by appointment. Moving still further from direct application of the principle announced in *Reynolds*, Plaintiffs also argue that the appointment of the Council members should be governed by the “one person, one vote” rule, relying on *Sailors v. Board of Education of Kent County*⁶⁵ and *Kramer v. Union Free School District No. 15*.⁶⁶ In *Sailors*, the Court considered the constitutionality of the selection of a county school board chosen, not by the electors of the county, but by delegates from the local school boards.⁶⁷ The process by which the county school board was selected was as follows: “Each board sends a delegate to a biennial meeting and those delegates elect a county board of five members, who need not be members of the local boards, from candidates nominated by school electors.”⁶⁸ Petitioner argued that the process violated the “one person, one vote” principle, which the Court has held is constitutionally required in state elections.⁶⁹ After discussing *Reynolds*, the Court found that there is “no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election.”⁷⁰ The Court then held that “[a]t least as respects nonlegislative officers, a

⁶³See *Hadley*, 397 U.S. at 56

⁶⁴*Ball*, 451 U.S. at 364-65.

⁶⁵387 U.S. 105 (1967).

⁶⁶395 U.S. 621 (1969).

⁶⁷387 U.S. at 106.

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰*Id.* at 108.

State can appoint local officials or elect them or combine the elective and appointive systems as was done here.”⁷¹

The Court expanded upon *Sailors* in *Kramer*, which involved a New York statute that limited the right to vote in school district elections to individuals who owned or leased taxable real property within the school district and parents of children enrolled in the local public schools.⁷² Most pertinent to the case at bar, the Court first recognized that “States do have latitude in determining whether certain public officials shall be selected by election or chosen by appointment and whether various questions shall be submitted to the voters.”⁷³ The Court only then went on to explain that the need to scrutinize the manner in which the voting franchise is distributed is not reduced, “simply because, under a different statutory scheme, the offices subject to election might have been filled through appointment.”⁷⁴ Of *Sailors*, the *Kramer* Court noted that “each local school board sent one delegate to a biennial meeting at which the members of the county board of education were selected . . . [but that] “no constitutional complaint (was raised respecting [the] election of the local school boards.”⁷⁵ Ultimately, the Court concluded that New York had failed to demonstrate a compelling interest that was sufficiently tailored to limit the franchise to owners or lessees of taxable property.⁷⁶

In *Rodriguez v. Popular Democratic Party*, the Court considered whether the principle enunciated in *Kramer* and *Sailors* applied to a Puerto Rico statute, which vested in a political party the power to fill an interim vacancy in the Puerto Rico Legislature.⁷⁷ The Court noted that while *Sailors* held that a statute authorizing appointment rather than

⁷¹*Id.* at 111.

⁷²*Kramer*, 395 U.S. at 622.

⁷³*Id.* at 629.

⁷⁴*Id.* at 628-29.

⁷⁵*Id.* at 629 n.12 (quoting *Sailors*, 387 U.S. at 111).

⁷⁶*Kramer*, 395 U.S. at 633.

⁷⁷457 U.S. 1, 3 (1982).

election of a county school board was valid, it left open the question whether a state may constitute a local legislative body through the appointive rather than elective process.⁷⁸ The Court reasoned that the statute at issue did not restrict access to the electoral process because “[a]ll voters have an equal opportunity to select a district representative in the general election; and the interim appointment provision applies uniformly to all legislative vacancies, whenever they arise.”⁷⁹ Applying rational basis review, the Court ultimately concluded that “[t]he Puerto Rico Legislature could reasonably conclude that appointment by the previous incumbent's political party would more fairly reflect the will of the voters than appointment by the Governor or some other elected official.”⁸⁰

Two district court decisions discussed by the parties have applied the above framework in circumstances similar to the present case. In *Bradley v. Work*, minority voters challenged an Indiana procedure for selecting members of a judicial nominating commission and for electing judges. They alleged violations of the Voting Rights Act, the Equal Protection Clause, and the Fifteenth Amendment.⁸¹ Like Alaska, Indiana limits the election of the attorney members of its judicial nominating commission to attorneys, while the Governor is charged with appointing the commission's non-attorney members.⁸² Relying on the limited purpose exception, the district court held that the procedure by which Indiana's judicial nominating commission is selected is constitutional because the commission “does not perform traditional governmental functions,” reasoning that the commission's “sole purpose and reason for existence is to screen candidates as part of the judicial appointment process.”⁸³ Approving of this arrangement, the district court wrote:

⁷⁸*Id.* at 9-10 & n.9 (citing *Sailors*, 387 U.S. at 109-10).

⁷⁹*Rodriguez*, 457 U.S. at 10.

⁸⁰*Id.* at 12.

⁸¹916 F. Supp. 1446 (S.D. Ind. 1996), *aff'd*, 154 F.3d 704 (7th Cir. 1998).

⁸²*Id.* at 1456.

⁸³*Id.*

The attorney-members of the Commission are selected to represent the interests and reflect the expertise of the local bar when evaluating candidates for a judicial appointment. Their divergent interests uniquely qualify attorneys to advise the governor, for their interests are different in nature and in scope from the interests of the general public in a fair and impartial judiciary.⁸⁴

The district court went on to conclude that “the State's classification represents a reasonable effort to provide representation of both the general populace and the members of the bar on a Commission whose limited function is to advise the governor on the selection of an appropriate candidate for judicial office.”⁸⁵ The Seventh Circuit affirmed the district court, but did not reach the Equal Protection issue because it had not been preserved on appeal.⁸⁶

In *African-American Voting Rights Legal Defense Fund, Inc. v. Missouri* (“AAVRLDF”), another district court reached a similar conclusion in a slightly different context.⁸⁷ In that case, African-American voters alleged that they were denied the right to vote for lawyer members of Missouri’s judicial selection commission on the ground that African-Americans were, at the time, underrepresented in the Missouri Bar.⁸⁸ The court first found that the franchise had not been denied to African-Americans, which would require proof of intentional discrimination, but rather to the entire nonlawyer populace of Missouri, which would only require the State to support the statute by a reasonable basis that was rationally related to a legitimate state interest.⁸⁹ Applying rational basis review to uphold the Missouri practice, the district court explained:

Certainly, it is reasonable, if not necessary, to have lawyers on these commissions. There is no one better to evaluate the ability of potential

⁸⁴*Id.* at 1457.

⁸⁵*Id.* at 1458.

⁸⁶*Bradley*, 154 F.3d at 711.

⁸⁷994 F. Supp. 1105 (E.D. Mo. 1997).

⁸⁸*Id.* at 1126.

⁸⁹*Id.* at 1127.

judges than the attorneys who will have to practice before them every day. Attorneys typically will know the judicial aspirants better than the general public. They will know which aspirants have the legal acumen, the intelligence, and the temperament to best serve the people of Missouri. It is therefore quite clear that attorneys must serve on the commissions.”⁹⁰

On appeal, the Eighth Circuit affirmed the decision of the district court without discussion, noting that “the decision of the District Court is correct and that extended discussion would add nothing of substance to the thorough and well-reasoned opinion of that court.”⁹¹ With these principles in mind, the court proceeds to discuss application of “one person, one vote” to the Plan.

2. Application of “One Person, One Vote” to the Judiciary

In *Wells v. Edwards*, a decision of a three-judge panel in the Middle District of Louisiana that was affirmed by the Supreme Court, held, broadly and categorically, that the “one person, one vote” principle does not apply to the judicial elections challenged as denials of equal protection because “judges . . . are not representatives in the same sense as are legislators or the executive. Their function is to administer the law, not to espouse the cause of a particular constituency.”⁹² Rather, “[t]he primary purpose of one-man, one-vote apportionment is to make sure that each official member of an elected body speaks for approximately the same number of constituents.”⁹³ This rule has been reiterated by the Supreme Court and at least one notable jurist outside this

⁹⁰*Id.* at 1128.

⁹¹*African-American Voting Rights Legal Defense Fund, Inc. v. Missouri*, 133 F.3d 921 (8th Cir. 1998) (unpublished).

⁹²See *Wells v. Edwards*, 347 F. Supp. 453, 455 (M.D. La. 1972) (quoting *Stokes v. Fortson*, 234 F. Supp. 575, 577 (N.D. Ga. 1964), *aff'd*, 409 U.S. 1095 (1973)).

⁹³Defendants highlight that “Plaintiffs do not contend defendants’ point that the one person, one vote principle does not apply to judicial elections.” Docket 43 at 3. This assertion is incorrect in that it overstates *Wells*’ application and flatly contradicts *Kramer*’s holding that “once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.” *Kramer*, 395 U.S. at 629 (quoting *Harper*, 383 U.S. at 665)).

circuit.⁹⁴ Plaintiffs are correct that *Wells* involved judicial district apportionment, and not a classification on the basis of occupation, but *Wells* also held that an affected voter may only mount a challenge to any judicial election by showing:

“an arbitrary and capricious or invidious action or distinction between citizens and voters would be required. In other words, this Court must find that the State has not only distinguished between citizens and voters, but that such distinctions are arbitrary and capricious or invidious.”⁹⁵

In order to invalidate the Plan under this test, Plaintiffs would have to show an “invidious action” or an “arbitrary or capricious” distinction by the framers of the Alaska Constitution in devising and adopting the Plan during the Constitutional Convention. Plaintiffs have not alleged any such arbitrary, capricious, or invidious action.⁹⁶ Plaintiffs’ challenge to the Plan fails on this ground alone.

3. Application of the Limited Purpose Exception to the Plan

a. The Board’s Election

The “one person, one vote” does not apply to the election of the members of the Board, because the Board’s activities generally fall within the limited purpose exception applicable when a governmental entity (1) exercises only narrow, limited governmental powers, and (2) conducts activities that disproportionately affect only a specific group of individuals.⁹⁷ With respect to the first prong, the Board exercises powers that concern the regulation of a specific profession, the practice of law.⁹⁸ Thus, the Board approves

⁹⁴See *Chisom v. Roemer*, 501 U.S. 380, 402-03 (1991) (Stevens, J.); *Smith v. Boyle*, 144 F.3d 1060, 1061 (7th Cir. 1998) (Posner, J.).

⁹⁵*Wells*, 347 F. Supp. at 455 (quoting *Holshouser v. Scott*, 335 F. Supp. 928, 933 (M.D. N.C. 1971)).

⁹⁶Even assuming Plaintiffs alleged an invidious action or arbitrary and capricious distinction, they have not pled any plausible factual allegations supporting such behavior on the part of the Constitutional Convention, the State, or the Council.

⁹⁷See *Ball*, 451 U.S. at 363-72; *Salyer Land Co.*, 410 U.S. at 731.

⁹⁸Traditional governmental functions include the imposition of sales or property taxes, enactment of laws governing the conduct of citizens, selling tax-exempt bonds, condemning property, setting policies that substantially affect all residents, or administering normal functions

and recommends to the Alaska Supreme Court rules concerning admission, discipline, licensing, continuing legal education, specialization, and defining the practice of law.⁹⁹ The Board also adopts bylaws and regulations concerning membership, classification, fees, and annual and special meetings.¹⁰⁰ Finally, the Board has the power to hire and sue on behalf of the Bar, as well as establish, collect, deposit, invest, and disburse membership and admission fees, penalties, and other funds from its members.¹⁰¹ With respect to the second prong, the only individuals who are regulated by the Board's activities are Bar members. For the election of the Board, limiting the franchise to lawyers is therefore logically and legally sound, and it clearly falls within the limited exception to the "one person, one vote" rule.

Having determined that the Board's election falls within the exception, the next question is whether the restriction on those who can vote for Board members violates Equal Protection values. Given that the Board is a limited purpose entity, the franchise may be constitutionally limited to a group of individuals who are disproportionately affected so long as the decision is reasonable and bears a rational relationship to a legitimate state interest.¹⁰² The Plan reflects the entirely rational proposition that lawyers have the experience and expertise needed to select Council members from among the ranks of Alaska's lawyers. Furthermore, the interest in selecting qualified persons to serve on the Board is a legitimate – indeed very important – interest. Absent a clear constitutional limitation, Alaska is free to structure its judicial system to meet special concerns regarding the qualifications of its judges. The court concludes therefore that

of government such as maintenance of streets, the operation of schools, or sanitation, health or welfare services. *Ball*, 451 U.S. at 366.

⁹⁹AS 08.08.080(a)(1)-(3).

¹⁰⁰AS 08.08.080(b)(1)-(3).

¹⁰¹AS 08.08.080(c)(1)-(4).

¹⁰²*Ball*, 451 U.S. at 371; *Kramer*, 395 U.S. at 627-28.

the limitation on who may vote for members of the Board survives rational basis review.¹⁰³

b. The Council's Appointment

Having concluded that the Board's election passes constitutional muster, the next question is whether the Board's selection of the attorney members of the Council violates Equal Protection principles. Plaintiffs urge that there is a violation, but in doing so, they are necessarily imposing on the process a judgment that a public election is necessary for the appointment of judicial officers. Yet, as noted above, the Court specifically held in *Sailors* that the "one person, one vote" principle does not apply where non-legislative officers are chosen by appointment, rather than by election.¹⁰⁴ Moreover, the delegates to the Alaska Constitutional Convention endorsed and the people of the State of Alaska ratified the proposition that Alaska state judges are to be appointed, rather than elected. Plaintiffs have not cited, nor has this court's research found, any authority in support of the proposition that a state may not appoint, rather than elect, its judiciary.¹⁰⁵ Thus, although "one person, one vote" is not relevant to appointments, this court also finds the analysis by the district judges in *Bradley* and *AAVRLDF*, which found that judicial selection commissions perform non-traditional governmental functions, persuasive. Here, the Council does not "administer normal functions of government" or "enact laws

¹⁰³Additionally, even if the Board's election did not fall within the limited purpose exception, the Ninth Circuit has held that "the malapportionment of representation on a state bar governing body is not a violation of fourteenth amendment rights." *Brady v. State Bar of California*, 533 F.2d 502, 502-03 (9th Cir. 1976). Thus, assuming the Board were malapportioned, "its acts would not for that reason be invalid, but would be valid as acts of a de facto authority." *Id.* at 503.

¹⁰⁴See, e.g., *Sailors*, 387 U.S. at 111 ("Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man, one vote' has no relevancy."); accord *Wells*, 347 F. Supp. at 455 ("one person, one vote" does not apply to the judiciary).

¹⁰⁵Plaintiffs rely on *Kramer*, but as explained above, that case dealt only with a situation in which the state had decided to use an elective process rather than an appointive process to choose members of a county school district board.

governing the conduct of citizens;¹⁰⁶ rather, among its responsibilities, the Council is charged with evaluating and recommending the most qualified candidates for Alaska's bench based on its assessment of the credentials of members of the bar being considered for vacant judgeships. In this regard, therefore, the Council is a limited purpose entity whose actions disproportionately affect the membership of the Alaska Bar.

For many of the same reasons supporting the limitation on the Board's election, the selection of the Council's attorney members by the Board is rationally related to a legitimate state interest in selecting well-qualified jurists. Moreover, the Alaska Constitution has included checks on the exercise of the appointment powers in the Plan, which save it from defeat under rational basis review. To begin with, some members of the Board are themselves appointed by the Governor. Second, the Board appoints only three of the seven members of the Council. Any candidate for judicial office must therefore secure the vote of at least one other member of the Council in order to be recommended for appointment. Third, the Council's nominations are subject to a final selection by the Governor. Fourth, every person nominated by the Council and selected by the governor must stand for periodic retention elections in which all registered voters participate. These extensive limitations winnow and ultimately defeat the notion central to Plaintiffs' case that it is a select group of citizens – that is, Alaska lawyers – who actually select the Alaska judiciary and in doing so deprive other citizens of equal rights under the law. Rather, the Plan merely allows the public to draw upon the expertise of Alaska's lawyers in the selection of judicial officers, a justification that is rationally related to a legitimate state interest.

B. Motion at Docket 4

Because the court grants Defendants' motion to dismiss, Plaintiffs' motion for a preliminary injunction is denied as moot.

¹⁰⁶*Ball*, 451 U.S. at 366 n.11.

V. CONCLUSION

For the foregoing reasons, Defendants' motion at docket 36 is **GRANTED**, and Plaintiffs' motion at docket 4 is **DENIED** as moot.

DATED at Anchorage, Alaska, this 15th day of September 2009.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

ALASKA CONSTITUTIONAL CONVENTION

December 9, 1955

THIRTY-SECOND DAY

PRESIDENT EGAN: The Convention will come to order. We have with us this morning Chaplain Major Henry A. Foss of Ladd Air Force Base. Chaplain Foss will give the daily invocation.

CHAPLAIN FOSS: Eternal loving Heavenly Father, we raise our hearts in gratitude to Thee Who has been the guiding and sustaining force and power within our lives throughout the days and years of the history of our nation. We thank Thee for this occasion and this assembly which is gathered here for the transaction of this important business. We pray Thee that we may be guided by Thy Spirit in mind, in heart, in our deliberations and actions that may determine a course and path of life that may bring happiness and welfare for the common good of all concerned. We ask in His name and for His sake. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll at this time.)

CHIEF CLERK: Two absent.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with the regular order of business. Does the special Committee to read the journal have a report to make at this time?

WHITE: Mr. President, the Committee to read the journal has read the journal for the 29th and 30th days, Tuesday and Wednesday, December 6 and 7, respectively, and recommends their adoption without change.

PRESIDENT EGAN: Mr. White asks unanimous consent that the journals of the 29th and 30th Convention days be adopted.

WHITE: I beg your pardon. Correction. The journals for the 28th and 29th days.

PRESIDENT EGAN: Mr. White asks unanimous consent that the journals of the 28th and 29th days be adopted by the Convention. Is there objection? Hearing no objection it is so ordered and the journals are ordered adopted.

WHITE: Mr. President, the Committee to read the journal has read the journal for the 30th day, Wednesday, December 7, and on page 2, sixth paragraph, in the middle of the page, beginning ". Coghill", instead of "Administration Committee" say "Committee on Administration". Two paragraphs below that "Mr. Londborg asks that the consideration , strike "the". Three paragraphs below that is the same situation. "Mr. Londborg

moved that the", strike "the". Page 4, fourth paragraph, second line, after "12:15" insert o'clock p.m. The Committee to read the journal, Mr. President, recommends the adoption of the journal for the 30th day with these corrections.

PRESIDENT EGAN: Mr. White asks unanimous consent for the adoption of the journal for the 30th day, with the proposed amendments. Is there objection? Hearing no objection it is so ordered and the journal of the 30th day with the proposed amendments is ordered adopted. Are there any petitions, memorials or communications from outside the Convention?

CHIEF CLERK: No.

PRESIDENT EGAN: Are there reports of standing committees? Reports of select committees? Mr. Sundborg?

SUNDBORG: Mr. President, your committee to suggest arrangements for hearings during recess has had placed on the desk of each delegate a report which, since its preparation, has been approved by the committee chairmen. The committee chairmen asked that it be submitted to the Convention for such action as the Convention desired to take on it. I would like to say that this report and the arrangements suggested therein were compiled from the questionnaires which the members filled out and turned in to the Chief Clerk. Since the time that the report was prepared, we have made some slightly different arrangements respecting compensation and per diem than many members contemplated at the time they filled out the questionnaires and so it is possible there will be some changes which we will want to make in the schedule of hearings. I would like to explain that several principles which guided your committee in setting up this schedule of hearings were as follows: first of all, we scheduled delegates for hearings only in their home communities except in the case of those who are remaining in Fairbanks and who are here from other places and except that Mrs. Hermann, who is going to Nome anyway and who was elected at large in the Territory, would be scheduled for a hearing in that City. We also had the guiding principle that no delegate would be set down on the schedule for a hearing in more than one place. Since I know there will probably be several members who want to suggest changes in this as far as their own plans are concerned, I would like to suggest to the Convention that we take a brief recess during which those members could contact the Committee and then we will bring the resolution out on the floor and I will move its adoption with certain amendments.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for a few minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Sundborg.

SUNDBORG: Mr. President, I ask unanimous consent to revert to the order of business dealing with introduction of resolutions.

PRESIDENT EGAN: Mr. Sundborg asks unanimous consent to revert to the order of business of introduction of resolutions. Is there objection? If there is no objection it is so ordered.

SUNDBORG: Mr. President, I move and ask unanimous consent that a resolution consisting of the matter contained in the report to the Convention by committee chairmen, which was distributed to the delegates yesterday, be adopted by the Convention with the following changes: On the first page, item 1, after the word, "hearings" strike the words, "of not to exceed two days". On line 2 insert a comma after the word "Anchorage" and strike the word "and" immediately following. Change the period after "Fairbanks" to a comma. Strike all of the

next line which is the first line of the second paragraph. In the following line, which is line 4, strike "Kotzebue and insert in its place "Unalakleet". In the next paragraph, second line, strike Unalakleet" and insert in its place Kotzebue". On page 2 the fourth item, strike "Kotzebue -- Mr. Cross" and insert "Unalakleet -- Mr. Londborg". In the last of the places shown for hearings, Fairbanks, strike the first name, "Mr. Barr". Item 5, second line, after the word "Convention" insert the words "if possible".. Mr. President, I would like to now read item 1 where we made several changes so all delegates will know how it reads if the changes are adopted.

Hearings shall be held at Ketchikan, Juneau, Anchorage, Fairbanks, Wrangell, Petersburg, Sitka, Haines, Klawock, Nome, Unalakleet, Kodiak, Cordova, Seward, Homer, Palmer, Dillingham, Valdez and Nenana."

One additional amendment has just been called to my attention. On page 2, the third place name, Nome", strike the words "and Mr. Londborg". Mr. President, I move and ask unanimous consent for the adoption of the resolution as amended.

PRESIDENT EGAN: Mr. Sundborg moves and asks unanimous consent for the adoption of the resolution as amended.

KILCHER: I object.

SUNDBORG: I so move.

PRESIDENT EGAN: Mr. Sundborg so moves. Who seconded the motion?

WHITE: I second the motion.

PRESIDENT EGAN: Mr. White seconded the motion. When a person

seconds the motion they should also get up and address the Chair so it will be easier for the secretariat to see who it was. The motion is open for discussion. Mr. Kilcher.

KILCHER: Mr. President, I am sorry that I have to object. The reason is that in spite of having contacted the Committee of three on a matter of importance, no consideration has been given to my objection.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I wonder if I could interpose that we did give consideration in the Committee to Mr. Kilcher's objection, and the Committee unanimously discarded it. We did give consideration to it, Mr. Kilcher.

KILCHER: I stand corrected. The Committee has adopted rules in putting up this report that have nothing to do with the need at hand in holding hearings, in my opinion. The Committee was led by its commendable desire of simplicity and savings. If we are not hypocritical about going to have hearings during this winter recess, we should have hearings where they are most needed, and the judge as to where the hearings are most needed, should be the delegate from his district. The delegate should have been contacted more as to their will and wishes. Those delegates that had two or three places of hearings should have been personally contacted as to which place they think is the most important or possibly which places are

equally important. This has not been done for simplicity's sake and for matters of streamlining an arbitrary rule as set up by the Committee, to have one hearing or one delegate in his hometown, send him home, let him have a hearing and that should be enough. That is not logical. Namely, in my particular case, and I know of three or four others, cases, exceptions should be made. Personally, I know a hearing in Kenai is much more important for the sake of statehood, for the sake of ratification of the constitution, than Homer. I have a lot of time next spring and a lot of time during my stay in Homer area when I am home. I can influence these people, I can talk to them in small groups. I can have a hearing sure enough. But the place that needs hearings badly where people are utterly critical if not downright opposed to statehood are Kenai and Seldovia. I don't want to say I could influence them greatly. I would suggest that somebody be sent to Kenai, probably also to Seldovia. Maybe somebody should go down from Anchorage. If hearings are going to be held they should be held where they are needed, and if we spend 10,000 dollars for this Christmas recess you can spend another \$500, for maybe ten extra hearings in places where they are badly needed, and one of them is Kenai. Somebody should be sent down there from Anchorage or Kodiak, I don't care. I would gladly go. It has been intimated in the Committee that once we delegates are sent home then it should be our duty to hold

further hearings. We may hold them. We are magnanimously given the freedom that we may hold other hearings for instance, Kenai and Seldovia. We may do that but without expense or prior notice. Why, they certainly need prior notice and certainly the expense to any hearing should be paid if the others are paid. If we are sent to one hearing in Homer and if we don't take that just as an excuse to go home for Christmas vacation we should also be paid the expenses to any other hearing held necessary.

COGHILL: I rise to a point of order. I believe this was thoroughly discussed yesterday on the other point of the recess. Therefore, I move debate be limited to five minutes.

PRESIDENT EGAN: Your point of order is out of order, Mr. Coghill. Mr. Kilcher has the floor. Mr. Kilcher, proceed.

KILCHER: From a financial point of view I could just as leave stay in Fairbanks. I have a lot of friends up here and interesting things to do. I would like to learn the country better. I could be well paid by per diem. I could stay here and get \$300 pay for it. If I go home it will cost the Territory about \$120 or \$130, which is a nice savings. I don't see at all why a man should not be sent to another hearing place which costs the Territory possibly another \$40 or \$50. It is still much less than if a man stays here. I don't see why if I go home I should be penalized by spending a plane trip to Seldovia, which is about \$20 forth and back or a plane trip to Kenai which is about \$30 on my own time and my own money just out of sentimental reasons when it is my duty as a delegate. I will do plenty as a duty of the delegate. I have done so before November 8 and I will do so after February 8, but if we are going to go to hearings where they are needed. I think we should get paid for it.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I address two questions through the Chair to Mr. Kilcher? Mr. Kilcher, do you feel that a hearing in Kenai would be more desirable than a hearing in Homer?

KILCHER: It is equally desirable.

SUNDBORG: My second question was going to be, would you prefer we sent you down for a hearing in Kenai in place of Homer, if it is to be but one per delegate, which was our guiding principle.

KILCHER: I have many objections to your guiding principle for being an arbitrary one, but consequently I don't feel I can answer your question. They are equally desirable, there should be two hearings, possibly three.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Before we send Delegate Kilcher down to Seldovia or wherever he is going, I want to know whether he is qualified to sell statehood down there, which he says he's going down there selling. I notice he said he never thought of statehood one way or the other before he was going to run for the Convention. So if he's going down there to sell statehood, maybe he has been converted. I would like to know.

GRAY: I move the previous question, Mr. Chairman.

PRESIDENT EGAN: Mr. Gray moves the previous question. Is there a second to the motion?

METCALF: I second the motion.

PRESIDENT EGAN: It has been moved and seconded that the previous question be ordered. All those in favor of ordering the previous question will dignity by saying "aye", all opposed by saying "no". The ayes nave it and the previous question is ordered. The question is, "Shall the resolution with the proposed amendments be adopted by the Convention?" All those in favor of the adoption of the proposed resolution will signify by saying "aye", all opposed by saying "no", and so the Convention has adopted the resolution as amended. Mr. Davis.

DAVIS: Mr. President, I think this is possibly a matter of personal privilege. At my own request I was not named as a person to hold, as to appearing on any of these hearings. For that reason I feel I am not entitled to travel either way or to per diem going to my home and back, and for that reason I would like to request that when the payroll clerk makes up the payroll that I not be given either travel or per diem.

PRESIDENT EGAN: The Chief Clerk will make a note as to Mr. Davis's request. Are there any proposals to be presented at this time? If not, are there any motions or resolutions to come before us? Is there any unfinished business? Under unfinished business we will revert to the reading of communications. We have one from outside the Convention. The Chief Clerk may proceed with the reading of the communications.

CHIEF CLERK: Letter from Mrs. Laura Jones. (At this time the Chief Clerk read a letter from Mrs. Laura E. Jones, 8th grade teacher in the Fairbanks schools, thanking the delegates for the invitation extended for her class to attend a plenary session and to be guests of the delegates at lunch.)

PRESIDENT EGAN: Were there 28 children in that group?

CHIEF CLERK: Twenty-eight.

PRESIDENT EGAN: That would be, if the Chair might say so,

that would be approximately -- it might be that each two delegates could take one of these children. I am just suggesting what might happen here, as we go down the alphabet, except in the case of Mr. Hinckel. The Chair notes there are two Hinckel boys on that list. Mr. Hinckel being of the same name, you would want to have your alphabetical listing changed. Is there any suggestion as to how we should proceed in this situation? Mr. Hurley.

HURLEY: Mr. President, I think your suggestion is very well taken, and I will move that two delegates take charge of one student for the luncheon.

PRESIDENT EGAN: Every two delegates will take --

HURLEY: What I mean is I agree in substance. I think it is a good idea.

PRESIDENT EGAN: Is it the general agreement that each two delegates will take one of these children to lunch here on a certain day? Does somebody want to suggest as to what day? Mr. Cooper?

COOPER: Mr. Chairman, I would like to leave the date open to the Rules Committee on the date that they will put the next committee report in second reading on the calendar, so that the plenary session will not merely be a formality that they attend, and in line with that, that it be done if possible prior to recess.

PRESIDENT EGAN: Mr. Riley then if there is no objection would your Rules Committee attempt to report back to the Convention tomorrow so that we might send some communication back to the classroom?

RILEY: I expect we will have matters in second reading perhaps through Monday as the calendar now appears -- perhaps beyond that, dependent on what comes in meanwhile.

PRESIDENT EGAN: Is there any other unfinished business? Mr. Kilcher?

KILCHER: I would like to rise to a point of personal privilege.

PRESIDENT EGAN: If there is no objection. Mr. Kilcher, you may rise to a point of personal privilege.

KILCHER: How long may I speak, Mr. President?

PRESIDENT EGAN: There is no specified limit as to how long you can talk.

KILCHER: I would hate to be interrupted by a motion to cut it

don't intend to speak that long.

PRESIDENT EGAN: Mr. Kilcher, yesterday after the Chairman spoke, I don't mean to interrupt you, but it was called to the President's attention that we had adopted a resolution or motion that the tapes be cut off when the question of personal privilege, when a delegate rises to a question of personal privilege and owing to the fact that was brought to the attention of the

President, he has no other alternative.

(At this time Mr. Kilcher spoke under the question of personal privilege.)

PRESIDENT EGAN: Mr. Kilcher, the Chair would like to additionally state that the remark was not directed at you particularly. It was something that the Chair feels that each and every delegate should recognize when he takes his feet at all times. Mr. Hellenthal?

HELLENTHAL: Mr. President, I should move, I believe there is no further unfinished business, I therefore move that we have a recess for a definite stated period of 15 minutes perhaps to get a cup of coffee. I move that we have a 15-minute recess.

PRESIDENT EGAN: Mr. Hellenthal moves and asks unanimous consent that the Convention stand at recess for 15 minutes. If there is no objection, the Convention is at recess for 15 minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. If there is no other unfinished business we will proceed with the general orders of the day. General order of the day is consideration of Committee Proposal No. 2 in second reading. The Chief Clerk may proceed with the second reading of Committee Proposal No. 2.

(The Chief Clerk read Committee Proposal No. 2 for the second time.)

PRESIDENT EGAN: Before we proceed the Chair would like to announce that the University expects at least 100 additional people for lunch and they would like to have the tables, to be able to come down and get the tables at 11:45. The tables would be returned to this room at 1:30. We now have Committee Proposal No. 2 before us. The proposal is open for amendment section by section. Mr. Taylor?

TAYLOR: Mr. President, I believe the President should call to the attention of the delegates that attached to the copy of the committee proposal which is on everybody's desk is a

commentary which has been prepared by the Committee for the benefit of the delegates in construing the meaning of each section of the proposed article. Of course, so many of the sections are self-explanatory, but some of them possibly need a little explanation, and for that reason this commentary on the various sections we felt would be helpful and it might be the means of perhaps enlightening the members so there would not be too much discussion or time taken up in the consideration of the proposal.

PRESIDENT EGAN: Thank you, Mr. Taylor. Are there amendments to Section 1 of Committee Proposal No. 2? Does everyone have the copy of the proposal and a copy of the commentary on the judiciary article before them? Is there anyone else who does not have a copy? Mr. Marston also needs a copy of the proposal and a copy of the commentary on the article. Are there amendments to Section 1?

MCNEALY: I have an amendment.

PRESIDENT EGAN: Mr. McNealy, you may offer your amendment.

MCNEALY: Mr. President, I offer this amendment now only to preserve the future race.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment by Mr. McNealy.

CHIEF CLERK: "Strike Sections 4, 5, 6, 9, 10, 11, 12, 13, 14."

HURLEY: Point of order. Mr. President. I understood we were considering Section 1.

PRESIDENT EGAN: Mr. McNealy, would you mind if your proposed amendment were held until we come to Section 4? If it is the wish of the Convention we will determine first as to whether or not there are amendments to each section. Are there amendments to Section 1? If there are none we will proceed to Section 2. Are there amendments to Section 2? Are there amendments to Section 3? Are there amendments to Section 4? Mr. McNealy's amendment may be made at this time.

CHIEF CLERK: "Strike Section 4."

PRESIDENT EGAN: Are you moving that the section be stricken?

MCNEALY: I wish to move the adoption of the amendment striking Section 4.

PRESIDENT EGAN: Mr. McNealy moves the adoption of the amendment striking Section 4. Mr. Davis?

DAVIS: I did not hear what he said.

PRESIDENT EGAN: He moves the amendment to strike Section 4. Is there a second to the motion?

SUNDBORG: Mr. President, I will second for the purpose of allowing Mr. McNealy to explain what his intention and purpose is.

PRESIDENT EGAN: Mr. Sundborg seconds the motion to strike Section 4.

MCNEALY: Mr. President, I am not going to take a great deal of time today as I understand the bill possibly will be continued in second reading until after the recess and very likely it will not be necessary for me to speak upon all these amendments because probably my thought is included in my motion to strike Section 4. It states that, "Justices of the Supreme Court and judges of the Superior Court are appointed by the Governor on nomination by the Judicial Council as provided in this article." Being an attorney, I know the background of the appointment system of judges. Being an Alaskan I have lived under the appointment system so long that I feel that I should have the right to vote for these judges. The thought behind this I believe and the thought of the Judiciary Committee no doubt is to keep judges out of politics. In my opinion this appointment method will bring judges into politics more so than an election by the people. For that reason and in regard to many other reasons which I do not want to take up the time of the Convention to discuss now, I am opposed to the appointment by the governor on nomination by the judicial council.

PRESIDENT EGAN: Mr. McNealy, in order to clarify a statement that you just made, the Chair feels obligated to state to the delegates that anyone who is under the impression that any

official action has been taken that will hold any proposal in second reading is wrong. There has never been any action that will hold anything in second reading officially as you mentioned, Mr. McNealy. If it was your feeling it might be held until after the hearings recessed, no such action has ever been taken, and the Chair wants to clarify that point to all the delegates. Mr. McLaughlin?

MCLAUGHLIN: Mr. Chairman, as Chairman of the Judiciary Committee, I feel in answer to the argument presented here and the proposal to strike, I feel it proper to point out to the Convention that I, probably in this Convention, was the only elected judge present in this Convention. I was twice elected as municipal Magistrate for the City of Anchorage. I might point out, not in vanity or pride but as a factual argument that I never lost, and never won by less than double the vote of any other candidate. The last time I ran my recollection is that I won four to one. If any man should be in favor of the elective system, it should be I. I might point out that in terms of the elective system no member of the Judiciary Committee and that

consisted of two laymen, one of whom had spent 15 years in law enforcement activities, never questioned the impropriety of having elective judges in Alaska. Historically, at the time of the adoption of the Federal Constitution, I don't believe that any state of the Union authorized the election of its judges. They were all appointed. When the elective system came in it was approximately the middle of the 19th century. It was found inadequate because of the fact that we will be confronted here in Alaska with not a nonpartisan judiciary but a judiciary that in substance would be dictated and controlled by a political machine. I am a partisan myself, but I don't believe that our judiciary should be subject to the influences where they would have to go to any clubhouse to secure their nomination or have to secure funds and sometimes excessive and exorbitant funds for the purposes of being elected. I might also point out that one of the dangers of the elective system is the fact that a judge whenever he makes a decision, he has to keep peering over his shoulder to find out whether it is popular or unpopular. If we determine the validity of our laws in terms of popularity as the general acceptance, we are then not a government of laws on which we pride ourselves. It is not the function of the judge to make the law, it is his function to determine it, and the way to keep them independent is to keep them out of politics. Historically, in terms of this document here there is nothing in it that is radical. There is nothing in it that is theory. All of it has worked. California, in 1932, adopted what is known as the Missouri Plan. That is a system of selection. One reason why we did not permit the governor of the state to pick candidates and have them approved or ratified by the senate or house of representatives was that it was discovered under the California plan that there was a tendency on the part of the governor to always pick men of his own political party, subject to the confirmation, not of the senate, but a group called a "committee on qualifications". He would just present them with a long line of Democrats or a long line of Republicans. Does the system work? The system does work. The method by which we determine how the judicial council would be created was -- we followed the Missouri Bar plan that has been in effect (when I say Missouri Bar plan, I mean the Missouri Plan which is part of Article 5, Section 29, of the Missouri Constitution) since 1942 and my recollection is that it has been ratified by the voters three times in succession. The complement of our judicial council, that is three selected directly by the bar association, three appointed by the governor, and the chief justice being ex officio member. The constitution of our judicial council is exactly the same as that in the State of Missouri. We did not follow the New Jersey Plan although the New Jersey Plan which has been sponsored by Chief Justice Vanderbilt, who is Chief Justice of the Supreme Court of New Jersey -- Judge Vanderbilt is not opposed to the Missouri Bar Plan -- but frankly because of the complexities of the New Jersey judiciary, they

could not get it through. In New Jersey the governor appoints and his appointment is ratified by the senate. In every modern constitution, and when I say modern constitution, with the exception of Hawaii which evaded the issue, in every modern constitution -- by that I mean all our latest -- Missouri, the State of New Jersey, and Hawaii -- they all provide for appointive judges and not elective judges. Have we compromised? Yes, we have -- we have compromised -- we have accepted the Missouri Plan. That means in substance what happens is that three lawyers appointed by the bar association as under the Missouri Plan, and the three laymen as appointed by the governor and approved by the senate initially determine who the candidates will be. What is the theory? The theory is you have a select group. The lawyers know who are good and they know who are bad. The laymen represent in substance the public in order to protect them in substance from the lawyers, but they are confirmed by the senate for one reason. The laymen in the committee insisted upon it so that we would have a broader base and the governor himself would not necessarily be able to nominate to the judicial council, his own house. The governor is presented with two names, two or more names, Missouri says three or more. We figured because of the size of the Territory, initially it would be preferable to present two names. The governor has no other choice, of the two names presented, he takes one, fills the vacancy in the court. In terms of the general acceptance of this plan is it radical? Is it new? Is it theory? No sir. It has been approved by the American Judicature Society. It has been approved by an organization I know which is, forgive me, I know I might affront many members here, which is renowned for its conservatism -- the American Bar Association. It has been in substance approved by the Alaska Bar Association, and it has been approved by probably the organization in the field which is most zealous in its idealism, the American Judicature Society. There is nothing unusual, nothing new. What we are trying to prevent are some of the travesties which have existed in some of the states where our judges are picked and plucked directly from the ward political office. Many of the members compromised. We are not happy, in a sense, with the compromise, but the only system that has ever worked apparently in recent years, has been a combination of the appointive and the elective. I might carry on a bit and point out what happens in terms after the governor does appoint from the list presented to him as under the Missouri Plan. Roughly, three and one-half or four years later, the judge is required, every judge without exception, is required to go on the ballot for approval by the voters. Does he have to spend any money? No sir. What is the requirement? The only requirement on a nonpartisan ballot could be, "Shall Judge 'Blank' be retained in office?" The Missouri Plan provides and the New Jersey Plan in substance provides (my figures are rough), that roughly a year and one-half after appointment the judge will be put on the ballot to determine whether or not the public desires to retain

him. It was the view of the Committee that in order to attract good men to become candidates, the only way we could assure the attraction of good candidates was to assure them they would be in office at least for a period of three and one-half years. Why is that necessary? Because after a year and one-half a judge might make a very unpopular decision, and he would not be able to overcome that in terms of popular resentment, and he might be forced out of office after a year and one-half. It is not universally true, but generally your best practitioners in the law are also the men who have the best income and the best practice. A man with good income and good practice will not be attracted to the bench if he feels that after a year and one-half, he will hazard his whole career. He has already hazarded his private practice. He will hazard his whole career with the possibility of being rejected. Three and one-half years is a good inducement. If he is reelected after three and one-half years then under our terms, the terms of our proposal here, he will then sit on the bench for a period of ten years if he is a supreme court judge or he will sit on the bench for a period of six years if a superior court judge and then he will automatically go on another nonpartisan ballot to determine whether he shall be

retained or not. That compromises the difficulty in the American judiciary system, and when I say compromise, it is the best compromise and the best solution to a vexing problem between those who feel we should have lifetime tenure so the judges can be absolutely independent or whether we should have short terms so the judges could be subject to popular will. The popular will should be expressed even in the control of the judiciary, but the way to control it is to put the judge on a nonpartisan ballot. It does not cost him a nickel. He is running against himself, he's not running against anybody else. In terms of whether or not the lawyers would pick the poorest or the best, my answer to that is the answer of Benjamin Franklin who in arguing for appointive system pointed out that it would be very advisable to have an appointive system under the Federal Constitution because of the fact that every lawyer, having determined that a judgeship was open, would promptly designate and recommend the most successful of his brothers in order to steal his practice. Do the lawyers, do they have a vested interest in the proposition? Definitely they do, but as craftsmen or professional men they know best, who is the most desirable. Will you get unanimity on that Judicial council? If the Alaska Bar Association or if any bar association in this Territory or in the United States can be used as an example, as long as you have three lawyers you will have three different opinions. It is probably the most democratic and probably the only efficient system that has yet been devised. It is not a crackpot idea, it has worked and regularly. State constitutional conventions have adopted it. In general I might point out this -- this conforms generally to all the recommendations of the American Judicature Society, all the recommendations of the American Bar Association. It conforms

to the theory under which the Missouri Plan was adopted, and if this is adopted this will be (Hawaii avoided it) the most modern, most liberal, most workable judiciary article of all the constitutions of all the 49 states. Is it theory? Is it social planning? It is based on practice. It is based on experience, and it conforms to very good theory.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, may I direct a question in order to get information? According to your proposal, the judiciary council submits nominations, not less than two. What happens if the governor refuses to appoint either of the two or three as the case may be, if they do not meet with his approval?

MCLAUGHLIN: Others can be presented.

LONDBORG: Would he have the right to call for other nominations or must he stick with those originally presented?

MCLAUGHLIN: In theory the governor would be required to stick with those nominated.

LONDBORG: May I ask this, just for lack of information on my own part on the Bar Association who and how do people get into that? I take it they have to be lawyers.

MCLAUGHLIN: They would have to be lawyers, Mr. Londborg. There was no attempt made -- if we had started to define everyone's qualifications -- much of this will be left to the legislature, but normally that means lawyers.

LONDBORG: Then I'd like to ask this question, is it true that the judiciary council is composed of a majority of lawyers?

MCLAUGHLIN: That is true.

LONDBORG: That is counting the supreme court judge?

MCLAUGHLIN: That is true. I might point out that in Missouri, the appellate Judicial Commission (this is the Missouri Plan) consists of seven members, the chief justice, three elected lawyers, and three laymen appointed by the governor, and these are the ones that designate for the governor. They have subordinate commissions, the circuit Judicial Commission consists of two lawyers, two laymen, and the president and judge of the court of appeals.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I have a question, Mr. President, that I would like to present to any member of the Judiciary Committee. That is this that I want to state first that I am very favorably

impressed with this particular section. The appointive power however clearing through the governor -- in most of the state impeachment clauses -- the two or three highest elective officials or any elective officials being impeached in ordinary procedure, the impeachment springs from the house and is tried by the senate with the chief justice sitting or some of the other supreme court justices sitting as the presiding officer of that body. Now we have a situation here, I am just wondering why the appointive power of the governor is invoked in this particular clause, because it would seem to me with the judicial council and the recommendations such as they have made, it might be best to submit the recommendation directly to the senate. The governor, if he were in a position where he is being impeached, would then have on the presiding bench on the body that was impeaching him a justice whom he had named for appointment and I wonder what the thinking of the Judicial Committee on that is.

MCLAUGHLIN: It is my understanding that Mr. Rivers has some potential objection to the appointment of the nominees to the bench by the governor. Is that right, Mr. Rivers?

V. RIVERS: No, it is more a question to get explanation on the floor as to what would happen in a case like this. I have a good deal of regard for the section you folks have drawn up. I regard it very highly as a layman, but I did want to find out what your thinking was as to why we had to clear the judges through the governor in any event. Why didn't they spring from this appointive and recommending body directly to the senate for confirmation rather than clearing through the governor in any instance, because there might be a conflict of interests if these supreme court judges were called to sit upon the trial of a man whom they had received their appointment from.

MCLAUGHLIN: The thinking of the Committee, Mr. Rivers, was that we wanted something that had precedent and that worked. It has worked in Missouri, it is working in a limited sense in New Jersey, it is working in California. That is, we wanted a practical precedent for it. We did not want to experiment. We did consider the possibility that the judicial council do it, but we wanted some participation by the executive in it, and in fact one of the laymen insisted, on the Committee, insisted that not only the governor appoint the laymen to the committee but they be ratified by the senate so we would have a full participation in the process. As you know, under the model state constitution, the chief justice runs for election and he designates the judges. It was the feeling of the Committee that that would be too much of a closed

corporation, that is the chief justice appoints, in lieu of the governor, under the Missouri Plan, but since it had been untried, the Committee didn't want to consider it. The fact of the matter is, there are many problems that we cannot anticipate, all

the problems that will arise, but we took the best available everywhere and we applied it and when the problems arise, then we will attempt to solve them.

PRESIDENT EGAN: Mr. Smith.

SMITH: I believe the mover of this amendment intimated that the Committee had based their favoring the appointive system on the basis that it would take the judgeships out of politics. I don't know what the Committee's thinking has been, but I certainly would not defend either the appointive nor the elective on the grounds that it would take the judgeships out of politics. I believe the political implications would be equal in either case. However, the appointive system does have the advantage of being selective as to the qualifications of judges. Quite often under an elective system a man is elected on his personal charm or his popularity and quite often his qualifications are not closely examined. Therefore, I would oppose the amendment.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, in regard to a question submitted by Mr. Rivers. Now I believe Mr. McLaughlin touched upon that, but I believe Mr. Rivers loses sight of the fact that the governor does not select any appointee that the only ones he can appoint to either the supreme court or the superior court are those men who have been selected by the judicial council, so the governor does not have any choice in the selection of the candidate for office. He merely appoints. I don't believe that that would create such a feeling of gratitude towards the governor from a man that was appointed to the supreme court or to the superior court that it would cause him to be derelict in his duties. Also I would like to point out that over many years there has been a great controversy in the legal profession throughout the United States. The American Bar Association Journal, which I have been receiving for some 27 years, periodically comes out with articles by various practicing attorneys and by judges, leading men in the profession, who have felt that a distinct change should be made in the selection of the judiciary. When the Missouri Plan was adopted, I believe it was in 1945, it was felt that there was a distinct improvement in the methods of choosing judges, that it abolished the necessity which had prevailed for many years of having to get out into the rough and tumble of a political fight, to spend money, perhaps depend upon certain groups for the support to get elected to a judgeship. Now in this particular instance we have got away from that necessity. We have the laymen and the attorneys -- and coming back to this attorney -- I might mention to the Convention that the attorneys now are organized in a body known as the Alaska Bar Association. It is an integrated bar, an official body of the Territory. Any person seeking to practice law in the Territory

of Alaska, before he can practice, must be a member of the Alaska Bar Association, and he is bound by the actions of the integrated bar, so it is through the integrated bar that these names are selected. It is a democratic election among the attorneys for the selection of these judges. I think Mr. McLaughlin has elaborated upon that as to the selection and the lawyers would know possibly who would be the most able sitting on the benches. The less lucrative practice the man has, the more he would like to see the able man who has been making the money step up there, he might get some of his practice. That is true. It was not original with Mr. McLaughlin. Thomas Jefferson or Benjamin Franklin said that. I feel that in view of the historical matters of

selection of judges, which has not met with the approval, that we have before us now an article which we hope will be adopted as it is into the constitution, and I know that if this article is adopted by this Convention and becomes a part of the constitution that every university in the United States that has a law school and all law societies that have the opportunity of reading this article can honestly say that they have perhaps the most progressive and most modern and up-to-date system of selecting the judiciary of any state in the United States, and I would like to see this adopted by this Convention without one syllable or a comma or a period left out, just as it is. Mr. McNealy says, "Well, we have had judges appointed here for many years. I would like to protect those men." Perhaps Mr. McNealy has practiced under those appointed judges so long he is like the prisoner who after many years begins to love his chains.

V. RIVERS: May I ask a question of Mr. Taylor?

PRESIDENT EGAN: You may, Mr. Victor Rivers.

V. RIVERS: Mr. Taylor, if the governor does not appoint and the appointment springs from judicial council, why is not only one name recommended to him instead of two?

TAYLOR: It is to give a choice.

V. RIVERS: He has a choice power and appointive power?

TAYLOR: That is correct. I might say that there will be legislative act to implement these sections that are in here. He will have to appoint because it devolves upon him. There can be three to give him a choice if he wants them, according to what the legislature says.

MCNEALY: Mr. President, this matter I wish to assure the delegates is not personal with me, and if you will bear with me for a couple of minutes I am going to make the whole pitch, .so to speak, on this particular amendment. If this amendment fails then I am going to ask unanimous consent to withdraw all the

other suggested amendments for the purpose of saving time of this Convention, because if all the amendments were considered and argued upon, and I were fortunate enough to have a second, this discussion could go on for days and even weeks. I offer this amendment. I am not sold on the bill as it is. I am not particularly sold on the matter of the election of the judges by the public. I owe it to other attorneys who have asked me to offer this amendment and to laymen who feel that they should have the right to vote for all the offices that they possibly could vote for under a system of state government. I did not start in the law business as of yesterday. I have been admitted to the bar almost 27 years, and I did not have the funds to attend a university and the prior four years then I spent in the law office, and that was a continuous four years of work in a law office, so for more than 30 years I have been depending upon the law for my bread and butter, and on the point of having a successful practice, why that certainly should not prevent me from being one of those appointed if I ever desired to be a judge, which I don't think I could afford to because of probable pay scales, so I'll probably be appearing before the judges as long as I'm able to get around, possibly as long as old Judge Grigsby down in Anchorage or our Dean here, Julien Hurley. Now as far as your election of changing judges in office, I want to call attention to another old saw which has been in effect since time when the memory of man runneth not to the contrary and that is that judges never die and they very seldom retire. In this matter of running against the record, I want to argue that point just a minute. To say that the voters are going to have an opportunity now, it's going

to be put on the ballot shall Judge So-and-so be reelected. Well, I can think of this situation, I am concerned about this. Judge So-and-so has been appointed, and he serves and he is on the supreme bench for ten years or is on the superior bench and has served for six years and then he runs against his own record. All of the attorneys that are practicing before this judge learned over this period of six or ten years that Judge So-and-so is a stinker. He comes down with some of the lousiest decisions. He steps on this fellow and that fellow, he does not follow the law. He hands down decisions that are unfair to people. Now, all of the lawyers know this situation, but the general public does not know. The general public does not pay too much attention to judges and what is going on in court unless it is your case that is before the court, so the time eventually rolls around -- the six or ten years -- and old Judge "Stinker" comes up to run against his record. So then the lawyers, if they can do it -- Mr. Taylor, to digress a minute, mentioned the American Bar Association. I am not a member of the American Bar Association. Never have been and never will be. If my memory serves me correct, there are probably only about 30 per cent of the lawyers in the United States that do belong. I am not going to state why I do not belong and why the other 60 or 70 per cent don't -- but the fellow comes up. The lawyers

then look over those now that belong to the American Bar Association at least, and possibly under our Alaska Bar Association, I haven't seen the Canon of Ethics adopted, or to be adopted, but if the members of the American Bar, under the Canon of Ethics, can do this, can get out and bring to the public's attention that Judge So-and-so should not be reelected, (and I question under the Canon of Ethics of the American Bar will allow it) then the lawyers carry on a campaign in the newspapers and over the radio and say that Judge So-and-so is no good and urge the public to vote against him. Now, I am speaking from years of experience as to how the public in general feel about the attorneys and I am in hopes that the Alaska Bar Association will so regulate our own ranks that the attorneys will be considered as professional men and not shysters in the future. But in carrying on this campaign with the general public, unless their minds are changed, they are going to say, "What is the matter, this bunch of lawyers here are trying to get rid of good old Judge Whoozit." So Judge Whoozit comes out, he doesn't have to spend any money campaigning, all he's got to do is tell the reporter, "This bunch of lawyers -- I have stepped on their toes in trying to carry out the laws as written and this bunch of lawyers are trying to sabotage me." Judge Whoozit will go back into office by the biggest vote that it is possible to give him. The only ones who will ever vote against him will be the lawyers and there's not enough of them in the Territory to have an effect on the election. If I were a judge and wanted to be continued in perpetuity in office, then I would want the attorneys to come out and recommend against me. Now, and as I said before, I am going to withdraw these others and this will be my last time on the floor if you will bear with me just a few more moments. Now, I would like to speak personally of the matter of politics involved. I don't think that running for a judgeship either, should be a popularity contest. But here we have three laymen appointed by the governor, three lawyers appointed by the bar association. I am looking ahead to a situation of this kind that will arise where a governor appoints three laymen, now the governor appoints these three laymen and they are beholden to the governor. The governor, be he Republican or Democrat, tells these three laymen, Here is Jones and Smith here now, they have been good party workers, they helped get me into office. Now, I want you three laymen on the board, Jones and Smith should be rewarded, so I want you to come up with their names." Then the three lawyer members don't agree. They want two different members to be appointed, so they come up with two. The three laymen members say to the governor, "What are we going to do?" The governor says "hang tough. Now, we have precedent for that. Take your Employment Security Commission here in the Territory, which is one of these two and two deals, two from labor and two from management, and they have not

been able to agree on one single solitary important problem under the Employment Security Commission, and it is questionable that they ever will be able to.

They can't even agree, or haven't the last time I knew, on a bill which was passed in the last legislature hoping to break the deadlock by authorizing the four of them to get together and select a fifth member. So I can see an absolute stalemate in that regard. Going further, now currently the vast majority of states elect their judges. First I want to apologize to the Convention here about saying anything about Nebraska. That is where I studied law and where I was admitted to the bar, and being opposed to their unicameral system, maybe I should be opposed to the fact that they elect their judges. I have been an inactive member of the bar there for a great many years, and the other day I received a list of the judges that were still on the district court bench -- we called it district court there, not superior court were on the district court bench in Omaha. At the time I was there, in the late 20's and early 30's, we had 12 district judges in Omaha Douglas County, I should say. These 12 district judges ran for election every four years. I noted in the recent paper that I got from the Quarterly Law Review from the Bar Association that all 12 of these district judges are still on the bench in Omaha. They have been running for office every four years. They are good judges. The lawyers like them, the people like them. It is no argument that you are going to have inferior men on the bench simply because, if the judge is not a good judge, the people themselves are going to see that he is removed. Now, in closing, I believe it was on the floor that this constitution should be more or less of a fundamental document. I am in favor of a fundamental document. I believe that this judiciary article, with all due respect to the attorney members and the laymen members on the Judiciary Committee, that it could have been solved by saying, "There shall be a supreme court and such inferior courts as the legislature may establish from time to time", which would have taken care of the matter just as well. I assure you, ladies and gentlemen, I will not speak upon this subject again, and I thank you for this opportunity.

PRESIDENT EGAN: Mr. Ralph Rivers?

R. RIVERS: As a member of the Judiciary Committee, I would like to second the able presentation of our Chairman and to endorse the points brought out by Mr. Taylor. I was a member of the bar in Seattle when I was a young fellow, over 20 years ago, and there they had the election system. The judges had to file in a competitive political field every two years, and there was always that undercurrent that litigants were contributing to the judges' campaign funds. There was nothing improper for a person to contribute to the campaign fund, but there was an undercurrent of chicanery. It does not seem to be right that a man sitting on the bench should be the subject of contributions from various and sundry people, either presently litigants or people with cases pending. The best soap-box orator often times gets elected and your better

attorneys who have these qualifications we are all aware that are required would hesitate to throw their hats in the ring and get into that kind of a circus. I concur with Mr. Smith that this has the virtue of a screening process, an orderly screening process. We label it nonpartisan because the ability and qualifications should have nothing to do with the political party. But actually this is not only an approach at nonpartisanship although politics is bound to enter into it to a certain extent, this is a screening process which is the most important point involved. So I think that it is positive with some decency of approach and thinking the judicial council will seek for the best available timber, and we take a bow to the governor in taking his choice of two persons that are nominated, or three if we have that many to spare and are available to be nominated, but he has no alternative but to pick one of the names that are presented to him by

the judicial council. There is the other point that there will only be six until a supreme court justice is appointed and the only chance for a deadlock would be on nominating two or three people for the office of supreme court justice. After that you have your seventh member and there will be no chance of a deadlock. I am willing to trust the integrity and good sense of the six people first appointed to judicial council to be able to agree on two or three nominations for chief justice, and I am willing to trust the governor to take his choice of those two or three names that are presented, so I see no serious problem of a deadlock in order to get the machinery fully implemented. I go along with Mr. Taylor that this Committee has given and taken and bumped its head, I should say the members have bumped their heads together. There has been some compromising and adjusting, but our composite thinking is better than the thinking of any one of the seven of us that constituted that Committee. I believe we have a constructive article, one of which we can be duly proud. So outside of letting the Style and Drafting Committee change a few commas, Mr. Taylor notwithstanding, and polish up a sentence or two, I hope it is adopted the way it is written.

JOHNSON: I move the previous question.

PRESIDENT EGAN: Mr. Johnson moves the previous question.

TAYLOR: I second the motion.

PRESIDENT EGAN: Mr. Taylor seconds the motion. The question is "Shall the --

SUNDBORG: Parliamentary inquiry, Mr. President. Is the matter of voting on the previous question debatable?

PRESIDENT EGAN: No, it is not, Mr. Sundborg.

SUNDBORG: I call for a roll call.

PRESIDENT EGAN: The question is, "Shall. the previous question be ordered?" A roll call is asked for, the Chief Clerk will call the roll. Mr. Smith?

SMITH: May I rise to a point of information? The previous question would be the vote on the amendment?

PRESIDENT EGAN: The previous question would be the vote on the amendment. What you will be voting on now is whether you should order that previous question. Mr. Davis?

DAVIS: Mr. President, the amendment is only to Section 4, is that right?

PRESIDENT EGAN: That is right. We are not speaking of Section 4 right now, Mr. Davis. We are speaking as to whether we will order the vote on Section 4. The Chief Clerk may call the roll.

(The Chief Clerk called the roll at this time with the following result:

Yeas: 41 - Armstrong, Awes, Barr, Boswell, Coghill, Collins, Cooper, Cross, Doogan, Gray, Harris, Hellenthal, Hilshcer, Hinckel, Johnson, King, Knight, Laws, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Peratrovich, Poulsen,

Reader, Riley, R. Rivers, Robertson, Rosswog, Smith, Stewart, Taylor, VanderLeest, Walsh, White, Wien.

Nays: 12 - Davis, Emberg, V. Fischer, Hermann, Hurley, Kilcher, Londborg, Nordale, V. Rivers, Sundborg, Sweeney, Mr. President.

Absent: 2 - Buckalew, H. Fischer.)

LONDBORG: Mr. President, I would like to change my vote to "no".

PRESIDENT EGAN: Mr. Londborg wishes to change his vote to "no".

CHIEF CLERK: 41 yeas, 12 nays and 2 absent.

PRESIDENT EGAN: So the previous question has been ordered.

JOHNSON: I request a roll call on the previous question.

V. RIVERS: Is a question of personal privilege in order at this time?

PRESIDENT EGAN: If there is no objection, Mr. Victor Rivers.

V. RIVERS: I just want to say that we are acting in final action now on the amending of a bill, rather the amendment of a proposal. It seems to me not only good courtesy but good judgment that the previous question and final action should be used very charily. I can see using it late at night after many hours of debate, but it is hard for me to conceive foreclosing any member of this group from having their full expression of their views on the final action of any part of any proposal that comes up. It seems to me that it is very poor policy to exercise the previous question in a matter of prime importance that we are taking the primary action of amending. I have sat in a good many deliberative bodies. I have seen the previous question used to stop debate on minor points where you have something at issue which may have not been primary to the functioning of the body. But I seldom have seen the privilege of the previous question abused to stop debate on a final action of a measure that is coming up for either amendment or final passage. It seems to me that debate on these things of importance that are going to carry on for many years should not be limited to the expression of the opinions of a few. We are here for the primary purpose of considering all facets of all of these questions, and it seems to me that moving the previous question forecloses substantial consideration. I think there are men in this body who should not only express their views but to express their views for the record, should be heard in regard to what they have to say pro and con on this question. It is one of the fundamental questions involved as to whether or not we have the appointive system of judges. I might tell you I favor the appointive system of judges in the manner set up here. However, that is beside the point. It seems to me, in determining intent and determining the consensus of this body, the record should be complete. It seems to me that moving the previous question was entirely one of -- not a desire to foreclose the record but to foreclose many men who might have had some valuable comments to put into this record on this point. I just want to say at this point I am going to close my discussion on the previous question, but I just want to say in reading the handbook (the Hawaiian Legislative Handbook) in connection with judges, I want to call your attention to the first paragraph. Independence of the judiciary is a fundamental principle of our American court system. How to achieve that independence is a problem still unsolved. All agree that the first step is to find the right method

of selecting judges which will insure a bench free from the influence and control of party politics, individuals or pressure groups." Now it seems to me this matter should have a more full discussion before action is taken on this particular amendment.

NORDALE: I would like to echo everything that Mr. Rivers says, and I believe that every paragraph of this constitution is too important to preclude anyone from expressing his views. I would like to move to rescind the action on the previous question.

SUNDBORG: I second it.

PRESIDENT EGAN: It has been moved and seconded that the action taken to order the previous question be rescinded. All those in favor of rescinding the action ordering the previous question will signify by saying "aye", all opposed by saying no. The "ayes" have it and the action has been rescinded. We have before us Mr. McNealy's proposed amendment to Committee Proposal No. 2. Mr. Hurley?

HURLEY: Mr. President, in order that there will not be a feeling on the part of the 55 delegates that this is a courtroom and only attorneys are speaking, I would like to endorse in substance Section 4 of the proposal. I think Section 4 goes to the meat of the whole proposal and as such it will be necessary for us probably to digress into a great many other things that may have been taken care of in later sections. Generally speaking, I think that Mr. McNealy is extremely sincere in his objections to it, but I too have lived under an area where judges were elected to office from anywhere to two or four years. I too have found that those judges have stayed in office from anywhere to 20 to 40 years. I think that is a very substantial argument why a system that is prescribed here should be adopted. In other words, it is not an argument against it. The main argument against the running of judges on an open ticket in a prescribed time against other competition I think has been ably stated by Mr. Ralph Rivers, that it does degenerate, and I have seen it degenerate, into a question of whether a judge is capable of making his own decision on the litigants that are before him and whether he has in mind whether or not they will serve him well at election time. The only other thing I would like to say, besides endorsing in full, is that I would like at a later time, in Section 9 and 10, when we come to it, to offer some slight amendment.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, Mr. Hurley has a point here when he says that only the attorneys have been speaking in this matter. I am an attorney but I want to speak on this amendment because the matter is absolutely fundamental. If Mr. McNealy's amendment proposed to Section 4 should be adopted, of course the whole approach to the matter of the selection of the judiciary would be different. We would have to start out and do it all over again. Now that would be all right too. Merely the fact that the Committee has put in a proposal here is certainly not governing on this body. But at this time we are going to have to decide, by this body, as to whether it is the will of the Convention that judges be appointed, or as to whether it is the will of the Convention that judges be elected. After we decide that, one way or the other, then we can go into the other matters as to how they are appointed or as to how they are elected, in either case. Now historically, judges were

always appointed until some time after the adoption of our Federal Constitution, and our Federal Constitution included that procedure in providing that judges are appointed and, in fact, are appointed for life. And, of course, the theory behind appointing judges for life is that

they are once appointed, completely independent, and over the years we have seen many times when a President attempted to what we might call, "pack" the Supreme Court. The President has appointed his man or his men with a particular idea in mind, and when those judges were appointed, I think invariably or at least almost all the time, the President in question has been badly disappointed to find that his man followed what he conceived to be the law and not the President's wishes. The lifetime tenure of judges has much to recommend it. On the other hand, the lifetime tenure of judges has the possibility of being abused. Any attorney who has practiced law has seen instances where a judge appointed for a lifetime, after serving for a length of time, becomes completely unresponsive to the will of the people, refuses to change with the times and the times do change. And for that reason, strict appointment with a lifetime tenure, has its disadvantages. With that in mind then, sometime shortly after the adoption of the United States Constitution, many of the states started electing their judges with the idea that the judges would be more responsive to the public will. And the pendulum, as somebody said awhile ago, swung clear over to the other side and we had very nearly all our judges except our Federal judges being elected by the people and for relatively short terms. I grew up in the State of Idaho and we had elective judges. Their terms, even the supreme court judge terms, were only four years. The judge ran every four years and inevitably it got into politics. In order to attempt to remedy that situation, the State of Idaho many years ago adopted a nonpartisan judicial ballot where the judge runs, not as a member of the party, but runs for the office. However, he runs against some other person who aspires to be a judge, and he runs every four years. The result was that the judiciary was not and could not be independent, depending on the whims of the time. depending on the decisions a man might have made, he was or was not retained, or depending on how popular his opponent might be, completely irrespective of qualifications. Now the elective system has much to recommend it, but likewise, it has much against it. In the creation and maintenance of an independent judiciary, and I believe without qualification, I believe I could say that all of us here want an independent judiciary, a judiciary that will not be swayed by the public will at any particular moment, a judiciary that will not be subject to political pressure, a judiciary that will not be subject to pressure from the executive branch of the government. I moved to Alaska some 16 years ago and from that time to this I have been operating under a judiciary which was appointive. However, appointed for a very short term of four years, and I am willing to state flatly in my opinion that system will not work. I have seen instances where judges were

appointed who had no qualifications at all to be judges. They were appointed either by reason of a compromise they were the only ones everyone could get together on -- or for some other reason. In at least one instance, I saw an instance of a judge appointed who was a good judge and who was doing a good job as judge. In the particular case I have in mind the judge made a decision against the United States of America, in my opinion a completely proper decision, but a decision against the United States of America. When he came up for reappointment at the expiration of his four years he was not. reappointed, and a judge was appointed who it was believed would follow what the government wanted, and I know that we do not want that. Now the plan which has been presented here is a compromise between the plan of appointing judges for long terms and a plan for election of judges. In my opinion it has the best features of both. Now Mr. McNealy said, when he was talking, that the fact that a judge may be appointed, may be elected rather, might be an entirely a good judge and that the fact that judges are elected is not any argument that the elected judges are inferior, and I will admit that in a minute, and I also will admit that the fact that judges are appointed does not necessarily guarantee that they are superior judges, but it seems to me that the plan which is set up here gives the best of the two systems with the result that when the procedure is followed we have taken the best means yet devised to appoint and select qualified judges and to keep judges

free from outside pressures and to get rid of judges who are not able to properly do their job. I hope that Mr. McNealy's proposed amendment will be defeated.

PRESIDENT EGAN: Mr. Metcalf? If there is no objection, the Convention is at ease for a moment while the stenotypist changes her machine.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mrs. Sweeney.

SWEENEY: Mr. .Chairman, in view of the fact that they are going to take our desks from us in a few minutes, I would like to move that we recess until 1:30 this afternoon and that Mr. Metcalf be the first speaker when we resume discussion.

PRESIDENT EGAN: Mrs. Sweeney asks unanimous consent that owing to the fact that the University people will have to get these tables out of here in a few minutes, that the Convention stand at recess until 1:30 p.m. and that Mr. Metcalf, who was recognized, have the floor at that time. Is there objection? Hearing no objection the Convention stands at recess until 1:30 p.m.

ALASKA CONSTITUTIONAL CONVENTION

December 12, 1955

THIRTY-FIFTH DAY

PRESIDENT EGAN: The Convention will come to order. Reverend Armstrong, will you give our daily invocation.

REVEREND ARMSTRONG: Our Father, we come to Thee asking for Thy divine help and guidance. Create within us clean hearts, renew within us right spirits, cause us to devote all of our energy to the building of a constitution that will insure right, peace, and harmony within the State of Alaska. Teach us humbly to rely upon Thee for wisdom in each step of our way. For this we ask in Jesus' name. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

CHIEF CLERK: Two absent.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with the regular order of business. Mr. Knight?

KNIGHT: Mr. President, after reading the journal for the 31st day I would like to make the following corrections

PRESIDENT EGAN: Mr. Knight, reporting for the special Committee to read the journal, would like to make the following corrections for the journal for the 31st day.

KNIGHT: In the paragraph beginning "A letter from", add the word "Mr." on page 1. On page 4, paragraph beginning with "Mr. McLaughlin" on the second line, delete the word "from" and add thereto the word "of". Same page, beginning with the paragraph

"After recess". on the third line, add "S.L.A. 1955" after "46".

On page 5, paragraph beginning with "Mr. Riley", the word "rules" should be changed to "ruled". Those are all the corrections, Mr. President. I ask unanimous consent that the journal be approved as read.

HERMANN: I object for a moment, Mr. President. On page 3, in the second paragraph, as I recall the minutes, that should be "both dates inclusive". The word "inclusive" has been left out after "dates".

CHIEF CLERK: No, that was in, Mrs. Hermann, and the words that were added were "both dates". I don't have it right here.

PRESIDENT EGAN: Then on the original resolution the word "inclusive" was there but they added the words, "both dates"?

HERMANN: Then on page 4, the second paragraph, second line says "Paragraph 3 in the resolve be amended. Should that not be resolution"?

PRESIDENT EGAN: That would indicate more or less the title.

CHIEF CLERK: It was the resolve clause that was amended. That is the only way you can designate what was amended, by looking back.

PRESIDENT EGAN: Is there objection to Mr. Knight's request? Mr. Knight asks unanimous consent that the journal for the 31st Convention day, with the proposed amendments offered by the special Committee to read the journal, be approved by the Convention. Is there objection? Hearing no objection it is so ordered. Are there any petitions, memorials, or communications from outside the Convention?

CHIEF CLERK: A letter from the Republican Women's Club of Anchorage, opposing the Tennessee Plan.

PRESIDENT EGAN: If there is no objection the letter will be referred to the Committee on Ordinances, No. IV.

CHIEF CLERK: A letter from Walter J. Hickel. (Clerk read letter inviting the delegates to attend the opening of the Fairbanks Traveler's Inn, December 17 at 1:30 p.m.)

PRESIDENT EGAN: The delegates will attempt to remember that date and the letter will be filed. Are there other communications?

CHIEF CLERK: I have none.

PRESIDENT EGAN: Are there reports of standing committees? Mr. Collins?

COLLINS: Mr. President, Committee on Amendment, No. XIII, submits Committee Report No. 3 for first reading.

PRESIDENT EGAN: The Chief Clerk will proceed with the first reading of Proposal No. 3.

CHIEF CLERK: "Committee Proposal No. 3, introduced by the Committee on Direct Legislation, Amendment and Revision, INITIATIVE, REFERENDUM AND RECALL, AMENDMENT AND REVISION."

PRESIDENT EGAN: The proposal is referred to the Rules Committee for placement on the calendar. Are there other reports of standing committees? If not, are there reports of special committees or select committees? Are there any proposals to be introduced at this time? Are there any motions or resolutions? Mr. Marston?

MARSTON: Mr. President, I think this comes in here. It is pertaining to the arrangements for hearing during recess. I have had communications from my particular group in Spenard and they do not feel that it is necessary for me to call a meeting --

PRESIDENT EGAN: Is there objection to taking up this question at this time? If not, proceed Mr. Marston.

MARSTON: They do not think it necessary for me to call a meeting with them. They have admonished this institution to forget sectionalism and not let it creep in, and they expect to find this constitution, yet written by mankind, one that is acceptable to the people as a whole. They are watching these deliberations very carefully, and they want a constitution built for the good of all, with favoritism toward none. That is the position they took on it and I am carrying that message to you. That comes from my group in Spenard. I will not hold meetings there and therefore I will not be entitled to any compensation for travel or per diem or compensation while I am away. I am so notifying the Finance Committee of that now.

PRESIDENT EGAN: The Chief Clerk will make a note of that fact that he will not accept his per diem or any other compensation during the recess. Are there any motions or resolutions? Is there any unfinished business? Under unfinished business the Chair might state that with regard to the proposed Committee on Engrossment and Enrollment, the Chair desires to appoint Mrs. Sweeney, Mr. Ralph Rivers and Mr. Yule Kilcher to serve as the Committee on Engrossment and Enrollment. Is there any other unfinished business to come before the Convention? Mr. Coghill?

COGHILL: I don't know whether it is in order at this time but Saturday we discussed the possibility of seeing the films. one from the Alaska Visitor's Association and one from the Corps of Engineers. We have arranged for that at the pleasure of the Convention. It will be held in the Mines Auditorium at 7 p.m. this evening. I hope that does not conflict with any committee meetings or hearings and if there is a majority of the Convention that wants to see these films, it will go on as scheduled. However, if the majority of the Convention feels they don't want them, there is no sense in bothering the Mines organization. I think we should have a show of hands on how many want to see this particular two-feature film.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, before we have a show of hands, I would like to suggest that since we have a good deal of business on hand and that we work straight through to 6 o'clock, eat dinner in the cafeteria and go from there to see the film.

That is just a suggestion but I think we would have more who would be willing to stay over and see the film that way than we would have if they had to come back.

HINCKEL: Along the same lines, may I suggest we work to 7 o'clock, go to the show, and eat afterwards.

PRESIDENT EGAN: Mr. Walsh.

WALSH: Mr. President, relative to the discussion on films, I wish to be permitted to read a very brief comment, one from Mr. Bartlett, also one from Dr. Patty and one from Governor Heintzleman, very brief. I will quote just the meat of it. "These pictures are truly authentic. They depict the real Alaska of the far North. The photography is simply beautiful. I hope the pictures may be widely shown to promote a better understanding of the real Arctic." Signed E. L. Bartlett, Alaska Delegate to United States Congress. And from Dr. Patty, "The photography and narrations are excellent. It was a relief to find the restraint and factual way in which you presented your subjects. These will be excellent for showing in schools." Signed Dr. Patty, President, University of Alaska. And from Governor Heintzleman, "I have viewed many pictures of conditions in Northern Alaska and the life of the Eskimos there, but I was never more

satisfied with any presentation than with these. You have caught the spirit of the North country." Signed B. Frank Heintzleman, Governor of Alaska. I thought it would be well for the members to know that these have been endorsed by those men whom I have just read.

PRESIDENT EGAN: What seems to be the desire of the Chairman of the Committee on Administration? Mr. McNees?

MCNEES: In line with what we have heard here this morning, I would like to move that we stay organized for a group until 6 o'clock tonight and that the group as a whole see these two pictures at 7 o'clock.

PRESIDENT EGAN: Mr. Smith.

SMITH: Along this same line, I would like to ask the consent to be excused at 3:30 this afternoon on the grounds that I have some very urgent personal business to attend to before 5 o'clock.

PRESIDENT EGAN: If there is no objection, Mr. Smith, you may be excused at 3:30 this afternoon. Mr. Nerland?

NERLAND: Point of information? Is it contemplated that this session will last all day today and if we attend this showing this evening, there will be no committee meetings at all today?

PRESIDENT EGAN: That would be the assumption if this --

NERLAND: It occurs to me our time is drawing short before we recess for the hearings and I know the Finance Committee had planned a meeting for this evening, assuming that we would not have time during the day, and perhaps there are going to be other committees pressed too, to get their committee proposals in before our recess time, which I consider quite essential.

MCNEES: By that motion I did not mean that we should stay in plenary session, of course, we would stay about for the conduct of Convention business.

PRESIDENT EGAN: Mr. McNees, do you think it might be well if, as Mr. Coghill first suggested, before we put any motion to ask those members who feel they will be present at this film showing to raise their hands?

MCNEES: I will withhold the motion for the moment.

PRESIDENT EGAN: Will those delegates who feel they will be present to see the showing of the films, please raise their hands. Mr. Barr?

BARR: Before I vote on that I would like to know for sure if I have a committee meeting tonight for this reason. I would not want to come back out here especially for the show, but if I am going to have a committee meeting afterwards, I will come out early and take in the show. I wonder how many committee meetings are planned.

PRESIDENT EGAN: Are there other committees that plan meetings for tonight? Mr. Victor Rivers?

V. RIVERS: The Executive Committee will have a meeting at 3 o'clock if we can all get together. I think that does not conflict with most of our members.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, the Resources Committee will also hold a meeting if time is available. We will hold it on schedule if the plenary session allows. Otherwise, any time that it is possible to hold one.

PRESIDENT EGAN: The Resources Committee will meet as soon as possible, on schedule if the plenary session allows. Mr. Rosswog.

ROSSWOG: Mr. Chairman, your Local Government Committee would like to have a meeting sometime this afternoon, at its regular time or at sometime at least.

AWES: The Bill of Rights Committee would also like to meet, if possible.

PRESIDENT EGAN: The Bill of Rights Committee would like to meet. Mrs. Hermann?

HERMANN: I think if we break up in committee meetings, it will be the usual rule that those who do not have committee meetings will go back to town. I can't vote on this until I know whether I am going to have to come back out here or whether I am going to stay. I would like to see the pictures, but whether or not I can come back out, I don't know. Now, I think my original suggestion was that we continue in plenary session until time to adjourn today and then go ahead with the hearing and after that hold committee meetings if they want to, but I think I would have to know which we are going to do before I could vote.

PRESIDENT EGAN: Perhaps then you would rather find out how long we are going to be here before you put the question as to whether you want to stay and see the film. Mr. Coghill?

COGHILL: Mr. Chairman, it might be well to bring up the thought that possibly we could adjourn our plenary session this morning early and adjourn until 3 o'clock this afternoon and take up plenary work until this afternoon, giving a chance for most of the committees a chance to get together. It is just a suggestion if that would clear up the point of whether you're going to be here or not when the showing convenes.

PRESIDENT EGAN: The Chair would like to state that we should remember we have a committee proposal to work on and it is very hard to tell, subject to the wishes of the body, just when we could recess. Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, in line with the motion, I think it is appropriate to say that in my opinion and a number of others that I have talked to, we should start dividing work up into regular orders of business, both plenary and committee work, we have gotten through the bulk of the work which has been practically all committee work and it was my intention and thought that I would move for a recess about 12:30 today, even though we had an order of business, and ask for recess until 9 o'clock tomorrow morning, and in that way we would then have our afternoon free for committee meetings. If we are going to have something on our calendar from now on, it seems we should divide and give an equal portion of our time to the two different phases that we are facing, the plenary work and committee work. It was my thought that I would at 12:30 ask for an adjournment until 9 o'clock tomorrow morning.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: I don't agree that we can divide the time equally between committees and plenary sessions. I think the committees have had their time, and if they are not through, they should find extra time and not interfere with work on the floor.

PRESIDENT EGAN: Mr. McNees, what was the subject matter of your motion? Would you state your motion again.

MCNEES: The motion originally was that we continue to conduct whatever business in a Convention way that we had before us whether plenary sessions or committee meetings, but hold the entire group here through the dinner hour for the showing at 7 o'clock. My understanding was that the showing of this film will not take too long.

COGHILL: No, it is about an hour in length -- the Alaska Visitors and then we have two short thirty-minute films that can be shown but the Alaska Visitors film this is the last night we can possibly obtain the Alaska Visitors film. It is leaving tomorrow.

PRESIDENT EGAN: The Chair would question whether a motion could bind all the members to be sure and stay here to see the film.

MCNEES: I will withdraw the motion.

WALSH: Again I might state I have seen those films, a great part of them, and I think they are very interesting and important. I don't mean to say that we should leave any regular order of business for it, but if the members could arrange so that we could see those at 7 o'clock and for one hour I think they are very important. I realize too, that we have before us business since Saturday, the Judiciary recommended proposal, and I think that time could be given to the continuation of that today. It probably would make some progress. That is a very important and in my opinion, an excellent proposal, and I would like to see the Convention put in some time on that. That is my opinion.

PRESIDENT EGAN: If there is no objection then the Chair will just state that it is planned to have the films at 7 o'clock this evening in the Mines Building, and all those delegates who so desire can attend the showing of those films at that time. Is there any other business to come before the Convention? If not, we will proceed with the second reading of the Committee Proposal No. 2. We have before us an amendment to a motion by Mr. Cooper, as the Chair recalls. Mr. Hinckel?

HINCKEL: I am out of order then because I have withdrawn a motion and I thought I was in order by presenting it now.

PRESIDENT EGAN: Mr. Hinckel, had you withdrawn a motion with the understanding that you would be able to present it later,

but was it not that this particular thing was before us at that time the reason you held your motion? Was that with relation to this committee proposal?

HINCKEL: I am out of order. I will wait.

PRESIDENT EGAN: Will the Chief Clerk please read the proposed amendment to the motion. Mr. Cooper?

COOPER: Since Friday I met with the Judiciary Committee and during the meeting the conversation was very enlightening, and all but, in effect the Committee has taken a pat stand on their Section No. 7, and I would like to withdraw my original motion with the consent of my second, and in effect the only amendment that I could offer at this time would be that after the word "nomination" the last word in Section 7 would be "and possess such additional qualifications as the legislature may prescribe." I don't really believe my amendment now would have any meat whatsoever. As I understand, something not specifically spoken of in the constitution can be accomplished at a later date, such as "the legislature requiring additional qualifications." Am I correct?

PRESIDENT EGAN: Mr. Cooper, now your present amendment to the motion that you originally introduced would set up or give this power to the advisory council, isn't that right, or is that correct?

COOPER: I withdrew that. I ask with the consent of my second.

PRESIDENT EGAN: You would like to withdraw the amendment to your original motion?

COOPER: I would have to take it in that order.

PRESIDENT EGAN: Is there objection to Mr. Cooper's withdrawing the amendment to his original motion? If not, with the consent of the second, the amendment to the original motion by Mr. Cooper is ordered withdrawn.

COOPER: Now, Mr. President, I would like to withdraw the original motion.

PRESIDENT EGAN: Mr. Cooper asks unanimous consent that he be allowed to withdraw his original motion which would strike, after the word "state" on line 2, page 3 --

CHIEF CLERK: No, it was a substitution, it was to strike Section 7 and to put in a new Section 7.

COOPER: The original motion was to strike the entire Section 7 and insert the amendment I had written.

PRESIDENT EGAN: Is there objection to Mr. Cooper's withdrawing that motion? Hearing no objection the motion is ordered withdrawn.

COOPER: Mr. President, I do want it made clear to me that if the constitution does not speak on the subject that that subject then is authorized in essence.

PRESIDENT EGAN: Mr. Cooper, if there is no objection the Chair will declare a one-minute recess and perhaps the Rules Committee or other members can answer that exactly. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Cooper.

COOPER: Having withdrawn my other amendment, I wish at this time to offer an amendment which is my honest feeling that I was trying to accomplish last Friday. I would like to present this amendment and ask for unanimous consent.

PRESIDENT EGAN: Mr. Cooper, do you have your amendment prepared to offer to the Chief Clerk at this time?

COOPER: Yes, I do.

PRESIDENT EGAN: The Chair would like to ask that all delegates please speak up as the gallery is pretty well filled and it is very hard for the delegates to be heard in the gallery.

BUCKALEW: Mr. President, who is in the gallery?

PRESIDENT EGAN: Mr. Buckalew, the Chair understands that there are some 50 students of the senior class of the Fairbanks High School along with several of the faculty, and we are very happy to have you with us this morning. The Chief Clerk will read the amendment.

CHIEF CLERK: "Page 3. line 2, after the word 'state' delete the rest of the section and substitute the following: 'and possess such other qualifications as may be prescribed by law.'"

PRESIDENT EGAN: What is the pleasure of the delegates? Mr. Cooper?

COOPER: I ask unanimous consent to that amendment.

PRESIDENT EGAN: Mr. Cooper asks unanimous consent that the proposed amendment be adopted.

JOHNSON: I object.

PRESIDENT EGAN: Objection is heard.

WHITE: I second the motion.

PRESIDENT EGAN: Mr. White seconds the motion. The motion is open for discussion. Mr. Ralph Rivers?

R. RIVERS: Mr. President, I helped George draft this clause for the purpose of achieving what he had in mind. Many of the members of the Rules Committee and of the Judiciary met with the Board of Governors of the Bar Association Saturday noon, and the members of the Board of Governors had expressed the thought that we could very well dispense with that residence requirement and that membership of the Alaska Bar for five whole years stating that additional flexibility was better, and the Board of Governors did not naturally, would not, object to adding some qualifications by the legislature. It is my thought though that if you are going to lay down an eligibility qualification that the legislature may not change that unless we give the legislature authority to do so. Now the effect of the present proposed amendment would be that to be eligible to be a justice of the supreme court or a judge of the superior court you must be a member of the Alaska Bar and possess such other qualifications as the legislature may

prescribe. That is the effect of the present amendment, and to get this thing on the way I will trust the legislature as to whether they want to put three years or five years or any other period or else leave it the way it is, so I am going to support Mr. Cooper's amendment.

PRESIDENT EGAN: Is there other discussion? Mr. McNeese?

MCNEESE: Mr. President, I rise to speak in favor of the amendment, feeling that the constitution has no right to restrict, and therefore I would vote in favor of the amendment.

PRESIDENT EGAN: Is there further discussion?

BARR: I spoke on this before. I can only repeat myself, but I would like to say that the principal aim of the constitution is to protect the rights of the people, and the attorneys here have all said that a justice or a judge should have a wide experience in law, not just have had experience as a prosecutor or a corporation attorney or something of that sort, but have wide experience. The people of Alaska who might be judged by that court also will have a right to demand that he have a wide experience and not only in the law but be thoroughly familiar with our conditions in Alaska, since they are rather peculiar to those of the states. It is the duty of we here to see that it is written in the constitution because it is the constitution's purpose to preserve the rights of the

people, and this would do it if there was a five-year residence requirement in the constitution.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, I generally would agree with Mr. Barr's ideas about protecting the rights of the people. Requirements might seem in order if we did not have this new situation where a board consisting of a majority of lawyers that are also interested in the people's rights. They are appointed by people who are interested in the people's rights. Therefore, it has practically full powers to nominate the right kind of people, and furthermore we have the legislature, who is mainly interested in protecting the people's rights to establish further qualifications if they choose, and I think it is satisfactory to protect the people's rights and I am in favor of Mr. Cooper's amendment.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, I have to further explain myself again, that that is exactly, that is the protection of the people's rights was what I was trying to accomplish and what I have accomplished by this amendment. The people have no choice originally in the appointment or in the nomination for judges, but through the people's representatives, their legislators, they will have the right to insist on additional qualifications if the people so desire. That was exactly the entire essence of my amendment, in that the qualifications can be increased if the people so desire.

MARSTON: Mr. President, may I have the Cooper amendment read?

PRESIDENT EGAN: Would the Chief Clerk please read the amendment by Mr. Cooper.

CHIEF CLERK: "Page 3, line 2, after the word 'state' delete the rest of the section and substitute the following: 'and possess such other qualifications as may be prescribed by law.'"

MARSTON: I vote for the Cooper resolution.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, I would like to call attention to the fact that at the last plenary session when this section was before us the precise question was also considered and voted on twice. In other words, the striking of everything in Section 7 after the word "state" in line 2 on page 3, that proposal came before us twice at the last plenary session and was rejected by the Convention. The only new part of this proposal is the addition of the wording after the word "state" which

is, "and possess such other qualifications as the legislature may prescribe. Now that part of the amendment or proposed amendment is new. I contend that the first part of the amendment has already been acted on twice and is not proper and should be rejected on that basis. However, I would like to point out that Saturday the Judicial Committee had a meeting at which Mr. Cooper attended, and at that meeting Mr. Cooper gave us the understanding and the impression that all he wanted to do was to add the phraseology, and possess such additional qualifications as the legislature may prescribe" to the wording already contained in Section 7, without any deletions, except for deleting the period and inserting a semicolon after the word "nomination". That was the understanding of the Judiciary Committee and so far as I know the Committee approved of that particular change. But now, presumably over the weekend, he has changed his mind and now wants to strike out all of the words which I believe have already been passed on twice and I think this five-year requirement certainly is not an unreasonable safeguard to put in the article, and it has been passed on, certainly unanimously, by the entire Judiciary Committee, and I am not aware that the Board of Governors of the Alaska Bar Association are necessarily opposed to it, as Mr. Ralph Rivers indicated, because I attended the meeting yesterday afternoon of the Judiciary Committee, and the Board of Governors of the Alaska Bar Association, and so far as I know nothing was said at that time to indicate that the Bar Association wanted this five-year requirement stricken from the constitution. They did raise questions about whether or not there would be available manpower. However, they felt that the authority given to the judicial council was broad enough in the entire article to give or to provide for a good and independent judiciary when the time comes. I believe that the amendment is out of order and I certainly am opposed to it.

PRESIDENT EGAN: The Chair would have to state at this point that in the opinion of the Chair the amendment is in order. There is something new that entirely changes the original idea, so the Chair would have to hold that the amendment is in order.

R. RIVERS: I was going to ask for the privilege of the floor for just a moment. It was to the effect that Mr. Clasby, Secretary of the Board of Governors, said that they approved this article as a whole but were going to make some minor suggestions, and one of the suggestions that they were going to make was that we might modify this five-year business. Then he went on to say, "We're short of manpower and maybe we can get a good judge elsewhere." Now they did not say to what extent they might want it modified, but they distinctly left the impression we did not need that five-year residence in there. I don't think Mr. Johnson was trying to impair my integrity. Perhaps he and I just did not hear it the same way.

PRESIDENT EGAN: Mr. Taylor?

TAYLOR: I will have to take issue with Mr. Rivers on that. We had a meeting of the Judiciary

Committee with the Board of Governors of the Alaska Bar Association. I don't know whether Mr. Rivers was there last night, and they have withdrawn all objections to the bill. There was only one man who voiced objection. That was Mr. Clasby, the Secretary, and that was personal objection, not the Board of Governors. They said to leave it as it is, and as far as the manpower condition might exist of getting six or nine judges, if they had to pick them all at one time, that it should be better to leave this bill exactly the way it is now, except at the end, after the word "nomination", then "possess such other qualifications as the legislature may prescribe or which may be provided by law." So there is nothing from the Board of Governors here but what they are in favor of it. They spoke very highly of it yesterday. They said to leave it go the way it is. You don't see them here objecting to it, do you? That was the result of the meeting yesterday.

R. RIVERS: I refer to a luncheon meeting on Saturday. If they had the following meeting I must have overlooked it, but I do refer to a luncheon meeting on Saturday.

TAYLOR: They raised some very minor objections, but the other members said those were taken care of in the bill itself. I don't think they had time to go over it fully.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, to clarify a very minor tempest in a teapot, Mr. Johnson, for his information Mr. Cooper asked me this morning whether or not he in substance were bound by his conversations with the Judiciary Committee on Saturday, and I assured him, Mr. Johnson, that if he felt in good conscience that he had in substance agreed to something that he now regretted, I felt sure the Judiciary Committee did not feel it was a commitment of sorts. It was on my assurance, Mr. Johnson, that he changed his mind and submitted a new amendment. That is in justification of Mr. Cooper's attitude.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: May I ask Mr. Taylor a question. Mr. Taylor, if the proposed amendment is defeated, do you plan to propose an amendment adding the words, "and subject to such further eligibility qualifications as the legislature may prescribe", following the present Section 7?

TAYLOR: Yes. If this motion carries, which I hope it does not, I would offer that amendment.

HELLENTHAL: If it is defeated, what do you plan to do, offer this amendment?

TAYLOR: No, I would not offer that amendment for the reason that I am on this Committee, and I bound myself to go for this bill as it is. It might be if the amendment is offered I might support it, but I am not going to offer any amendment to change the nature.

PRESIDENT EGAN: Mr. Gray.

GRAY: I am not speaking from a lawyer's standpoint (I'll let them take care of that but just from the protection of the average citizen, I believe in the supreme court justice much like we have the governor. If we have a five-year residence requirement, it is no requirement to a position of that statute in the State of Alaska. By five years the people will know what they are getting for supreme court judges. Just like by five years residence, we will know what we will be getting

for governor. I believe in the five-year requirement. It gives the people a chance to know who they are receiving for the top offices of the state. For that reason I am going to go along with the five-year residence requirement.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: I oppose Mr. Cooper's amendment, that part of it which abolishes the five-year residence requirement. I have seen many times in the small towns where newcomers come to town with a good gift of gab and a great big smile and they win a lot of friends immediately and a few months afterwards they have just as many enemies. Therefore, I feel that we should have the entire five-year residence requirement so that we really know what people are under stress and under pressure. Let me ask you also, remind the delegates that this constitution for the great State of Missouri, which was revised and adopted in 1945, the residence requirement was said last week were nine years in addition to being 15 years a citizen of the United States. If it is good enough for the State of Missouri and other states that have adopted recent constitutions, it certainly should be good enough for us. Another matter I want to bring up with reference to the late Judge Dimond. What were the reasons for him being loved by every one, it was the fact that he was a long-time resident here in the Territory. He worked with the miners out in the hills in the winter time and understood the common man's problems. He was not only a humane judge but learned in the law, and I wish you people would remember that, that residence means something, and therefore I oppose Mr. Cooper's motion for that reason.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, the last time this was discussed on the floor I was in substance probably opposed to the amendment offered by Mr. Cooper or an amendment of this type. However, in talking with other attorneys over the weekend who are not members of the Judiciary Committee here, it has changed my thinking, and I am wholeheartedly in favor of the amendment as offered by Mr. Cooper and for several reasons. The bill, as I see it in going all the way through, is set up so it leaves no possible control by the legislature whatsoever. It is entirely a piece of legislation in itself. It purports to have a closed corporation, so to speak, in my opinion. Now if the judiciary council or the Judiciary Committee believes so strongly in the qualifications of the judiciary council, as it is going to be set up, then there should be no

worry on their part or the part of anyone in this Convention

of having this amendment adopted, because this supreme judicial council will without question appoint the right man, and

if they feel that he should have five years residence in the

Territory and five-years practice in the Territory, surely

this council, also set up by the Judiciary Committee, is not

going to go off the track. If they are, there is something

wrong with the judicial council system. Now conditions may

change over a course of years, or if the matter is left to

the legislature they may see a necessity for rather than five

years, of requiring ten years here. I think it certainly

should, some parts of this bill at least, should be left to

the discretion of the legislature. As an attorney I probably

should be in favor of a closed shop corporation, but for the

reasons I have stated, I believe no harm can be done, in fact

I believe the bill will be greatly improved, and certainly

it would be in my opinion, to adopt the amendment as offered

by Mr. Cooper.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I voted against the amendment to delete the five-year residence the other day. I am going to vote

for Mr. Cooper's amendment because something new which has

been added, in my mind, strengthens it to the point where I

can support it. I think one of the fundamental things that

this body is going to have to do, whether they like it or

not, is to develop faith and trust in the future legislatures

of Alaska. Now I have on occasion criticized the legislature, and I reserve the right to do it again, but nevertheless, it is a very important instrumentality of government. And it is the only instrumentality of government that is sufficiently flexible to correct conditions that may change with the passing years, and for one I am not insisting that we have five years of residence if the amendment is in that will permit the legislature to correct that if the need for it ever arises. I am going to support Mr. Cooper's amendment.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, may I ask the Clerk to read the portion which is to be added under Mr. Cooper's amendment?

CHIEF CLERK: "and possess such other qualifications as may be prescribed by law."

DAVIS: May I direct a question to Mr. Cooper? Mr. Cooper, I would ask as to whether you would make any objection to substituting the word "additional" for the word "other"?

COOPER: I have no objection.

DAVIS: I would like to offer an amendment to Mr. Cooper's proposed amendment to substitute the word "additional" for the word "other", and I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that the word "additional" be substituted for the word "other" in Mr. Cooper's proposed amendment. Is there objection? Hearing no objection the change is ordered made. Now we have the original amendment. Mr. Stewart?

STEWART: As a nonlawyer, I would like to say that I have been convinced now that with the legislature having the say as to the qualifications of the Chief Justice, I am going to support the amendment.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, I am going to restate my position of the other day that I think that every man in high office in the Territory, whether it be on the judiciary or the executive, wherever he may be, where he is establishing policy and handling the affairs of the Alaskans, should have a close acquaintance with Alaska. I believe that the requirement of the registration should stay in. I can also see that unless you have, as we come into the new status of statehood, there is going to be a transitory period. In that transitory period, under this amendment, the only requirement you will have for your chief justice on down will be

admission to the Alaska bar. Now it's nice to say that the judicial council will make no mistakes but I am sure that there is nobody that has ever been assembled that won't make mistakes. I think it is a necessary safeguard that we leave in the five years of practice and the five years of residence. I don't agree with this idea of opening the gates wide open. As far as any closed shop goes, it is not a closed shop to say that a man shall not only have an acquaintance with the law in his business but he shall also have an acquaintance with the people and the country he is doing business with and doing business for. It seems to me utterly ridiculous to pass this on to the legislature in this particular form, in this particular instance. I notice that practically none of the other states have done it. If they

had any good reason, I think they had. We have also a good reason to retain the five years, because I am sure as I stand here, in the transitory provisions the legislature will be piled high with work. They are not going to take up the minor qualifications of judges at that time. You are going to get a chief justice, and all the first appointments to the court will come in with the only requirement being they will be admitted to the bar and to my way of thinking that is not adequate.

PRESIDENT EGAN: Mr. Coghill?

COGHILL: Speaking for the first time on this proposal and being a nonattorney, I go along with Mr. Rivers on his statement and would like to bring that further in opposing this. You are in fact placing the responsibility on the legislature to encroach upon a division of government, which is the judicial. Also, you will note that in past years in the legislature, if you are going to throw the qualifications of judges into the legislative hands that you are going to encroach upon the people being willing to take responsibility to that effect, the same way as has been brought about by board members in our Territorial form of government. Therefore, I am opposed to the amendment.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I would like to speak in favor of this amendment. I feel that the requirements should be left flexible and that we will have protection in the judicial council. I have been a long resident of the Territory and I have grown to look at it from the attitude of residence requirements from our officials, but I do think in this case I would be in favor of the amendment.

PRESIDENT EGAN: Mr. Robertson:

ROBERTSON: Mr. President, I am obliged to oppose this proposed

amendment. In my opinion this is not setting up a closed corporation. It is a provision particularly for the protection of the people of Alaska because they get a good judiciary. I would have no objection to adding to the present Section 7, the last clause of Mr. Cooper's proposed amendment, "and possess such other qualifications as may be prescribed by law." But I think we ought to have the minimum limitations to start out with, and furthermore, I think we have the manpower among the men who are practicing attorneys in Alaska to obtain the necessary judgeships and justices as we enter statehood, and I hope the amendment is voted down.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: Mr. President, I wish to speak in favor of the

amendment for this reason. A statement just recently made on the floor here stated that there were sufficient qualified men in the legal profession in the Territory at the present time to cover the jobs that would be open when we become a state. Now that is just a polite way of inferring possibly that a certain amount of protection should be given to the men who are in the Territory in the legal profession. The point I wish to make is this there are going to be so many small items which will come up before this final document is completed, Mr. President, that the antistatehood crowd will be able to go to the members of Congress and say, "They are building a fence around themselves." They will have 25 or 30 small items which from the standpoint of publicity and personal opinion, they can sway members of Congress and say, "Who do those Alaskans think they are, building a fence around themselves and they want to get into the Union of the United States." We have an end product to sell. We had better make that pretty liberal if we are going to get into the Union.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. Robertson, if this amendment is defeated, will you propose an amendment adding the words, "and subject to such further qualifications as the legislature may prescribe" to the present Section 7?

BUCKALEW: Point of order. I think it is out of order to ask a man if he is going to offer an amendment if this passes, and ask somebody else if that is

PRESIDENT EGAN: The Chair will. have to hold that your point of order is well taken in that it doesn't have anything to do with this amendment before us right now.

HELLENTHAL: Mr. Chairman, if I felt that the members of the Judiciary Committee would offer the amendment that I speak of, to the present Section 7, I would then vote against Mr. Cooper's amendment. However, until those assurances are forthcoming, I shall vote for Mr. Cooper's amendment. Now, Mr. Coghill made a mention that the Cooper amendment, he said would encroach upon the prerogatives of the judiciary. Well, I cannot see that in the light of Section 8. The Judiciary Committee in Section 8, as far as judges of other courts are concerned, is perfectly willing to leave their qualifications to the legislature. So if Mr. Coghill is consistent, Section 8 would have to be amended and rewritten completely. So I see nothing wrong in allowing the legislature to prescribe the qualifications. However, I do think it would be preferable if the residence requirement were left in as a minimum and then the legislature would take up from there. But until I have assurances from the Judiciary Committee I shall support this amendment.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I feel impelled to support Mr. Robertson and Mr. Rivers in speaking against the proposed amendment. I, too, would go along with the idea that after the word "nominations" if we added in that the additional qualifications by the legislature could be set up. I feel the little fence building by Alaskans is not a bad idea, since primarily we are using airplanes these days and are able to get over fences. Also, I believe the proponents of this thing are presupposing that we are going to have statehood in the next 15 minutes. I like to view that idea kindly but I am afraid it is not going to be the case. There are a good many qualified attorneys, young attorneys here in Alaska who will have had more probably than

ample residence requirements to be joining in such a thing as this by the time we get to be a state and we shouldn't overlook that fact. I am compelled to vote against this proposed amendment, but if it were later on added in after the word "nominations ", I would be inclined to support it.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, first of all I would like to say that if I in any way impuned Mr. Ralph Rivers' integrity, I apologize. I had no such intention. In answer to what Mr. Hilscher has said about going to Congress with a constitution that provides little fences, I would like to point out that the constitution of the Commonwealth of Puerto Rico, which has already been approved by the Congress, makes the residence requirement for judges ten years, and they shall have been admitted to practice law in Puerto Rico at least ten years prior to this appointment and shall have resided in Puerto Rico at least five years immediately prior thereto. " That was the type of fence that was built in Puerto Rico and which was subsequently approved by the Congress. I don't see that that is any argument against the amendment. I go along with Mr. Robertson, Mr. McCutcheon and Mr. Victor Rivers in their idea that the language sought to be added after striking out the five-year requirement, could well be added to the section as it is now, and I would have no objection to that and I would be willing to offer such an amendment if this proposal is defeated.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, I would like to make only the statement that the comparison of Alaska with Puerto Rico is a most unhappy one. For one thing Puerto Rico is a Commonwealth. If some of them had their way they would be entirely independent. They have a language of their own, they are feeling like a minority nationality, they are an overpopulated small island. A lot of them are leaving their country, entirely the reverse situation of Alaska. We are a country that is vast and we are

absorbing population yet, so from this point of view I think that we could not possibly choose an unlikelier comparison than the one with Puerto Rico. Again I reiterate that I still think that the amendment should be supported.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, it is very true that Puerto Rico is far different than Alaska, but Congress's feeling on this subject is probably the same in both cases, and I would like to point out here that in the debate on the floor we have been for and against two different things in this amendment. One is the residence requirement and the other is whether or not the legislature should have some say in this matter of appointment. Now I believe that we should leave the residence requirement in, as I have stated before. Another reason that I have not stated is that since we have our choice of appointing these judges or electing them, and we have chosen not to elect them for very good reasons, it seems that we should at least then give the people a chance to know who is going to be the judge. If he has been residing here for five years or practicing law for five years, at least they're acquainted with him or heard of him and they have some chance to object, but not so if he comes in from the outside as a stranger. If this amendment fails and if someone else does not put in a like amendment, I am prepared to put

in an amendment incorporating Mr. Cooper's words regarding the legislature but placing them after the words in the third line, "for at least five years" and striking, "next preceding their respective nominations". I don't think they should be required to live here five years just immediately before their nomination because such a man might be elected to Congress and want to come back.

PRESIDENT EGAN: Mr.,Victor Fischer.

V. FISCHER: Mr. President, several speakers have referred to this provision as it now stands as one designed to protect the people of the state and have attacked this proposed amendment as being one that would remove the protection from the people. I disagree completely with that kind of an approach. I am sure that the legislature would put in requirements that would insure protection of the people of Alaska but at the same time, by leaving it to the legislature, we would also insure that it would be flexible enough to assure that we would get good judges in Alaska.

PRESIDENT EGAN: Mr. McNees.

MCNEES: I move the previous question.

PRESIDENT EGAN: Mr. Taylor had been trying to get the floor. Mr. Taylor.

TAYLOR: There has been some objection voiced here as to citing Puerto Rico as an example of building a fence around themselves. Now Mr. Kilcher says we should not pay any attention to that example because they speak a different language, they are a different class of people, they are on a little island. I would like to call Mr. Kilcher's attention to the fact that Hawaii, who has called their convention and have a constitution, and we have referred to it a good many times here, they have the ten-year residence and practice provision for the judges of Hawaii. Now nobody has spoken out against the Hawaii Constitution. The Congress has not said to them they cannot have statehood because they have got a ten-year residence and practice for judges. It is the accepted thing all over the United States. The various constitutions that have been drawn or revised within the past ten or twelve years, have all got the residence requirement up to 15 years. I don't think we are letting the bars down in this thing whatsoever, and as I said, we had the meeting the other day with a number of people who were objecting to this, Mr. Cooper amongst them, and at that time the Judiciary Committee agreed with those men that after the word "nomination" at the end of the paragraph we would insert a semicolon and, "provided however that the legislature may prescribe other qualifications" and leave the paragraph as it was. Well. we had agreed that the members of the Committee would not make any changes but we would support that amendment, and I will support that amendment if it is put at the end of the present paragraph. Mr. Johnson says he will do it. Also, coming back to this fact of the striking of this five-year residence and five-year practice provision here, I think that is brought about by certain elements in Alaska wanting some outside judges. Now, there is only one man who spoke on the Board of Governors for that. That is a man who is a big corporation attorney, and he is the one who wants to get the judges from outside. Is it not much better that we have judges from lawyers in Alaska? We know them, we have a chance to pass on their qualifications and if they have a five-year residence and a five-year practice, we know it. But what would we know about a man's ability, his honesty and integrity if he is dragged in here from the outside, perhaps for a particular purpose? I feel we should select them from the people that we know. I think we should leave this in here.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for one moment. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk will please read the proposed amendment as amended, as it is now offered by Mr. Cooper.

CHIEF CLERK: "Page 3, line 2, after the word 'state', delete the rest of the section and substitute the following: 'and possess such additional qualifications as may be prescribed by law.'"

UNIDENTIFIED DELEGATE: Question.

METCALF: Roll call.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, inasmuch as I moved this amendment, do I have the right to close the debate?

PRESIDENT EGAN: That is correct.

COOPER: All I can say is that in listening to this entire discussion what has been proven to me so far is that the best qualifications for a judge is an Alaskan who has lived here for five years and been admitted to practice law for five years. That is practically the only qualification as it now stands. I can see no reason why that is necessary. The best men, possibly a better man, will be available and made available to the people of Alaska if that man has the right to serve as a judge whether he has lived here for five years or not. It is the people of Alaska that are going to be tried by these judges and not the Alaska Bar Association, and the best judge that can be secured to sit on the bench is what the people are entitled to. The people have only one recourse and that is through the legislature. That is why my amendment was presented. That is their final recourse, the only recourse, and if additional qualifications should be or could be prescribed by the legislature to secure a better judge, then I believe that is the right of the people.

PRESIDENT EGAN: The question is, "Shall Mr. Cooper's amendment as amended, be adopted by the Convention?"

JOHNSON: Mr. President, I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 32 - Awes, Buckalew, Cooper, Cross, Davis, Emberg, V. Fischer, Hermann, Hilscher, Hinckel, Hurley, Kilcher, Lee, Londborg, McNealy, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, Rosswog, Smith, Stewart, Sundborg,

VanderLeest, White, Wien, Mr. President.

Nays: 21 - Armstrong, Barr, Boswell, Coghill, Collins, Gray, Harris, Hellenthal, Johnson, King, Knight, Laws, McCutcheon, McLaughlin, Metcalf, Nolan, V. Rivers, Robertson, Sweeney, Taylor, Walsh.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 32 yeas, 21 nays, and 2 absent.

PRESIDENT EGAN: So the proposed amendment has been adopted by the Convention. Mr. Hinckel?

HINCKEL: On Friday I had an amendment in which I did not withdraw, but I withdrew .my motion for approval. I would now like to withdraw the amendment and substitute an amendment that reads as follows --

PRESIDENT EGAN: Mr. Hinckel asks unanimous consent. Was it ever offered for the record? It was not moved, Mr. Hinckel, so it would not have been on the record, and you can just offer the new amendment if you so choose.

HINCKEL: I offer this amendment and ask unanimous consent. "Section 5, line 6. Proposal No. 2, after the words, 'rejection of the voters' we delete the words, 'of the State'."

PRESIDENT EGAN: In line 6, page 2, wasn't the word "qualified"?

HINCKEL: I had previously suggested that the words "those voters of the State" be deleted and another phrase substituted, but now I am requesting only the words "of the State" be deleted because I am told by legal counsel that I accomplish the same purpose by just striking those words.

PRESIDENT EGAN: Do you ask unanimous consent for the adoption of that proposed amendment, Mr. Hinckel?

HINCKEL: I do.

PRESIDENT EGAN: Is there objection to Mr. Hinckel's unanimous consent request? Mr. Stewart?

STEWART: May I ask Mr. Hinckel to explain why.

HINCKEL: The object in making the request was that I felt if it was left worded as it is that there is the possibility of interpretation that all elections or confirmations of judges for the superior and supreme court for the statewide election, and I felt that the superior court judges should be confirmed

by the people under their jurisdiction.

PRESIDENT EGAN: Mr. McLaughlin, you may ask a question.

MCLAUGHLIN: Merely to confirm Mr. Hinckel, he did discuss the matter with the Judiciary Committee, and we unanimously agreed that it would not change the deletion of the words, "of the state" on line 6, page 2, would not change the meaning and would effectuate the purpose that Mr. Hinckel sought. In other words, the Judiciary Committee unanimously consents.

PRESIDENT EGAN: Is there further objection to Mr. Hinckel's unanimous consent request? If not, the request has been adopted by the Convention. and the words "of the State" are ordered deleted. Mr. Sundborg.

SUNDBORG: Mr. President, I move and ask unanimous consent that we recess for ten minutes.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for ten minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chair has been informed that we have with us some of the members of the Board of Governors of the Alaska Bar Association. We have the President of the Alaska Bar, Mr. Mike Monagle of Juneau, and we are certainly happy to have you with us this morning. We are now on Section 8 of the Committee Proposal No. 2. Are there amendments to Section 8? If not, we will proceed to Section 9. Are there amendments to Section 9?

HURLEY: May I ask the Chairman of the Committee on Judiciary a question?

PRESIDENT EGAN: You may, Mr. Hurley, if there is no objection.

HURLEY: Is there in your opinion, Mr. Chairman, any possibility that the judicial council would nominate a large number of persons for selection by the governor? In other words, say ten, in which case it would, in effect, place the selection and the nomination on the governor and relieve the judicial council of any responsibility for having selected a precise panel. In other words, the fact that there is no upper limit there, would that affect the --

MCLAUGHLIN: The possibility does exist that the council could do that. Under the Missouri Plan, that is under the Missouri Constitution from which this section is derived, it reads "not less than three". It was the intent of the Judiciary Committee not to make it "not less than three" because then by law the council would be required to present three persons.

It is the desire of the Judiciary Committee and to some extent that had confirmation of the Board of Governors of the Alaska Bar Association that we keep the selections down to a minimum, because of the limited number of lawyers that we have in the Territory we wanted to restrict the selection of the governor. In fact, the fear has been expressed already that initially the governor might have too much determination in selecting the judges. For that reason it was kept down to two, but with the increase in size of the state it is well recognized that then the judicial council should have latitude in submitting more than two nominations for the one vacancy.

SUNDBORG: May I be permitted to address a question to Mr. McLaughlin?

PRESIDENT EGAN: You may, if there is no objection.

SUNDBORG: Mr. McLaughlin, several days ago when we were discussing this article for the first time, as I heard you, you answered a question, asked by someone, on whether if the governor did not like the names suggested to him he could call for more names, and my recollection was that you answered that in that case more names would be supplied. Was that a considered answer?

MCLAUGHLIN: That was not a considered answer. I believe that I corrected myself. Under this article, under Section 9, the governor has no right of refusal, he cannot refuse. The obvious answer to it, that's the way the section was intended, if there was any other intent it would mean, particularly with the present status of the Alaska Bar, that if the governor refused, he would very promptly exhaust all nominees and he would pick the man that he wanted.

SUNDBORG: Thank you, I just wanted to clear the record. May I address another question to Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection.

SUNDBORG: Also with respect to Section 9. it does not mention there is an office of chief justice. Is there an office of chief justice created by this article? The reason I ask is that when a man, for instance, is appointed by the governor to the position of chief justice, does he hold that position subject to the elections every ten years, and the retirement provision is in here for life, or does each governor who is elected have the right to name a chief justice from among the panel that then makes up the supreme court?

MCLAUGHLIN: There is an office of the chief justice and once appointed by the governor, he remains the chief justice for life or until removed by the voters or until retired for other cause or resignation.

PRESIDENT EGAN: Mr. White?

WHITE: My question was somewhat along the same line, Mr. President. I am not sure that that answered it or not. Did I understand the intent of this section Mr. McLaughlin, to be that when the office of chief justice of the supreme court becomes vacant it, the new appointee is automatically the chief justice?

MCLAUGHLIN: Those who are designated by the judicial council, the nominees, the governor selects one of the two or maybe three nominees. The governor selects one of those and that man becomes the chief justice.

WHITE: Not only the first time but each subsequent time the office becomes vacant?

MCLAUGHLIN: That is correct.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Following through on the same line, if the governor desired to elevate one of the justices of the supreme court to be the chief justice, it would have to go through the regular procedure of approval by the judicial council that his name might be one of two submitted to

the governor, and then it would be up to him to choose?

MCLAUGHLIN: That does not preclude a member of the supreme court from becoming chief justice. Actually, under this act he could resign. The judicial council could select him, he and someone else submitted to the governor and if the governor selected him, then he would become chief justice.

V. FISCHER: Would he have to resign?

MCLAUGHLIN: There is a possibility he would have to resign.

PRESIDENT EGAN: Are there any other questions or amendments relative to Section 9? If not, we will proceed with Section 10. Are there amendments to Section 10? Mr. Sundborg?

SUNDBORG: Mr. President, may I be permitted to address a question to Mr. McLaughlin? With respect to Section 10 I am in the dark as to what you mean by this phrase, "on the basis of appropriate area representation".

MCLAUGHLIN: The phrase, "on the basis of appropriate area representation" was put in there as a guide in order to assure that the judicial council would not consist entirely of three lawyers, let us say from an area like Anchorage. It was intended to have the representation from all areas of the Territory. We were indicating an intent to have a geographical

representation.

SUNDBORG: That then refers to and modifies the word, "appoint". They "appoint on the basis of appropriate area representation"?

MCLAUGHLIN: That is right.

V. RIVERS: Are members of the bar, all members of the bar, members of the "organized state bar", or is that just the American Bar Association?

MCLAUGHLIN: The "organized state bar" was a generic term the Committee took as best representing what would be a statewide organization of attorneys. Originally the Committee did have the expression "The Alaska Bar Association or its successor". The difficulty was that the legislature could terminate the organized bar, that is terminate the integrated bar, and we use the "organized bar" as best representing that association which would represent all the attorneys of the Territory.

V. RIVERS: "Organized state bar" would not necessarily imply that all members admitted to the bar then were members of that organized bar, is that right?

MCLAUGHLIN: That would imply this, that all could belong to it.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I would like to address a question to Mr. McLaughlin. My question really has reference to Section 11 but affects Section 10. In Section 11 you mention that "the chief justice shall thereafter be ex officio a seventh member and the chairman of the judicial

council" and then mention that it requires an affirmative vote of four of its members. Does the term, "ex officio member", restrict his voting rights in that group?

MCLAUGHLIN: It does not restrict his voting rights at all.

HURLEY: In the matter of a tie he would have a vote?

MCLAUGHLIN: He does anyway.

PRESIDENT EGAN: Mr. Smith.

SMITH: I would like to address a question to Mr. McLaughlin. I am just a little curious as to the Committee reasons for providing that the organized state bar shall appoint the three attorney members and that the governor shall appoint the three nonattorney members.

MCLAUGHLIN: The reason, Mr. President, for that is that is the very essence of the so-called Missouri Plan. The three who are appointed by the bar represent a craft in substance, the theory being, and it has worked out in Missouri, that they best know their brothers, and they are there, based solely on their professional qualifications but selected because they would represent in theory the best thinking of the bar, and they are there solely because they represent their craft. In essence there is nothing undemocratic about it because of the fact that we know by its very nature that the judges of the supreme and superior court will be attorneys. The three lay members are in substance those who represent the public. Under the Missouri Plan there is a specific provision that the members appointed by the bar of Missouri shall be elected. They specifically use the word "elected". We didn't use it, we did not deem it necessary. Under the Missouri Plan the three laymen are appointed by the governor. There is a difference in this Section 9 in the sense that the laymen under our Section 9 are required to be approved by the senate. That is, they are subject to confirmation by the senate. The reason that varies from the Missouri Plan is that what happened was in Committee there was quite some discussion about the popular representation.

DAVIS: Mr. President, before he goes ahead, he is talking about Section 9, I am sure he meant Section 10. I would like it to be clear.

MCLAUGHLIN: Do you desire me to proceed, Mr. President, or wait until that arises.

PRESIDENT EGAN: It might be inasmuch as the question has arisen that if there is no objection, Mr. McLaughlin could proceed. Mr. Fischer?

V. FISCHER: I would like to give cause to the question to arise by introducing an amendment on this subject.

PRESIDENT EGAN: Mr. Fischer, you may introduce your amendment at this time. The Chief Clerk will read the proposed amendment.

CHIEF CLERK: "Section 10, page 3, line 22, strike the comma after the word 'article', substitute a period and strike the remainder of the sentence."

V. FISCHER: Mr. President,. I move and ask unanimous consent for the adoption of this motion.

MCCUTCHEON: I object.

COGHILL: I second the motion.

PRESIDENT EGAN: Objection is heard. Mr. Coghill seconds the motion. The question is open for discussion. Mr. Fischer?

V. FISCHER: I would just like to briefly say that I believe the confirmation requirement is not necessary and is in a way

discriminatory against the lay members. I can see why it was put in originally, to give the legislature some say in the selection of judges. We have now amended Section 7 to provide that the qualifications, in effect, would be established by the legislature, and I believe that therefore we should not require confirmation of lay appointees to the council by the legislature.

PRESIDENT EGAN: Is there further discussion of the motion by Mr. Fischer? Mr. Taylor?

TAYLOR: Perhaps Mr. Fischer did not give full consideration to this particular section of the proposal. Under our present act, the Bar Association, the integrated bar, is an official body of the Territory. It is, you might say, chartered, by the legislature, and compulsory membership is required under the act. Nobody can practice law unless they have been admitted to the bar and belong to the integrated bar. Now the bar is screening their applicants, their men for the board, on this judicial board. They must have certain geographical representation in the integrated bar. We have three from the First Division, three from the Third Division and three from the combined Second and Fourth Divisions. So the selection of the three attorney members of the Commission are a selection by an official Alaska organization, the integrated bar. The other three would be selected and approved by the senate, appointed by the governor and approved by the senate. The attorney members have already been approved by the Alaska Bar Association, so why then put them through a further screening when they have already been screened by the members. The lay members have not been screened at all, only by the senate. We feel that the bar members are screened by the bar, then the lay members are screened by the senate. It makes it even.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, there is in Section 10, it is pertinent to this motion, the way that I interpret it, line 16, "the appropriate area", in line 20, "different major areas". I would like to ask Mr. McLaughlin if the intent was that the three attorney members of the judicial council would come from three appropriate areas and the three lay members would come from different major areas than that of the three appropriate areas?

MCLAUGHLIN: There is no difference. In fact, if the Committee on Style and Drafting desires in the future to change it, we would be delighted. The one reason why we have left in the words "major areas" on the laymen representation is the possibility (forgive me, Mr. Walsh) that Nome itself might have the feeling that it would be left out in its representation. If we struck "major areas" then there would be

an implication that we did not have to worry about certain areas of the Territory. Frankly, it is my belief that both could be made to conform and the same wording could be used.

COOPER: In other words then, the idea is not to cause the three laymen to come from different areas than the areas from which the three lawyers came?

MCLAUGHLIN: No, there was no such intent.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I would like to ask the question of the Judicial Committee, if using the word major, does not that denote there is also a minor?

MCLAUGHLIN: In answer to that, Mr. Londborg, if the representatives from the alleged minor areas so desire, we can strike the whole expression, "major area or appropriate area" and then you're not assured of any representation at all. It is the desire of the Committee to have a general geographical representation on the judicial council and that includes all areas.

COGHILL: Point of order. I believe we are diverting from the subject before the Convention. We have a motion on confirmation by the senate for the nonattorney members. We are talking about representation from the major areas. I think we ought to dispose of the subject at hand.

PRESIDENT EGAN: You are correct, Mr. Coghill. That was allowed because the question was asked. The question is, "Shall Mr. Fischer's amendment, inserting a period and striking the words, 'subject to confirmation by the Senate', on line 22 of page 3, be adopted?" Mr. Davis?

DAVIS: Mr. President, was Mr. Fischer's motion seconded?

PRESIDENT EGAN: Yes, by Mr. Coghill. Mrs. Nordale?

NORDALE: I would like to call attention to the fact that one speaker said that the organized bar was an arm of the Territorial government and the senate was an arm of the Territorial government, and I would like to point out that the governor is certainly an arm of the Territorial government and elected by direct vote of the people.

HELLENTHAL: Mr. President, on Mrs. Nordale's suggestion I heartily agree. The people through their agency, the integrated bar, are going to screen the three attorney members. The people through their agent, the governor, will screen the nonattorney members. I don't know why we should get the senate in on the act in addition.

PRESIDENT EGAN: Does anyone else wish to speak on the subject?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: If not, the question is, "Shall Mr. Fischer's amendment be adopted?"

METCALF: Roll call.

PRESIDENT EGAN: Mr. Metcalf asks that the roll be called. The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 26 - Armstrong, Boswell, Coghill, Collins, Cooper, Cross, Davis, V. Fischer, Hellenthal, Hilscher, Hurley, Kilcher, Knight, Lee, Marston, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, Rosswog, Sundborg, Sweeney, VanderLeest, White.

Nays: 27 - Awes, Barr, Buckalew, Emberg, Gray, Harris, Hermann, Hinckel, Johnson, King, Laws, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Metcalf, Nerland, Nolan, V. Rivers, Robertson, Smith, Stewart, Taylor, Walsh, Wien, Mr. President.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 26 yeas, 27 nays and 2 absent.

PRESIDENT EGAN: So the amendment has failed of adoption. Mr. Sundborg?

SUNDBORG: Mr. President, I have an amendment to offer.

PRESIDENT EGAN: Mr. Sundborg has an amendment to offer to Section 10. The Chief Clerk will please read the amendment.

CHIEF CLERK: "Section 10, line 22, strike the words 'the Senate' and insert in lieu thereof the following: 'a majority of the members of the Legislature in joint session assembled'."

SUNDBORG: Mr. President, I move and ask unanimous consent for the adoption of the amendment.

JOHNSON: I object.

MCNEES: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Sundborg?

SUNDBORG: Mr. President, this is a fairly basic matter also which I am sure is going to come before us in some other connection before we are through here. The practice in the Territorial legislature in the past has been that confirmation of appointments is by both houses in joint session assembled. I believe it has been a good practice. I don't believe that only the senate should have the right to express the people's will with respect to appointments by the executive, as it would be in this case, but that it should be by majority of all the members of the legislature and not just by majority of the members of the upper house.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: Mr. President. I wish to speak in favor of the amendment. The situation can arise, as it has in the past, where in the makeup of our senate alone, there might be a majority of attorneys as members of the senate or there may be a sufficient number of attorneys that if they wish to exert certain influence, they could act as somewhat of a damper on confirmation of the lay members of that board. I believe that Mr. Sundborg's amendment is worthy of support.

BARR: I am not going to discuss it very widely, but I would say that I don't know what may happen in the future. The only thing I can do is judge by what has happened in the past. I have

never been in the senate when there was a majority of attorneys. But I remember distinctly when there was a time when there were 14 attorneys in the house out of 24.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I am a little concerned. I think the confirmation of the lay members of the judicial council should be the same as the confirmation procedure which will be uniform throughout our governmental structure. Now I don't know what the body has in mind or whether the constitution could contain a blanket clause to the effect that when the language "subject to confirmation" is used that means subject to confirmation by the members of both houses sitting in joint session. It seems to me that Mr. Sundborg made a good point, but I don't know whether we are doing the right thing by saying "subject to confirmation by both houses sitting in joint session" and later on come up with a different motive for the general operation of the state. I would like to hear from somebody.

MCNEES: May I ask Mr. Rivers if this might not be a general policy of the Convention to require the meeting of both houses

in joint session on issues of this magnitude or nature.

R. RIVERS: That would be fine if that were to turn out to be the fact.

HERMANN: I think the adoption of any such provision should wait upon the report of the Apportionment Committee and find out how big the house and senate are going to be. You might very well have the tail wagging the dog in this case.

PRESIDENT EGAN: The question is, "Shall Mr. Sundborg's proposed amendment be adopted?" All those in favor of the adoption of Mr. Sundborg's amendment will signify by saying "aye", all opposed "no".

MCCUTCHEON: Call the roll.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 28 - Armstrong, Buckalew, Collins, Cooper, Davis, Emberg, V. Fischer, Hellenthal, Hilscher, Hinckel, Hurley, Kilcher, Lee, McCutcheon, McNealy, McNees, Marston, Nordale, Peratovich, Poulsen, Reader, Riley, Smith, Stewart, Sundborg, VanderLeest, White, Mr. President.

Nays: 25 - Awes, Barr, Boswell, Coghill, Cross, Gray, Harris, Hermann, Johnson, King, Knight, Laws, Londborg, McLaughlin, Metcalf, Nerland, Nolan, R. Rivers, V. Rivers, Robertson, Rosswog, Sweeney, Taylor, Walsh, Wien.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 28 yeas, 25 nays and 2 absent.

PRESIDENT EGAN: The "yeas" have it and so the proposed amendment has been adopted. Are there other amendments to Section 10? If there are no further amendments, we will proceed --

STEWART: Mr. President, may we have that read as it was amended?

CHIEF CLERK: "Line 22, page 3, strike the words 'The Senate' and insert in lieu thereof the following: 'a majority of the members of the Legislature in joint session assembled'."

PRESIDENT EGAN: Are there other amendments? We will proceed with Section 11. Mr. Coghill?

COGHILL: Mr. President, Section 10, I have an amendment that

I am contemplating on proposing. However, first I would like to hear discussion by the Convention as far as the subject of confirmation by the legislature in joint session assembled, as far as the attorney members of these boards are concerned. I feel that we are going to be setting up a precedent here that all professional boards will be chosen by their given profession and a minority will be picked by the nonprofessional group and confirmed by the elected members of the electorate for Alaska, but in turn the professions of the doctors, lawyers, and dentists and all the rest of them are going to have the chance to load the committee with professional people.

PRESIDENT EGAN: Mr. Coghill, the Chair has been lenient in allowing discussion even through there was no motion on the floor, owing to the fact that questions have been asked. The Chair will have to ask that these discussions be confined to matters before the Convention.

COGHILL: Well I'll submit a proposal then, Mr. Chairman.

CHIEF CLERK: "Line 18, page 3, after the word 'bar' insert a comma and add the following: 'subject to confirmation by the Legislature in joint session assembled'."

COGHILL: Mr. President, I move and ask unanimous consent for the adoption of this amendment.

BUCKALEW: Objection.

COGHILL: I so move.

KILCHER: I second the motion.

PRESIDENT EGAN: Mr. Kilcher seconded Mr. Coghill's motion. Will the Chief Clerk please read the proposed amendment again.

CHIEF CLERK: "In Section 10, line 18, after the word 'bar' insert 'subject to confirmation by the Legislature in joint session assembled'."

PRESIDENT EGAN: Add a comma.

SUNDBORG: I wonder if I might ask Mr. Coghill if he would consent to a proposed change in his amendment which would not change the sense but I believe would be a little smoother. If on line 22, after the word "article" we change the comma to a period and then insert "both the attorney and nonattorney members shall be". It would then read, the new sentence, would say "both the attorney and nonattorney members shall be subject to confirmation by majority."

COGHILL: Mr. President, I consent to that with consent of my second because it does not change the intent of my amendment.

PRESIDENT EGAN: Mr. Coghill, it might be more in order if you ask that your original amendment be withdrawn and then submit it. There will be no confusion in the minds of the delegates when we vote on it, if that is what you are attempting to accomplish.

COGHILL: Yes, that's right. I will so move and ask unanimous consent that my proposed amendment be withdrawn.

PRESIDENT EGAN: Mr. Coghill asks unanimous consent that his. original proposed amendment be withdrawn. Is there objection? Mr. Riley?

RILEY: I object for purposes of comment. It would appear to me to be far more expeditious to act on it as first offered. Otherwise we are going to introduce the complication of, do we rescind our former action to put the show on the road. This could all be reconciled in Style and Drafting later if Mr. Coghill's motion is adopted.

SUNDBORG: I agree with that, Mr. President, and withdraw my suggestion.

PRESIDENT EGAN: Mr. Sundborg then asks unanimous consent that his motion be withdrawn. If there is no objection it is so ordered and we have Mr. Coghill's original motion before us. Mr. McLaughlin.

MCLAUGHLIN: I presume Mr. Coghill submitted this motion merely for the purpose of getting this on the floor. Coldly and calculatingly, if this motion is passed you might as well tear up the whole proposal and provide for the election of juries, because then it would be more efficacious and more democratic. The whole theory of the Missouri Plan is that in substance, a select and professional group, licensed by the state, can best determine the qualifications of their brothers. The intent of the Missouri Plan was in substance to give a predominance of the vote to professional men who knew the foibles, the defects and the qualifications of their brothers. It is unquestionably true that in every trade and every profession the men who know their brother careerists the best are the men engaged in the same type of occupation. That was the theory of the Missouri Plan. The theory was that the bar association would attempt to select the best men possible for the bench because they had to work under them. If you require a confirmation of your attorney members you can promptly see what will happen. The selection is not then made by the organized bar on the basis of a man's professional qualifications alone. The determination of the selection of those people who are on the judicial council will be qualified by the condition, are they acceptable to a house and a senate or a senate alone, which is essentially Democratic or essentially Republican. No longer is the question based solely on the qualification

of the candidate for the bench. The question is, will those people whom we set up here on the judicial council, that we send from the bar, will they be acceptable in terms of political

correctness? If political correctness enters into the determination of the selection of those professional members who are to be placed upon the judicial council, the whole system goes out the window. All you have is one other political method of selection of your judges. The theory, and it is the only way it can possibly work, is that the lawyers are put on there to get the best man and not to take a man on the basis of his politics. But if we require confirmation, then the material consideration to be made by the Alaska Bar Association is, are we sending our best representative -- no. But are we sending a good Democrat acceptable to both members to both houses or are we sending a good Republican acceptable to both houses. If we permit that determination to enter into our consideration, then in substance we should provide for an initial election or initial appointment by the governor or some other body. Qualifications go out the window as soon as you have confirmation. The theory on the lay members on the confirmation, they represent the public and they represent the predominant political thought. The theory on the lawyer members of the council, they represent the profession, they represent the best interests of the profession. They represent a desire to have the best judges on the benches. I beg of you, please don't vote for the amendment.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I want to heartily second the remarks of Mr. McLaughlin but also want to point out that the purpose of the draft as now written is to have a nonpartisan selection of these lawyer members, and the minute you adopt something like this, you are making a partisanship proposition out of it. We want that to carry through to a nonpartisan selection of judges, so I think our thinking is quite clear.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: In bringing this up, I quite agree with both the Chairman of the Judiciary Committee and also the member. I believe that all of us here are working on committees real hard and we are trying to bring out good and concise thoughts. We are not trying to go to the extreme in our committee proposals, so that we will get a compromise on the floor. I don't think that is the intent. The purpose for this amendment is that I foresee that the nonattorney members of this board are going to be subject to all the ills of political skulduggery on the floor of the senate or the joint house assembled, and I see that if we are going to pick the judges on nonpartisan basis, that it should be left up to your representative of the government, the highest official in the executive branch which is your governor. That is the reason

why I voted for the amendment to strike that, the acceptance or confirmation by the senate. I think if we are going to accept some of them by the senate confirmation, we should accept them all. It is the precedent you are setting up here for boards on the professional level.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Coghill's proposed amendment be adopted by the Convention?"

ROBERTSON: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 4 - Coghill, Kilcher, Londborg, Mr. President.

Nays: 49 - Armstrong, Awes, Barr, Boswell, Buckalew, Collins, Cooper, Cross, Davis, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 4 yeas, 49 nays and 2 absent.

PRESIDENT EGAN: So the proposed amendment has failed. Are there other amendments to the section?

TAYLOR: I have one.

PRESIDENT EGAN: Mr. Taylor has a proposed amendment.

TAYLOR: Mr. President, I am proposing this amendment to Section 7.

PRESIDENT EGAN: Mr. Taylor offers a proposed amendment to Section 7. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Line 2, page 3, after the word 'State' strike the balance of the section and insert 'for at least three years and have been residents of the State for at least three years next preceding their respective nominations; provided, that additional qualifications may be prescribed by law.'"

TAYLOR: I ask unanimous consent for the adoption of the amendment.

SUNDBORG: Objection.

TAYLOR: I so move.

METCALF: I second it.

PRESIDENT EGAN: Mr. Metcalf seconds the motion of Mr. Taylor. Mr. Taylor?

TAYLOR: I would like to mention one thing. The matter was brought up and we have argued this thing quite thoroughly. I felt that it might be of the period of time that would elapse. Now in the last three years we have admitted perhaps 50 attorneys to the practice of law in Alaska, and it seems like there are going to be quite a number of them admitted each year from now on. Now this past year we had 25 who took the examination, the year before 19, so those men who in the past couple of years have taken the bar and have been admitted to the bar, in all probability by the time we achieve statehood will have the required residence of three years, and they have been practicing law for three years, which will make them eligible for the bench. It seemed the opinion of some of the proponents to eliminate the five-year period. It was through the fact there might not be sufficient manpower, but I think that would be taken care of. Now, even putting the best light on it, we cannot anticipate we will have statehood for a year

and a half or possibly more. I think I am being unduly optimistic when I say a year and a half. These men who are barred by time, that will be taken care of, as immaturity is always cured by the passage of time, and by three years we will have plenty of attorneys to pick for the judiciary. We feel there should be some restriction instead of dragging a man in from the outside and putting him on the bench, not knowing his qualifications or background, I think we should put at least three years because by that time there will be approximately 60 or 70 more lawyers in Alaska who will be judicial timber. I feel this amendment should be adopted.

PRESIDENT EGAN: Mr. McNees.

MCNEES: I rise to speak against the amendment on the same basis that I rose to speak against the original article as it was originally turned out in the Judiciary Committee. Feeling that it is not a matter of constitutional law but one of legislative law, therefore I oppose the amendment.

PRESIDENT EGAN: Mr. Gray.

GRAY: Will you have the Chief Clerk read the amendment again?

PRESIDENT EGAN: The Chief Clerk will please read the amendment.

CHIEF CLERK: "Section 7, page 3, line 2, after the word 'State', strike the balance of the section and insert, 'for at least three years and have been residents of the State for at least three years next preceding their respective nominations; provided, that additional qualifications may be prescribed by law.'"

PRESIDENT EGAN: The question is, "Shall Mr. Taylor's proposed amendment be adopted by the Convention?" Mr. Marston?

MARSTON: Mr. Chairman, I want to talk on this. I wish we would quit going back. We settled this. We are never going to get through.

TAYLOR: Point of order. He is not speaking on the subject.

MARSTON: We have passed on this. We have given our reasons.

PRESIDENT EGAN: Mr. Marston, under the circumstances, Mr. Taylor's point of order, if you say we have passed on this, will have to be well taken because we did not pass on the question that is before us at the present time.

MARSTON: No new subject matter is brought up here.

PRESIDENT EGAN: Mr. Marston, the Chair will have to hold that Mr. Taylor's point of order is in order because there is new subject matter here.

MARSTON: May I say I am opposed to this amendment?

PRESIDENT EGAN: That is right. Mr. Barr.

BARR: May I say I am in favor of this amendment? In answer to another member who took the

floor a minute ago, he said that this was properly a legislative matter. I believe that certain qualifications should be specified by the legislature, but I believe that the constitution should state the basic law and preserve the rights of the people, and the people should be entitled to a judge who is properly qualified. That does not just mean qualified in the law. It means also qualified by various other types of experience, including experience in Alaska.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Taylor's proposed amendment be adopted by the Convention?" All in favor of the --

MCCUTCHEON: Call the roll.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 20 - Armstrong, Barr, Boswell, Coghill, Cross, Gray, Harris, Hellenthal, Johnson, King, Laws, McCutcheon, Metcalf, Nolan, R. Rivers, V. Rivers, Robertson, Sweeney, Taylor, Walsh.

Nays: 33 - Awes, Buckalew, Collins, Cooper, Davis, Emberg, V. Fischer, Hermann, Hilscher, Hinckel, Hurley, Kilcher, Knight, Lee. Londborg, McLaughlin, McNealy, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, Rosswog, Smith, Stewart, Sundborg, VanderLeest, White, Wien, Mr. President.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 20 yeas, 33 nays and 2 absent.

PRESIDENT EGAN: And so the proposed amendment has failed to pass. Are there other amendments? Mr. Sundborg?

SUNDBORG: Mr. President, may I be permitted to address a question to Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection, Mr. Sundborg.

SUNDBORG: Mr. McLaughlin, is it really necessary to provide at the end of Section 10 this language saying that the members of the judicial council "shall be compensated as provided by law"? It occurs to me that we have no such language, for instance, covering the compensation of the judges at all or of any other officials.

MCLAUGHLIN: There is provision specifically in the Act providing for compensation for the judges, and we did not want to make it mandatory, but we wanted to put it in there because we wanted to make it expressed that they could be paid for their services.

SUNDBORG: Is it your belief that if we did not have it in here that the legislature could not provide to compensate them?

MCLAUGHLIN: We are running close. Actually, I think the legislature, even if it were not in there, could provide for their compensation. I would prefer to leave it as it is, and if Style and

Drafting so recommends, after discussion with members of the Committee, we might recommend --

SUNDBORG: As Chairman of Style and Drafting, I certainly would not, for myself, want to recommend such a thing as striking that out because I believe it is substantive.

MCLAUGHLIN: I would prefer on behalf of the Committee to leave it in.

PRESIDENT EGAN: Are there other amendments to Section 10? Are there amendments to Section 11? Mr. Hellenthal?

HELLENTHAL: Mr. President, I ask unanimous consent that the word "ex officio" be stricken in the fifth and sixth lines on page 4.

R. RIVERS: I object.

HELLENTHAL: I so move.

MCNEES: I second the motion.

R. RIVERS: The word "ex officio" means that that particular seventh member of the judicial council is the member of judicial council by virtue of the fact that he happens to be chief justice, and so that when the person who occupies the office of chief justice is changed the next chief justice, because he is chief justice, becomes a member of the judicial council, so I just think it is better to leave it in there.

PRESIDENT EGAN: Mr. Rivers, if I might ask a question, by specifically stating "ex officio" and not mentioning anything about his voting power, does that take away from him the right of voting except in the event of a tie?

R. RIVERS: No, he has full membership rights and the full vote at all times.

PRESIDENT EGAN: Where would that be definitely established?

R. RIVERS: I have seen it work through the Territorial government. Governor Gruening was a member of a half dozen boards and he was a voting member. I was an ex officio member of several boards. Now unless we say, "He shall not have the vote except in the event of a tie" ex officio member has full voting rights, so I like it the way it is.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: That was not my understanding of an ex officio member. I doubt that an ex officio member, so designated, has voting rights. I would like to withdraw my objection and ask that the word "voting" be inserted after the word "seven" in line 6, which will clearly obviate my objection.

PRESIDENT EGAN: Do you ask unanimous consent that that be included in your motion, Mr. Hellenthal?

HELLENTHAL: Yes.

PRESIDENT EGAN: Without objection, it is included in the original motion.

TAYLOR: Mr. President, I am going to object for the time being. I cannot see the use of putting in the word "voting", "the seventh voting member", because of the fact that if he is a member of the board, he has to vote. Being a presiding officer he would vote last. In case there were four votes cast in favor of him there would be no necessity -- only in case of a tie. Now ex officio in no way or intent can mean a man is not entitled to vote, if he has an office, sometimes he cannot vote, he's merely presiding but that's got to be prescribed. If it isn't prescribed, why he votes. Now the word "ex officio" does not mean to take away any rights conferred upon a member of a committee or a commission. Ex officio means by virtue of an office, the office, not the man, is actually a man. It happens to be whoever holds that office is a member -- is a member of the board. That is all it means. I can't see the use of putting in the word "voting".

PRESIDENT EGAN: Is there objection to a one-or two-minute recess? If there's no objection the Convention is recessed for one or two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. What is the status of Mr. Hellenthal's amendment right now? Did you ask unanimous consent, Mr. Hellenthal, that your original amendment be withdrawn?

HELLENTHAL: Correct.

MCNEES: I withdraw my second.

PRESIDENT EGAN: If there is no objection, it is so ordered.

HELLENTHAL: I ask unanimous consent that the word "voting" be included following the word "seventh" in line 6, page 4.

PRESIDENT EGAN: Mr. Hellenthal asks unanimous consent that the word "voting" be included following the word "seventh" in line 6, page 4.

HELLENTHAL: Mr. President, I don't mean to be picayune but apparently in the Senate of Alaska as it is now constituted, the president who is the ex officio member of boards is not entitled to a vote. Now Robert's says if the ex officio member is not under the authority of the society he has all the privileges including the right to vote, so the question is whether or not the chief justice under this proposal would be under the authority of the society, and I would interpret the society to mean there the seven-man supreme court. There is still a very grave question in my mind. One group here tells me that he is under the authority of the society. Another group says that he is not. If there is question why don't we leave the word "voting" in?

PRESIDENT EGAN: Mr. Hellenthal, I wonder if you would be acceptable to the proposition that this matter be turned over to the Rules Committee in conjunction with the Judiciary Committee and that they come to some determination on it and report at some later time.

HELLENTHAL: I am very happy with that suggestion.

PRESIDENT EGAN: If there is no objection Mr. Hellenthal's request will be held in abeyance

until such time as a complete report is made on that subject to the Convention. Are there other amendments to Section 11 or 12? If not, are there proposed amendments to Section 13? Are there proposed amendments to Section 14? Mr. McLaughlin?

MCLAUGHLIN: Mr. Chairman, may I read into the record so that the Convention will well know that under Section 13 we did not go into minute detail concerning the functions of the judicial council, but inquiry has been made whether or not the judicial council would make budgetary recommendations to the legislature. That is specifically inherent in these recommendations. Matters such as court structures would include budgets. Administration of the court would include budgetary recommendations to the legislature.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, I would like to ask a question of Mr. McLaughlin. I would also like to have the answer read into the record. Is it intended that the judicial council shall also make studies and recommendations of the lower courts and see if they can get from our present system some considerable more semblance of order or procedure?

MCLAUGHLIN: That would be specifically intended under such a phrase as including such matters as court structure.

PRESIDENT EGAN: Are there amendments to Section 13? Amendments to Section 14? Are there amendments to Section 15? Are there proposed amendments to Section 16? Mr. Gray.

GRAY: Mr. Chairman, I would like to ask the Chairman of the Judiciary, in Section 15, where the judges, "...at the age of

70, on such retirement pay as may be prescribed by law, and shall render no further service on the bench, except for special assignments as provided by court rule." What do you mean by that phrase?

MCLAUGHLIN: That was intended. The presumption is that at sometime the Committee decided that age 70 is about the time that men may become subject to the infirmities of age and it would be just as well to have that as the arbitrary time at which they retire. As for special assignments, it is fair to presume that at some time in Alaska we will have a Mr. Justice Oliver Wendell Holmes who was quite effective at the age of 92 or we might have a Cardozo, where their services and experience would be of great benefit to the state, then the exception could be made to utilize those men for special assignments.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, we often encounter occasions when the docket gets overly crowded and if you could recruit an experienced jurist who doesn't happen to be infirm, -- it's pretty handy to have him available, if he is willing to serve. Often times leave is granted to judges for particular persons and one of these men could be made use of during such periods.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Could I ask a question of Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection, you can direct your question.

COOPER: Mr. McLaughlin, again do I understand that in line 25 on page 5 and the first two lines on page 6, "The basis and amount of retirement pay for justices and judges who retire or are retired at an earlier age shall be prescribed by law." Does that mean that they can retire themselves at the age of 60 if they decide they want to go into retirement and that they will be provided with a form of retirement pay if they are the ones that elect to retire?

MCLAUGHLIN: That means that the legislature can determine exactly what retirement provisions are, that is what retirement is and they can make an allocation of one dollar a year or 30,000 dollars a year, but they shall lay down the rules as to what retirement is, and what constitutes it.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I would like to direct a question to Mr. McLaughlin.

PRESIDENT EGAN: Without objection, you may direct the question.

MCCUTCHEON: In other words, a mandatory retirement of 70 years does not obviate the possibility that the legislature may set a lower retirement age?

MCLAUGHLIN: That is true.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, we have fixed a compulsory retirement age at 70. Reading of this article shows that the judicial council may recommend earlier retirement for judges who are infirm and may not have the capacity to continue performing their services. In some instances a person will get fairly stubborn and he will not resign. We have a forced retirement on account of infirmities prior to age of 70 based on action of the judicial council, or recommendation of judicial council, or if it happens to be a member of the supreme court it would be on the recommendation of a board of three persons appointed by the governor to investigate the matter and with retirement by the governor, but I think that the legislature could not retire judges on a compulsory basis earlier than 70 if we spell 70 in here.

MCLAUGHLIN: Mr. Rivers, the State of Maine -- I was answering Mr. McCutcheon, State of Maine has a provision that no provision for retirement as such, but it provides that if you are not off the bench when you are 70 you won't collect any pay. So in effect the legislature could provide if you are serving on the bench after the age of 65, their act concerning retirement benefits would be ineffective, that you would waive all rights to them and in that sense the legislature could so provide.

R. RIVERS: In that sense I will concur.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I would like to address a question to Mr. McLaughlin.

PRESIDENT EGAN: If there is no objection Mr. McNealy, you may ask your question.

MCNEALY: Mr. McLaughlin, have you and your Committee checked into the number of states that do provide for retirement pay for state judges?

MCLAUGHLIN: We did check on it, but we left the matter entirely to the legislature. There was some discussion whether or not we should provide a definite mechanical or arithmetical figure, and the Committee wholeheartedly decided that was a

matter that should be left to the legislature. In terms of constitutional provisions for retirement, New Jersey retires at 70 without a right of special assignment. Connecticut, New York, New Hampshire at 70, Missouri at 75 and Louisiana at 80. They set them forth, I believe, in their constitution. The statutory limit for retirement age is generally set at 70. Hawaii for instance, under their constitution, retires at 70 under Article 5, Section 3.

V. FISCHER: I would like to know whether the term "retire" or "are retired" includes defeat at an election. For instance, assume that a justice has served for 25 years and then at the age of 68, he is defeated at the polls when he comes up for reconfirmation. Would he be precluded by the term "retire"?

MCLAUGHLIN: Mr. Chairman, these are curbstome opinions, but the legislature could determine that a justice who had served so many years and then was defeated for reelection could be retired and use the expression under the constitution and so provide for it. These are outside limits that we are setting on the activities of judges.

PRESIDENT EGAN: Are there other amendments to -- Mr. Hellenthal?

HELLENTHAL: I worry somewhat about the words "except for special assignments as are provided by court rule." It seems to me I have heard of abuses in this regard. Perhaps the word "temporary" should be inserted before the word "special". Here we will have the rule-making body, which will have a tendency to recognize that their mental abilities will continue unimpaired after 70. They will all be convinced of it in fact. They are going to make the rule and they might keep themselves on indefinitely under the guise of special assignments. I ask Mr. McLaughlin if the word temporary" might not preclude that possibility.

MCLAUGHLIN: Mr. Chairman, it is the belief of the Committee that that is mere legislation. The age of 70 was specifically set forth so there would be no embarrassment on retiring a person. If there is an abuse of the special assignment privilege, I might point out the legislature controls the purse strings and if it is abused, there will be no appropriation for the purpose. It is something that we should not necessarily anticipate or write into our constitution.

HELLENTHAL: I do not favor enacting legislation by cutting off appropriations and I therefore ask unanimous consent that the word "temporary" be inserted prior to the word "special" on line 24.

PRESIDENT EGAN: Line 24, on page 5?

HELLENTHAL: Yes.

PRESIDENT EGAN: You ask unanimous consent?

R. RIVERS: I object for a question.

PRESIDENT EGAN: Objection is heard. Mr. Ralph Rivers?

R. RIVERS: I would say it would be better to substitute the word "temporary" for the word "special" and not put them both in.

HELLENTHAL: I consent to that.

PRESIDENT EGAN: Then if there is no objection -- Mr. Davis?

DAVIS: I would object to that. I like it the way it is.

PRESIDENT EGAN: Your objection is heard. Do you so move, Mr. Hellenthal?

HELLENTHAL: I so move that the word "temporary" be inserted in lieu of the word "special" in line 24.

PRESIDENT EGAN: Mr. Hellenthal moves and asks unanimous consent that his proposed amendment be to insert the word "temporary" prior to the word "special" in line 24.

JOHNSON: I object to the unanimous consent.

R. RIVERS: Did you say instead of the word "special"?

PRESIDENT EGAN: The Chair understood that Mr. Hellenthal had changed his mind but the Chair was probably in error.

HELLENTHAL: No, that incorporates Mr. Rivers' suggestion which was, as I interpret it, that "temporary" be substituted for the word "special" and I did not ask unanimous consent but merely moved that the change be made.

POULSEN: I second it.

PRESIDENT EGAN: Mr. Poulsen seconds the motion. Mr. Gray?

GRAY: I would like somebody to explain to me the difference between these two proposals.

PRESIDENT EGAN: Mr. Hellenthal, would you explain the difference?

HELLENTHAL: Yes, the special assignment is limited to a temporary one now, whereas under the former wording a special assignment could go on for ten years and could be used as a guise for increasing the tenure of the judges by the exercise of their own rule-making power.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I see what Mr. Hellenthal is driving at, but I am afraid the mere change of the word "special" to "temporary" would not accomplish his purpose because "temporary" is almost synonymous with "indefinite". It is an amount of time. If we are going to burden the constitution with such things, it is useless. Either we forget about the matter entirely or specify it further.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I realize that the cases are special and possibly unusual, but there have been many, many cases of very exceptional judges who were well beyond 70 years. I think it is unwise in the constitution to make it impossible for such judges to serve their state. After all, they have all of the experience of their years of service on the bench. Now personally I am against the 70-year retirement age, but the Committee has gone over that back and forth, one way or the other, and I am not going to raise an objection that way, but I would certainly like to see it provided in the constitution so that in the event we have a person who is physically and mentally capable to be a judge, and in the event we have crowded dockets and we need to assign somebody to help clear up the docket, that we have the power to do so. And if we say "temporary" that means, I suppose, just what it says -- temporary. You could not assign a man to do a job that needed to be done if it was something more than temporary. For that reason I like the language as is, "for special assignments".

PRESIDENT EGAN: Is there further discussion?

NOLAN: Question.

PRESIDENT EGAN: If not, the question is, "Shall Mr. Hellenthal's proposed amendment be adopted by the Convention?" All in favor of the adoption of the proposed amendment say "aye", all opposed by saying "no". The "noes" have it and the amendment has failed. Are there other amendments to Section 15? Mr. Taylor?

TAYLOR: I have an amendment.

CHIEF CLERK: "Amend Section 15 by striking the following words: On line 22, page 5, 'at the age of 70'."

PRESIDENT EGAN: What is the pleasure?

TAYLOR: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Taylor moves the adoption of the proposed amendment. Is there a second to the motion? Hearing no second --

HELLENTHAL: I will second the motion.

PRESIDENT EGAN: Mr. Hellenthal seconds the motion. The question is, "On line 22, page 5, shall the words 'at the age of 70' be deleted from the section?"

BUCKALEW: Question.

EGAN: All those in favor of the adoption of Mr. Taylor's proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the amendment has failed. Are there other amendments? Mrs. Wien?

WIEN: Mr. President, I move and ask unanimous consent that this Convention recess until 1:30 this afternoon.

PRESIDENT EGAN: Mrs. Wien asks unanimous consent that the Convention stand at recess until 1:30 p.m. Mr. Sundborg?

SUNDBORG: As announced yesterday, the Style and Drafting will meet at 12:15, in the lunchroom.

PRESIDENT EGAN: The Chair would like to state there will be no meeting of committee chairmen as had been previously announced. Miss Awes?

AWES: The Bill of Rights Committee will meet at 12:45.

RILEY: Subject to Mr. McLaughlin's views, such members of Rules and Judiciary who are free to get together during the noon hour should perhaps do so to resolve that one question we have heard.

PRESIDENT EGAN: The Rules Committee and Judiciary will meet during the noon hour. Mr. Nerland?

NERLAND: Mr. President, I request the members of the Finance Committee meet for just a few minutes immediately following recess.

PRESIDENT EGAN: The members of the Finance Committee will meet immediately upon recess. Mr. McNealy?

MCNEALY: Mr. President, I request a meeting of the Ordinance Committee, No. IV, at 12:15.

PRESIDENT EGAN: There will be a meeting of the Ordinance Committee at 12:15. Hearing no further committee announcements and no objection, then the Convention will stand at recess until 1:30 p.m.. The Convention is at recess.

Bylaws of the Alaska Judicial Council

ARTICLE I

Policies

Section 1. Concerning Selection of Justices, Judges, and Public Defender

The Judicial Council shall endeavor to nominate for judicial office and for public defender those judges and members of the bar who stand out as most qualified based upon the council's consideration of their: 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. The Council shall actively encourage qualified members of the bar to seek nomination to such offices, shall endeavor to prevent political considerations from outweighing fitness in the judicial and public defender nomination processes, and shall consistently strive to inform the public of Alaska's Judicial Council selection process.

Section 2. Concerning Retention of Judges

Pursuant to the provisions of Alaska Statutes Titles 15 and 22, the Council may recommend the retention in judicial office of incumbent justices and judges found to be qualified through appropriate means of judicial performance assessment; and may recommend against retention of justices and judges found to be not qualified through assessment processes. The Council shall endeavor to prevent political considerations from outweighing fitness in the judicial retention recommendation process.

Section 3. Concerning Administration of Justice

The Council shall initiate studies and investigations for the improvement of the administration of justice. These studies and investigations may be conducted by the entire Council, by any of its members or by its staff as directed by the Council. The Council may hire researchers and investigators and may contract for the performance of these functions. A topic for any study or investigation may be proposed at any meeting of the Council by any member without prior notice.

ARTICLE II

Membership

Section 1. Appointment; Limitation of Term

Members of the Council shall be appointed and shall serve their terms as provided by law; however, a member whose term has expired shall continue to serve until a successor has been appointed. Council members may be appointed to successive terms; however, no Council member should serve more than two full terms or one unexpired term and one full term.

APPENDIX B

Section 2. Effective Date of Appointment

(A) Non-Attorney Members. The effective date of a non-attorney member's appointment to the Council shall be the day following the effective date of the vacancy in the seat to which appointed, if appointed before that date; or the date of or specified in the gubernatorial letter of appointment, if appointed after that date. Non-attorney members shall have full voting rights effective upon the appointment date, unless and until denied confirmation by the legislature.

(B) Attorney Members. The effective date of an attorney member's appointment shall be the day following the effective date of the vacancy in the seat to which appointed, if appointed before that date; or the date of or specified in the letter of appointment from the board of governors of the Alaska Bar Association, if appointed after that date.

(C) Chief Justice. The effective date of the chief justice's appointment is the date that the chief justice assumes the post of chief justice.

Section 3. Oath of Office

The Chair of the Council shall administer the oath of office to each new member, following a determination by the Council that the person selected has met the qualifications for membership set forth by law.

Section 4. Vacancies

At least 90 days prior to the expiration of the term of any Council member, or as soon as practicable following the death, resignation, or announced intent to resign of any Council member, the executive director shall notify the appropriate appointing authority and request that the appointment process be initiated immediately to fill the vacancy.

Section 5. Disqualification

(A) Candidacy of Council Member. Any member of the Judicial Council who seeks appointment to a judicial office or the office of public defender must resign from the Council as of the date of the application and should not accept reappointment to the Council for a period of two years thereafter.

(B) Attendance at Regular Meetings. Council members shall attend all regular meetings of the Council unless excused by the chair for good cause. If a member is absent without good cause for two consecutive meetings, the chair shall formally request the resignation of that member.

Section 6. Expenses; Compensation

Council members shall be reimbursed for travel and other expenses incurred while on Council business and may receive compensation as otherwise provided by law.

ARTICLE III Officers

Section 1. Officers Specified

(A) The officers of the Council shall be the chair, vice-chair and executive director.

(B) **Chair.** The chief justice of the Alaska Supreme Court is the chair of the Alaska Judicial Council.

(C) **Vice-Chair.** The vice-chair will be the member of the Judicial Council whose current term will first expire.

(D) **Executive Director.** The Council by concurrence of four or more of its members may designate an executive director to serve at the pleasure of the Council.

Section 2. Duties and Powers

(A) **Chair.** The chair shall preside at all meetings of the Council and perform such other duties as may be assigned by the Council. In the absence of an executive director or acting director, the chair will serve as acting director.

(B) **Vice-Chair.** The vice-chair shall preside at meetings of the Council in the absence of the chair. The vice-chair shall perform such other duties as usually pertain to the office of the chair when the chair is unavailable to perform such functions.

(C) **Executive Director.** The executive director shall keep a record of all meetings of the Council; shall serve as chief executive officer of the Council; shall be responsible to the Council for planning, supervising and coordinating all administrative, fiscal and programmatic activities of the Council; and shall perform such other duties as may be assigned. The executive director may receive compensation as prescribed by the Council and allowed by law.

(D) **Acting Director.** In the event of the incapacity, disability, termination or death of the executive director, the Council may appoint an acting director, and may impose such limits on the authority of said acting director as it deems advisable, until such time as a new executive director can be found, or until such time as the incapacity of the executive director can be cured. Should the Council choose not to appoint an acting director or otherwise fail to appoint, the chair of the Council will, ex officio, serve as acting director until a replacement executive director can be found.

ARTICLE IV Meetings

Section 1. Public Sessions; Public Notice

All meetings of the Judicial Council shall be open to the public, except as hereinafter specifically provided. At least three days prior to any such meeting to be held in Anchorage, Fairbanks, or Juneau, public notice of date, time, and place of the meeting and of general topics to

be considered shall be given through paid advertisements in major newspapers of general circulation in all three cities; for meetings to be held elsewhere in the state, paid public notice shall be provided at least three days in advance in the newspaper or newspapers of general circulation in such other areas as well as in the newspapers of general circulation in Anchorage, Fairbanks, and Juneau. When the notice requirements of this section are determined by the Council to be unreasonable, the Council is authorized to meet after such other period and utilizing such other form of public notice as it deems reasonable under the circumstances.

Section 2. Participation by Telecommunications

It shall be the policy of the Judicial Council to meet in person, where practicable. When, however, in the opinion of the chairperson, circumstances exist warranting a telephone conference among members between meetings, or the personal attendance of one or more Council members at a regularly scheduled meeting has been excused for good cause, a member or members may participate in regular or special meetings by teleconference subject to the following requirements: that reasonable public notice under Article IV, Section 1, and adequate notice to members under Article IV, Section 8, have been given; that at least one member or staff person is present at the time and location publicly announced for any such meeting; and that adequate teleconference or other electronic communication means are available. Teleconferencing may be used to establish quorums, receive public input and, if all voting individuals have a substantially equal opportunity to evaluate all testimony and evidence, to vote on actions.

Section 3. Regular Meetings

The Council shall hold not fewer than two meetings per year, at times designated by the Council, to consider problems which may affect the Council and concern the administration of justice in the State of Alaska.

Section 4. Special Meetings

When a vacancy in the office of justice, judge, or public defender actually occurs or is otherwise determined to be lawfully impending, the chairperson shall call a special meeting of the Judicial Council within the time-frame required by law. The chairperson shall also call a special meeting of the Council upon the request of four or more members to consider such business as may be specified in the request; at such meeting, the Council may also consider such other business as may come before the Council with the consent of four or more of the members present. The chairperson shall fix the time and place of such meeting not more than 30 days from the date of receipt of such request.

Section 5. Public Hearings

The Council may hold public hearings on all matters relating to the administration of justice as it deems appropriate and in such places as it determines advisable.

Section 6. Executive Sessions

The Council may determine as permitted by law whether its proceedings will be conducted in executive session. This determination must be made in a session open to the public and the decision to hold an executive session must be supported by the concurrence of four or more members. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session, unless auxiliary to the main question. No action may be taken in executive session.

Section 7. Place of Meeting

Insofar as may be practicable, meetings should be held in the area of the State most directly affected by the subject matter under consideration, or elsewhere as determined advisable.

Section 8. Notice of Meeting: Waiver

Written notice of each meeting shall be mailed to all members of the Council as far in advance as practicable but in any event not less than five days before the date fixed for each meeting. Presence at a meeting of the Council without objection shall constitute waiver of notice.

ARTICLE V

Voting and Quorum

Section 1. Voting

All members of the Council present shall be entitled to vote on all matters coming before the Council, except that the chair shall only vote when to do so would change the result. The Council shall act by concurrence of four or more members. All votes shall be taken in public session. Any member can vote in the affirmative or negative or abstain on any matter; However, a member who wishes to abstain shall so indicate before the question to be voted on is called and shall disclose the reasons for abstaining.

Section 2. Conflict of Interest; Disqualification

No member may vote on any matter in which he or she has a substantial personal or pecuniary interest. In addition, a member of the Council who believes that his or her personal or business relationship to any applicant for a judicial or public defender vacancy or to any judge or justice being evaluated for retention purposes might prevent such member from fairly and objectively considering the qualifications of such person, or might otherwise involve a conflict of interest or create the appearance thereof, shall disclose the circumstances of the actual or apparent conflict to the Council and shall disqualify himself or herself from discussing or voting on the nomination or retention of that person.

Section 3. Quorum

Four members of the Council shall constitute a quorum for the transaction of business at any meeting.

Section 4. Rules of Order

Robert's Rules of Order Revised will govern the meetings of the Council insofar as they do not conflict with these bylaws.

**ARTICLE VI
Committees**

Section 1. Standing Committees

The Council may establish such standing committees from time to time as may be deemed appropriate for the efficient and effective conduct of Council business. Standing committee assignments shall be made annually by the chairperson. The function of each committee shall be to monitor Council activities between meetings, to provide guidance and advice to staff, and to report to the Council at regularly scheduled meetings regarding the committees' areas of oversight. Each committee shall include at least one attorney and one non-attorney member. To the maximum extent possible, Council members should be permitted to serve on the committee or committees of their choice. The following standing committees may be established:

- (A) Finance, audit, and administration;
- (B) Programs and research;
- (C) Judicial and public defender selection and retention;
- (D) Legislation.

Section 2. Ad Hoc Committees

The chairperson may direct the establishment of ad hoc committees from time to time as may be deemed appropriate. Ad hoc committees shall report to the Council on their activities and may make recommendations for Council action.

**ARTICLE VII
Procedure for Submitting Judicial and Public Defender
Nominations to the Governor**

Section 1. Notice of Vacancy; Recruitment

Whenever a vacancy to be filled by appointment exists, or is about to occur, in any supreme court, court of appeals, superior court, or district court of this state, or in the office of public defender, the Council, by mail or by such other publication means as may be appropriate, shall notify all active members of the Alaska Bar Association of the vacancy, and shall invite applications from qualified judges or other members of the bar of this state for consideration by the Council for recommendation to the governor. Council members may also encourage persons believed by such members to possess the requisite qualifications for judicial or public defender office to submit their

applications for consideration and may cooperate with judicial selection committees of the state or local bar associations or of such other organizations as may be appropriate in the identification and recruitment of potential candidates.

Section 2. Application Procedure

Each applicant for a judicial or chief public defender position shall obtain and complete an application for appointment provided by the Council and shall comply with all the requirements therein. Such application may request such information as deemed appropriate to a determination of qualification for office, including but not limited to the following: family and marital history; bar and/or judicial discipline history; criminal record; involvement as a party in litigation; credit history; physical and mental condition and history; community activities; academic and employment history; military record; and representative clientele.

Section 3. Evaluation and Investigation of Applicants' Qualifications

(A) Judicial Qualifications Polls. The Judicial Council may conduct judicial qualifications polls in such form and manner as may be prescribed by the Council and cause the same to be circulated among the members of the Alaska Bar Association. The poll should be relevant to criteria listed in Article 1, Section 1 of these bylaws. If the Alaska Bar Association conducts a qualifications poll satisfactory to the Council, the Council may recognize such poll. The Judicial Council may conduct such other surveys and evaluations of candidates' qualifications as may be deemed appropriate.

(B) Investigation. The Council and its staff shall investigate the background, experience, and other qualifications of an applicant under consideration for a judicial or a public defender vacancy, and may call witnesses before it for such purposes.

(C) Candidate Interviews; Expenses. The Council may, when and where it deems desirable, conduct a personal interview with one, some, or all applicants for any judicial or public defender vacancy. Candidates requested to appear before the Council for such interviews shall appear in person; when, however, a candidate for good cause shown is unable to personally attend such interview, the Council may arrange for an interview by telephone or other electronic communication means with such applicant, and such alternative interview as may be appropriate, including but not limited to interview of such candidate by a committee of the Council at such other time and place as may be convenient. A candidate may choose to be interviewed publicly or in executive session, to protect the candidate's privacy interests consistent with Alaska's Open Meetings Act. The choice to interview publicly or in executive session will have no bearing on the council's evaluation of the candidate's qualifications.

A candidate's expenses for judicial or public defender office are that candidate's responsibility. The Council may reimburse candidates for travel expenses in the Council's discretion. The cost of a telephone interview requested by the Council shall be paid by the Council.

Section 4. Nomination Procedure; Recommendation of Best Qualified Candidates

The Council shall select two or more candidates who stand out as the most qualified under the criteria set out in Article I, Section 1 of these bylaws, considering (a) other candidates who have applied; (b) the position applied for; and (c) the community in which the position is to be located. The names of the selected candidates shall be submitted to the governor in alphabetical order; but if the council's vote does not result in selecting at least two applicants who are sufficiently qualified, the council shall decline to submit any names and will re-advertise the position.

Section 5. Reconsideration

The Council will not reconsider the names submitted to the governor after the nominees are submitted unless the disability or death of one or more nominees leaves the governor with less than two names for filling a judicial vacancy. If the governor requests additional nominees in such a situation, the Council will submit additional names so that the governor has at least two nominees for each vacancy. The Council may select additional names from the original applicants for the position or may re-advertise for the position.

Section 6. Publication and Review of Procedures

The Council shall establish and follow written forms and procedures for the nomination of attorneys who apply to be justices, judges, and public defender. The Council shall publish the bylaws and procedures in its biennial report to the Alaska Supreme Court and legislature, post them on its website, and provide them to applicants. The Council shall review these procedures at intervals not to exceed three years.

ARTICLE VIII

Review of Judicial Performance

Section 1. Retention Election Evaluation

Prior to each general election in which one or more justices or judges has expressed the intention to be a candidate for retention election, the Council shall conduct evaluations of the qualifications and performance of such justices and judges and shall make the results of evaluations public. Evaluations may be based upon the results of a judicial performance survey conducted among all active members of the Alaska Bar Association and other members, retired or inactive, that the Council chooses. Evaluations also may be based upon such other surveys, interviews, or research into judicial performance as may be deemed appropriate, including but not limited to, any process that encourages expanded public participation and comment regarding candidate qualifications.

Section 2. Recommendation

Based upon the evaluative data, the Council may recommend that any justice or judge either be retained or not be retained. The Council may actively support the candidacy of every incumbent judge recommended to be retained, and may actively oppose the candidacy of every incumbent judge whom it recommends not be retained. The Council shall publicize its recommendations.

Section 3. Judicial Performance Evaluation

The Council may conduct evaluations of judges or other judicial officers, other than at the time of retention elections, and may make the results of the evaluations public.

Section 4. Publication and Review of Procedures

The Council shall establish and follow written procedures for the evaluation of justices and judges. The Council shall publish the procedures in its biennial report to the Alaska Supreme Court and legislature, post them on its website, and provide them to justices and judges. The Council shall review these procedures at intervals not to exceed four years.

**ARTICLE IX
Extra-Council Communications**

Members of the public may wish to communicate their thoughts about the qualifications of applicants and the performance of judicial officers to individual Council members. All written communications between a Council member and any other person or organization regarding the qualifications of any applicant or the performance of any judicial officer should be forwarded to all other members; all oral communications regarding such matters should be shared with other members. Council members may encourage people to communicate with the Council in writing or at a public hearing.

Council members may discuss their individual views about the qualifications of applicants and the performance of judicial officers with members of the public, including the applicants and judicial officers. Council members may not publicly discuss the views of other Council members about the qualifications of applicants and the performance of judicial officers. Communications and deliberations among Council members that occur in executive session, including discussion about the qualifications of an applicant or the performance of a judicial officer shall be kept confidential in accordance with the law and Council bylaws.

**ARTICLE X
Access to Council Records****Section 1. Public Records**

All records of the Judicial Council, unless confidential or privileged, are public as provided in AS 40.25.110. The public shall have access to all public records in accordance with AS 40.25.120.

Public Records include:

1. Council bylaws and policy statements;
2. Minutes of Council meetings;
3. Final Council reports;
4. Financial accounts and transactions;

5. Library materials; and
6. All records other than those excepted in this bylaw.

Section 2. Right to Privacy

Materials that, if made public, would violate an individual's right to privacy under Art. I, Section 22 of the Alaska Constitution shall be confidential. Confidential materials are not open for public inspection and include:

1. Solicited communications relating to the qualifications of judicial or public defender vacancy applicants, or judicial officers;
2. Unsolicited communications relating to the qualifications of a judicial or public defender applicant or judicial officer, where the source requests confidentiality;
3. Those portions of the "application for judicial appointment" and "judge questionnaire" that reveal sensitive personal information entitled to protection under law;
4. Investigative research materials and internal communications that reveal sensitive personal information entitled to protection under law; and
5. Contents of Council employees' and members' personnel records, except that dates of employment, position titles, classification and salaries of present and/or past state employment for all employees are public information. In addition, application forms, resumes and other documents submitted to the Judicial Council in support of applications for any position with the Council grade 16 or above are public information.

Section 3. Deliberative Process

Materials that are part of the deliberative process of the Judicial Council, including those prepared by Council employees, are privileged and confidential if their disclosure would cause substantial and adverse effects to the Council that outweigh the need for access. These materials generally include drafts and computations prior to final document approval, internal memoranda conveying personal opinions, and other pre-decisional documents not incorporated into public records under this bylaw.

Section 4. Other Information

Information required or authorized to be kept confidential by law is not a public record.

Section 5. Privileged Communications

Communications that are legally privileged are not public information. These communications include but are not limited to communications between the Council and its attorney made for the purpose of facilitating the rendition of professional legal services to the Council.

Section 6. Release of Information

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information will be disclosed. Information that otherwise would not be disclosable may be released to the subject of that information or to the public if it is in a form that protects the privacy rights of individuals and does not inhibit candid debate during the decision-making process.

**ARTICLE XI
Office of Judicial Council**

The Council shall designate an office of the Council in such location as it deems appropriate. Records and files of the Council's business shall be maintained by the executive director at this location.

**ARTICLE XII
Appropriations**

The Council will seek such appropriations of funds by the Alaska Legislature and other funding sources as it deems appropriate to carry out its constitutional and statutory functions.

**ARTICLE XIII
Bylaw Review and Amendment**

The Council shall review these bylaws at intervals not to exceed six years. These bylaws may be altered or amended by the Judicial Council by concurrence of four or more members, provided reasonable notice of proposed amendments has been provided to all Council members.

These bylaws adopted by the Alaska Judicial Council, this 15th day of February 1966; amended November 10, 1966; June 18, 1970; March 30, 1972; February 15, 1973; May 26, 1983; December 10, 1986; March 19, 1987; January 14, 1989; November 2, 1993; June 26, 1996; December 9, 1996; September 23-24, 1997; July 6-7, 1998; July 15, 2002; September 22, 2005; November 28, 2005; October 14, 2006.

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Alaska Judicial Council Procedures for Nominating Judicial Candidates

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

I. Application Procedures

A. Notice of Vacancy; Recruitment

1. Notice of Vacancy

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

APPENDIX C

¹

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

2. Recruitment

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

B. Submission of Applications

Application forms for open judicial positions may be obtained upon request from the Council's office and are also available on the Council's website. Each applicant seeking to be considered for nomination by the Council to an open judicial position must file a completed Judicial Council application form and must comply with all requirements described in the form. A sample of a standard Council application form is appended (Appendix A).

1. Background Information

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

2. References

The Council requires an applicant to submit the names of three professional references and two character references. The Council asks the applicant to submit the names of attorneys and judges involved in three of the applicant's cases in the past three years that went to trial and three of the applicant's cases in the past three years that did not go to trial but in which the applicant did substantial work. An applicant must submit the names of persons who can verify and comment about the applicant's past and present employment.

3. Nature of Law Practice

An applicant is asked to provide detailed information about the applicant's practice of law within the past five years, including the percentage of practice in state versus federal court, the

percentage of practice in civil versus criminal matters, and the percentage of practice at the appellate versus trial court level. An applicant must describe how often the applicant appears in court and must provide an estimate of how many jury and non-jury trials, appellate matters, and administrative hearings the applicant has handled within the past five years.

4. Writing Sample

The Council requires a sample of the applicant's writing ten to twenty pages in length, prepared solely by the applicant within the past five years. The Council also asks the applicant to provide a list of any legal publications the applicant has authored.

5. Information Needed to Determine Potential Conflicts

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

6. Short Biography to Post on Council Website

The Council requires an applicant to submit a brief written summary of his or her background, legal education, and legal experience. The Council posts applicants' summaries on its website and invites attorneys to review them when responding to Council surveys. Applicants may also choose to have their photograph posted on the website with their biographical summary.

7. Number of Copies; Re-Use of Applications

Applicants must submit twelve copies of the completed questionnaire and writing sample and twelve copies of their photograph to the Council on or by the date set forth in the notice of vacancy. If an applicant applies for another judicial position within six months of a prior application, the applicant must provide written notice to the Council of his or her intent to apply for the new vacancy. The Council may permit the applicant to rely on his or her most recent application, but requires the applicant to provide any supplemental information.

C. Confidentiality

1. Non-Public Materials

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

2. Public Materials

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

II. Initial Review of Applications; Background Investigation

A. Initial Review for Completeness and Compliance with Statutory Requirements

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

B. Background Investigation

1. Reference Check

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

2. Background Investigation

Council staff review bar files for the applicant's history with and standing in the bar, and fee arbitration and grievance histories, whether action was taken or not. It further investigates the allegations if necessary. An applicant's credit report is obtained. The applicant's Martindale Hubble rating, if any, is reviewed. Staff investigate whether the applicant has been a party to any civil litigation and if so, what the applicant's involvement was in that litigation and how it was resolved. Staff investigate whether the applicant has had any criminal history, traffic violations, or administrative actions against his or her driver's license. Staff review the applicant's potential conflicts of interest as indicated on the application, or from attorney or public comment or other sources that could pose a significant problem for the proper functioning of the courts if the applicant is appointed. Staff members obtain and/or verify information on pro bono or other legal service activity. Staff members may otherwise investigate any specific verifiable information obtained from any source about an applicant's fitness for office. This may include speaking with the source of that information, researching the Internet, newspapers, court files, transcripts, hearing records, or otherwise attempting to ascertain the veracity of the information. The background investigation normally takes about two months to complete. Because the Council continually solicits and receives public feedback about applicants, a background investigation can extend until the time the Council votes on its nominations.

3. Evaluation of Writing Samples

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

III. Bar Poll; Public Comment

A. Bar Poll

1. Form of Poll

The Council surveys all active members, in-state inactive members and retired members of the Alaska Bar Association. The bar poll asks attorneys to rate each candidate on a five point scale [1 (Poor) to 5 (Excellent)] on six criteria: professional competence, integrity, judicial temperament, fairness, suitability of experience, and overall professional qualifications. Survey respondents indicate whether they base their numerical ratings on direct professional experience, other personal contacts, or professional reputation, or whether they are declining to evaluate a particular candidate due to insufficient knowledge. Respondents with direct professional experience with an applicant are asked to specify whether that experience is substantial and recent, moderate, or limited. Respondents are asked to provide demographic information including their length, location, and type of law practice and their gender.

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

2. Method of Polling

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

The Council maintains an updated list of active members, in-state inactive members and retired members of the Alaska Bar Association. Immediately after the application deadline, the Council sends the complete list to an independent contractor, typically a workgroup affiliated with the University of Alaska. The contractor receives paper surveys, administers the electronic survey and analyzes all survey data. For each new selection, the contractor assigns a randomly selected

control number to each attorney on the list. The same ID number is assigned for contemporaneous surveys.

The Council also maintains an updated list of active members, in-state inactive members and retired members of the Alaska Bar Association who have provided their e-mail address to the Alaska Bar Association or to the Council. Immediately after the application deadline, the Council forwards its list of e-mail addresses to the contractor.

a. Electronic Bar Survey

The contractor sends an e-mail invitation to participate in the bar poll to attorneys on the Council's e-mail list. The invitation provides an attorney with a password encoded link to access the survey. The invitation reminds an attorney to not respond to the paper survey if the attorney responds to the electronic survey. The electronic survey asks attorneys whether they wish to discontinue receiving paper surveys. Attorneys receiving electronic surveys are sent an e-mail reminder prior to the response deadline, if they have not yet responded to the survey. Electronic survey data are encrypted during transmission to preserve the confidentiality of the data. The contractor strips the response of its e-mail address, and identifies the electronic survey response by the assigned control number for that selection.

b. Paper Bar Survey

The Council sends paper surveys to active and in-state inactive members who have not indicated that they wish to discontinue receiving paper surveys. The paper survey reminds an attorney to not respond to the electronic survey if the attorney responds to the paper survey. Respondents are instructed to place the completed survey inside a plain envelope marked "confidential" and to place that envelope in a self-addressed, pre-paid postage return envelope containing the respondent's name and signature. Upon receipt, the contractor separates the outside envelope from the survey form. Thereafter, the contractor identifies the paper survey response by its control number.

3. Method of Evaluating Poll Results

a. Review for Duplicate Responses

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

b. Numerical Ratings

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

c. Bar Poll Comments

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

4. Distribution of Bar Poll Results

The contractor provides the Council with its analysis and a transcript of all bar survey comments two to three weeks after the survey response deadline. Within a few days of receiving the analysis, Council staff inform applicants of survey results.

a. Numerical Ratings

Staff inform the applicant of his or her ratings and provide the applicant with a general idea of the spectrum of ratings received by applicants. Staff do not identify the scores of other applicants.

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

b. Bar Poll Comments

Council staff edit the transcribed bar poll comments to remove information that might compromise the identities of respondents. Staff send applicants their written edited comments about one week after all applicants have been contacted by telephone. The edited comments indicate whether the comments were signed or unsigned, but no identifying information about the survey respondent is provided. Bar poll comments about applicants are not released publicly.

B. Solicitation of Public Comment

Immediately after the application deadline has passed, the Council issues a press release announcing the names of applicants; it also publicizes and posts on its website the place and approximate date of the Council meeting set for candidate interviews and the Council's vote. In its press release and on its website, the Council invites comments from the public about applicants. The public is invited to write, telephone, or fax comments to the Council. The public is also invited to submit comments via the Council's website.

The Council holds a public hearing to receive public comments. If feasible, the hearing is held in the community where the judge will sit. The hearing typically coincides with the time set for applicant interviews. The Council advertises its public hearing through paid advertisements in major newspapers in Anchorage, Fairbanks, and Juneau, and in the location of the vacancy if different. The Council may take public comments telephonically at the Council's expense.

IV. Distribution of Applicant Materials to Council Members

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

1. copies of the written applications
2. applicant writing samples and a memo prepared by staff analyzing the samples
3. a staff memorandum summarizing staff review of the applicant's discipline files, credit, civil, and criminal history, and conflicts of interest
4. memoranda concerning particular matters investigated by staff
5. a report of the complete bar poll numerical ratings and statistical analysis
6. an unedited transcription of attorney comments submitted in the bar poll in a format that identifies information omitted in the edited version received by each applicant
7. if applicable, bar poll ratings received by the applicant in prior applications or judicial retention elections
8. all letters of reference
9. all responses to questionnaires solicited by the Council from attorneys and judges with recent experience with the applicant
10. all public comments
11. any unsolicited materials received concerning the applicant

These materials typically exceed one hundred pages of written materials per applicant. Council members review all of these materials before meeting to interview applicants.

V. Interview ProceduresA. Prior to the Interview1. Scheduling

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

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

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

2. Public and Private Interviews

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

3. Communicating Comments About Applicants

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

4. Disclosures by Council Members

Immediately before interviewing an applicant, the Council convenes briefly in executive session and each Council member discloses to other Council members any relevant information known or communicated to the Council member about the applicant that other members may not know.

B. The Interview

1. Length of Interview

An interview usually lasts about forty-five minutes.

2. The Interview Process

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

3. Focus of Interview Questions: Selection Criteria

The Council's interview questions will focus on matters relevant to determining the applicant's qualifications under the criteria set out in Article I, Section 1 of the Council's bylaws. Council members may inquire about any relevant concerns raised in the materials provided to the Council or any issues arising from the applicant's testimony before the Council.

Members will not ask questions designed to elicit views on issues likely to be litigated before the applicant, if appointed. Nor will Council members ask about an applicant's political affiliations, religious beliefs, or other "prohibited considerations" listed below in Part VI, except when reliable evidence or the applicant's own testimony suggests that questions relating to these topics may be reasonably necessary to address specific concerns about the applicant's qualifications. Thus, for example, if the Council received credible and specific information indicating that an applicant's actions on the bench might be influenced by religious bias, Council members could pursue the issue to ensure that the applicant would be able to act fairly and impartially as a judge. Similarly, if an applicant made statements about having strong political affiliations or views, Council members could

ask follow-up questions to confirm that these affiliations and views would not carry over to the applicant's judicial performance.

4. Questions Based on Confidential or Anonymous Source

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

VI. Nomination Procedures

A. Criteria for Evaluating Qualifications of Individual Applicants

Article I, Section 1 of the Council's Bylaws requires Council members to determine the qualifications of individual judicial applicants by considering the following selection criteria:

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

- Integrity. In evaluating integrity, Council members consider whether the applicant has demonstrated a consistent history of honesty and high moral character in the applicant's professional and personal life. Members also consider the applicant's respect for professional duties arising under the codes of professional and judicial conduct, as well as the applicant's ability to understand the need to maintain propriety and the appearance of propriety.
- Fairness. To assess an applicant's fairness, Council members examine whether the applicant has demonstrated the ability to be impartial to all persons and groups of people and has shown a commitment to equal justice under the law. Members look for applicants who have shown themselves to be open-minded and capable of deciding issues according to the law, even when the law conflicts with their personal views.
- Temperament. In assessing an applicant's temperament, Council members consider whether the applicant possesses compassion and humility; whether the applicant has a history of courtesy and civility in dealing with others; whether the applicant has shown an ability to maintain composure under stress; and whether the applicant is able to control anger and maintain calmness and order.
- Judgment, Including Common Sense. To determine an applicant's judgment and common sense, Council members look for a sound balance between abstract knowledge and practical reality: members consider whether, in making decisions in the legal arena or in other spheres of life, the applicant has demonstrated the ability to make prompt decisions that resolve difficult problems in a way that makes practical sense within the constraints of any applicable rules or governing principles.
- Legal and Life Experience. Council members consider both legal and life experience. They evaluate the amount and breadth of an applicant's legal experience and the suitability of that experience for the position sought, including trial and other courtroom experience and administrative skills. At the same time, Council members look for broader qualities reflected in the applicant's life experiences, such as the diversity of the applicant's personal and educational history, exposure to persons of different ethnic and cultural backgrounds, and demonstrated interests in areas outside the legal field.
- Demonstrated Commitment to Public and Community Service. In assessing an applicant's commitment to public and community service, Council members consider the extent to which an applicant has demonstrated a commitment to the community generally and to improving access to the justice system in particular.

B. Initial Discussion of Individual Applicant's Qualifications

Immediately after concluding an individual applicant's interview, the Council discusses that applicant to enable each Council member to evaluate the applicant's qualifications under the selection criteria described above and in Article I, Section 1 of the Council's Bylaws. The Council holds the discussion in executive session to promote candid discussion about the qualifications of applicants. Each Council member is given an opportunity to comment on that member's assessment of the applicant; the order of discussion follows the order in which Council members questioned the applicant.

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

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

C. Deliberation to Determine Most Qualified Applicants

After all applicants have been interviewed, the Council deliberates on the entire slate of candidates. By this time, each Council member has evaluated the individual qualifications of all applicants under the criteria described in Article I, Section 1 of the bylaws; the deliberations now turn to comparing and ranking all applicants so that each member can identify the candidates whose overall qualifications, in that member's view, make them most qualified to be nominated. The procedure for making this determination is spelled out in Article VIII, Section 4 of the Council's bylaws. This section requires Council members to select the candidates who are most qualified under the criteria described in Article I, Section 1 by considering:

- All Candidates Who Have Applied. Under the procedures set out in Article VIII, Section 4, each Council member compares the relative standing of all applicants, relying on that member's independent judgment as to each candidate's individual qualifications according to Article 1, Section 1's selection criteria.

- The Position Applied For. Each Council member takes into account the specific level of judgeship applied for and considers the ability of each candidate to serve at that level.
- The Community in Which the Position is Located. Each Council member looks at the needs of the particular community where the new judge will serve.

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

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

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

D. Vote To Nominate Most Qualified Applicants

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

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

E. Prohibited Considerations in Determining Qualifications and Voting

1. Anonymous Comments

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

2. Discrimination

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

3. Religious and Political Beliefs

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

4. Likelihood of appointment.

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

VII. Post-Nomination Procedures

A. Notification of Applicants

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

B. Transmittal to the Governor

1. Preparation of List of Nominated Candidates and Press Release

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

2. Call to Governor's Office

As soon as possible after individual applicants are notified, Council staff call the governor's office to communicate the Council's nominations.

3. Written Notification to Governor

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

C. Requests for Additional Names; Reconsideration

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

Effective date: October 3, 2005, amended July 19, 2007

Appendix A
Judicial Application

Alaska Judicial Council Application for Judicial Appointment

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

Date: _____

I. Public Information (Questions 1-24)

Personal

1. (a) State full name* _____

Name as it should appear on bar survey: _____

* 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

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

Total _____ years _____ months

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

Total _____ years _____ 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.

** 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.

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.

(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.

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.

Legal Experience

9. Describe chronologically your legal employment since admission to law school. **Please provide dates, name of employer, name of supervisor or person who can verify employment, addresses, 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.**

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: _____

Supervisor or name of contact person who can verify employment: _____

Current address of this person: _____

City _____ State _____ Zip _____

Dates of Employment: From _____ To _____

Description: _____

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

Employer: _____

Supervisor or name of contact person who can verify employment: _____

Current address of this person: _____

City _____ State _____ Zip _____

Dates of Employment: From _____ To _____

Description: _____

Reason for Leaving: _____

Employer: _____

Supervisor or name of contact person who can verify employment: _____

Current address of this person: _____

City _____ State _____ Zip _____

Dates of Employment: From _____ To _____

Description: _____

Reason for Leaving: _____

Previous Employers (continued)

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

Reason for Leaving: _____

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

Reason for Leaving: _____

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

Reason for Leaving: _____

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

Reason for Leaving: _____

Sample
Application

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

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

Comment: _____

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

Comment: _____

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

Comment: _____

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

Comment: _____

(e) Number of trials (by court or jury) you conducted in the past 5 years:
 None 1- 5 6-15 16-30 31 or more

Comment: _____

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

Comment: _____

(g) Approximate number of appellate matters handled: _____

Comment: _____

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

Briefly describe type of matters heard: _____

(i) Have you undertaken any *pro bono* work through a *pro bono* legal service provider (e.g. Alaska Legal Services, Alaska Network on Domestic Violence and Sexual Assault, etc.) during this period? Yes No

Describe: _____

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.

Public Service

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

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).

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)

- (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.

Application

- (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.

Sample

- (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: _____

Address: _____

City/State/Zip: _____ Phone: _____

Name: _____

Address: _____

City/State/Zip: _____ Phone: _____

- (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: _____

Address: _____

City/State/Zip: _____ Phone: _____

Name: _____

Address: _____

City/State/Zip: _____ Phone: _____

Name: _____

Address: _____

City/State/Zip: _____ Phone: _____

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 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.*)

Case Number 1

Case Name: _____ *Case Number:* _____
v. _____ *Judge Name:* _____
Attorneys Involved:

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

Case Number 2

Case Name: _____ *Case Number:* _____
v. _____ *Judge Name:* _____
Attorneys Involved:

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

Case Number 3

Case Name: _____ *Case Number:* _____
v. _____ *Judge Name:* _____
Attorneys Involved:

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	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. (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: _____ *Case Number:* _____
v. _____ *Judge Name:* _____

Attorneys Involved:

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

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

Case Number 2

Case Name: _____ *Case Number:* _____
v. _____ *Judge Name:* _____

Attorneys Involved:

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

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

Case Number 3

Case Name: _____ *Case Number:* _____
v. _____ *Judge Name:* _____

Attorneys Involved:

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	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 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? Yes No

In each case, state in detail the circumstances and the outcome.

Sample
Application

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.

Additional Comments (Continued)

Sample Application

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

24. 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 _____

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

Please leave area empty

Date: _____

Sample
Application

II. Confidential Information (Qs. 25-34)

25. Office Telephone: _____
Home Telephone: _____
FAX: _____
E-mail: _____
26. Social Security Number :* _____
Date and place of birth: _____ Age: _____
27. For the purpose of identifying potential conflicts of interest:
- (a) Spouse's full name and occupation:** _____

- (b) Children's names and occupations: _____

28. (a) Current mailing address: _____
City, State Zip: _____
- (b) Current business address: _____
City, State Zip: _____
29. State every residence you have had in the last five years in the United States or elsewhere, with exact address of each, and the month and year of the beginning and ending of each residence.

* Social security number is used for the sole purpose of identification for background checks.

** Also include the full name and occupation of a domestic partner with whom you reside (required to determine possible conflict of interest problems).

30. Has any private sanction been imposed against you in response to a complaint, charge or grievance brought against you as an attorney or a judge? Yes No

To your knowledge, have any formal complaints (including fee disputes), charges or grievances (not disclosed in response to question 22) been brought against you? Yes No

In each case, state in detail the circumstances and the outcome. Please include all complaints even if they were dismissed or not accepted for filing.

31. If you have been a judge, have you received notice of public charges, a cautionary letter, private admonition, or other confidential sanction from the Alaska Commission on Judicial Conduct? Yes No

In each case, state in-detail the circumstances and the outcome.

32. Please estimate your total income* 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.

Year	Total Income*	Percent of Total Income* Derived From the Practice of Law

* 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.

Conflict of Interest

- 33. Please identify, with particularity: (a) every entity in which you have any interest financial or otherwise and describe the interest; (b) any person who, through a relationship with you, might create a conflict of interest if you were appointed, and describe the conflict.

What steps, if any, would you take to avoid potential conflict of interest under the Code of Judicial Conduct if you were appointed to the bench?

Ability to Perform Job-Related Functions

- 34. Is there any reason why it might be difficult for you to perform fully all of the requirements of this position as set out in the judicial position description attached to this application? Yes No

If so, please explain how you will be able to perform job-related functions, with or without reasonable accommodation.

Certification and Waiver

I hereby certify that, to the best of my knowledge, the information provided on this application is true and complete; and that I am a citizen of the United States and of the State, and will be eligible to be licensed to practice law in Alaska at the time of expected appointment (Ak. Const. Art IV; § 4).

I waive any privilege of confidentiality I may have with respect to information concerning my qualifications for judicial office that the Judicial Council may desire to obtain. I specifically authorize the Council to obtain and examine my personnel files from current and past employers, including all files maintained by the Alaska Court System, and to obtain information, records and documents regarding me from any law enforcement agency, any bar association, any occupational licensing board, any educational institution, and any disciplinary body, including specifically the Alaska Bar Association and the Alaska Judicial Conduct Commission. I further authorize these institutions, organizations, and individuals, and any other institutions, organizations and individuals to make available to the Council all confidential and non-confidential documents, records and information concerning me that the Council may request.

Sample
Application

Signature of Applicant _____ Typed Name _____

Date _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public, State of Alaska
My Commission expires: _____

Release to Obtain Credit History

I specifically authorize the Council to obtain information regarding me from any credit reporting agency. I authorize these agencies to make available to the Council all confidential and non-confidential documents, records, and information concerning me that the Council may request.

_____	_____
Signature of Applicant	Typed Name

Date	

Sample
Application

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public, State of Alaska
My Commission expires: _____

Appendix A

Writing Sample
(see question 21)

Sample
Application

Appendix B
Sample Bar Poll Pages



alaska judicial council

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Susan Orlansky

CHAIR, EX OFFICIO
Alexander O. Bryner
Chief Justice
Supreme Court

October 12, 2005

Dear Member of the Alaska Bar Association:

Attached is the bar survey for applicants for the current vacancy on the Fairbanks Superior Court, Fourth Judicial District. Please refer to Professional Conduct Rule 8.2 concerning your obligation to provide truthful and candid opinions on the qualifications or integrity of these applicants.

The Council encourages narrative comments. A page for comments is provided for each applicant. If these pages are not sufficient please attach separate pages as needed.

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

We ask that you complete and return the survey form no later than November 11, 2005, to Behavioral Health Research & Services (BHRS), P.O. Box 240207, Anchorage, Alaska 99524-9990. Alternatively, you may respond to the survey electronically over the Internet no later than November 11, 2005. If you respond to the electronic survey, please do not respond to this paper survey.

Sincerely,

Larry Cohn
Executive Director

Introduction

Validation of Responses. A self-addressed, postage-paid return envelope is enclosed for the return of your completed evaluation. Place the completed survey inside the envelope marked "Confidential" and seal the envelope. Then use the self-addressed stamped envelope, being sure to sign in the space provided. The return envelope **MUST BE SIGNED** in order for your survey to be counted. (In most surveys, a few unsigned surveys are excluded from tabulation.)

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

Return Date. Please complete and return this survey no later than November 11, 2005 to:

Behavioral Health Research & Services (BHRS)
P.O. Box 240207
Anchorage, Alaska 99524-9990

Demographic Questions

1. **Type of Practice.** Which of the following best describes your practice?*(CIRCLE ONE)*
 1. Private, solo
 2. Private, office of 2-5 attorneys
 3. Private, office of 6 or more attorneys
 4. Private corporate employee
 5. Judge or judicial officer
 6. Government
 7. Public service agency or organization (not government)
 8. Other (specify) _____

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

3. **Gender.** _____ Male _____ Female

4. **Cases Handled.** The majority of your practice consists of *(CIRCLE ONE)*
 1. Prosecution
 2. Mainly criminal
 3. Mixed criminal and civil
 4. Mainly civil
 5. Other (specify) _____

5. **Location of Practice.** In which judicial district is most of your work conducted? *(CIRCLE ONE)*
 1. First District
 2. Second District
 3. Third District
 4. Fourth District
 5. Outside Alaska

Please consider each of the following applicants.
If you do not have sufficient knowledge to evaluate an applicant, please go to the next applicant.

Fairbanks Superior Court, Fourth Judicial District

APPLICANT NAME

Basis for Evaluation

- A. Which of the following best describes the basis for your evaluation of this applicant? Direct professional experience is limited to direct contact with the applicant's professional work. This includes working with or against the attorney on a legal matter (i.e., a case, arbitration, negotiation. . .). (check one)
- Direct professional experience Professional reputation
 Other personal contacts Insufficient knowledge to evaluate this candidate (go to next candidate)
- B. If you checked direct professional experience, which of the following best describes the amount of that experience?
- Substantial and recent (within last 5 years) Moderate Limited
- C. Please rate the applicant on each of the following qualities by circling the number that best represents your evaluation. Applicants should be evaluated on each quality separately. Use the ends of the scales as well as the middle. The tendency to rate an applicant "excellent" or "poor" on every trait should be avoided since each person has strengths and weaknesses. If you cannot rate the applicant on any one quality, leave that one blank.

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

Appendix C
Evaluation Report - Sample Pages

Table 1
Mean Ratings of Applicants for the Juneau District Court, First Judicial District

	N	Professional Competence	Integrity	Fairness	Judicial Temperament	Suitability of Experience	Overall Rating
Dan Branch	149	3.6	4.1	3.9	3.7	3.4	3.6
Brad J. Brinkman	115	3.9	4.1	4.0	3.8	3.9	3.9
James E. Douglas	74	3.8	4.0	3.8	3.6	3.8	3.7
Andy Hemenway	86	3.9	4.1	4.0	3.9	3.7	3.8
Stacie L. Kraly	107	3.8	4.1	4.0	4.0	3.5	3.8
Keith B. Levy	140	4.4	4.5	4.4	4.4	4.2	4.4
Philip M. Pallenberg	136	4.3	4.3	4.2	4.3	4.2	4.2

Table 2
Respondent Characteristics

<i>Type of Practice</i>	<i>N</i>	<i>%</i>
Private, solo	203	20.9
Private, office of 2-5 attorneys	156	16.1
Private, office of 6 or more attorneys	176	18.1
Private, corporate employee	27	2.8
State judge or judicial officer	60	6.2
Government	227	23.4
Public service agency or organization (not government)	27	2.8
Other	29	3.0
No response	66	6.8

Length of Alaska Practice

5 Years or fewer	116	12.0
6-10 Years	120	12.4
11-15 Years	134	13.8
16-20 Years	148	15.2
21 Years or more	370	38.1
No response	83	8.6
Mean		16.6
Standard Deviation		10.8

Gender

Male	606	62.4
Female	282	29.0
No response	83	8.6

Cases Handled

Prosecution	66	6.8
Mainly criminal	62	6.4
Mixed criminal and civil	163	16.8
Mainly civil	558	57.5
Other	55	5.7
No response	67	6.9

Location of Practice

First District	144	14.8
Second District	16	1.7
Third District	637	65.6
Fourth District	75	7.7
Not in Alaska	32	3.3
No response	67	6.9

Table 3
Alaska Bar Members' Level of Experience with the Candidates
Juneau District Court, First Judicial District

<i>Candidate Evaluated for Nomination</i>	<i>Percent of the 971 ABA members who rated this applicant</i>	<i>n</i>	<i>Direct Professional Experience</i>	<i>Professional Reputation</i>	<i>Social Contacts</i>	<i>No Response</i>
Dan Branch	20.4%	198	150	21	27	0
Brad J. Brinkman	14.5%	141	115	13	13	0
James E. Douglas	10.0%	97	74	8	12	3
Andy Hemenway	13.4%	130	86	15	29	0
Stacie L. Kraly	14.0%	136	108	13	14	1
Keith B. Levy	20.2%	196	140	30	24	2
Philip M. Pallenberg	21.0%	204	137	31	32	4

Table 4
Distribution of Responses and Measures of Central Tendency for Overall Rating
Juneau District Court, First Judicial District

	1	2	3	4	5	Mean	Median	Mode	Standard Deviation	N
	Poor	Deficient	Acceptable	Good	Excellent					
Dan Branch	6	13	48	51	29	3.6	4	4	1.0	147
Brad J. Brinkman	0	3	35	47	28	3.9	4	4	0.8	113
James E. Douglas	1	8	17	32	15	3.7	4	4	1.0	73
Andy Hemenway	0	7	22	36	21	3.8	4	4	0.9	86
Stacie L. Kraly	0	9	31	44	23	3.8	4	4	0.9	107
Keith B. Levy	1	3	12	48	74	4.4	5	5	0.8	138
Philip M. Pallenberg	2	11	20	26	76	4.2	5	5	1.1	135

Note: Ratings for only those respondents with direct professional experience with the applicant

Table 5
Mean Scores on Overall Rating by Type of Caseload Handled
Juneau District Court, First Judicial District

	Prosecution		Criminal		Mixed		Civil		Other	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
Dan Branch	3.6	9	3.6	5	3.4	38	3.7	86	--	0
Brad J. Brinkman	3.9	8	3.4	5	3.9	28	3.9	59	4.0	3
James E. Douglas	4.2	6	3.5	2	3.9	20	3.5	33	3.7	3
Andy Hemenway	3.0	1	4.0	4	4.1	15	3.8	54	4.0	4
Stacie L. Kraly	3.6	8	3.6	5	3.5	29	3.9	53	4.5	2
Keith B. Levy	4.5	2	3.0	2	4.0	27	4.5	91	5.0	2
Philip M. Pallenberg	3.1	10	4.7	16	4.2	39	4.1	54	4.5	2

Note: Ratings for only those respondents with direct professional experience with the applicant

Table 6
Mean Scores on Overall Rating by Location of Practice
Juneau District Court, First Judicial District

	First		Second		Third		Fourth		Outside Alaska	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
Dan Branch	3.6	61	4.3	3	3.6	66	3.6	8	--	0
Brad J. Brinkman	3.9	74	4.3	3	3.6	21	4.3	3	3.0	1
James E. Douglas	3.7	50	--	0	3.6	10	4.0	2	2.5	2
Andy Hemenway	3.6	22	--	0	3.9	45	3.6	7	4.5	4
Stacie L. Kraly	3.6	63	5.0	1	4.0	29	4.3	4	--	0
Keith B. Levy	4.3	73	5.0	1	4.5	46	4.0	3	--	0
Philip M. Pallenberg	4.2	67	4.0	1	4.1	45	3.7	6	4.7	3

Note: Ratings for only those respondents with direct professional experience with the applicant.

Table 7
Mean Scores on Overall Rating by Type of Practice
Juneau District Court, First Judicial District

	Private, Solo		Private, 2-5		Private, 6+		Corporate		Judge/Judicial		Government		Public Service		Other	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
Dan Branch	3.3	27	3.1	17	3.5	11	3.0	1	3.5	15	3.8	65	5.0	1	4.0	1
Brad J. Brinkman	3.8	26	3.9	8	3.8	8	3.0	1	4.0	7	3.8	48	4.0	1	5.0	3
James E. Douglas	3.4	16	3.3	7	3.5	8	4.0	1	4.3	8	3.8	20	4.0	1	3.5	2
Andy Hemenway	3.8	13	4.1	17	4.2	13	--	0	3.3	6	3.6	26	4.0	2	--	0
Stacie L. Kraly	3.5	16	3.5	8	3.6	13	5.0	1	3.8	6	3.9	50	5.0	1	4.0	1
Keith B. Levy	4.3	23	4.2	16	4.5	23	5.0	1	4.0	9	4.4	44	4.8	5	5.0	3
Philip M. Pallenberg	4.4	23	4.4	13	4.2	18	4.0	1	4.4	14	3.9	44	4.5	4	4.8	4

Note: Ratings for only those respondents with direct professional experience with the applicant.

Table 8
Mean Scores on Overall Rating by Respondent Gender
Juneau District Court, First Judicial District

	Female		Male	
	Mean	N	Mean	N
Dan Branch	3.9	39	3.5	97
Brad J. Brinkman	3.8	32	3.9	69
James E. Douglas	3.3	9	3.7	54
Andy Hemenway	3.5	22	4.0	52
Stacie L. Kraly	4.0	37	3.6	58
Keith B. Levy	4.6	40	4.3	81
Philip M. Pallenberg	4.4	28	4.1	90

Note: Ratings for only those respondents with direct professional experience with the applicant.

Table 9
Mean Scores on Overall Rating by Length of Alaska Practice
Juneau District Court, First Judicial District

	5 or fewer Years		6-10 Years		11-15 Years		16-20 Years		21 or more Years	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
Dan Branch	3.3	3	3.5	11	4.1	21	3.8	29	3.4	73
Brad J. Brinkman	4.0	2	4.0	8	3.9	12	3.6	17	3.9	63
James E. Douglas	3.3	3	3.2	5	3.0	5	3.6	10	3.9	41
Andy Hemenway	4.0	2	3.8	6	3.8	10	4.0	16	3.7	42
Stacie L. Kraly	3.8	6	3.9	15	3.9	16	3.7	19	3.6	39
Keith B. Levy	4.2	10	4.4	8	4.6	12	4.5	22	4.3	69
Philip M. Pallenberg	4.2	9	4.2	10	4.3	16	4.3	28	4.1	58

Note: Ratings for only those respondents with direct professional experience with the applicant.

Table 15
Keith B. Levy: Detailed Information on Responses

Applicant Keith B. Levy was evaluated by 140 ABA members on at least one variable, based on their direct professional experience with him. The ratings received by this candidate were as follows: *Professional Competence* (4.4), *Integrity* (4.5), *Fairness* (4.4), *Judicial Temperament* (4.4), *Suitability of Candidate's Experience for this Vacancy* (4.2), and *Overall Rating for this Position* (4.4).

	<i>Professional Competence</i>		<i>Integrity</i>		<i>Fairness</i>		<i>Judicial Temperament</i>		<i>Suitability of Experience</i>		<i>Overall Rating</i>	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
Basis for Evaluation												
No Response	4.5	2	4.0	2	4.0	2	4.0	2	4.5	2	4.0	2
Direct Professional	4.4	140	4.5	139	4.4	138	4.4	139	4.2	138	4.4	138
Professional Reputation	4.1	25	4.3	26	4.2	28	4.1	29	3.9	29	4.0	26
Other Personal Contacts	4.3	24	4.5	24	4.5	22	4.4	24	3.9	24	4.3	24
Type of Practice												
No Response	4.6	14	4.6	14	4.6	14	4.6	14	4.1	14	4.5	14
Private, Solo	4.4	23	4.3	23	4.4	23	4.3	23	4.2	22	4.3	23
Private, Office of 2-5	4.3	16	4.3	16	4.4	16	4.1	16	4.3	16	4.2	16
Private, Office of 6 or more	4.3	23	4.6	23	4.5	23	4.5	23	4.4	23	4.5	23
Private Corporate Employee	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1
State Judge or Judicial Officer	4.2	9	4.4	8	4.2	9	4.4	9	3.9	9	4.0	9
Government	4.4	45	4.6	45	4.3	44	4.4	44	4.0	44	4.4	44
Public Service Agy or Org	4.8	6	5.0	6	4.8	6	4.8	6	4.5	6	4.8	5
Other	5.0	3	5.0	3	5.0	2	4.7	3	4.3	3	5.0	3
Years of Practice in Alaska												
No Response	4.6	17	4.6	17	4.6	17	4.5	17	4.2	17	4.5	17
5 years or fewer	4.3	11	4.4	11	4.2	10	4.2	10	4.0	10	4.2	10
6 to 10 Years	4.4	8	4.5	8	4.4	8	4.5	8	4.1	8	4.4	8
11 to 15 Years	4.6	12	4.5	12	4.6	12	4.4	12	4.5	12	4.6	12
16 to 20 years	4.5	22	4.8	22	4.5	22	4.6	22	4.1	22	4.5	22
21 years or more	4.4	70	4.5	69	4.4	69	4.4	70	4.2	69	4.3	69
Gender												
No Response	4.6	17	4.6	17	4.6	16	4.5	17	4.1	17	4.5	17
Male	4.3	82	4.4	81	4.3	82	4.3	82	4.1	81	4.3	81
Female	4.6	41	4.7	41	4.6	40	4.6	40	4.4	40	4.6	40
Cases Handled												
No Response	4.6	14	4.6	14	4.6	14	4.5	14	4.1	14	4.4	14
Prosecution	4.7	3	4.7	3	4.5	2	4.5	2	4.5	2	4.5	2
Mainly Criminal	3.5	2	3.5	2	2.5	2	2.5	2	3.0	2	3.0	2
Mixed Criminal and Civil	4.1	27	4.3	27	4.1	27	4.3	27	3.7	27	4.0	27
Mainly Civil	4.5	92	4.6	91	4.5	91	4.5	92	4.4	91	4.5	91
Other	5.0	2	5.0	2	5.0	2	5.0	2	5.0	2	5.0	2
Location of Practice												
No Response	4.6	15	4.6	15	4.6	15	4.5	15	4.1	15	4.5	15
First District	4.4	73	4.5	73	4.3	72	4.3	73	4.2	73	4.3	73
Second District	4.0	1	5.0	1	5.0	1	5.0	1	4.0	1	5.0	1
Third District	4.5	47	4.6	46	4.5	46	4.5	46	4.3	45	4.5	46
Fourth District	4.5	4	4.5	4	4.3	4	4.3	4	4.0	4	4.0	3
Outside Alaska	--	0	--	0	--	0	--	0	--	0	--	0
Amount of Experience												
No Response	4.5	13	4.5	13	4.5	13	4.5	13	4.4	13	4.5	13
Substantial and Recent	4.5	73	4.5	73	4.4	73	4.5	73	4.2	73	4.4	72
Moderate	4.4	34	4.6	34	4.5	33	4.5	34	4.3	34	4.5	34
Limited	4.2	20	4.5	19	4.3	19	4.2	19	4.0	18	4.1	19

NOTE: Ratings for only those respondents who reported direct professional experience with the candidate.



alaska judicial council

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CHAIR, EX OFFICIO
Dana Fabe
Chief Justice
Supreme Court

April 15, 2009

Re: Alaska Supreme Court

Dear Member of the Alaska Bar Association:

The Alaska Judicial Council is seeking applicants for a position on the **Alaska Supreme Court** created by the forthcoming retirement of Justice Robert L. Eastaugh on November 2, 2009. This letter provides essential information about the position and the application deadline. For more information, please contact the Judicial Council at 279-2526, or by e-mail at lcohn@ajc.state.ak.us.

Alaska judges must conform their conduct to the Alaska Code of Judicial Conduct and the laws of Alaska and the United States. They must be familiar with Alaska law, procedure, and trial practice. A supreme court justice must meet the qualifications set out at AS 22.05.070. He or she must: be a citizen of the United States and of the State of Alaska; be a resident of Alaska for five years immediately preceding appointment; have engaged in the active practice of law, as defined in AS 22.05.070, for not less than eight years immediately preceding appointment; and must be licensed to practice law in Alaska at the time of appointment.

The annual salary of a supreme court justice is \$179,520. Justices also receive personal leave as established by the Administrative Rules of Court, state-paid health and dental benefits, and judicial retirement system benefits.

An application form for this position may be obtained by writing or calling the Alaska Judicial Council. Application forms may also be obtained on-line by visiting the Council's Internet site: www.ajc.state.ak.us. Completed applications for this position must be received by the Alaska Judicial Council no later than **3:00 p.m., May 15, 2009**.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Cohn".

Larry Cohn
Executive Director

(Over: Alaska Supreme Court Position Description)

APPENDIX D

Judicial Position Description Alaska Supreme Court

Five justices sit on the Alaska Supreme Court. The Alaska Supreme Court has final appellate jurisdiction in all Alaska state court proceedings. The supreme court hears civil appeals, including administrative appeals from the superior court, as a matter of right and criminal appeals from the Alaska Court of Appeals upon grant of petition. The court hears judicial discipline appeals from the Alaska Commission on Judicial Conduct and attorney application and discipline cases from the Alaska Bar Association. The court may, upon its discretion, decide questions of state law certified from the federal courts. The court also promulgates the Alaska Rules of Court and administers the Alaska Court System. According to the Alaska Court System's fiscal year 2007 annual report, 413 cases were filed in the Alaska Supreme Court, including 221 civil appeals, 101 petitions for hearing, 67 petitions for review, and 24 other cases.

Each supreme court justice is assisted by and is responsible for the supervision of three law clerks and a secretary. The supreme court hears cases monthly in Anchorage and Fairbanks, semi-annually in Juneau, and as needed in other Alaskan communities.

The principal office of the supreme court is in Anchorage. A supreme court justice may maintain an office at a place other than the principal office as designated by order of the court or of the chief justice. Justices residing in a location other than Anchorage must be prepared to travel frequently to Anchorage for oral arguments and court meetings. Justices residing in Anchorage regularly travel to hear cases in Juneau and Fairbanks. Justices may travel to hear cases in other locations. Justices may be assigned to other courts as needed.

Supreme court justices must have excellent communication skills, both oral and written. They must be capable of a very high level of analytical reasoning. They must possess unimpaired judgment at all times. They must thoroughly evaluate briefs, motions and arguments and render decisions in a timely and even-handed manner. Justices must treat colleagues, parties, attorneys, employees, and the public with fairness, courtesy, and respect. They must work effectively under pressure. Justices must be familiar with Alaska law, procedure, and precedent. Justices must conform their conduct to the Code of Judicial Conduct and to the laws of the State of Alaska and the United States. Justices often must sit (or stand) at a desk or bench for prolonged periods of time.

Supreme court justices stand for retention at the first general election more than three years after initial appointment and every ten years thereafter. The annual salary of a supreme court justice is \$179,520.