



Judicial Selection Reform

The Alaska Judicial Council is authorized by Article IV, Section 8 of the state constitution. The Council currently has seven members: three attorney members, appointed by the Alaska Bar Association (ABA); three non-attorney members (“public members”) who are appointed by the Governor and confirmed by the Legislature. The Chief Justice of the Supreme Court serves as the 7th member – but votes only when it changes the outcome, such as to break a 3 to 3 tie among the other 6 members of the Council.

When a vacancy occurs on a court, those who wish to serve as a judge or justice must first apply to the Judicial Council. Only those applicants who can secure at least 4 “yes” votes from Council members can have their names submitted for the Governor’s review. The Governor makes the final decision, but the list of choices submitted for the Governor’s consideration is typically meager – often just two names.

The Council has come under increasing criticism for the fact that a majority of its members (i.e., those who are members of the Alaska Bar Association) are not accountable to any elected official in government – i.e., the Governor or the Legislature. In just the last two years, there have been five occasions when all three public members on the Council supported nominating judicial applicants with outstanding qualifications; however, all the voting attorney members of the Council opposed these nominations, and the Chief Justice – also a dues-paying member of the Bar Association – voted with the attorneys to block these applicants from being considered by the Governor. Of these five cases, three of them occurred with nominations to the Alaska Supreme Court – the highest and most powerful judicial panel in the state.

When the Chief Justice votes in these situations it presents an obvious conflict of interest. By acting to prevent certain court applicants from even being reviewed by the Governor, the Chief Justice is directly helping pick who will serve with him or her on the Supreme Court. This obviously affects the balance of power on the Supreme Court, which in turn determines the judicial philosophy of the entire court system, since lower courts are bound by rulings of the Supreme Court.

Legislation introduced in the 28th Alaska Legislature – SJR 21 / HJR 33 – proposes to place before voters a proposed constitutional amendment that would double the number of public, non-attorney members on the Alaska Judicial Council from three to six, and require the attorney members to be confirmed by the Legislature.

Amending the constitution as proposed by SJR 21 & HJR 33 would result in more public involvement in the judicial selection process. It would also virtually eliminate the occasions where the Chief Justice would be voting to break tie votes among other Council members, thus eliminating the conflict of interest that is inherent whenever the Chief Justice is involved in picking judges.