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A Look at Judicial Selection in Alaska

Antonia Moras

An overview of the whole judicial selection and retention process in Alaska reveals a rather elegant balance of interests in the formal structure of the appointment process, with opportunities provided for participation by all three branches of government as well as the public. The framework was intentionally set up to avoid a politicized judiciary, with the Alaska Judicial Council established as an independent body bearing the pivotal responsibility for determining the makeup of the judiciary. Over the last several decades, the administration of the process by the Judicial Council has become very broadly based and transparent, with input on candidates solicited from many directions, in many forms.

Constitution

In delineating the general framework for the state's judicial branch within Article IV, the Alaska Constitution establishes the Judicial Council as the nominating body for judicial candidates, while also providing for the participation of all three branches of government at one or more points in the judicial appointment process.

The Judicial Council comprises three attorney members, to be named by the Board of Governors of the Alaska Bar; three non-attorney members, to be selected by the governor and approved by majority vote of the legislature in joint session; and the chief justice of the supreme court, serving as chair (Figure 1). Appointments to the Council are to be made with consideration for area representation and without regard to political affiliation. Attorney and non-

*Please see **Judicial selection**, page 7*

HIGHLIGHTS INSIDE THIS ISSUE

Figure 1. Selection of Alaska Judicial Council

Alaska Constitution, Article IV, Section 8

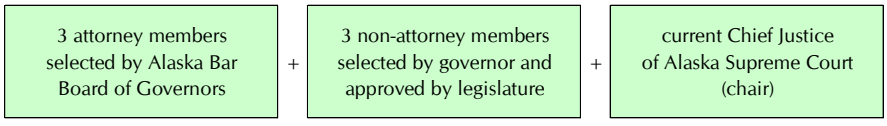
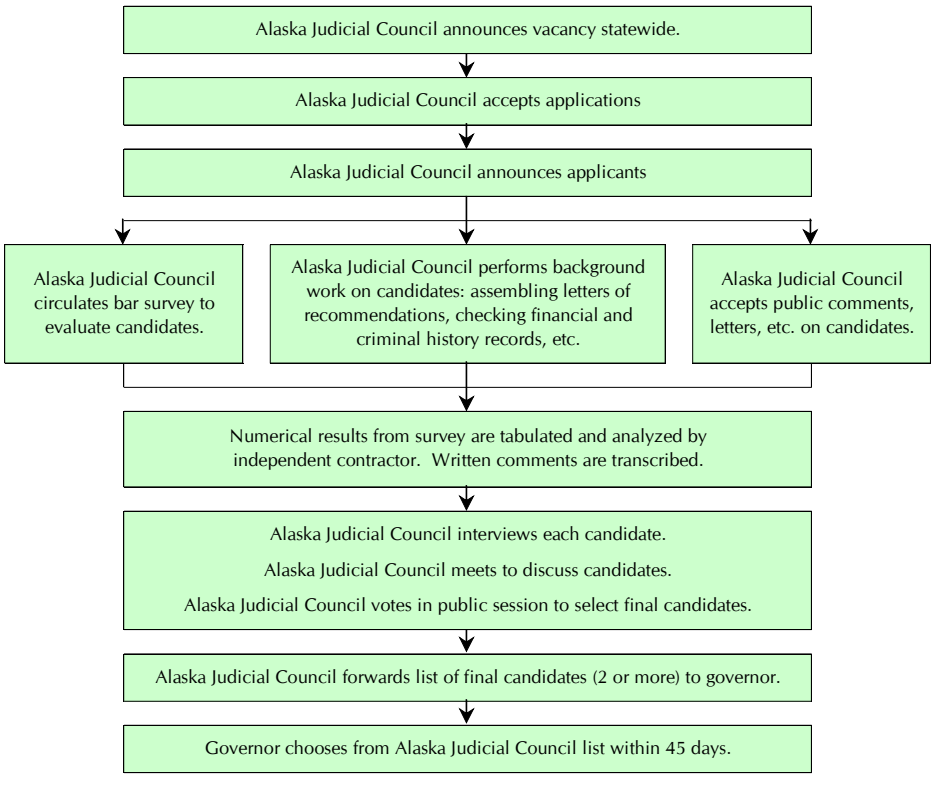


Figure 2. Alaska Judicial Selection Process

Alaska Constitution, Article IV, Sections 5 and 8



Civil Trial Outcomes in 2001

The Bureau of Justice Statistics has released figures showing a detailed picture of the realities of civil trial outcomes. Overall, the number of civil trials in the U.S. and the median jury trial award have decreased substantially since the early 1990s, and extremely large awards are made in very few cases. In the country's 75 largest counties—which contain a significant portion of the population—there were 22,451 civil trials in state courts of general jurisdiction in 1992 and only 11,908 in 2001 (Table 1). When adjusted for inflation, the median jury trial award in 1992 was $65,000; in 1996, $40,000, and in 2001, $37,000 (Table 2).

It is estimated that only three percent of all civil cases actually go to trial; most are settled before trial. In 2001, a jury decided almost 75 percent of tort, contract and real property trials (Table 3). Plaintiffs prevailed in 55 percent of the trial cases (Table 4), with punitive damages as well as compensatory damages awarded in 6 percent of these cases (Table 5).

As indicated in Table 5, the median amount awarded in 2001 was a modest $33,000, with only 6.8 percent of cases resulting in awards of $1 million or more.

Medical malpractice and product liability cases—particularly asbestos—showed the highest percentage of cases with large awards. Although the number of product liability and medical malpractice cases going to trial decreased between 1992 and 2001, as did all other case types, these two case types showed the strongest increase in award size. Together the two types of cases totaled only about 11 percent of all civil trials in 2001. Medical malpractice cases comprised just under 10 percent of civil trials and product liability cases were slightly over 1 percent of the total number of civil trials (Table 1). Plaintiffs won in 311 medical malpractice trial cases, with just below 30 percent of these plaintiffs receiving awards of $1 million or more. In product liability cases, plaintiffs prevailed in 70 trials, with 39 percent of these receiving total awards of $1 million or more.

The figures presented in this article were taken from Bureau of Justice Statistics Bulletin "Civil Trial Cases and Verdicts in Large Counties, 2001." NCJ 202803.

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Table 1. Number of Civil Trials Disposed of in State Courts in the Nation's 75 Largest Counties, 2001

Case type	Number of trials[a]	Percent of cases
All	**11,908**	**100.0 %**
Tort cases	**7,948**	**66.7 %**
Automobile	4,235	35.6
Premises liability	1,268	10.6
Product liability	158	1.3
Asbestos	31	0.3
Other	126	1.1
Intentional tort	375	3.1
Medical malpractice	1,156	9.7
Professional malpractice	102	0.9
Slander/libel	95	0.8
Animal attack	99	0.8
Conversion	27	0.2
False arrest, imprisonment	45	0.4
Other or unknown tort	390	3.3
Contract cases	**3,698**	**31.1 %**
Fraud	625	5.2
Seller plaintiff	1,208	10.1
Buyer plaintiff	793	6.7
Mortage foreclosure	22	0.2
Employment discrimination	166	1.4
Other employment dispute	287	2.4
Rental/lease	276	2.3
Tortious interference	138	1.2
Partnership dispute	40	0.3
Subrogation	69	0.6
Other or unknown contract	73	0.6
Real property cases	**262**	**2.2 %**
Eminent domain	52	0.4
Other real property[b]	210	1.8

Note: Data for case types were available for 100% of the 11,908 trial cases. Detail may not sum to total because of rounding.

a Trials include bench and jury trials, trials with a directed verdict, judgments notwithstanding a verdict, and jury trials for defaulted defendants.

b Includes title disputes, boundary disputes, and other real propery cases.

Source: *Bureau of Justice Statistics*

Table 2. Trends in Jury Trial Awards in State Courts in the Nation's 75 Largest Counties, 1992–2001

Case type	Median jury award amounts, adjusted for inflation, by year			Percent change, 1992–2001
	1992	1996	2001	
All trial cases	**$65,000**	**$40,000**	**$37,000**	**-43.1 % ***
All tort cases	**$64,000**	**$34,000**	**$28,000**	**-56.3 % ***
Selected case types				
Automobile	37,000	20,000	16,000	-56.8 *
Premises liability	74,000	64,000	61,000	-17.6
Product liability	140,000	373,000	543,000	287.9 *
Medical malpractice	253,000	287,000	431,000	70.4 *
All contract cases	**$70,000**	**$90,000**	**$81,000**	**15.7 %**
Selected case types				
Fraud	88,000	90,000	87,000	-1.1
Seller plaintiff	44,000	70,000	68,000	54.5
Buyer plaintiff	55,000	55,000	62,000	12.7
Employment	178,000	234,000	127,000	-28.7

Note: In 1992 there were two distinct data collection efforts for civil cases. The first project focused on all civil cases (trials, settlements, and dismissals) disposed in 1992, with no information on awards or punitive damages. In the second civil case project, BJS collected information on jury trials disposed in 1992, including both award and punitive damage data. Because award data were available for jury trials in 1992 and not for bench trials, this table includes only jury trial award data.

* 1992–2001 difference is significant at the 95%-confidence level.

Source: *Bureau of Justice Statistics*

Civil Cases in Alaska: 1999-2000

Teresa W. Carns

How are civil cases handled in Alaska? A report published by the Alaska Judicial Council in 2001 gives a snapshot of civil case data from June 1, 1999 through December 1, 2000—about one and one-half years. The data excluded all domestic relations, probate, and a variety of other cases classed as civil, to focus on personal injury (43% of the database), malpractice (3%), property damage (7%), debt (17%), and other business disputes (16%). The purpose of the analysis was to describe the characteristics of Alaska cases, and to provide a baseline of information about them for other research.

The Council's findings showed that most cases ended with a settlement. Another 18 percent were dismissed, and 16 percent ended with a default or other type of judgment, including a trial. However, the trial rate, including both jury and bench trials (about equal in numbers) was only 3.4 percent in 2000. This was similar to the national trial rate of 2.9 percent in 1995.

Tort cases went to jury trials more frequently than did other types of civil cases. Bench trials tended to have smaller judgment amounts than did jury trials—perhaps linked to differences in the types of cases that parties took to bench trials and jury trials. In all of the 83 trials included in the 2,591-case database, punitive damages were awarded in only eight cases, although they were requested in 17 percent of the cases filed. One award was required by statute.

The Council also looked at the judgment amounts, for all cases included in the report. For 20 percent of the cases the judgment amount was $0 (or the attorney did not provide the information). Fifty-six percent of

*Please see **Civil cases**, page 4*

Table 3. Comparing Bench and Jury Trials in State Courts in the Nation's 75 Largest Counties, 2001

Case type	Jury	Bench
How many civil trials were decided by a jury or judge?		
All cases	8,859	2,828 *
Who were the plaintiffs?[a]		
Individuals	91.2 %	56.5 % *
Businesses	8.0 %	41.5 % *
Who sued whom?[b]		
Indvidual v. individual	44.9 %	31.6 % *
Business v. business	5.5 %	26.6 % *
Who won?[c]		
Plaintiffs overall	52.6 %	65.1 % *
Plaintiffs in torts	50.7 %	64.7 % *
Plaintiffs in contracts	61.6 %	67.8 % *
How much?[d]		
Median award	$37,000	$28,000 *
In tort cases	$28,000	$23,000
In contract cases	$81,000	$30,000 *
What percentage of prevailing plaintiffs received awards of $1 million or more?		
All cases	8.4 %	2.6 % *
Tort cases	7.8 %	5.4 %
Contract cases	10.7 %	1.9 % *
What percentage of prevailing plaintiffs were awarded punitive damages?		
All cases	5.7 %	4.4 % *
How long did the cases last?[e]		
Median number of months	21.7 mos.	16.1 mos. *
Percent decided within 2 years	56.9 %	77.0 % *

Note: There were 221 other cases including directed verdicts, judgments notwithstanding the verdict, and jury trials for defaulted defendants that were not included in this table.

* Jury-bench difference is significant at the 95%-confident level.

a Data on plaintiff types were available for 99.5% of jury and 99.6% of bench trials.

b Data on litigant pairings were available for 99.3% of jury and 99.4% of bench trials.

c Data on plaintiff winners were available for 99.9% of jury and 99.8% of bench trials.

d There were a total of 4,603 jury and 1,792 bench trials where the plaintiff won an award. Award data were available for 99.4% of jury and 99.1% of bench trials.

e Case processing time data were available for 99.9% of jury and bench trials.

Source: *Bureau of Justice Statistics*

Table 4. Plaintiff Winners in State Courts in the Nation's 75 Largest Counties, 2001

Case type	Total number of trials	Percent with plaintiff winners[a]
All trial cases[b]	**11,681**	**55.4 %**
Tort cases	**7,798**	**51.6 %**
Automobile	4,121	61.2
Premises liability	1,260	42.0
Product liability	154	44.2
Asbestos	30	60.0
Other	124	40.3
Intentional tort	366	56.8
Medical malpractice	1,149	26.8
Professional malpractice	99	52.5
Slander/libel	94	41.5
Animal attack	99	66.7
Conversion	28	46.4
False arrest, imprisonment	45	42.2
Other or unknown tort	383	50.9
Contract cases	**3,625**	**64.8 %**
Fraud	602	58.3
Seller plaintiff	1,196	76.8
Buyer plaintiff	779	61.5
Mortage foreclosure	22	72.7
Employment discrimination	160	43.8
Other employment dispute	282	55.7
Rental/lease	276	64.9
Tortious interference	133	57.9
Partnership dispute	41	46.3
Subrogation	61	67.2
Other or unknown contract	73	56.2
Real property cases	**258**	**37.6 %**
Eminent domain	49	40.8
Other real property[c]	209	36.8

Note: Data on plaintiff winners were available for 99.9% of trials. Detail may not sum to total because of rounding.

a Excludes bifurcated trials where the plaintiff only litigated the damage claim. There were 216 trials where only the damage claim was litigated.

b Trial cases included bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdicts, and jury trials

c Includes title disputes, boundary disputes, and other real property cases.

Source: *Bureau of Justice Statistics*

Civil cases
(continued from page 4)

the cases involved amounts less than $20,000, and 75 percent of the cases involved amounts less than $50,000. At the time of the report, district court jurisdiction was $50,000, meaning that although most cases were filed in superior court, most concerned amounts that would have qualified them for district court handling. Only 75 cases in the nearly 3,000 reviewed had judgment amounts of $500,000 or more.

The report included information about the use of alternative dispute resolution (ADR) in civil cases. The Council found that attorneys used mediation more frequently than arbitration, settlement conferences or early neutral evaluation. Early neutral evaluation was used in personal injury auto cases (5% of those cases), as were settlement conferences (10% of those cases) and mediation (13%). Mediation was used in 21 percent of malpractice cases, 18 percent of personal injury premises cases and 14 percent of personal injury or other product liability cases. The larger the case, the more likely it was to have been settled by an ADR technique. The ADR technique used also depended on the size of the case, as judged by the amount of attorney fees and the amount of the settlement: the larger the case, the more likely it was that some form of ADR had been used. Mediation, in particular, was associated with the largest cases

The report looked to see the relationship between cases and liability insurance. Over three-quarters of personal injury auto and premises cases involved liability insurance. Smaller percentages of personal injury other, product liability and malpractice cases (around 40%) had liability insurance. For other types of cases, fewer than one-quarter were insured.

*The report **Alaska Civil Cases June 1999–December 2000**, can be downloaded from the Judicial Council web site, at www.ajc.state.ak.us.*

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Table 5. Plaintiff Award Winners and Punitive Damage Awards in State Courts in the Nation's 75 Largest Counties, 2001

	Trial cases with a plaintiff winner[a]					Punitive damage awards (only) in plaintiff winner cases[b]				
	Number of all trial cases with a plaintiff winner[c]	Total final amount awarded to plaintiff winners (includes both compensatory and punitive damages)		Percent of plaintiff winner cases with final awards —		Number awarded punitive damages[a]	Amount of punitive damages awarded		Number of cases with punitive damages —	
Case type		Total	Median	Over $250,000	$1 million or more		Total	Median	Over $250,000	$1 million or more
All trial cases[d]	**6,487** *	**$4,346,072,000**	**$33,000**	**18.3 %**	**6.8 %**	**356**	**$1,221,877,000**	**$50,000**	**81**	**41**
Tort cases	**4,069**	**$2,299,957,000**	**$27,000**	**18.8 %**	**7.7 %**	**217**	**$367,149,000**	**$25,000**	**45**	**23**
Automobile	2,565	526,435,000	16,000	8.6	2.8	54	48,578,000	5,000	9	7
Premises liability	522	400,653,000	59,000	22.9	9.1	8	646,000	33,000	—	—
Product liability	70	199,153,000	450,000	64.6	39.1	3	1,077,000	433,000	2	—
Asbestos	19	86,275,000	1,650,000	90.7	59.7	2	900,000	500,000	2	—
Other	51	112,878,000	311,000	54.7	31.4	1	177,000	177,000 **	—	—
Intentional tort	214	128,428,000	37,000	25.4	16.3	78	32,653,000	16,000	16	9
Medical malpractice	311	600,746,000	422,000	66.1	29.7	15	115,577,000	187,000	4	2
Professional malpractice	51	43,108,000	93,000	30.6	13.9	7	117,000	1,000	—	—
Slander/libel	39	17,067,000	121,000	39.6	6.0	23	3,771,000	77,000	4	—
Animal attack	66	6,741,000	18,000	11.7	—	6	391,000	68,000	—	—
Conversion	13	926,000	23,000	—	—	3	289,000	100,000	—	—
False arrest, imprisonment	19	2,185,000	30,000	14.6	—	5	202,000	8,000	—	—
Other or unknown tort	199	374,514,000	106,000	39.9	15.5	16	163,849,000	470,000	11	4
Contract cases	**2,369**	**$2,043,211,000**	**$45,000**	**17.7 %**	**5.4 %**	**138**	**$854,658,000**	**$83,000**	**36**	**18**
Fraud	358	768,506,000	81,000	30.2	12.0	60	368,992,000	63,000	11	5
Seller plaintiff	925	165,336,000	34,000	10.5	2.9	9	484,000	4,000	—	—
Buyer plaintiff	477	130,585,000	45,000	17.7	4.8	16	16,509,000	275,000	9	3
Mortage foreclosure	13	2,731,000	70,000	13.6	13.6	—	—	—	—	—
Employment discrimination	73	44,913,000	166,000	39.4	14.4	13	13,552,000	606,000	9	5
Other employment dispute	162	265,939,000	78,000	23.8	4.8	16	3,949,000	151,000	2	1
Rental/lease	176	24,112,000	20,000	11.9	2.6	9	2,282,000	15,000	2	2
Tortious interference	83	580,211,000	94,000	30.7	6.9	9	431,981,000	83,000	3	1
Partnership dispute	19	52,462,000	97,000	41.8	12.8	4	16,909,000	186,000	1	1
Subrogation	44	2,047,000	8,000	4.1	—	—	—	—	—	—
Other or unknown contract	41	6,369,000	22,000	13.9	7.1	2	1,000	1,000	—	—
Real property cases[e]	**49**	**$2,904,000**	**$15,000**	**6.1 %**	—	**1**	**$70,000**	**$70,000 ****	—	—

* The number of plaintiffs awarded damages may differ from the number calculated from the percentage of plaintiffs who successfully litigated the case (Table 4). Missing award data, the fact that in some cases plaintiff winners receive nothing because of award reductions, and the inclusion of plaintiff winners receive nothing because of award reductions, and the inclusion of plaintiff winners in bifurcated damage trials (a group excluded from Table 4) account for some of this difference.

** Not median but the actual amount awarded.

a Data for case type and final awards were available for 99.3% of all plaintiff winners. Award data were rounded to the nearest thousand. Final award amount includes both compensatory (reduced for contributory negligence) and punitive damage awards. Detail may not sum to total because of rounding.

b There was a total of 364 cases in which a punitive damage claim was awarded. In 356 of these cases, the punitive award went to the plaintiff and in 8 cases the punitive award went to the defendant on a counterclaim. In this study, cases are classified by the primary case type, though many cases involve multiple claims (that is, contract and tort). Under laws in almost all states, only tort claims qualify for punitive damages. If contract or real property cases involved punitive damages, it involved a related tort claim. Detail may not sum to total because of rounding. Award data were rounded to the nearest thousand.

c Excludes bifurcated trials where the plaintiff won on only the liability claim. Bifurcated trials involving only damage claims, however, have been included.

d The number of trials includes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

e Eminent domain cases are not calculated among final awards because there is almost always an award; the issue is how much the defendant (whose property is being condemned) will receive for the property.

Source: *Bureau of Justice Statistics*

Gender Equality in Justice Professions

Pamela Kelley

The issue of gender equality in the justice system continues to be evolve, but is still relevant in the eyes of the bench, bar, paralegals and students, as is shown in a second discussion at UAA cosponsored by the Alaska Bar Association's Gender Equality Section, the UAA Justice Center and the Women's Studies Program.

A panel moderated by Alaska Supreme Court Justice Dana Fabe convened on campus in early November to identify and deconstruct stereotypes encountered in the legal profession. Panelists included: Marla Greenstein, Executive Director of the Alaska Commission on Judicial Conduct; Robert Bundy, partner with Dorsey & Whitney; Toni Jones, paralegal with Dorsey & Whitney; Steven Van Goor, bar counsel with the Alaska Bar Association; Pamela R. Kelley, Assistant Professor of Justice with UAA; and Echo Oliver, a UAA Justice major earning a paralegal certificate within her degree program.

The presentation began with a video clip demonstrating how the use of language reinforces stereotypes connoting inequality. The video, dating from the mid-1980s, showed scenes common in some panelists' experiences—as they reported in a prescreening. Here, the relative age of the panelist made an important difference in the experiences and reactions they reported.

One panelist, Toni Jones, recounted how early in her career she was implicitly but strongly discouraged from childbearing so long as she wanted or needed to keep working.

"In my experience, once you were pregnant you could not continue working—or at least working for very long," she said. "It just wasn't part of our culture then." The commercial world did not face discrimination claims under statutes in effect at the time. So forty years ago, according to Ms. Jones, women deferred childbearing, quit their jobs, or were fired.

Her recollections contrasted sharply with the experiences encountered by the youngest panelist. Echo Oliver, a UAA Justice major who served her paralegal internship at the U.S. Attorney's office and now works there, described coworkers who are aware of the existence of rights against discrimination in the workplace. She described young women peers for whom taking a discrimination claim to a supervisor would be, to use Ms. Jones' terms, "part of our culture." The empowerment principle displayed over the passage of time, from 1960 to today, was illustrated in that exchange. Ms. Oliver and her female peers, she reports, are well aware that discrimination based on pregnancy or status as a parent is unlawful.

Yet gender equality, while requiring empowerment of the disadvantaged gender, is more than statutory changes and widespread knowledge of those changes and the resulting corresponding rights. Sensitivity to stereotyping is necessary before its connotations of inequality can be made plain.

Justice Fabe elicited examples from each panelist regarding how the use of stereotyping surfaced in her professional life. Examples included an instance in which counsel used titles (e.g., officer) for male witnesses, but omitted titles for female witnesses of the same rank. Another pointed out how corrective measures used to maintain control of counsel in court proceedings elicited complaints describing female judges as "shrill" and "unprofessional," when the same measures taken under the same circumstances by men would have elicited no complaint.

The November presentation was the second this year. It was made primarily to an audience of Sociology students enrolled in "Men, Women & Change." The earlier presentation was made primarily to an audience of Justice and Paralegal students enrolled in "Justice and Society." The only panelists who participated in both presentations were Marla Greenstein and Steve Van Goor.

The presentations differed slightly. Ms. Greenstein, the executive director of the Alaska Commission on Judicial Conduct, noticed that there were both male and female students on the earlier panel. In her opinion, the balance made for more immediate experiences for the audience to consider and heightened their participation. In contrast, she described the November presentation as more focused on panel remarks than on the students' input. During this presentation, a sense of historical movement toward gender equality was clearer—from the video depictions circa 1986, to the stories recounted by legal professionals with experiences over decades, to students beginning careers today.

As noted by panelist Robert Bundy, "The panel consisted of a wide variety of professionals, some with over 30 years dedicated to working on improvements to and issues of equality within our profession and the legal system."

Students asked questions that clearly challenged the panel's conception of gender equality in the legal system. One student simply asked: *What approach has the legal profession taken to gender equality for gay, lesbian and transgendered participants in the system?* The long pause revealed that "gender equality" had been discussed by the panel as though "gender equality" was synonymous with "equality of the sexes."

Steven J. Van Goor, Bar Counsel for the Alaska Bar Association, pointed out that the American Bar Association's Ethics 2000 Amendments to the Model Rules of Professional Conduct may be an early signal that lawyer misconduct by definition is being broadened to encompass bias based on sexual or gender orientation. Changes in the comments to the rule may be an indication that gender equality as more expansively defined has made inroads with the professional bar associations.

Rule 8.4 in the Ethics 2000 Amendments to the Model Rules adds the following language:

> It is professional misconduct for a lawyer to: . . . (d) engage in conduct that is prejudicial to the administration of justice.

The Official Comment to the Amended Rule provides:

> A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. (Model Rules of Professional Conduct Rule 8.4 cmt . 4, 2000)

The work of the Alaska Bar Association's Gender Equality task force will continue.

Pamela Kelley is an Assistant Professor with the Justice Center.

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Happy Holidays &

Best Wishes for 2005

from the Justice Center.

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Recruiting and Retaining Volunteers in Alaska Justice Agencies

André B. Rosay

Since volunteers and interns are now integral to many agencies in Alaska, recruiting and maintaining qualified volunteers is necessary for programs to be effective. This is the case for youth courts. Youth courts are specialized pre-adjudication programs that divert first-time nonviolent juvenile offenders away from the formal juvenile justice system. With the exception of program directors and limited staff, youth courts are operated by volunteers who act as prosecutors, defense attorneys, judges, and bailiffs. Consequently, the effectiveness of a youth court is dependent upon its ability to recruit and maintain volunteers. To assess how to improve volunteer recruitment and sustainability in youth courts, we conducted three simultaneous focus groups with a total of 22 youth court volunteers. During these focus groups, we asked volunteers about ways to improve recruitment and sustainability. Many of the results from this evaluation are relevant for any agency that seeks to recruit and maintain skilled volunteers and interns. In this short article, we summarize some of our findings.

We began our focus groups by asking participants why they had originally decided to volunteer for youth court. Youths generally indicated a strong interest in juvenile justice which had developed from peer, family, and media influences. More specifically, participants joined youth court because their peers either came into contact with the formal juvenile justice system or were already volunteering with youth courts. Some youths decided to join because their parents were employed by the criminal justice system. Others were convinced by their parents that it would be a good idea, particularly to prepare for college applications. Finally, there is no doubt that recent television shows have stimulated youths' interest in the justice system. Unfortunately, many of these youths became disillusioned once they realized that youth courts were not like television shows. A persistent issue that arose in all focus groups is that youths' perceptions of youth court were generally inaccurate. As a result, many youths became disenchanted with their volunteer experience and decided to quit. In order to successfully recruit and maintain volunteers, youth courts should provide each potential volunteer with a better understanding of youth courts.

We suspect that the same is true for most justice agencies. Individuals who decide to volunteer for an agency will do so because of an interest in justice that has developed from peer, family, and media influences. In addition, students are routinely encouraged by their teachers and professors to seek volunteer opportunities. However, little is told to them about the details of such opportunities and in some cases, these volunteer opportunities may be grossly misunderstood. Misconceptions will be the leading cause of volunteer attrition. To solve this problem, agencies should provide a clear understanding of the volunteers' roles and responsibilities before accepting volunteers. Training and orientation sessions can be an effective way to clear up such misconceptions.

This did not occur with youth courts. Focus group participants unanimously agreed that their training course should be revised. First, youths complained that the course was not directly relevant to the types of cases that they would hear. For example, youths complained that discussions of criminal intent were focused on murder, a charge that clearly would never appear in youth courts. Second, and partly as a result of irrelevant examples, many youths complained that they had no idea what youth courts were about until they participated on real cases. Finally, some youths had not participated in mock cases as part of their training session and others complained that mock cases occurred too late in the training. Overall, it is clear that their training course should be revised. In doing so, revisions should (1) eliminate irrelevant examples and (2) ensure that all youths participate in mock cases throughout the training course. By achieving these two goals, misconceptions about youth courts should be greatly reduced and volunteer sustainability should improve.

We suspect that most justice agencies could benefit from revisions in their orientation and training courses. Too often these courses will dramatize routine business in order to excite and entice potential volunteers. After all, a course on murder is far more interesting and exciting than a course on shoplifting. Unfortunately, these dramatic examples only amplify potential volunteers' misconceptions, and inevitably these volunteers will become dissatisfied once they realize that their actual experiences will be far less dramatic and exciting. In order to improve sustainability, all agencies should exclude dramatic examples from their orientation and training courses and should instead provide a more realistic description of what the volunteers will do. Although doing so should increase volunteer sustainability, it may decrease volunteer recruitment.

To improve volunteer recruitment, our focus group participants believed that additional publicity was required. Although youths believed that youth courts are well known in their communities, they also believed that few youths actually know how to get involved. To inform youths about how to get involved, focus group participants suggested that publicity about youth courts should more specifically describe how youths can get involved. Focus group participants understood their role in promoting youth courts and in explaining to their peers how to get involved. In addition, youths believed that additional publicity in the media and schools would be worthwhile.

We again suspect that the same is true for most justice agencies. Volunteer recruitment should be amplified by additional publicity in media and schools. Though most potential volunteers know about justice agencies, they will often have grave misconceptions about these agencies and will generally not know what volunteer opportunities are available or how to apply for them.

Once successful volunteers have been recruited, the best way to keep them will be to offer tangible incentives. Focus group participants thought it was important to increase incentives to enhance volunteer sustainability. More specifically, they thought it was important to clearly base tangible incentives on the number of hours each youth had volunteered. A reward system should be developed in youth courts so that the number and quality of rewards increase as youths' involvement in youth courts increases. Tangible rewards identified by youths as valuable included sweatshirts, jackets, presidential awards, gavels, and plaques. These rewards should be more clearly linked to the number of hours each youth has volunteered than they currently are. Finally, youths believed that volunteer sustainability could be improved by adding fun non-court activities such as parties and picnics.

Overall, the results from our evaluation suggest that volunteer recruitment and sustainability can be improved if agencies (1) publicize volunteer opportunities, (2) clearly state how to apply for these volunteer positions, (3) provide an accurate description of the volunteer position, and (4) reward volunteers with tangible incentives.

Although these results were specific to youth courts in Alaska, there is no reason to believe that these results would not generalize to other agencies.

This project was funded through a University of Alaska Anchorage Center for Community Engagement & Learning grant from the Corporation for National and Community Service Learn-and-Serve. The full report is available on the National Youth Court Center website at www.youthcourt.net.

André Rosay is an assistant professor with the Justice Center.

Judicial selection
(continued from page 1)

attorney members serve six-year staggered terms, while the chief justice serves during the three years of his tenure in that position on the supreme court.

The constitution requires that the governor appoint a judge from a list of two or more candidates selected by the Judicial Council, and it further requires that judges stand periodically for retention in non-partisan general elections, providing the electorate with an opportunity to express its approval or disapproval of a judge's performance.

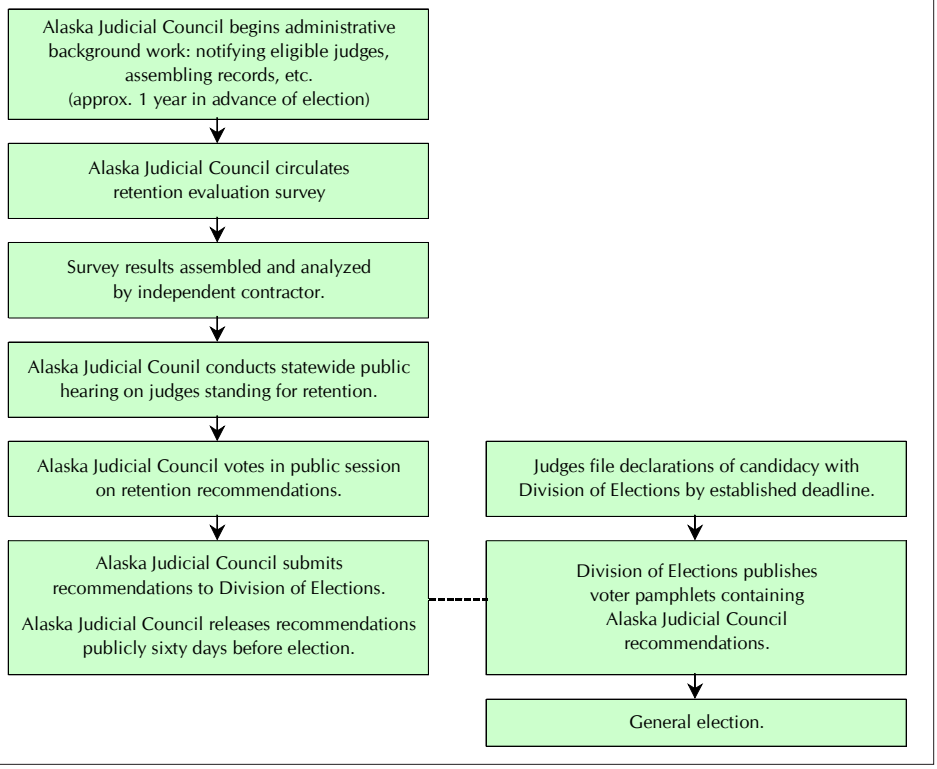
The minutes of the constitutional convention reveal that the drafters of the document wished to avoid either a system dominated by partisan appointees or a judiciary involved in election politics. They also wanted to forestall the establishment of an entrenched judiciary beyond the reach of community opinion.

Selection Process

Figure 2 presents the main steps in the judicial selection process. Much, although not all, of the process is open to observation by anyone, and the Judicial Council vote selecting final candidates is taken in public session. The process draws in evaluative material from all Alaska Bar members who choose to participate, as well as from members of the public, who may submit letters and comments to the Council. In addition to assembling evaluative material from a spectrum of sources, the Council also assesses a writing sample submitted by the candidate and conducts a thorough background check—examining credit and financial history, any criminal history records, and professional history: the type of background check commonly performed for many government positions.

The Judicial Council's process has evolved over time, primarily by broadening the base from which information about a candidate's qualifications and suitability is drawn and by becoming more open to observers. The emphasis in selecting final candidates is on professional qualifications and personal suitability to the role of judge. This purpose directs the evaluation of the material assembled on the candidates.

Figure 3. Alaska Judicial Retention Election Process
Alaska Constitution, Article IV, Sections 6, 7, 8



Bar Survey

The most elaborate tool used in evaluating candidates is the bar poll. This is a written survey sent to all members of the Alaska Bar. Respondents rate each candidate on a five-point scale according to the categories of professional competence, integrity, fairness, judicial temperament, and suitability of experience and also assign an overall score.

Each respondent indicates the basis of his or her evaluation of a candidate—whether it stems from direct professional experience, professional reputation or social contacts. While all numerical results are tabulated and available for review by anyone, the Council uses only the numerical results from those with direct professional experience in its evaluation.

The survey also collects background information on survey respondents: type of practice, years of practice, judicial district, gender, age and so on. The Council releases all numerical data on both candidates and survey respondents to the public—primarily through its website. It is possible to learn, among other things, how many bar members in each district evaluated a given candidate, what the average scores for each candidate were, and what the overall score was.

In addition to the quantitative evaluation, bar poll respondents also may submit written comments on a candidate's suitability—either anonymously or signed. The Judicial Council reviews these comments and discusses them with the candidate but they are not released to the public.

According to numbers assembled informally by the Council, bar survey responses have ranged from a low of around twenty percent to a high of around forty percent, with the average in the high twenty percentile range, with rates for the district containing the vacancy usually substantially higher than those for the other districts.

The results of the bar poll are a major component in the Judicial Council's evaluation of a candidate but, as Figure 2 shows, not the only one. After interviewing each

*Please see **Judicial selection**, page 8*

Judicial selection
(continued from page 7)

candidate, the Council as a whole meets and discusses all of the material available on each candidate and eventually votes in open session.

The Constitution requires the Council to forward the names of at least two nominees to the governor, but in practice the length of the final list varies. According to Council records, it has been as large as thirteen—when there were several Anchorage superior court vacancies—and as many as nine names for just one position have been sent to the governor. It has also happened that the Council decided against forwarding the names of any candidates and reopened the application process.

Along with the names of the final nominees, the governor receives the entire contents of a candidate's application, the public portion of the bar survey, and any confidential material released by the nominee, including reference letters sent to the Judicial Council. The Constitution requires the governor to select from the list within forty-five days. There are no other requirements associated with the governor's final selection, although some governors interview final nominees. The public is free to communicate with the governor's office at this or any other stage.

Retention Election

One of the intents of the participants in the constitutional convention was to avoid an entrenched judiciary, such as can evolve with lifetime appointments—as in the federal system. Participants also wanted to avoid having the judges involved in political elections. The compromise was to require that each judge stand for retention in a non-partisan election held after various periods of service (Figure 3). These non-partisan retention elections are conducted as part of the state general elections.

The Judicial Council also has a role in the retention election process: it makes recommendations for or against retention; releases these recommendations publicly; and sends them to the Division of Elections by a prescribed date.

To a great extent, the process for retention election parallels that for selection—as discussed above. The most significant difference is that to evaluate a judge's suitability for retention in the position the Council seeks direct input from an even wider spectrum of sources. The retention election survey is sent not just to bar members but also to other groups who have had the most opportunity to work with and observe a judge—police and probation officers, guardians ad litem, CASA volunteers, social workers, and court employees—although not all of these groups complete all portions of the survey. Jurors who have sat on cases before a judge can also contribute evaluations. Again, the Council releases numerical results from the survey to the public.

The background work done by the Council includes, among other things, looking into peremptory challenge numbers and appellate confirmation rates.

The Council also holds a statewide public hearing to elicit public comments on the candidates, and it considers the information assembled by independent volunteer organizations, such as Alaska Judicial Observers, which evaluate the courtroom work of the judges.

The Council votes in open session on whether to recommend retention. In the years since statehood, the Judicial Council has recommended against the retention of a handful of candidates—with at least one still being retained in the general election.

The responsibility for the actual conduct of the retention election lies with the Division of Elections, which publishes the Judicial Council recommendations and supplementary materials in its voter's pamphlet. Judges standing for retention election must formally declare their candidacy with the Division by a prescribed date: this is a requirement separate from the Judicial Council process.

Retention elections are non-partisan: judges cannot campaign and there is no competition for a given position. Judges are, however, permitted to respond publicly to challenges mounted against them preceding the election.

Criticism

During the controversy that arose earlier this year around judicial selection, there were a number of concerns voiced about the process. Some of these questioned the framework as established by the Constitution; others criticized the actual process more directly. Some comments were made—in the press and in the legislative hearings conducted—regarding a lack of transparency in the selection process. In reality, while some aspects of the selection process and some of the material collected on a candidate are kept confidential, this seems to be a well-ventilated process overall—particularly when seen against that of other states, some of which do not even make the identities of candidates known. (See accompanying article, "Judicial Selection in the U.S.") The Judicial Council uses a variety of means to publicize and facilitate its process—primarily print media and the internet, but also mailings and broadcast media—and the public has multiple opportunities for participation.

The Council itself was criticized for its political and philosophical bias, but the criticism seems unfounded when the basis for the composition of the Council is examined: given the means of appointment and the length of term of the various members and the appointing agents, no particular political or philosophical approach can dominate its membership for very long.

It was also asked if the selection process might be intimidating to applicants. It is a fact that the procedures are undeniably lengthy and in-depth, but it is hard to see how the process could be otherwise and still permit a thorough examination of a candidate's background and qualifications.

Another thread in the public discussion concerned the term *most-qualified*. The Judicial Council's bylaws require it to send to the governor the names of the *most-qualified* applicants—rather than just all *qualified* applicants. This requirement actually can work to make the final list longer than two names. In adopting this bylaw, the Council was acting in accordance with its role as established within the Constitution to carry the weight of the selection responsibility. A mostly semantic discussion also questioned the definition of the term *most-qualified*. In practice, the Judicial Council does not set specific numbers or a specific list of background qualifications—beyond the minimum required by law—when it begins to consider candidates for a position. Its practice is holistic: it looks at the entire pool of candidates for a particular position, examining each candidate in-depth.

Research

The Council itself has conducted some research on its own procedures on a sporadic basis, often in response to requests for data from the legislature. It also published a more thorough statistical look at the selection and retention processes and results in 1999: "Fostering Judicial Excellence: A Profile of Alaska's Judicial Applicants and Judges." This study of data on candidates and judges looked statistically at the education, legal experience and personal characteristics of those who had applied for judgeships since 1984. The findings showed that bar survey scores and other survey-related variables were the variables most likely to be related to the nomination and appointment of applicants, with those scoring higher on the bar poll *statistically* more likely to be nominated and to a lesser extent, appointed. Writing ability, as assessed by the Council through a

Websites and Other References Relevant to Questions of Judicial Selection

The Alaska Judicial Council's website (www.ajc.state.ak.us) provides information about judicial selection and retention in Alaska, including announcements of current judicial vacancies and a historical log of judicial appointments since Alaska statehood in 1959. The website also makes available reports on Judicial Council research on justice administration in Alaska.

The American Judicature Society (AJS), mentioned in the accompanying article, "Judicial Selection in the U.S.," is a non-profit organization established in 1910 to maintain the integrity and independence of the courts and ensure public understanding of the courts. Its website (www.ajs.org) covers judicial selection processes throughout the country, legislation relative to the courts, and other court-related issues.

The State Justice Institute (SJI), a federally-funded granting institute, conducts studies on a wide range of court-related issues. Its website (www.statejustice.org) provides access to funded projects. The Alaska Court System has resumed over three-quarters of a million dollars from SJI for projects.

The National Center of State Courts (NCSC) collects statistics, conducts research and provides assistance to state courts, particularly in the area of administration. Its website (www.ncsconline.com) provides an extensive overview of its work and access to its research, publications and other projects and services.

candidate's writing sample, also showed a relationship to selection, with higher writing scores associated with nomination and appointment.

The study examined the performance of judges, as measured by their evaluation surveys and the votes received for retention in the general elections. The statistical analysis of retention surveys and election results suggested relatively high levels of public approval of judicial performance. Moreover, judges who had received relatively high scores initially on the selection poll tended to receive high scores later on retention surveys, suggesting that the bar survey for selection does predict a certain level of competence.

Beyond the Council's own research, little evaluation of the Alaska selection and retention processes has been done, and there seems to be a need for additional formal examination of their patterns and history to see how the framework has held up over the last four and a half decades.

There is, however, some information from another state body that throws light on the ultimate outcome of the current selection and appointment process. Data from the Alaska Commission on Judicial Conduct—the state body overseeing the conduct of the judiciary—shows that the Alaska judiciary has been exceptionally free of disciplinary and ethical problems. Since the early 1970s, only six judges have received a formal public sanction—the most severe form of discipline for professional misconduct—from the Alaska Supreme Court. The formal public sanctions have usually been in response to some form of public misuse of the office. The last sanctioning took place in 2000. The sanctions handed down from the Supreme Court have involved either public censure or public reprimand, but not removal from office—which would be the ultimate disciplinary action. Since statehood, no Alaska judge has been removed from office.

* * *

Has this selection process established by the state constitution and elaborated by state statutes been effective? The careful balance of the current selection process forestalls any strong possibility that a judge will be under obligation to a particular political interest group. The judiciary remains essentially unpoliticized in its daily functioning, and, since statehood, there have been few public scandals involving judges. The electorate remains as a check on the judiciary and on the appointment process itself. Although there is some need for more evaluative research, both statistical and historical, currently available statistical data show a relatively high level of public approval of the judges appointed under the current process. It is also worth noting that despite instances where the retention of an individual judge has been opposed by one interest group or another because of an unpopular decision, the retention elections have not become extraordinarily expensive fights or involved extreme political posturing—unlike in other states. Judges do, however, stand for retention, and the electorate is free to deny it.

Editorial note: The UAA Justice Center has in the past served as the independent contractor for the Judicial Council in tabulating bar poll results for both judicial selections and retention elections.

Antonia Moras is the editor of the ***Alaska Justice Forum****.*

Native Issues Articles Reprinted

Two articles that originally appeared in the *Alaska Justice Forum* have been reprinted in the Altamira Press Tribal Legal Studies Textbook Series. "Circle Peacemaking," by Lisa Rieger, which was first published in the Winter 2001 (Vol. 17, No. 4) issue, examines the use of circle sentencing in Kake. It is included in *Introduction to Tribal Legal Studies* (Walnut Hill, CA: Altamira Press, 2004). Phyllis Morrow's "A Sociolinguistic Mismatch: Central Alaskan Yup'iks and the Legal System" appeared in Summer 1993 (Vol. 10, No. 2). This article analyzes the problems posed by linguistic and cultural differences in the interaction between Yup'ik speakers and the Western, English-based justice system. It has been reprinted in *Tribal Criminal Law and Procedure* (Walnut Hill, CA: Altamira Press, 2004).

Lisa Rieger was formerly a faculty member with the Justice Center. She is currently an attorney with CIRI. Phyllis Morrow is Dean of the College of Liberal Arts and a Professor of Anthropology at the University of Alaska Fairbanks.

Justice Center Projects Funded

Several Justice Center projects have recently received grant funding: $152,000 from the National Institute of Justice for André Rosay to continue his work studying sexual assault in Alaska; $50,000 for Rosay to look at the problem of domestic violence throughout the state; and $23,000 for an educational video on domestic violence and the courts to be produced by the Alaska Court System in conjunction with the Justice Center.

Table 1. Rules Governing Submission of List of Judicial Nominees in Localities Where Merit Selection Occurs

State/court		Days allowed to submit list	Number of names submitted	Order names are submitted	Additional information sent to appointing authority	Governor bound by recommendation	Legislative confirmation required	Nominees names made public
Alabama	Baldwin County	30	3	Alpha	No	Yes	No	Yes
	Jefferson County	90	3	Alpha	No	Yes	No	Yes
	Madison County	—	3	—	—	Yes	No	Yes
	Mobile County	—	3	—	—	Yes	No	—
	Talladega County	—	3	—	—	Yes	No	—
	Tuscaloosa County	45	3	—	No	Yes[1]	No	Yes
Alaska		90[2]	2 or more	Alpha	Applicant questionnaires, voting record, bar survey, letters of recommendation	Yes	No	Yes
Arizona		60	3 or more	Alpha	—	Yes	No	Yes
Colorado	Appellate courts	30	3	Alpha	Applicant questionnaire	Yes	No	Yes
	Trial courts	30	2–3	Varies by judicial district[3]	Varies by judicial district[3]	Yes	No	Yes[4]
Connecticut		—	—	—	—	Yes	Yes[5]	—
Delaware		60	3	Alpha	No	Yes[6]	Yes	Yes
District of Columbia		60	3	—	—	Yes (president)	Yes	Yes
Florida	Supreme Court	30	3–6	Alpha	Investigative file	Yes	No	Yes
	District Court of Appeal	30	3	Alpha	Investigative file	Yes	No	Yes
	Trial courts	30	3 or more	Alpha	Investigative file	Yes	No	Yes
Georgia		—	5 at most	—	—	No	No	—
Hawaii		—	4–6	Alpha	Applicant questionnaire	Yes	Yes	No
Idaho		—	—	—	—	Yes	No	Yes
Indiana	Appellate courts, Tax Court	70	3	—	Nominee evaluations	Yes	No	Yes
	Allen County	60	3	—	Nominee evaluations	Yes	No	Yes
	Lake County	60	3	—	Nominee evaluations	Yes	No	Yes
	St. Joseph County	60	5	—	Nominee evaluations	Yes	No	Yes
Iowa	Supreme Court	60	3	Alpha	Applicant questionnaire	Yes	No	Yes
	Court of Appeals	60	5	Alpha	Applicant questionnaire	Yes	No	Yes
	District Court	60	2	Alpha	—	Yes	No	Yes[7]
	District associate judges	15–30	3	—	—	Yes[8]	No	—
	Magistrate judges	15–30	1	—	—	N/A[8]	No	—
Kansas	Appellate courts	60	3	—	—	Yes	No	—
	District court	30	2–3	—	—	Yes	No	—
Kentucky		—	3	Alpha	—	Yes	No	Yes
Maryland	Court of Appeals	85	5–7	Alpha	Applicant questionnaire	Yes[9]	No	Yes
	Trial courts	85	2–7	Alpha	Applicant questionnaire	Yes[9]	No	Yes
Massachusetts		—	3–6	Alpha	—	No[10]	No[11]	No
Minnesota		60	3–5	—	—	No	No	Yes
Missouri		—	3	—	—	Yes	No	Yes
Montana		90	3–5	—	Entire applicant file, Commission voting record and recommendations	Yes	Yes	Yes
Nebraska		90	3 or more	Alpha	Applicant questionnaire, investigative file	Yes	No	Yes
Nevada		—	3	Alpha	Entire file	Yes	No	Yes
New Mexico		30	2 or more	Alpha	—	Yes[12]	No	Yes
New York	Court of Appeals	120[13]	3–7	—	Entire file, including commission recommendations, applicant financial statements	Yes	Yes	Yes
	Supreme Court, Appellate divison of Supreme Court, Trial courts (outside New York City)	—	—	—	Written evaluation, entire file	Yes	Yes	No
	New York City	90	3	—	Information re: qualifications	Yes (mayor)	No	No
North Dakota		60	2–7	Alpha	—	No	No	Yes
Oklahoma		—	3	Random	Applicant questionnaire, writing sample, investigative file	Yes	No	Yes
Rhode Island		90	3–5	Alpha	Entire file	Yes	Yes	Yes
South Dakota		—	2 or more	Alpha	Investigative file	Yes	No	—
Tennessee		60	3	Alpha	Applicant questionnaire, investigative file	Yes[14]	No	Yes
Utah	Appellate courts	45	5–7	Alpha	Applicant questionnaire, investigative file	Yes	Yes	Yes
	Trial courts		3–5					
Vermont		—	Open	Alpha	Applicant questionnaire	Yes	Yes	No
Wisconsin		—	—	—	—	Yes	No	—
Wyoming		60	3	Alpha	Entire file	Yes	No	—

— means "not indicated."

Judicial Selection in the U.S.

Across the country the methods for choosing state and local judges basically break down into two categories—elective or appointive. But these two broad classifications contain variants with substantive differences. Elections can be partisan or non-partisan and appointive systems can vest the power solely in the governor or legislature or use some sort of screening and nominating process in a merit selection plan such as Alaska employs. In addition, states sometimes use different procedures for different levels of their court systems.

According to the American Judicature Society, thirty-two states and the District of Columbia use some form of merit selection at one or more levels of their courts (Table 2). Fifteen states and the District of Columbia use a merit selection plan with a nominating commission—such as the Alaska Judicial Council—for either or both the appellate courts and the courts of general jurisdiction. Nine states use a combination of merit selection and other methods, and another nine use merit selection to fill mid-term vacancies.

Table 2. Judicial Selection in the United States: Appellate and General Jurisdiction Courts

Merit selection through nominating commission*	Gubernatorial (G) or legislative (L) appointment without nominating commission	Partisan election	Nonpartisan election	Combined merit selection and other methods
Alaska	California (G)	Alabama	Arkansas	Arizona
Colorado	Maine (G)	Illinois	Georgia	Florida
Connecticut	New Jersey (G)	Louisiana	Idaho	Indiana
Delaware	New Hampshire (G)	Michigan	Kentucky	Kansas
District of Columbia	South Carolina (L)	Ohio	Minnesota	Missouri
Hawaii	Virginia (L)	Pennsylvania	Mississippi	New York
Iowa		Texas	Montana	Oklahoma
Maryland		West Virginia	Nevada	South Dakota
Massachusetts			North Carolina	Tennessee
Nebraska			North Dakota	
New Hampshire			Oregon	
New Mexico			Washington	
Rhode Island			Wisconsin	
Utah				
Vermont				
Wyoming				

* The following nine states use merit plans only to fill midterm vacancies on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, North Dakota, and Wisconsin.

Source: *American Judicature Society. Used with permission.*

The American Judicature Society, an independent, non-profit, judicial organization founded in 1913 to address questions related to the functioning of the judiciary branch, has long advocated merit selection plans for the appointment of judges. The prototype for these plans was first adopted in Missouri in the 1940s. Since that time, many other states have adopted merit selection as their method for judicial appointment—some, like Alaska, doing so within the state constitution, and several by executive order.

In those plans incorporating a nominating commission as part of the selection process, the composition of the commission varies as does the way of appointment to the commission. Most nominating commissions comprise a mix of lawyers and non-lawyers, with some also including a sitting judge or justice. Alaska's approach includes attorneys and non-attorneys, with the chief justice of the supreme court serving *ex officio*.

In many states, including Alaska, attorney members are selected for the commission by the state bar association. In some, the governor makes the attorney appointments,

*Please see **Judicial selection**, page 12*

Table 1. Rules Governing Submission of List of Judicial Nominees in Localities Where Merit Selection Occurs (continued)

1 **Alabama (Tuscaloosa County)**. If the governor does not select from the list within 60 days, the commission is required to submit a new list.

2 **Alaska**. Time may be extended by the judicial council with the concurrence of the supreme court.

3 **Colorado**. Each of Colorado's twenty-two district judicial nominating commissions has developed its own rules of procedure.

4 **Colorado**. The judicial nominating commissions of two districts do not indicate whether nominees' names are made public.

5 **Connecticut**. The governor selects a nominee from the commission's list, sends the name to the general assembly, and the general assembly makes the appointment.

6 **Delaware**. The governor may refuse to appoint from the first list and may require the commission to submit one supplementary list.

7 **Iowa**. According to Iowa's sample procedure for district judicial nominating commissions, the names of nominees are announced in a press release. However, these sample procedures have not been formally adopted by all of Iowa's 14 judicial districts.

8 **Iowa**. District judges appoint district associate judges from lists of nominees recommended by the county magistrate appointing commission. The county magistrate appointing commission appoints magistrates.

9 **Maryland**. The governor may also fill the vacancy by selecting a person from any list submitted by the appropriate commission for a vacancy on the same court, provided the previous list was submitted within two years of the current vacancy and information on the nominee is updated.

10 **Massachusetts**. The governor may decline to nominate any applicant and seek further recommendations from the commission.

11 **Massachusetts**. Appointment requires advice and consent of the governor's council.

12 **New Mexico**. The governor may make one request to the commission for additional names, and the commission shall comply if a majority of the commission finds that additional persons would be qualified and recommends those persons for appointment.

13 **New York**. For unexpected vacancies, the commission has 120 days to submit a list of nominees. For vacancies that occur through expiration of terms on December 31, the commission has a fixed deadline of December 1, except for terms that expire during non-election years when the deadline is October 15.

14 **Tennessee**. For appellate court vacancies, the governor may reject the first list of nominees and request a second list, but he or she must provide in writing reasons for rejecting the first list and must select a nominee from the second list.

Source: *American Judicature Society. Used with permission.*

Judicial selection
(continued from page 11)

while other state plans involve the state legislature, the state attorney general, the supreme court and others in some combination for the commission appointment process.

Non-attorney members on nominating commissions are also appointed or elected in a variety of ways: by governors, boards of commissioners, mayors, or supreme courts. In Alaska, the governor appoints the non-attorney members to the Judicial Council.

Terms of services for members of nominating commissions also vary from state to state, with Alaska Judicial Council members appointed for six-year terms.

As detailed in Table 1 (page 10), the rules governing the submission of nominees for judicial appointments cover such points as the number of names submitted, the kinds of additional information passed on to the appointing authority, and the time frame established for nominations. A majority of states specify precisely how many names are to be sent forward or give a range, such as three to six names, while a few specify a minimum number—in Alaska, two or more.

In most states using a merit selection plan, the governor is bound by the recommendation of the nominating body. In a handful of states the procedure also incorporates legislative confirmation of judicial appointments.

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