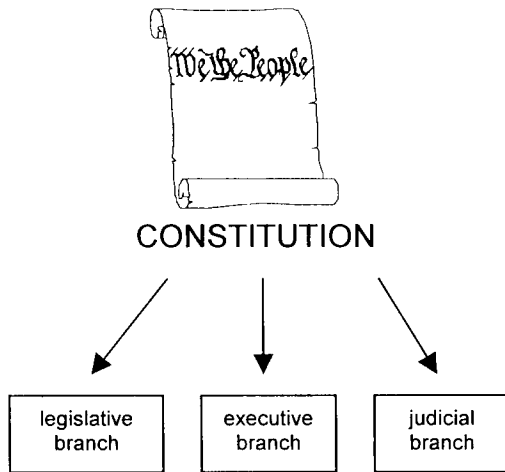


JUDICIAL INDEPENDENCE

What is it? Why is it important?



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The American democratic system of government is based upon the provisions of our federal (United States) and state constitutions. They describe a government consisting of three co-equal branches. In Alaska state government, these branches are:

- The Legislative Branch, consisting of members of the Alaska Legislature (the Senate and the House of Representatives). The Legislative Branch is responsible for creating state laws and appropriating funds.
- The Executive Branch, consisting of the Governor and the state departments which work under the direction of the Governor. The Executive Branch administers and enforces state laws.
- The Judicial Branch, which includes the Alaska Supreme Court and the judges, magistrates and court employees who work under the direction of the supreme court. The Alaska Court System resolves disputes brought before it, by applying state laws, federal laws, and the provisions of the state and federal constitutions to the facts of these disputes.

Our system of government is structured in this manner to avoid any one branch from becoming too powerful. The powers and responsibilities of each branch provide **checks** and **balances** on the powers and responsibilities of the other two branches.

The Judicial Branch is commonly called the court system. In Alaska state government, it includes the Alaska Court System, the Alaska Judicial Council, and the Alaska Commission on Judicial Conduct.

What do courts do?

There are eight accepted purposes of courts:

- To do individual justice in individual cases.
- To resolve cases in a manner that promotes public trust in our system of government
- To provide a forum for the peaceful resolution of legal disputes.
- To protect individuals from the arbitrary use of governmental power.
- To provide a formal record of legal status.
- To deter criminal behavior
- To rehabilitate persons convicted of crimes
- To separate persons convicted of crimes from society, in appropriate cases.

What is judicial independence?

Our system of government evolved from the English system. When the judicial system first evolved in England, judges served at the whim of the king. The king could, and sometimes did, "fire" judges whose decisions displeased him. The former British colonists who created the United States placed a strong emphasis on establishing a judicial branch of government which is co-equal with the executive and legislative branches. The Declaration of Independence cites the lack of independence of the British judiciary as one of the justifications for establishing the United States, inde-

pendent of England:

...He [the king] has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.— He has made Judges dependent of his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

The term “judicial independence” reflects the principle that judges must be free to decide individual cases based upon the judge’s considered judgment about the law and the facts of the case, rather than public opinion about the case.

Why is judicial independence important?

The citizens of our country and state are entitled to have access to a court system where their disputes will be decided by a judge who considers the facts of each case impartially, applying the law to the facts of each case to reach a decision. Each person who brings a case in Alaska’s courts should feel that his or her case will be measured on its individual merits, by a judge who is free from bias and political obligation.

Sometimes judges have to make unpopular decisions. Sometimes, for example, a judge may conclude that an individual citizen has a constitutional right which is in conflict with a law passed by the legislature. In such circumstances, a judge must exercise independent judgment to protect the individual citizen, or a group of citizens in the same situation, by declaring the law unconstitutional and unenforceable. A judge must take this action even if the law is generally favored by many of the state’s citizens. The separation of the three branches of government and principles of judicial independence preserve the judge’s ability to protect individual constitutional rights in this manner. It would be extremely difficult for a judge to exercise independent judgment if the judge could be summarily removed from office by representatives of another branch of government, or if our system of government allowed the judge’s decision to be ignored.

But shouldn't judges be accountable for their actions?

Yes, judges should be held accountable—and they are.

Judges' decisions may be appealed to higher courts for review. The decisions of appellate courts (courts that review lower court decisions) are also potentially subject to review by higher courts – even, in limited circumstances, by the United States Supreme Court.

Judicial independence does not mean that a judge who acts in inappropriate ways cannot be disciplined or removed from office.

A citizen in Alaska cannot be made a judge of the Alaska Court System unless he or she first meets stringent standards relating to education, experience and integrity. The Alaska Judicial Council conducts an intensive screening of all persons who seek to become state court judges, to determine their fitness for office. This process includes a solicitation of public opinion about these judicial candidates. The Judicial Council sends only the most qualified candidates to the Governor, who must appoint a judge from the pool of approved candidates.

Judges must stand for periodic retention elections, at which the voters of Alaska decide whether to allow each judge to continue to work as a judge in Alaska's courts. Before each retention election, the Alaska Judicial Council conducts a comprehensive process of collecting information about the performance of each judge, and makes that information available to the public.

The Commission on Judicial Conduct is a watchdog agency which investigates complaints against judges. The commission can recommend to the Alaska Supreme Court that individual judges be disciplined or removed, as appropriate.

Under Alaska's Constitution, the state legislature can also impeach any judge or justice for serious wrongful and illegal actions.

Judicial accountability and judicial independence are elements that work together in our system of justice.

Judicial independence is not for the protection of judges, but for the protection of the public. It is an essential element of our system of democratic government.