

**Alaska Judicial Council
Performance Evaluation for:**

**Judge William T. Montgomery
Bethel District Court**

The Alaska Judicial Council finds Judge Montgomery met or exceeded performance standards, and recommends a **“YES”** vote for another term in office

Judge Montgomery was appointed to the Bethel District Court in June of 2018. This is his first retention election. Judge Montgomery handles both civil and criminal cases.

Performance Summary:

After conducting its performance review, the Judicial Council determined that Judge Montgomery met or exceeded performance standards on all criteria, including legal ability, integrity, impartiality/fairness, temperament, diligence, and administrative skills.

The Council also determined that Judge Montgomery met or exceeded educational requirements set by the Alaska Supreme Court.

Because Judge Montgomery met or exceeded all performance and professional development standards, the Alaska Judicial Council recommends a “yes” vote on retention in office.

Performance Findings:

The Council conducts a thorough performance review of each judge standing for retention. Key findings for Judge Montgomery include:

- **Ratings by justice system professionals:** Attorneys and law enforcement officers who appeared before Judge Montgomery gave him very good reviews, as did court employees.
- **Ratings by jurors:** Jurors who served in trials before Judge Montgomery during 2018 and 2019 rated him 4.6 overall on a five-point scale. One juror commented, “He was an excellent judge.”
- **Professional activities:** The Council’s review of Judge Montgomery’s professional activities showed positive contributions to his community and to the administration of justice. Judge Montgomery was a member of the court system’s Jury Improvement Committee, a group that works to improve the jury service experience. He attended various public functions in the Bethel community, and made a presentation to a school group about the role and responsibilities of a judge. He served as a temporary superior court judge in Bethel when the superior court needed assistance.

- **Other performance indicators:** The Council's review of other performance indicators, including Judge Montgomery's financial and conflict of interest statements, disqualifications from cases, and appellate reversal rates, raised no performance concerns.
- **Timeliness:** Alaska law requires judges' pay be withheld if a decision is pending longer than six months. The Council verified that Judge Montgomery was paid on schedule, and he certified that he had no untimely decisions.
- **Ethics:** There were no public disciplinary proceedings against Judge Montgomery, and the Council's review found no ethical concerns.

Documents:

- [Judge Montgomery's Judge Questionnaire](#)
- [Judge Montgomery's Attorney Survey Ratings](#)
- [Judge Montgomery's Peace and Probation Officer Survey Ratings](#)
- [Judge Montgomery's Court Employee Survey Ratings](#)
- [Juror Survey Memo](#)
- [Peremptory Challenges Memo](#)
- [Recusal Records Memo](#)



Print Questionnaire

Received

NOV 29 2019

Alaska Judicial Council

alaska judicial council

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Alaska Judicial Council Trial Judge Questionnaire

2020 Candidates for Judicial Retention

November 2019

William Thomas Montgomery

Name

Bethel District Court

Court

1. Please estimate your workload during your present term.

a) 15 % civil cases

b) 20 # of jury trials/year

85 % criminal cases

3 # of non-jury trials/year

0 % court administrative work

0 # of administrative appeals/year

100 % Total

2. Please describe your participation on court/bar committees or other administrative activities during your current term of office.

I am a member of the Jury Improvement Committee.

3. Please describe any judicial or legal education you have undertaken or provided during your current term in office.

I attended two Judicial Conferences (October 2018, and October 2019), New Judge Training (January 2019), the National Judicial College's General Jurisdiction Course (March-April 2019), and went to Fairbanks to meet face-to-face with my Judicial Mentor, Judge Lyle, as part of the Court System's Mentor/Mentee program (August 2019). In addition, I will be attending New Judge Training in January 2020.

4. Please describe any public outreach activities.

Besides attending public functions in a small community (like high school sporting events, 4th of July parades, the Saturday Market, and hosting a musher for the K300 dog sled race), I presented at my daughter's school. The presentation focused on the role and responsibilities of a judge.

5. Please assess, in one or two paragraphs, your judicial performance during your present term. Appropriate areas of comment could include: satisfaction with your judicial role, specific contributions to the judiciary or the field of law, increases in legal knowledge and judicial skills, or other measures of judicial abilities that you believe to be important.

I believe my transition to the bench has been fairly seamless. My work as an attorney for the Office of Public Advocacy is the same work the I handle as a District Court Judge and Superior Court Judge Pro Tem. I handle a large criminal docket and a CINA docket - these were my two main practice areas at OPA.

Where I feel like my legal knowledge and judicial skills have improved are in the areas of forcible entry and detainers and DV/stalking/sexual assault protective orders. As well as working with self-represented litigants. At the conclusion of the last forcible entry and detainer that I presided over, the litigant who was being evicted from his home thanked me for explaining the process, listening to his case, and providing a fair forum. He did this at the conclusion of the hearing, even though I ruled against him, evicted him from his home, and required him to pay close to \$50,000 in damages.

6. During your most recent term as a judge, have you:
- a) had a tax lien filed or other collection procedure instituted against you by federal, state, or local authorities? Yes No
 - b) been involved in a non-judicial capacity in any legal proceeding whether as a party or otherwise? Yes No
 - c) engaged in the practice of law (other than as a judge)? Yes No
 - d) held office in any political party? Yes No
 - e) held any other local, state or federal office? Yes No
 - f) had any complaints, charges or grievances filed against you with the Alaska Commission on Judicial Conduct, the Alaska Bar Association, the Alaska Court System, or any other agency that resulted in public proceedings or sanctions?
 Yes No
7. If your answer to any of the questions above is "yes," please give full details, including dates, facts, case numbers and outcomes.

My Mother-in-law passed away from Glioblastoma (fast growing and aggressive brain cancer). The insurance company refused to pay on a life insurance policy. I drafted a complaint for my Father-in-law and drafted an opposition to motion to dismiss. The complaint was filed on 4/9/2019 in the Circuit Court for Montgomery County in Maryland. The case name is: David Shaler, as administrator of the estate of Lois Shaler v. American National, Honda Financial Services, and Criswell Honda. The case number is: 465565-V. The case settled on 8/21/2019 for the full value of the life insurance policy. I did not take or receive any compensation for my work.

Although my wife is also an attorney, I drafted the complaint and the opposition to the motion to dismiss because the case was too emotional/painful for my wife to handle.

8. Please provide any other information which you believe would assist the Council in conducting its evaluations and in preparing its recommendations for the 2020 retention elections.

When I interviewed for the District Court in Bethel, my wife was an attorney with the Office of Public Advocacy in Bethel. I made a promise that in an effort to reduce any potential conflicts of interest, my wife would leave her position with OPA. That happened almost a year ago. She is now an attorney with AVCP (Association of Village Council Presidents) in their Tribal Justice Department. She provides legal trainings to the various tribal courts that are compacted with AVCP and provides real-time legal assistance to the tribes. She no longer appears in court or represents individual clients.

For questions 9 - 12, please do not list any cases that have pending issues in your court.

- 9. Please list your three most recent jury trials including case names and numbers. Please list the names, current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these trials. (Attach additional pages if necessary.)

Case Number 1

Case Name: State of Alaska Case Number: 4BE-19-00205CR
 v. Joseph Ayagarak, Jr.

Attorneys Involved:

Name: <u>Janae Bly</u>	Name: <u>Maria Uttreyuk</u>
Address: <u>P.O. Box 170</u>	Address: <u>P.O. Box 2129</u>
City, State, Zip: <u>Bethel, AK 99559</u>	City, State, Zip: <u>Bethel, AK 99559</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 2

Case Name: State of Alaska Case Number: 4BE-19-00696CR
 v. Howard Pavilla

Attorneys Involved:

Name: <u>Izaak Bruce</u>	Name: <u>Eric Yff</u>
Address: <u>P.O. Box 170</u>	Address: <u>529 5th Ave., Suite 1</u>
City, State, Zip: <u>Bethel, AK 99559</u>	City, State, Zip: <u>Fairbanks, AK 99701</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 3

Case Name: State of Alaska Case Number: 4BE-19-00530CR
 v. Jacqueline Wassilie

Attorneys Involved:

Name: <u>Kathryn Mason</u>	Name: <u>Nathaniel Hainje</u>
Address: <u>P.O. Box 170</u>	Address: <u>P.O. Box 10</u>
City, State, Zip: <u>Bethel, AK 99559</u>	City, State, Zip: <u>Bethel, AK 99559</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

- 10. Please list your three most recent non-jury trials including case names and numbers. Please list the names, current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these trials. (Attach additional pages if necessary.)

Case Number 1

Case Name: State of Alaska **Case Number:** 4BE-17-00036MO
 v. Bradley Amos

Attorneys Involved:

Name: Mark Tyler	Name: Nathaniel Hainje
Address: 1031 W. 4th Ave., Suite 200	Address: P.O. Box 10
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Bethel, AK 99559
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 2

Case Name: Mary Weiss **Case Number:** 4BE-18-00027SC
 v. Mary Peltola

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: State of Alaska **Case Number:** 4BE-19-000171ci
 v. Arthur Alexie

Attorneys Involved:

Name: Fleur Roberts	Name: Stephen Wallace
Address: P.O. Box 82490	Address: 204 Mission Road, Rm 124
City, State, Zip: Fairbanks, AK 99708	City, State, Zip: Kodiak, AK 99615
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

- 11. Please list your three most recent cases, including case names and numbers, which did not go to trial, but on which you did significant work (such as settlement conference, hearings, motion work, etc.). Please list the names, current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these cases. (Attach additional pages if necessary.)

Case Number 1

Case Name: ITMO: [REDACTED] Case Number: 4BE-18-00013DL

v. _____

Attorneys Involved:

Name: Christopher Storz	Name: David Case
Address: 510 2nd Ave., Suite 200	Address: Trading Bay Drive, Suite 390
City, State, Zip: Fairbanks, AK 99701	City, State, Zip: Kenai, AK 99611

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 2

Case Name: ITMO: Turner and Turner Case Number: 4BE-19-00301CI

v. _____

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: State of Alaska Case Number: 4BE-18-00677CR

v. John Lomack

Attorneys Involved:

Name: Mark Tyler	Name: Nathaniel Hainje
Address: 1031 W. 4th Ave., Suite 200	Address: P.O. Box 10
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Bethel, AK 99559

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

- 12. *Optional:* If you deem it helpful to the Council, please list up to three other cases during your past term in which you believe your work was particularly noteworthy. Please list the names, current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these cases. (Attach additional pages if necessary.)

Case Number 1

Case Name: _____ *Case Number:* _____

v. _____

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. _____

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. _____

Attorneys Involved:

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Table 53
Judge William T. Montgomery
Demographic Description of Respondents - Bar Association Members

	<i>n</i>	<i>%</i>
All respondents	37	100
Experience with Judge		
Direct professional experience	31	83.8
Professional reputation	4	10.8
Other personal contacts	2	5.4
Detailed Experience*		
Recent experience (within last 5 years)	30	100.0
Substantial amount of experience	15	50.0
Moderate amount of experience	7	23.3
Limited amount of experience	8	26.7
Type of Practice		
No response	1	2.7
Private, solo	1	2.7
Private, 2-5 attorneys	3	8.1
Private, 6+ attorneys	3	8.1
Private, corporate employee	-	-
Judge or judicial officer	16	43.2
Government	9	24.3
Public service agency or organization	2	5.4
Retired	2	5.4
Other	-	-
Length of Alaska Practice		
No response	1	2.7
5 years or fewer	5	13.5
6 to 10 years	5	13.5
11 to 15 years	6	16.2
16 to 20 years	5	13.5
More than 20 years	15	40.5
Cases Handled		
No response	1	2.7
Prosecution	3	8.1
Criminal	7	18.9
Mixed criminal & civil	21	56.8
Civil	4	10.8
Other	1	2.7
Location of Practice		
No response	1	2.7
First District	1	2.7
Second District	-	-
Third District	19	51.4
Fourth District	16	43.2
Outside Alaska	-	-
Gender		
No response	2	5.4
Male	25	67.6
Female	10	27.0

*Only among those respondents reporting direct professional experience with the judge.

Table 54
Judge William T. Montgomery
Detailed Responses - Bar Association Members

	<i>n</i>	Legal Ability <i>M</i>	Impartiality/ Fairness <i>M</i>	Integrity <i>M</i>	Judicial Temperament <i>M</i>	Diligence <i>M</i>	Overall <i>M</i>
All respondents	37	4.0	4.2	4.4	4.2	4.2	4.1
Basis for Evaluation							
Direct professional experience	31	4.2	4.5	4.6	4.3	4.3	4.3
Experience within last 5 years	30	4.2	4.5	4.6	4.3	4.3	4.3
Experience not within last 5 years	-	-	-	-	-	-	-
Substantial amount of experience	15	4.2	4.4	4.7	4.4	4.3	4.3
Moderate amount of experience	7	4.4	4.7	4.7	4.4	4.4	4.6
Limited amount of experience	8	3.9	4.4	4.3	4.1	4.3	4.0
Professional reputation	4	3.3	3.3	3.5	3.5	3.5	3.5
Other personal contacts	2	3.0	2.0	3.0	3.0	3.0	3.0
Type of Practice*							
Private, solo	1	3.0	3.0	3.0	3.0	3.0	3.0
Private, 2-5 attorneys	2	4.5	4.5	5.0	4.5	4.5	4.5
Private, 6+ attorneys	3	3.3	4.0	3.3	3.7	3.3	3.3
Private, corporate employee	-	-	-	-	-	-	-
Judge or judicial officer	14	4.6	4.9	5.0	4.9	5.0	4.8
Government	8	3.6	4.1	4.4	3.6	3.6	3.9
Public service agency or organization	1	4.0	4.0	4.0	4.0	4.0	4.0
Retired	1	5.0	5.0	5.0	5.0	5.0	5.0
Other	-	-	-	-	-	-	-
Length of Alaska Practice*							
5 years or fewer	5	3.8	4.2	4.6	3.8	3.8	4.0
6 to 10 years	3	3.7	4.3	3.7	3.7	4.0	3.7
11 to 15 years	6	4.2	4.3	4.8	4.3	4.2	4.3
16 to 20 years	5	4.4	4.6	4.4	4.4	4.4	4.4
More than 20 years	11	4.4	4.6	4.7	4.7	4.7	4.5
Cases Handled*							
Prosecution	3	3.3	4.0	4.3	4.0	2.7	3.7
Criminal	6	4.0	4.3	4.5	3.7	4.3	4.2
Mixed criminal & civil	17	4.3	4.5	4.6	4.6	4.6	4.4
Civil	4	4.5	4.8	4.5	4.5	4.5	4.5
Other	-	-	-	-	-	-	-
Location of Practice*							
First District	1	2.0	3.0	2.0	2.0	3.0	2.0
Second District	-	-	-	-	-	-	-
Third District	15	3.9	4.5	4.5	4.3	4.3	4.2
Fourth District	14	4.6	4.6	4.9	4.6	4.5	4.6
Outside Alaska	-	-	-	-	-	-	-
Gender*							
Male	23	4.2	4.5	4.6	4.4	4.4	4.3
Female	6	3.8	4.3	4.3	4.0	4.0	4.0

*Ratings from only those respondents reporting direct professional experience with the judge.

Table 38:
Judge William T. Montgomery
Description of Respondents' Experiences - Peace and Probation Officers

		<i>n</i>	<i>%</i>
	All respondents	9	100.0
Experience with Judge			
	Direct professional experience	8	88.9
	Professional reputation	1	11.1
	Other personal contacts	-	-
Detailed Experience*			
	Recent experience (within last 5 years)	8	100.0
	Substantial amount of experience	1	12.5
	Moderate amount of experience	4	50.0
	Limited amount of experience	3	37.5

*Only among those respondents reporting direct professional experience with the judge.

Table 39:
Judge William T. Montgomery
Detailed Responses - Peace and Probation Officers

	<i>n</i>	Impartiality/ Fairness <i>M</i>	Integrity <i>M</i>	Judicial Temperament <i>M</i>	Diligence <i>M</i>	Overall <i>M</i>
All respondents	9	4.0	3.8	4.0	4.1	3.9
Basis for Evaluation						
Direct professional experience	8	4.3	4.0	4.3	4.4	4.1
Experience within last 5 years	8	4.3	4.0	4.3	4.4	4.1
Experience not within last 5 years	-	-	-	-	-	-
Substantial amount of experience	1	5.0	4.0	4.0	5.0	5.0
Moderate amount of experience	4	4.5	4.3	4.5	4.5	4.3
Limited amount of experience	3	3.7	3.7	4.0	4.0	3.7
Professional reputation	1	2.0	2.0	2.0	2.0	2.0
Other personal contacts	-	-	-	-	-	-

*Ratings from only those respondents reporting direct professional experience with the judge.

Table 47
Judge William T. Montgomery
Description of Respondents' Experience - Court Employees

	<i>n</i>	<i>%</i>
All respondents	10	100
Experience with Judge		
Direct professional experience	8	80.0
Professional reputation	1	10.0
Other personal contacts	1	10.0
Detailed Experience*		
Recent experience (within last 5 years)	8	100
Substantial amount of experience	3	37.5
Moderate amount of experience	2	25.0
Limited amount of experience	3	37.5

*Only among those respondents reporting direct professional experience with the judge.

Table 48
Judge William T. Montgomery
Detailed Responses - Court Employees

	<i>n</i>	Impartiality/ Fairness <i>M</i>	Integrity <i>M</i>	Judicial Temperament <i>M</i>	Diligence <i>M</i>	Overall <i>M</i>
All respondents	10	4.7	4.5	4.4	4.5	4.7
Basis for Evaluation						
Direct professional experience	8	4.6	4.5	4.4	4.5	4.6
Experience within last 5 years	8	4.6	4.5	4.4	4.5	4.6
Experience not within last 5 years	-	-	-	-	-	-
Substantial amount of experience	3	5.0	4.7	4.3	4.7	5.0
Moderate amount of experience	2	4.5	4.0	4.0	4.0	4.0
Limited amount of experience	3	4.3	4.7	4.7	4.7	4.7
Professional reputation	1	-	4.0	-	4.0	-
Other personal contacts	1	5.0	5.0	5.0	5.0	5.0



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: March 17, 2020
RE: Juror Survey Report

The Alaska Judicial Council surveyed all jurors who sat in trials during 2018 and 2019. The jurors sat before all of the 20 trial court judges eligible to stand for retention in 2020. A total of 754 jurors responded on Council-provided postcards that judges distributed to jurors at the end of each trial (see attached Juror Survey Card Example). Jurors completed the surveys on the postage-paid cards and mailed them to the Council.

Council staff entered the data from the surveys and ran basic descriptive statistics. This memorandum summarizes the findings. It is distributed to Council members and judges, and posted on the Council's website.

Table 1 shows the distribution of jurors by type of trial reported for each judge. Some jurors only wrote comments and did not rate the judge on the specific variables. Thus, there may be more respondents shown on Table 1 than appear on the judges' individual tables.

Table 1: Distribution of Jurors by Type of Trial, by Judge Alaska Judicial Council 2020 Retention Juror Survey				
Judge	Civil	Criminal	No Answer	Total
Christian, Matthew	0	34	0	34
Crosby, Dani	19	0	1	20
DiBenedetto, Romano D.	0	26	2	28
Dickson, Leslie N.	3	72	5	80
Franciosi, Michael	1	46	1	48
Guidi, Andrew	25	29	7	61
Hanley, J. Patrick	4	38	5	47
Henderson, Jennifer	29	3	0	32
Lamoureux, Yvonne	15	12	0	27
Logue, Michael	0	30	1	31
McCrea, Kari	0	28	3	31
Miller, Gregory	1	0	0	1
Montgomery, Will	3	64	14	81
Peters, Nathaniel	1	21	12	34
Reigh, Christina	0	43	3	46
Roetman, Paul A.	4	5	0	9
Wallace, David	1	35	2	38
Washington, Pamela S.	1	37	3	41
Wells, Jennifer	0	39	9	48
Woodman, Jonathan	0	16	1	17

Table 2 shows the distribution of number of days served, as reported by the jurors. Seventy-three percent of the jurors served fewer than five days.

Table 2: Distribution of Days Served Alaska Judicial Council 2020 Retention Juror Survey		
Number of Days Served	%	N
1 - 2 Days	20	152
3 - 4 Days	53	397
5 - 7 Days	15	114
8 - 10 Days	6	46
11 - 20 Days	2	11
21 or More Days	0	1
No Answer	4	33
Total		754

Juror Survey Results 2020
Retention Evaluation
Montgomery, Will

Survey Category	Mean	Poor (1)	Deficient (2)	Acceptable (3)	Good (4)	Excellent (5)	Total Responses
Impartiality / Fairness	4.6	0	0	7	20	54	81
Respectful / Courteous	4.7	0	0	5	15	61	81
Attentive During Proceedings	4.7	0	0	6	16	59	81
Control Over Proceedings	4.6	0	0	5	20	56	81
Intelligence / Skill as a Judge	4.7	0	0	4	20	57	81
Overall Evaluation	4.6	0	0	5	19	57	81



alaska judicial council

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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: July 15, 2020
RE: Peremptory Challenges of Judges Eligible for Retention in 2020

I. Introduction

In Alaska, a defendant has a right to a fair trial before an unbiased judge and the right to preempt a judge without proving bias or interest.¹ Two different authorities govern the challenge right. The legislature created the substantive right and defines its scope by statute.² The court regulates peremptory challenge procedures by court rules.³ In general, each side in a case gets one peremptory challenge.⁴

This memo examines peremptory challenge records for judges who are eligible to stand for retention in November 2020. The tables display civil and criminal case challenges for each judge, by year. Because superior court judges' terms are six years, a six-year period is examined for them. Because district court judges' terms are four years, a four-year period is examined for them. Parties have no right to challenge an appellate judge, so those judges are not discussed.

¹See *Gieffels v. State*, 552 P.2d 661 (Alaska 1976).

²See *id.*; AS 22.20.020.

³See Alaska R. Crim. P. 25(d); Alaska R. Civ. P. 42(c).

⁴See *id.*

II. Context for evaluating peremptory challenge data

Although the peremptory challenge provisions were designed to ensure each litigant's right to a hearing by a fair and impartial judge, in practice many factors prompt litigants or attorneys to challenge judges. Some parties might challenge a judge because they perceive the judge to be unfair in a certain type of case, while others might challenge a judge because they perceive the judge to be "too fair," and hope their case will be reassigned to a judge who they perceive as being more favorable to their case. Such a scenario can be especially relevant in smaller judicial districts and communities, where attorneys often can predict which other judge will receive the reassigned case. Other reasons parties might challenge judges include unfamiliarity with a new judge or seeking to avoid the demands of a judge who insists on high standards of practice or timeliness. Sometimes an attorney will use a peremptory challenge with the hope that a change of judge will result in additional time to prepare the case.

The Alaska Court System provides the Council with data regarding "disqualifications." The data are categorized into disqualifications brought in criminal cases by defense attorneys or prosecutors, those brought in civil cases by plaintiffs or defendants, and those initiated by the judges themselves. Judge-initiated disqualifications are discussed in a separate memorandum. Children's delinquency cases are included among criminal cases in this analysis because that is how they are accounted for in the court's case management system. Child in Need of Aid cases are included in the civil category.

Please note that in Child in Need of Aid cases, guardians ad litem and parents have the right to preempt the judge. These are noted as "other" on the following charts. Please also note that a CINA "case" that a judge may handle may include several consolidated cases because each child in a family is assigned a different case number. So if a judge receives a peremptory challenge in a consolidated CINA case, challenges are recorded for each individual child's case, magnifying the effect of challenges in CINA cases.

One system was used for compiling the disqualification data. Over the past fourteen years, the court has instituted a computerized case management system (CourtView) that has facilitated the collection and reporting of more detailed and accurate data for all court locations in the state. All of the CourtView data were compiled and reported by the Alaska Court System to the Alaska Judicial Council.

Care must be taken when comparing judges because they have different caseloads. Judges with higher-volume caseloads generally will have more peremptory challenges than those with lower-volume caseloads. Presiding judges sometimes ease one court's heavy caseload by assigning cases to judges from other venues within their judicial district, and to *pro tem* judges. Moreover, superior courts with heavy caseloads may ease their burden somewhat by assigning the bulk of a case to masters and/or magistrates. Similarly, district court judges may have very different caseloads. Cases may be handled by magistrates as well as by district court judges. The court system's caseload data do not reflect when a judge regularly travels to another community

to hear cases. Finally, consideration must be taken of judges who handle predominately criminal or predominately civil caseloads, as superior court judges in Anchorage do, versus those judges who handle all cases.

Parties who have not previously exercised their right of peremptory challenge may challenge a judge when one is newly assigned midstream, as if their case had been newly filed. Consequently, challenges often increase when a judge is assigned to a different caseload (e.g., from civil to criminal). Challenges also often occur when a new judge is appointed because those judges are newly assigned to existing cases and because that judge is “unknown” and thus less predictable. Another factor to consider is that some communities have only one or two assistant district attorneys or assistant public defenders. If an assistant DA or PD perceives a reason to categorically challenge a particular judge, that judge’s criminal peremptory challenge rate will be high, even though just one or two attorneys might be responsible for virtually all of that judge’s challenges. This may also occur in high-volume civil cases that involve only a few public attorneys, such as in Child in Need of Aid practice.

Care must also be taken when comparing judges across judicial districts. In 1995, the Anchorage Superior Court consolidated into civil and criminal divisions. Since then, all civil cases (including domestic relations, Child in Need of Aid, and domestic violence protective order cases) have been assigned equally to each of the Anchorage Superior Court judges in the civil division. Criminal division judges handle criminal and child delinquency cases, but do not routinely handle domestic cases. For this reason, it may be misleading to compare the peremptory challenges of a superior court judge in Anchorage with the rate of a superior court judge in another judicial district. Also, some judges in some judicial districts currently handle the therapeutic courts, such as Wellness Court. The impact of those caseloads on a judge’s challenge rate is unknown.

Because so many factors may potentially affect the number of peremptory challenges filed, these numbers should only be used as a signal of a potential issue with a judge. Once a high number of challenges is identified from the table, please refer to the explanatory text on the following pages which gives context for the judge’s caseload and potential factors which may have affected his or her challenge rates.

Blank spaces in the tables represent years that preceded the judge’s appointment to his or her current position. “Other” signifies a parent, or guardian ad litem in a Child in Need of Aid case.

III. Peremptory Challenge Records - Superior Court Judges

Peremptory Challenges of Judges - Superior Court																	
Judicial District	Judge	Party	2014		2015		2016		2017		2018		2019		Summary		
			Civil	Criminal	Total	Mean*	Median*										
Second	DiBenedetto, Romano D	Defendant	0	1	1	1	0	2	21	7	5
		Plaintiff	.	.	.	.	.	.	1	0	0	0	1	0
		Other	.	.	.	.	.	.	12	0	0	0	2	0
	Roetman, Paul A	Defendant	0	1	1	3	0	9	0	5	0	0	0	0	32	5.3	5
		Plaintiff	0	0	3	0	2	1	1	0	1	1	3	0			
		Other	0	0	0	0	0	0	0	1	0	0	0	0			
Summary															53	5.9	5
Third	Crosby, Dani R	Defendant	.	.	0	0	5	0	3	0	1	0	3	0	28	5.6	6
		Plaintiff	.	.	3	0	4	0	5	0	0	0	3	0			
		Other	.	.	1	0	0	0	0	0	0	0	0	0			
	Guidi, Andrew	Defendant	6	0	2	0	2	0	6	1	9	0	31	1	157	26.2	21
		Plaintiff	7	0	11	0	14	0	23	0	16	0	22	0			
		Other	0	0	3	0	1	0	0	0	0	0	2	0			
	Henderson, Jennifer S	Defendant	2	0	3	0	0	0	28	9.3	10
		Plaintiff	.	.	.	.	.	.	8	0	3	0	4	0
		Other	.	.	.	.	.	.	0	0	8	0	0	0
	Lamoureux, Yvonne	Defendant	7	0	2	0	1	0	21	7	9
		Plaintiff	.	.	.	.	.	.	2	0	1	0	2	0
		Other	.	.	.	.	.	.	0	0	6	0	0	0
	Miller, Gregory A	Defendant	7	0	3	0	8	1	4	1	11	0	13	0	106	17.7	18
		Plaintiff	4	0	0	0	10	1	9	0	10	0	7	7			
		Other	3	0	3	0	2	0	0	0	2	0	0	0			
	Reigh, Christina L	Defendant	1	1	0	1	2	0	9	3	2
		Plaintiff	.	.	.	.	.	.	1	0	0	0	0	0
		Other	.	.	.	.	.	.	3	0	0	0	0	0
	Wells, Jennifer K	Defendant	8	1	3	0	5	3	38	12.7	11
		Plaintiff	.	.	.	.	.	.	2	0	3	1	2	0
		Other	.	.	.	.	.	.	6	0	4	0	0	0
Woodman, Jonathan A	Defendant	1	0	1	1	2	3	6	6	37	9.2	8	
	Plaintiff	.	.	.	.	0	0	1	0	3	0	8	0	
	Other	.	.	.	.	0	0	2	0	3	0	0	0	
Summary															424	12.8	10
Fourth	Peters, Nathaniel	Defendant	0	22	1	5	3	6	37	12.3	9
		Plaintiff	.	.	.	.	.	.	0	0	0	0	0	0
		Other	.	.	.	.	.	.	0	0	0	0	0	0
All	Summary														514	11.4	9

. = No value

Defendant = defendant in both criminal and civil cases

* Mean and median unit of analysis is judge/year

Plaintiff = plaintiff in civil cases and prosecutor in criminal cases

Other = Judge Disqualified for Cause; Peremptory Disqualification by Father/Mother/GAL/State

Overall: The average number of peremptory challenges for the superior court judges on the ballot for 2020 was 11.4 per year. The number of peremptory challenges averaged over the last five election cycles was 27.8 (2010-2018). Since 2006, average numbers of peremptory

challenges for judges eligible for retention have ranged from a low of 11.4 (2020) to a high of 36 (2006 and 2008). The peremptory challenge average was 14.4 in 2018.

First Judicial District: No judges are eligible for retention in the First Judicial District in 2020.

Second Judicial District: None of the superior court judges in the Second Judicial District received unusually high numbers of peremptory challenges. Judge DiBenedetto and Judge Roetman received low averages of 7 and 5.3, respectively.

Third Judicial District: None of the superior court judges in the Third Judicial District received unusually high numbers of peremptory challenges. Although the number of challenges Judge Guidi received was higher than that received by other judges in this particular group, the number was not unusual when compared to judges' averages over the last ten years.

Fourth Judicial District: None of the superior court judges in the Fourth Judicial District received unusually high numbers of peremptory challenges.

IV. Peremptory Challenge Records - District Court Judges

Peremptory Challenges of Judges - District Court													
Judicial District	Judge	Party	2016		2017		2018		2019		Summary		
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Third	Dickson, Leslie N	Defendant	0	0	0	0	0	0	0	0	9	2.2	1.5
		Plaintiff	1	0	3	3	1	1	0	0			
	Franciosi, Michael J	Defendant	.	.	0	0	0	1	1	0	6	2	2
		Plaintiff	.	.	0	0	1	2	0	1			
	Hanley, J Patrick	Defendant	0	0	0	0	0	0	0	0	7	1.8	1
		Plaintiff	0	5	0	1	0	1	0	0			
	Logue, Michael B	Defendant	.	.	.	.	0	0	0	0	9	4.5	4.5
		Plaintiff	.	.	.	.	0	2	1	6			
	McCrea, Kari L	Defendant	.	.	0	0	1	0	0	0	18	6	7
		Plaintiff	.	.	0	0	0	10	0	7			
Wallace, David R	Defendant	0	0	0	0	0	1	0	0	4	1	1	
	Plaintiff	1	0	1	0	1	0	0	0				
Washington, Pamela S	Defendant	.	.	.	.	.	.	0	2	6	6	6	
	Plaintiff	.	.	.	.	.	.	3	1				
	Summary										59	2.8	2
Fourth	Christian, Matthew C	Defendant	1	0	0	1	0	0	0	0	19	4.8	3
		Plaintiff	0	12	0	5	0	0	0	0			
	Montgomery, William T	Defendant	.	.	.	.	0	4	0	3	7	3.5	3.5
		Plaintiff	.	.	.	.	0	0	0	0			
	Summary										26	4.3	3.5
All	Summary										85	3.1	2

. = No value

Defendant = defendant in both criminal and civil cases

* Mean and median unit of analysis is judge/year

Plaintiff = plaintiff in civil cases and prosecutor in criminal cases

Overall: The mean number of peremptory challenges for a district court judge appearing on the ballot in 2020 was 3.1. This mean was much lower than in 2018 when the average was skewed upward largely due to one judge's numbers to 34.9.

First Judicial District: No district court judges in the First Judicial District are eligible for retention in 2020.

Second Judicial District: The Second Judicial District has no district court judges.

Third Judicial District: District court judges in the Third Judicial District received an average of 2.8 peremptory challenges per year. Judge Washington has no data from 2016 to 2018 because she served temporarily on the Anchorage Superior Court during that time. She received only six challenges during the year she served on the Anchorage District Court, the court to which she was appointed.

Fourth Judicial District: The two district court judges from the Fourth Judicial District eligible for retention received very few challenges. Judge Christian received an average of 4.8 challenges per year and Judge Montgomery received an average of 3.5 challenges per year.



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: July 15, 2020
RE: Recusal Records of Judges Eligible for Retention in 2020

I. Introduction

One tool that the Judicial Council uses for evaluating judges is a judge's record of self-disqualification from cases, or "recusals." Judges are required to disclose potential reasons for disqualification and then step down from cases when there is a conflict. If a judge's activities prevent him or her from sitting on an inordinate number of cases, however, that judge may not be as effective as other judges in handling his or her caseload. This memo examines recusal records of those judges who are eligible for retention in 2020.

II. Context for interpreting recusal data

Alaska Statute 22.20.020 sets forth the matters in which a judge may not participate. Judges may not act in matters: when the judge is a party; when the judge is related to a party or an attorney; when the judge is a material witness; when the judge or a member of the judge's family has a direct financial interest; when one of the parties has recently been represented by the judge or the judge's former law firm; or when the judge for any reason feels that a fair and impartial decision cannot be given. Judicial officers must disclose any reason for possible disqualification at the beginning of a matter.

Alaska Code of Judicial Conduct Canon 3E presents even broader bases for recusal. The canon states that a judge is disqualified whenever the judge's impartiality might reasonably be questioned. The rule also requires a judge to disclose on the record any information that the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. The canon provides examples, including instances when the judge has a personal bias or prejudice concerning a party or an attorney, the judge has personal knowledge of the disputed facts, the judge or the judge's former law partner served as a lawyer in the matter in controversy, or when the judge knows that he or she, or the judge's spouse, parent, or child has an economic or other interest in the matter, or is likely to be a material witness in the proceeding.

Canon 4 requires judges to conduct their extra-judicial activities so as to comply with the requirements of the Code and so that the activities do not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties. Canon 4 restricts a judge's activities so as to minimize the instances that would require disqualification.

Conflicts and resulting disqualifications are unavoidable. Judges must recuse themselves when conflicts arise. Recusals do not necessarily indicate that a judge has failed to sufficiently regulate his or her extra-judicial activities. Only very high disqualification rates should trigger an inquiry about whether a judge is comporting him or herself so as to perform his or her judicial duties effectively.

The following tables list the number of instances each judge recused him or herself in the preceding six (for superior court judges) and four (for district court judges) years. Blank cells indicate that the judge had not yet been appointed to his or her current position.

III. Recusal Records - Superior Court Judges

Judge Recusals - Superior Court																
Judicial District	Judge	2014		2015		2016		2017		2018		2019		Summary		
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Second	DiBenedetto, Romano D	.	.	.	.	.	.	0	0	0	0	0	0	0	0	0
	Roetman, Paul A	2	0	1	1	7	1	12	0	5	0	11	0	40	6.7	6.5
	Summary													40	4.4	2
Third	Crosby, Dani R	.	.	1	0	18	0	26	0	11	0	8	0	64	12.8	11
	Guidi, Andrew	6	0	3	0	11	0	6	0	6	0	3	0	35	5.8	6
	Henderson, Jennifer S	.	.	.	.	.	.	6	0	4	0	8	0	18	6	6
	Lamoureux, Yvonne	.	.	.	.	.	.	1	0	1	0	2	0	4	1.3	1
	Miller, Gregory A	6	0	8	0	6	0	5	3	3	0	2	0	33	5.5	6
	Reigh, Christina L	.	.	.	.	.	.	1	1	1	0	0	2	5	1.7	2
	Wells, Jennifer K	.	.	.	.	.	.	5	0	3	0	5	0	13	4.3	5
	Woodman, Jonathan A	.	.	.	.	3	1	1	1	5	0	6	3	20	5	4.5
Summary													192	5.8	5	
Fourth	Peters, Nathaniel	.	.	.	.	.	.	0	0	2	2	0	2	6	2	2
All	Summary													238	5.3	4

. = No value

* Mean and median unit of analysis is judge/year

The recusal rates for superior court judges eligible for retention election in 2020 are unremarkable. The judge with the highest number of recusals (though still low) was Judge Crosby, who averaged 12.8 recusals per year. Most of these came in her first two years on the bench, with declining numbers afterwards. Judge Crosby had previously been in private practice in Anchorage, and her numbers likely reflect her previous activity as a practicing lawyer.

IV. Recusal Records - District Court Judges

Judge Recusals - District Court												
Judicial District	Judge	2016		2017		2018		2019		Summary		
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Third	Dickson, Leslie N	4	0	2	0	2	0	2	0	10	2.5	2
	Franciosi, Michael J	.	.	0	0	0	0	0	0	0	0	0
	Hanley, J Patrick	1	0	1	0	0	0	0	0	2	0.5	0.5
	Logue, Michael B	.	.	.	.	0	0	0	0	0	0	0
	McCrea, Kari L	.	.	0	0	1	0	0	0	1	0.3	0
	Wallace, David R	1	0	0	0	0	0	0	0	1	0.2	0
	Washington, Pamela S	3	0	5	0	3	0	0	0	11	2.8	3
	Summary									25	1	0
Fourth	Christian, Matthew C	3	0	1	4	1	0	4	0	13	3.2	3.5
	Montgomery, William T	.	.	.	.	1	25	0	9	35	17.5	17.5
		Summary								48	8	4.5
All	Summary									73	2.4	1

. = No value

* Mean and median unit of analysis is judge/year

District court judges typically recuse themselves infrequently. The recusal data for all district court judges standing for retention in 2020 was unremarkable.