



# alaska judicial council

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## MEMORANDUM

**TO:** Judicial Council

**FROM:** Staff

**DATE:** June 10, 2002

**RE:** Recusal records for judges eligible for retention in 2002

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### **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 judge who are eligible for retention in 2002.

### **II. Context for interpreting 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. The statute and canons require judges to 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.<sup>1</sup>

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<sup>1</sup>The accuracy and completeness of some of the data in these tables are questionable. These figures were obtained from court system records, which are the best source of information available for recusal statistics. Between 1994 and 1997, court record-keeping practices varied throughout the state, and the records for those years are not necessarily either correct or complete. According to the court system's statistics analyst, court data reporting practices have improved greatly since 1997, and the data from the past two years are reliable.

### III. Recusal Records

#### A. Superior Court Judges

<b>RECUSAL RECORDS FOR SUPERIOR COURT JUDGES RETENTION EVALUATION 2002</b>						
<b>Judge</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
<b>Collins</b>	7	15	7	3	6	10
<b>Thompson</b>	2	4	3	9	2	1
<b>Card</b>	0	n/a	2	2	1	2
<b>Pengilly</b>	3	2	11	5	9	7
<b>Savell</b>	18	29	13	20	9	10

Judges Thompson and Card recused themselves infrequently, never even reaching double-digits for any one year. Judges Collins and Pengilly recused themselves ten times or more only in one of the six years examined. Judge Savell recused himself the most often, with a low of nine and a high of twenty nine times per year during his six-year term, recusing himself over ten times in five of the six years examined. His recusal numbers have dropped in the last two years.

B. District Court Judges

<b>RECUSAL RECORDS FOR DISTRICT COURT JUDGES</b>					
Retention Evaluation 2002					
	<b>Judge</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
<b>Non-Anchorage</b>	Neville	4	0	0	5
	Miller		33	48	18
	Kavaur	4	9	7	0
	Froehlich	2	4	5	10
<b>Anchorage</b>	Adams			2	3
	Lohff	0	2	9	0
	Motyka	0	3	0	0
	Murphy	1	1	93	0
	Rhoades	0	1	1	2

Two district court judges' recusal rates are remarkable. First, Judge Murphy recused himself only once in 1998, 1999 and not at all in 2001. In 2000 he recused himself 93 times, almost twice as many as the single highest other judge for any one year. Larry Cohn's letter to Judge Murphy regarding Judge Murphy's high number of recusals in 2000 and Judge Murphy's explanation are attached.

Judge Miller's recusal numbers are also remarkable – over the last three years he has recused himself 99 times, topping Judge Murphy's overall record of 95 times. Judge Miller is a thirty-four year resident of Ketchikan and practiced there for ten years before being appointed. His long-term residence in Ketchikan, combined with his recent law practice, and Ketchikan's small size as a community should be noted when considering his high recusal rates. In 2001 he recused himself eighteen times so it appears that his recusal rate is dropping.

The remaining district court judges' recusal rates are uniformly low.