



# alaska judicial council

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## MEMORANDUM

**TO:** Judicial Council

**FROM:** Staff

**DATE:** May 24, 2004

**RE:** Recusal records for judges eligible for retention in 2004

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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 judges who are eligible for retention in 2004.

### **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.

### III. Recusal Records

#### A. Superior Court Judges

<b>RECUSAL RECORDS FOR SUPERIOR COURT JUDGES RETENTION EVALUATION 2002</b>						
<b>Judge</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>Christen</b>				0	5	1
<b>Cutler</b>	12	2	4	2	3	3
<b>Gleason</b>				13	6	0
<b>Jeffery</b>	0	0	0	0	0	0
<b>Rindner</b>				19	4	3
<b>Stephens</b>			28	29	14	12
<b>Steinkruger</b>	3	10	6	14	2	8

The new Anchorage judges, Judges Christen, Gleason, and Rindner, recused themselves infrequently. Judges Rindner and Gleason recused themselves more in their first full year on the bench than in other years, as would be expected. Judge Cutler also recused herself infrequently, only recusing herself twelve times in 1998 and not topping four times in any other year. Judge Steinkruger experienced a similar pattern, recusing herself 14 times in one year, 2001, but never more than ten times in any other year.

The data on Judge Jeffery are insufficient which prevents comparison with other judges.

Judge Stephens recused himself the most, doing so 28-29 times in each of his first two years on the bench. In the second two years on the bench he recused himself only 14 and 12 times, indicating a downward trend, as would be expected for a new judge.

None of these recusal rates are remarkable. Judge Stephens' recusals are higher than the other new judges likely because he is a judge in a smaller city and because he was born and raised in Ketchikan, resulting in him knowing more people and having more opportunities for conflicts.

B. District Court Judges

<b>RECUSAL RECORDS FOR DISTRICT COURT JUDGES RETENTION EVALUATION 2002</b>				
<b>Judge</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>Nolan</b>			2	0
<b>Funk</b>	3	2	2	1

The two district court judges' recusal rates are unremarkable.