

# Alaska Judicial Council Summary of Performance Evaluation

## Judge Jo-Ann M. Chung Anchorage District Court

The Judicial Council finds Judge Chung to be **qualified** and recommends unanimously that the public vote “**YES**” to retain her as a district court judge.

### Summary

The Judicial Council’s recommendation to vote “YES” on Judge Chung is based on her performance on many measures, including: surveys of attorneys and other professionals who have direct experience with Judge Chung; independent court observers; public records; APOC files; and any disciplinary files.

In addition, the Council researched specific aspects of Judge Chung’s performance such as how many times her decisions were affirmed on appeal, whether her pay was withheld for untimely decisions, and how often a party requested assignment of a new judge. Based on its review of all this information, the Judicial Council recommends a “YES” vote on Judge Chung. Performance evaluation information about Judge Chung is detailed below.

### Details

1. **Biographical Information.** Judge Chung has been a district court judge since 2011. This is her first retention election. For more biographical information about Judge Chung click [here](#).
2. **Survey Ratings.** The surveys use a 1 to 5 rating scale:  
5.0 = Excellent; 4.0 = Good; 3.0 = Acceptable; 2.0 = Deficient; 1.0 = Poor
  - a. **Attorney Surveys.** Attorneys who responded to the Judicial Council’s survey on Judge Chung’s performance rated her 4.1 on overall performance. For detailed attorney survey results on Judge Chung click [here](#).
  - b. **Peace and Probation Officer Surveys.** Peace and probation officers who responded to the Judicial Council’s survey on Judge Chung rated her 4.1 overall. For detailed peace officer survey results on Judge Chung click [here](#).
  - c. **Social Services Professionals.** Social services professionals evaluated Judge Chung’s performance as “Good,” based on direct professional experience.

- d. **Court Employee Surveys.** Court employees who responded to the Judicial Council's survey on Judge Chung rated her 4.6 overall. For detailed court employee survey results on Judge Chung click [here](#).
  - e. **Juror Surveys.** Jurors who served on trials in Judge Chung's courtroom rated her 4.8. For detailed juror survey results on Judge Chung click [here](#).
3. **Peremptory Challenge Rates.** Alaska law and court rules allow a party one opportunity to request assignment of a new judge. Judge Chung had an average of two challenges per year, which was lower than recent averages. For more information about peremptory challenge rates for Judge Chung click [here](#).
4. **Recusal Rate.** Judges are required to step down from a case when there is a conflict of interest (for example, when the judge is related to a party or an attorney), or there is some other reason why they should not preside over the case (for example, the judge has personal knowledge of disputed facts). For more information about Judge Chung's recusal rate click [here](#).
5. **Appellate Affirmance Rate.** The Council studies how often trial judges are reversed on appeal. For Judge Chung's performance on this item click [here](#).
6. **Salary Withholdings.** Alaska law requires a judge's pay to be withheld for unfinished work. No salary was withheld for Judge Chung during this time. For general information about salary withholding, click [here](#).
7. **Court Observations.** Independent, neutral court observers provide information about the judge's performance in the courtroom. The court observers rated Judge Chung 3.34 overall. For more information about the ratings of the Alaska Judicial Observers go to <http://www.ajc.state.ak.us/retention/retent2014/judobsrvs14.pdf>.



# alaska judicial council

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## Alaska Judicial Council Trial Judge Questionnaire

### 2014 Candidates for Judicial Retention

October 2013

Jo-Ann Chung

District Court

Name

Court

1. Please estimate your workload during your present term.

a) $\frac{40}{55}$ % civil cases	b) $\frac{10}{8}$ # of jury trials/year
$\frac{5}{5}$ % criminal cases	$\frac{8}{0}$ # of non-jury trials/year
$\frac{5}{100}$ % court administrative work	$\frac{0}{0}$ # 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 took over Operating Without License (OWL) specialty court in the beginning of 2012. I met with the stakeholders from the different agencies to re-establish guidelines. I moderated several trainings on bail issues in domestic violence cases at both the Spring of 2012 judicial conference (district court break-out session) and the magistrate's conference in the Fall of 2012.

3. 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.

It has been a very busy and stimulating first several years on the bench. I have been increasingly more comfortable in my judicial role. I have vastly increased my knowledge in the civil litigation arena, including credit card debt claims, forcible entry of detainer cases, lawsuits stemming from motor vehicle accidents, and post-judgement execution. I have increased my knowledge of felony crimes, extradition, suppression issues, and have had an opportunity to delve into interesting constitutional claims in the criminal context as well. Contributions include volunteering at the Moot Court local high school competitions, Success In and Out at Highland Correctional Facility, and the Colors of Justice program. I am also an instructor for a local bar study course on Criminal Law and Procedure. I find these court/law-related, civic-minded pursuits rewarding and fulfilling and continue to seek positive ways to serve the community. It has been a unique experience for me to transition from the role of an advocate to a fair and impartial jurist, but I feel that this challenge is an important part of the process. It is also important to me to think about notions of fairness and due process every day and apply these premises in all cases, whether it be an eviction case, a small claims case, or whether attorneys are involved or not.

4. 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, or with the Alaska Court System that resulted in public proceedings or sanctions?     Yes  No

5. If your answer to any of the questions above is "yes," please give full details, including dates, facts, case numbers and outcomes.

6. Please provide any other information which you believe would assist the Council in conducting its evaluations and in preparing its recommendations for the 2014 retention elections.

For questions 7 through 10 please do not list any cases that have pending issues in your court.

- 7. 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: 3AN-12-11733 CR  
 v. Pedro Nel Sanchez

**Attorneys Involved:**

Name: <u>Lawrence Monsma, DAO</u>	Name: <u>M. Reilly Cosgrove, PDA</u>
Address: <u>310 K Street, Suite 520</u>	Address: <u>900 W. 5th Ave, Suite 200</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Anchorage, AK 99501</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 2**

Case Name: Municipality of Anchorage Case Number: 3AN-13-3471 CR  
 v. Ronald Carey Williamson

**Attorneys Involved:**

Name: <u>Dustin Pearson, MOA</u>	Name: <u>Michael Graper, G&amp;L</u>
Address: <u>632 W. 6th Ave, Suite 210</u>	Address: <u>737 M Street</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Anchorage, AK 99501</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 3**

Case Name: State of Alaska Case Number: 3AN-13-2179 CR  
 v. Jesse Shane Kern

**Attorneys Involved:**

Name: <u>Andrew Klugman, DAO</u>	Name: <u>Mary Fleming, PDA</u>
Address: <u>310 K Street, Suite 520</u>	Address: <u>900 W. 5th Ave, Suite 200</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Anchorage, AK 99501</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

- 8. 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:** James Duncan **Case Number:** 3AN-12-10350 CI  
 v. Martha Reinbold

**Attorneys Involved:**

Name: Roberta Erwin, Esq.	Name: Roy Williams, Esq.
Address: 745 W. 4th Ave, Suite 500	Address: P.O. Box 770687
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Eagle River, AK 99577
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 2**

**Case Name:** Timothy Lethin **Case Number:** 3AN-12-7473 CI  
 v. Alaska 4-Wheel Drive, et.al.

**Attorneys Involved:**

Name: Brent Cole, Esq.	Name: Steven D. Smith, Esq.
Address: 821 N Street Suite 208	Address: 7120 Old Seward Hwy, # 203
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99518
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 3**

**Case Name:** Jin Hee Yun **Case Number:** 3AN-11-5222 CI  
 v. Kisun Hamilton

**Attorneys Involved:**

Name: John Pharr, Esq.	Name: John E. Havelock, Esq.
Address: 733 W. 4th Ave, Suite 308	Address: 1029 W. 3rd Ave, Suite 510
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99501
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

- 9. 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:* State of Alaska *Case Number:* 3AN-12-9845 CR  
*v.* Thomas Alan Hennings

**Attorneys Involved:**

<i>Name:</i> <u>Andrew Klugman, DAO</u>	<i>Name:</i> <u>Benjamin Muse, PDA</u>
<i>Address:</i> <u>310 K Street, Suite 520</u>	<i>Address:</i> <u>900 W. 5th Ave, Suite 200</u>
<i>City, State, Zip:</i> <u>Anchorage, AK 99501</u>	<i>City, State, Zip:</i> <u>Anchorage, AK 99501</u>
<i>Name:</i> _____	<i>Name:</i> _____
<i>Address:</i> _____	<i>Address:</i> _____
<i>City, State, Zip:</i> _____	<i>City, State, Zip:</i> _____

**Case Number 2**

*Case Name:* State of Alaska *Case Number:* 3AN-12-7959 CR  
*v.* Ryan Maxwell McCrum-Brion

**Attorneys Involved:**

<i>Name:</i> <u>Jason Frasco</u>	<i>Name:</i> <u>Darryl Thompson</u>
<i>Address:</i> <u>310 K Street, Suite 520</u>	<i>Address:</i> <u>841 I Street</u>
<i>City, State, Zip:</i> <u>Anchorage, AK 99501</u>	<i>City, State, Zip:</i> <u>Anchorage, AK 99501</u>
<i>Name:</i> _____	<i>Name:</i> _____
<i>Address:</i> _____	<i>Address:</i> _____
<i>City, State, Zip:</i> _____	<i>City, State, Zip:</i> _____

**Case Number 3**

*Case Name:* Ah Limchantha *Case Number:* 3AN-13-4735 CI  
*v.* Won Cho, et. al.

**Attorneys Involved:**

<i>Name:</i> <u>Darryl Thompson</u>	<i>Name:</i> <u>Jill Wittenbrader</u>
<i>Address:</i> <u>842 I Street</u>	<i>Address:</i> <u>506 Marine Way, Suite 3</u>
<i>City, State, Zip:</i> <u>Anchorage, AK 99501</u>	<i>City, State, Zip:</i> <u>Kodiak, AK 99615</u>
<i>Name:</i> _____	<i>Name:</i> _____
<i>Address:</i> _____	<i>Address:</i> _____
<i>City, State, Zip:</i> _____	<i>City, State, Zip:</i> _____



- 10. *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:* State of Alaska *Case Number:* 3AN-12-7336, A-11382  
*v.* Charles Kevin Stoke

**Attorneys Involved:**

<i>Name:</i> <u>Clint Campion, DAO</u>	<i>Name:</i> <u>Lindsay CU Van Grokum, PDA</u>
<i>Address:</i> <u>310 K Street, Suite 520</u>	<i>Address:</i> <u>900 W. 5th Ave, Suite 200</u>
<i>City, State, Zip:</i> <u>Anchorage, AK 99501</u>	<i>City, State, Zip:</i> <u>Anchorage, AK 99501</u>

<i>Name:</i> <u>Marika Athens, OSPA</u>	<i>Name:</i> _____
<i>Address:</i> <u>310 K Street, Suite 308</u>	<i>Address:</i> _____
<i>City, State, Zip:</i> <u>Anchorage, AK 99501</u>	<i>City, State, Zip:</i> _____

**Case Number 2**

*Case Name:* \_\_\_\_\_ *Case Number:* \_\_\_\_\_  
*v.* \_\_\_\_\_

**Attorneys Involved:**

<i>Name:</i> _____	<i>Name:</i> _____
<i>Address:</i> _____	<i>Address:</i> _____
<i>City, State, Zip:</i> _____	<i>City, State, Zip:</i> _____

<i>Name:</i> _____	<i>Name:</i> _____
<i>Address:</i> _____	<i>Address:</i> _____
<i>City, State, Zip:</i> _____	<i>City, State, Zip:</i> _____

**Case Number 3**

*Case Name:* \_\_\_\_\_ *Case Number:* \_\_\_\_\_  
*v.* \_\_\_\_\_

**Attorneys Involved:**

<i>Name:</i> _____	<i>Name:</i> _____
<i>Address:</i> _____	<i>Address:</i> _____
<i>City, State, Zip:</i> _____	<i>City, State, Zip:</i> _____

<i>Name:</i> _____	<i>Name:</i> _____
<i>Address:</i> _____	<i>Address:</i> _____
<i>City, State, Zip:</i> _____	<i>City, State, Zip:</i> _____

## District Court Judge Jo-Ann M. Chung

### A. Alaska Bar Association

#### Demographic Description

	N	%
<b>Type of Practice</b>		
No Response	--	0.0%
Private, Solo	17	19.5%
Private, 2-5 Attorneys	12	13.8%
Private, 6+ Attorneys	6	6.9%
Private, Corporate Employee	--	0.0%
Judge or Judicial Officer	17	19.5%
Government	32	36.8%
Public Service Agency or Organization	1	1.1%
Other	2	2.3%
<b>Length of Alaska Practice</b>		
No Response	6	6.9%
5 Years or fewer	10	11.5%
6 to 10 years	10	11.5%
11 to 15 years	11	12.6%
16 to 20 years	10	11.5%
21 years or more	40	46.0%
<b>Gender</b>		
No Response	--	0.0%
Male	59	67.8%
Female	28	32.2%
<b>Cases Handled</b>		
No Response	--	0.0%
Prosecution	15	17.2%
Mainly Criminal	15	17.2%
Mixed Criminal & Civil	26	29.9%
Mainly Civil	29	33.3%
Other	2	2.3%
<b>Location of Practice</b>		
No Response	--	0.0%
First District	2	2.3%
Second District	--	0.0%
Third District	85	97.7%
Fourth District	--	0.0%
Outside of Alaska	--	0.0%
<b>Experience with the judge</b>		
Direct professional experience	73	83.9%
Experience in last 5 years	72	82.8%
Experience not in last 5 years	1	1.1%

## Judge Jo-Ann M. Chung: Detailed Information Responses Alaska Bar Association Members

	Legal Ability		Impartiality/ Fairness		Integrity		Judicial Temperament		Diligence		Overall Evaluation	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
<b>Basis for Evaluation</b>												
No Response		4		2		6		4		8		1
<b>Direct Professional</b>	<b>3.9</b>	<b>71</b>	<b>4.1</b>	<b>73</b>	<b>4.3</b>	<b>70</b>	<b>4.1</b>	<b>72</b>	<b>4.1</b>	<b>69</b>	<b>4.1</b>	<b>73</b>
Experience in last 5 yrs	3.9	69	4.0	71	4.3	68	4.1	71	4.1	67	4.0	71
Experience not in last 5 yrs	4.0	1	5.0	1	5.0	1	--	0	4.0	1	5.0	1
Professional Reputation	4.5	8	4.6	9	4.9	8	5.0	8	4.9	8	4.8	9
Other Personal Contacts	4.5	4	4.7	3	5.0	3	4.3	3	4.5	2	4.5	4
<b>Type of Practice</b>												
No Response		3		1		4		2		5		1
Private, Solo	3.9	13	3.9	13	4.3	12	3.9	14	4.1	12	4.0	13
Private, 2-5 Attorneys	3.4	12	3.8	12	4.3	11	4.0	11	3.7	11	3.7	12
Private, 6+ Attorneys	3.5	6	3.5	6	3.5	6	3.7	6	3.8	6	3.7	6
Private, Corporate Employee	--	0	--	0	--	0	--	0	--	0	--	0
Judge or Judicial Officer	4.2	17	4.4	17	4.7	17	4.4	17	4.4	17	4.4	17
Government	4.0	21	4.2	23	4.3	22	4.1	22	4.0	21	4.0	23
Public Service Agency/Org	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1
Other	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1
<b>Years of Practice in Alaska</b>												
No Response		3		1		4		2		5		1
5 Years or fewer	4.0	8	4.2	9	4.4	8	4.4	9	4.7	7	4.2	9
6 to 10 years	3.6	7	3.8	8	4.0	8	3.8	8	3.5	8	3.5	8
11 to 15 years	3.9	7	4.0	7	3.9	7	4.0	6	4.0	7	4.1	7
16 to 20 years	3.3	10	3.8	10	4.1	8	3.8	9	3.6	9	3.7	10
21 years or more	4.2	34	4.3	34	4.5	34	4.2	35	4.2	33	4.3	34
<b>Gender</b>												
No Response		3		1		4		2		5		1
Male	3.9	49	4.0	51	4.3	50	4.0	51	4.0	47	4.0	51
Female	4.0	22	4.1	22	4.4	20	4.3	21	4.3	22	4.2	22
<b>Cases Handled</b>												
No Response		3		1		4		2		5		1
Prosecution	4.1	11	4.5	12	4.6	11	4.2	11	4.1	11	4.3	12
Mainly Criminal	3.8	11	3.6	11	3.8	11	4.1	12	4.1	10	3.8	12
Mixed Criminal & Civil	4.3	24	4.3	24	4.6	24	4.4	24	4.5	23	4.4	24
Mainly Civil	3.5	23	3.8	24	4.0	23	3.8	23	3.7	23	3.8	23
Other	3.5	2	4.0	2	5.0	1	3.5	2	4.0	2	3.5	2
<b>Location of Practice</b>												
No Response		3		1		4		2		5		1
First District	4.0	1	5.0	1	5.0	1	--	0	4.0	1	5.0	1
Second District	--	0	--	0	--	0	--	0	--	0	--	0
Third District	3.9	70	4.1	72	4.3	69	4.1	72	4.1	68	4.0	72
Fourth District	--	0	--	0	--	0	--	0	--	0	--	0
Outside of Alaska	--	0	--	0	--	0	--	0	--	0	--	0

Note: Ratings for only those respondents who reported direct professional experience with the judge.

**District Court Judge Jo-Ann M. Chung****B. Peace and Probation Officers****Demographic Description**

		<b>N</b>	<b>%</b>
<b>Type of Work</b>	No Response	1	4.5%
	State Law Enforcement Officer	7	31.8%
	Municipal/Borough Law Enforcement Officer	13	59.1%
	Village Public Safety Officer (VPSO)	--	0.0%
	Probation/Parole Officer	1	4.5%
	Other	--	0.0%
<b>Length of Alaska Experience</b>	No Response	2	9.1%
	5 Years or fewer	1	4.5%
	6 to 10 years	5	22.7%
	11 to 15 years	6	27.3%
	16 to 20 years	6	27.3%
	21 years or more	2	9.1%
<b>Gender</b>	No Response	2	9.1%
	Male	17	77.3%
	Female	3	13.6%
<b>Location of Work</b>	No Response	1	4.5%
	First District	1	4.5%
	Second District	--	0.0%
	Third District	20	90.9%
	Fourth District	--	0.0%
	Outside of Alaska	--	0.0%
<b>Community Population</b>	No Response	1	4.5%
	Under 2,000	1	4.5%
	Between 2,000 and 35,000	--	0.0%
	Over 35,000	20	90.9%
<b>Experience with the judge</b>	Direct professional experience	17	77.3%
	Experience in last 5 years	17	77.3%
	Experience not in last 5 years	--	0.0%

**Judge Jo-Ann M. Chung  
Peace and Probation Officers**

	Impartiality/ Fairness		Integrity		Judicial Temperament		Diligence		Overall Evaluation	
	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N
<b>Basis for Evaluation</b>										
No Response		2		3		4		4		2
<b>Direct Professional</b>	<b>4.3</b>	<b>16</b>	<b>4.3</b>	<b>16</b>	<b>4.2</b>	<b>15</b>	<b>4.2</b>	<b>14</b>	<b>4.1</b>	<b>16</b>
Experience in last 5 yrs	4.3	16	4.3	16	4.2	15	4.2	14	4.1	16
Experience not in last 5 yrs	--	0	--	0	--	0	--	0	--	0
Professional Reputation	4.0	3	4.5	2	4.0	3	4.0	3	4.0	3
Other Personal Contacts	5.0	1	5.0	1	--	0	5.0	1	5.0	1
<b>Type of Work</b>										
No Response		1		1		2		3		1
State Law Enforcement Officer	4.3	6	4.3	6	4.3	6	4.0	5	4.2	6
Municipal/Borough Law Enforcement Off.	4.2	10	4.3	10	4.1	9	4.3	9	4.1	10
Village Public Safety Officer (VPSO)	--	0	--	0	--	0	--	0	--	0
Probation/Parole Officer	--	0	--	0	--	0	--	0	--	0
Other	--	0	--	0	--	0	--	0	--	0
<b>Length of Experience</b>										
No Response		1		1		2		3		1
5 Years or fewer	5.0	1	5.0	1	5.0	1	5.0	1	4.0	1
6 to 10 years	4.0	4	4.3	4	4.5	4	4.0	4	4.3	4
11 to 15 years	4.5	4	4.5	4	4.3	3	4.3	3	4.3	4
16 to 20 years	4.0	6	4.0	6	3.7	6	4.0	5	3.8	6
21 years or more	--	0	--	0	--	0	--	0	--	0
<b>Gender</b>										
No Response		1		1		2		2		1
Male	4.2	14	4.3	14	4.2	13	4.2	13	4.1	14
Female	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1
<b>Location of Work</b>										
No Response		1		1		2		3		1
First District	--	0	--	0	--	0	--	0	--	0
Second District	--	0	--	0	--	0	--	0	--	0
Third District	4.3	16	4.3	16	4.2	15	4.2	14	4.1	16
Fourth District	--	0	--	0	--	0	--	0	--	0
Outside of Alaska	--	0	--	0	--	0	--	0	--	0
<b>Community Population</b>										
No Response		1		1		2		3		1
Under 2,000	--	0	--	0	--	0	--	0	--	0
Between 2,000 and 35,000	--	0	--	0	--	0	--	0	--	0
Over 35,000	4.3	16	4.3	16	4.2	15	4.2	14	4.1	16

Note: Ratings for only those respondents who reported direct professional experience with the judge.



# alaska judicial council

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## MEMORANDUM

**TO:** Judicial Council Members  
**FROM:** Staff  
**DATE:** March 26, 2014  
**RE:** Court Employee Survey Report

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The court employee survey was mailed to all court system employees excluding those who were identified by the court as attorneys. Of 637 surveys distributed, 300 were returned for a return rate of 47%. Of the 300 returned surveys, 49 had no ratings or comment on any judge and were not included in the analysis. Council staff entered data, ran descriptive statistics, and transcribed comments from the surveys. A sample survey page is included at the end of this memorandum.

Table 1 shows the basis for evaluation of each judge.

<b>Table 1 Basis for Evaluation</b>					
	<b>Direct Professional Experience</b>	<b>Professional Reputation</b>	<b>Other Personal Contacts</b>	<b>Rated Judge but No Basis Checked</b>	<b>Total Responses</b>
Jo-Ann M. Chung	43	11	5	1	60
Brian K. Clark	52	13	4	3	72
William L. Estelle	17	2	1	2	22
Andrew Guidi	38	8	2	1	49
Sharon A.S. Illsley	16	1	0	1	18
Louis James Menendez	34	3	1	1	39
Gregory Miller	34	15	1	1	51
Kevin G. Miller	31	3	3	2	39
Gregory Motyka	44	11	4	4	63
Stephanie Rhoades	54	19	5	7	85
Paul A. Roetman	15	2	2	0	19
Ben Seekins	38	6	1	2	47
Craig F. Stowers	54	9	9	2	74
John W. Wolfe	19	3	2	2	26

## Individual Results

Table 2 shows the mean score for each judge for each question on the survey. Individual survey results are provided for each judge in separate tables. Court employees used a five-point scale, with *excellent* scored as five, and *poor* scored as one. The first column shows the total number of court employees who evaluated the judge on at least one variable.

<b>Table 2 Ratings Based on Direct Professional Experience</b>						
	<b>Number of Responses</b>	<b>Impartiality/ Fairness</b>	<b>Integrity</b>	<b>Judicial Temperament</b>	<b>Diligence</b>	<b>Overall</b>
Jo-Ann M. Chung	43	4.7	4.8	4.6	4.6	<b>4.6</b>
Brian K. Clark	52	4.8	4.9	4.9	4.8	<b>4.9</b>
William L. Estelle	17	4.4	4.5	4.3	4.2	<b>4.3</b>
Andrew Guidi	38	4.4	4.5	4.5	4.4	<b>4.4</b>
Sharon A.S. Illsley	16	4.5	4.6	4.6	4.6	<b>4.5</b>
Louis James Menendez	34	4.5	4.6	4.5	4.5	<b>4.6</b>
Gregory Miller	34	4.4	4.4	4.3	4.5	<b>4.4</b>
Kevin G. Miller	31	4.9	4.9	5.0	4.8	<b>5.0</b>
Gregory Motyka	44	4.5	4.5	4.4	4.5	<b>4.5</b>
Stephanie Rhoades	54	4.5	4.5	4.3	4.5	<b>4.5</b>
Paul A. Roetman	15	4.8	4.7	4.5	4.7	<b>4.9</b>
Ben Seekins	38	4.7	4.8	4.8	4.7	<b>4.8</b>
Craig F. Stowers	54	4.5	4.5	4.3	4.5	<b>4.4</b>
John W. Wolfe	19	4.4	4.5	4.4	4.5	<b>4.4</b>



Distribution of Court Employee Ratings* 2014 Retention Evaluation <b>Jo-Ann M. Chung</b>							
Survey Category	Number of Responses						
	Total	Excellent (5)	Good (4)	Acceptable (3)	Deficient (2)	Poor (1)	Mean
<b>Impartiality/Fairness</b>	41	28	12	1	0	0	<b>4.7</b>
<b>Integrity</b>	42	33	8	1	0	0	<b>4.8</b>
<b>Judicial Temperament</b>	42	28	12	2	0	0	<b>4.6</b>
<b>Diligence</b>	40	25	12	3	0	0	<b>4.6</b>
<b>Overall Evaluation</b>	43	28	14	1	0	0	<b>4.6</b>

\* Ratings are based on direct professional experience.



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## MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** April 2, 2014  
**RE:** Juror Survey Report

---

The Alaska Judicial Council surveyed all jurors who sat in 2012 and 2013 trials before the 13 trial court judges eligible to stand for retention in 2014. A total of 716 jurors responded on Council-provided postcards that judges distributed to jurors at the end of each trial. Jurors completed the surveys on the postage-paid cards and mailed them to the Council. A sample juror survey postcard is included at the end of this memorandum.

Council staff entered data from the surveys and ran basic descriptive statistics. This memorandum summarizes the findings. It is distributed to Council members and judges, and shared on the Council's website. Jurors rated judicial performance, made comments, reported the number of days served and stated whether they sat on a civil or criminal trial.

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.

<b>Table 1: Distribution of Jurors by Type of Trial, by Judge</b> Alaska Judicial Council 2014 Retention Juror Survey				
<b>Judge</b>	<b>Civil</b>	<b>Criminal</b>	<b>No Answer</b>	<b>Total</b>
Jo-Ann M. Chung	7	87	3	97
Brian K. Clark	6	77	1	84
William L. Estelle	8	25	0	33
Andrew Guidi	10	1	1	12
Sharon A.S. Illsley	2	66	3	71
Louis James Menendez	0	23	1	24
Gregory Miller	0	72	1	73
Kevin G. Miller	2	34	3	39
Gregory Motyka	4	23	0	27
Stephanie Rhoades	3	92	1	96
Paul A. Roetman	9	28	4	41
Ben Seekins	2	54	2	58
John W. Wolfe	5	52	4	61

Table 2 shows the distribution of number of days served, as reported by the jurors. Three-quarters of the jurors served fewer than five days.

<b>Table 2: Distribution of Days Served</b>		
<b>Number of Days Served</b>	<b>%</b>	<b>N</b>
1 - 2 Days	42%	297
3 - 4 Days	35%	253
5 - 7 Days	12%	86
8 - 10 Days	4%	31
11 - 20 Days	1%	5
21 or More Days	0.1%	1
No Answer	6%	43
Total		716

## Individual Results

Table 3 shows the mean score for each judge for each question on the survey. Individual survey results are provided for each judge in separate tables. Jurors used a five-point scale, with *excellent* scored as five, and *poor* scored as one. The closer the jurors' scores were to five, the higher that judge's evaluation by the jurors. The last column shows the total number of jurors who evaluated the judge on at least one variable.

**Table 3**  
**Mean Score for each Variable and for "Overall Performance," by Judge**  
 Alaska Judicial Council 2014 Retention Juror Survey

	Fair and impartial to all sides	Respectful and courteous to parties	Attentive during proceedings	Exercised control over proceedings	Intelligence and skill as a judge	Overall evaluation	
						Mean	Total
Jo-Ann M. Chung	4.8	4.9	4.8	4.8	4.8	97	
Brian K. Clark	4.9	5.0	4.9	4.9	4.9	84	
William L. Estelle	4.9	4.9	4.7	4.8	4.7	33	
Andrew Guidi	4.9	5.0	4.8	4.7	4.8	12	
Sharon A.S. Illsley	4.8	4.9	4.9	4.9	4.9	71	
Louis James Menendez	4.8	4.9	4.9	4.8	4.8	24	
Gregory Miller	4.9	5.0	5.0	4.9	5.0	73	
Kevin G. Miller	4.9	4.9	4.9	4.9	4.9	39	
Gregory Motyka	5.0	5.0	4.8	4.9	4.9	27	
Stephanie Rhoades	4.9	4.9	4.9	4.9	4.9	96	
Paul A. Roetman	4.7	4.8	4.7	4.6	4.8	41	
Ben Seekins	4.8	4.9	4.7	4.7	4.8	58	
John W. Wolfe	4.8	4.9	4.7	4.8	4.8	61	

<b>Juror Survey Results 2014 Retention Evaluation Jo-Ann M. Chung</b>							
<b>Survey Category</b>	<b>Mean</b>	<b>Excellent (5)</b>	<b>Good (4)</b>	<b>Acceptable (3)</b>	<b>Deficient (2)</b>	<b>Poor (1)</b>	<b>Total Responses</b>
Impartiality/Fairness	4.8	80	16	0	1	0	97
Respectful/Courteous	4.9	87	10	0	0	0	97
Attentive during Proceedings	4.8	78	16	2	1	0	97
Control over Proceedings	4.8	79	17	1	0	0	97
Intelligence/ Skill as a Judge	4.8	76	20	0	1	0	97
Overall Evaluation	4.8	75	19	2	0	0	96



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## Final Draft MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** April 25, 2014  
**RE:** Peremptory Challenges of Judges Eligible for Retention in 2014

---

### 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.<sup>1</sup> Two different authorities govern the challenge right. The legislature created the substantive right and defines its scope by statute.<sup>2</sup> The court regulates peremptory challenge procedures by court rules.<sup>3</sup> In general, each side in a case gets one peremptory challenge.<sup>4</sup>

This memo examines peremptory challenge records for judges who are eligible to stand for retention in November 2014. 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.

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<sup>1</sup>See Gieffels v. State, 552 P.2d 661 (Alaska 1976).

<sup>2</sup>See id.; AS 22.20.020.

<sup>3</sup>See Alaska R. Crim. P. 25(d); Alaska R. Civ. P. 42(c).

<sup>4</sup>See 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.

For the first time, one system was used for compiling the disqualification data. Over the past twelve 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 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.

In the following tables:

- “d” signifies “defendant” in both criminal and civil cases;
- “p” signifies “plaintiff” in civil cases and “prosecutor” in criminal cases;
- “oth” signifies “other”.

If a judge was appointed in the last six months of a year, the number of challenges in that year was not used to calculate the average number of annual challenges for that judge. Blank spaces in the tables represent years that preceded the judge’s appointment to his or her current position.

A. Superior Court

	2008		2009		2010		2011		2012		2013		Average number challenges per year
Judge	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	
<b>First Judicial District:</b>													
Menendez, Louis							1 0d 1p	0	7 3d 4p	0	12 2d 10p	1 1d 0p	10
<b>Second Judicial District</b>													
Roetman, Paul					2 0d 0p 20th	2 2d 0p	1 1d 0p	6 6d 0p	0	10 10d 0p	3 3d 0p	3 3d 0p	8
<b>Third Judicial District:</b>													
Guidi, Andrew					19 10d 9p	0	19 6d 12p 30th	0	13 5d 8p	0	7 3d 4p	0	13
Miller, Gregory							2 2d 0p	54 46d 8p	0	120 7d 113p	12 9d 3p	99 1d 98p	96
<b>Fourth Judicial District:</b>													
(None)													
<b>Average number of challenges for superior court judges on 2014 ballot</b>													32

**Overall:** The average number of peremptory challenges for the superior court judges on the ballot for 2014 was 32 per year. In 2012 it was 31 per year. In 2010, it was 27 per year. The average number of peremptory challenges for the superior court judges on the ballot in both 2008 and 2006 was 36 per year. As discussed above, caution should be used when comparing a particular judge's annual average with the average for all judges. The location of the judgeship, the size of a judge's caseload, the type of cases heard by the judge, and the local legal culture can and do affect peremptory challenge rates. Peremptory challenge rates must be considered in the context of other available information about a judge's performance.

**First Judicial District:**

**Judge Menendez (Juneau):** Judge Menendez had an average of ten challenges per year, which was lower than the overall average of 32.

**Second Judicial District:**

**Judge Roetman (Kotzebue):** Judge Roetman had an average of eight challenges per year, which was much lower than the overall average of 32.

**Third Judicial District:**

**Judge Guidi (Anchorage):** Judge Guidi had an average of thirteen challenges per year, which was lower than the overall average of 32.

**Judge Miller (Anchorage):** Judge Miller had an average of 96 challenges per year, which was significantly higher than the overall average of 32. The challenges came almost entirely from prosecutors in the Anchorage District Attorney's office. Judge Miller was transferred administratively to the civil calendar in 2013 and subsequently experienced very few peremptory challenges.

B. District Court

	2010		2011		2012		2013		Average Number Challenges per year
Judge	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	
First Judicial District									
Miller, Kevin	0	0	1 0d 1p	2 2d 0p	1 0d 1p	0	0	0	1
Third Judicial District									
Chung, Jo-Ann M.			2 0d 2p	0	2 1d 1p	0	0	3 3d 0p	2
Clark, Brian K.	2 0d 2p	2 0d 2p	1 0d 1p	0	12 7d 5p	0	5 1d 4p	0	6
Estelle, William L.	196 1d 195p	29 27d 2p	222 0d 222p	108 9d 99p	140 2d 138p	256 17d 239p	79 1d 78p	48 44d 4p	270
Illsley, Sharon A.S.	2 1d 1p	53 52d 1p	3 3d 0p	58 58d 0p	0	60 59d 1p	1 1d 0p	18 16d 2p	49
Motyka, Gregory	0	1 1d 0p	1 0d 1p	2 0d 2p	2 0d 2p	2 1d 1p	0	4 4d 0p	3
Rhoades, Stephanie	9 5d 4p	8 8d 0p	5 4d 1p	8 7d 1p	10 2d 8p	8 8d 0p	4 1d 3p	7 7d 0p	15

Judge	2010		2011		2012		2013		Average number challenges per year
	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	
Third Judicial District, Cont.									
Wolfe, John W.	2	150	1	93	2	381	2	14	161
	2d 0p	150d 0p	1d 0p	93d 0p	0d 2p	379d 2p	2d 0p	13d 1p	
Fourth Judicial District									
Seekins, Ben					1	92	0	61	77
					1d 0p	85d 7p		61d 0p	
Average number of challenges for district court judges on 2012 ballot									13
Average number of challenges for district court judges on 2014 ballot									64

**Overall:** This retention period saw a sharp increase in the “average” peremptory challenges for district court judges. This was due in part to the two Palmer District Court experiencing “dueling” blanket peremptory challenges from public defenders (Judge Wolfe) and prosecutors (Judge Estelle). Judge Estelle also receive high numbers of challenges in civil cases. Judge Seekins and Judge Illsley also received high numbers of peremptory challenges. In contrast, the average number of peremptory challenges for district court judges in 2012 was thirteen. In 2010 the average was fourteen.<sup>5</sup> The average number of challenges for a district court judge in 2008 was sixteen. The 2006 average was seventeen. Because the averages in 2014 were so uncharacteristic, it may be more useful to compare district court judges’ peremptory challenge rates to recent years’ averages (a range of 13-17) instead of to the 2014 average.

**First Judicial District:**

**Judge Miller (Ketchikan):** Judge Miller experienced an average of one challenge per year, which was much lower than recent averages.

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<sup>5</sup> The 2010 average excluded one judge who had an unprecedented average number (278) of peremptory challenges during her term. If that judge’s average had been included, the average would have been 40.

### **Third Judicial District:**

**Judge Chung (Anchorage):** Judge Chung received an average of two challenges per year, lower than the recent averages.

**Judge Clark (Anchorage):** Judge Clark received an average of six challenges a year, which is lower than recent averages.

**Judge Estelle (Palmer):** Judge Estelle received extremely high numbers of challenges in 2010, 2011, and 2012. He received fewer challenges in 2013 but the number that year was still about ten times as high as the recent averages. Most of the challenges came from plaintiffs in civil cases (all four years) and prosecutors in criminal cases (in 2011 and 2012). Both the high numbers and the pattern of challenges in civil cases are unusual for a district court judge.

**Judge Illsley (Kenai):** Judge Illsley received an average of 49 challenges a year. This number is high but much lower than the average number of challenges reported when she was eligible for retention in 2010 (278).

**Judge Motyka (Anchorage):** Judge Motyka received three challenges per year, which was lower than recent averages.

**Judge Rhoades (Anchorage):** Judge Rhoades received an average of 15 challenges per year, which was about the same as recent averages.

**Judge Wolfe (Palmer):** Judge Wolfe received a high number of peremptory challenges, averaging 161 in his most recent term. These came almost entirely in criminal cases from defendants. When contacted, Judge Wolfe hypothesized that in 2010 and 2011, defendants in criminal cases were perempting him based on his interpretation of the law regarding *Nygren* credit (credit against jail time for substance abuse treatment). The issue was settled (consistent with Judge Wolfe's interpretation) by the supreme court and further clarified by a statutory change in 2012. He further explained that prosecutors exercising a blanket peremptory challenge of Judge Estelle in 2012, which caused the Public Defender Agency to retaliate by challenging Judge Wolfe. According to Judge Wolfe, the agencies called a truce in 2013, which is borne out by the numbers. He received only 16 challenges in 2013, which is typical for a district court judge.

### **Fourth Judicial District:**

**Judge Seekins:** Judge Seekins received an average of 77 challenges per year, almost entirely from defendants in criminal cases. He received 92 challenges his first year and 61 challenges his second. It is typical for a new judge to receive many challenges at first and then fewer as time goes on. It is also typical for Fairbanks judges to receive higher numbers of peremptory challenges than judges in other locations.



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## Final Draft MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** April 25, 2014  
**RE:** Recusal Records of Judges Eligible for Retention in 2014

---

### **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 2014.

### **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. 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 tables following 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**

<b>Recusal Records for Superior Court Judges Retention Evaluation 2014</b>						
<b>Judge</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>First District:</b>						
Menendez, Louis J.				6	5	8
<b>Second District:</b>						
Roetman, Paul			3	6	1	2
<b>Third District:</b>						
Guidi, Andrew			16	5	3	3
Miller, Gregory				5	3	6
<b>Fourth District:</b>						
(None)						

Overall, the recusal rates for superior court judges eligible for retention election in 2014 are unremarkable. Newly appointed judges frequently have a higher recusal rate their first year or two on the bench, and then the number of recusals sharply declines. In this group of new superior court judges, no judge experienced even that pattern, all recusing themselves infrequently.

**IV. Recusal Records - District Court Judges**

<b>Recusal Records for District Court Judges Retention Evaluation 2010</b>				
<b>Judge</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>First District:</b>				
Miller, Kevin	5	8	4	3
<b>Third District:</b>				
Chung, Jo-Ann		1	0	0
Clark, Brian	0	0	2	0
Estelle, William	2	2	2	3
Illsley, Sharon	1	0	2	2
Motyka, Gregory	0	1	0	1
Rhoades, Stephanie	3	1	0	0
Wolfe, John W.	1	0	0	3
<b>Fourth District:</b>				
Seekins, Ben			37	1

With one exception, district court judges recused themselves infrequently, which is typical. The exception was Judge Seekins in 2012, who recused himself from cases brought by his previous employer, the state District Attorney's office, for one year after his appointment. The recusal data for the district court judges standing for retention in 2014 was otherwise unremarkable.



# alaska judicial council

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## Final Draft MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** April 25, 2014  
**RE:** Appellate Evaluation of Judges Eligible for Retention in 2014

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### **I. Introduction**

The Judicial Council staff has several ways of evaluating judges' performance. One way is to compare how each judge's decisions withstand appellate review.

The review process begins with a staff member, usually the staff attorney, reading every published appellate decision and every memorandum opinion and judgment released by the appellate courts. Staff first determines how many issues were on appeal and then decides whether the appellate court "affirmed" each of the trial judge's decisions on appeal. Decisions requiring reversal, remand or vacating of the trial court judge's ruling or judgment are not classified as "affirmed." Mooted issues and issues arising only upon appeal, which were not ruled on by the trial judge, are not taken into account. When the Supreme Court or Court of Appeals *clearly* overrules a prior statement of law upon which the trial court reasonably relied to decide an issue, that issue is not considered. These cases are very rare.

After deciding how many issues in a case were affirmed, the case is given a score. For instance, if two of ten issues are affirmed, the case is given a score of "20% affirmed." This scoring system is different than the court system's methodology, which notes only whether the case was affirmed, partly affirmed, reversed, remanded, vacated, or dismissed. Also, the court system tends to attribute the appeal to the last judge of record rather than determine which judge's decisions were appealed. In this analysis, if a case includes more than one judge's decisions, an attempt is made to determine which judge made which rulings and to assign affirmance scores appropriate with those

decisions. If it is not possible to make that determination from the text of the case, the overall affirmance score for that case is assigned to each judge of record.

After the case has been scored, another staff member enters information about the case into a database. The data fields include case type,<sup>1</sup> judge, affirmance score, date of publication or release, opinion number, and trial case number.

Before a retention election, staff cross-checks the cases in its database to make sure the database is as complete as possible. Staff then analyzes each retention judge's "civil," "criminal,"<sup>2</sup> and overall (combined) affirmance rates. Staff also calculates civil, criminal, and overall affirmance rates for all the judges in the database for the retention period. Staff then compares affirmance rates for that year against affirmance rates for prior years. Cases that are included in the calculation of these rates are only those cases that have been decided in the current retention term, which is a six-year span for superior court judges and a four-year span for district court judges.

Several problems are inherent with this process. First, the division of an opinion into separate "issues" is sometimes highly subjective. Some opinions have only one or two clearly defined issues and are easy to categorize. Other opinions present many main issues and even more sub-issues. Deciding whether a topic should be treated as a "sub-issue" or an "issue" deserving separate analysis can be problematic and varies depending on the complexity of a given case. Generally, the analysis follows the court's outlining of the case; if the court has given a sub-issue its own heading, the sub-issue will likely have its own affirmed/not affirmed decision.

Second, each issue is weighted equally, regardless of its effect on the case outcome, its legal importance, or the applicable standard of review. For instance, a critical constitutional law issue is weighted equally with a legally less important issue of whether a trial judge properly awarded attorney's fees. Issues that the appellate court reviews independent of the trial court's decision (*de novo* review) are weighted equally with issues that are reviewed under standards of review that defer to the trial court's discretion. The Judicial Council staff has considered ways to weigh each issue to reflect its significance but has decided not to implement a weighted analysis.

Third, appellate courts tend to affirm some types of cases more often than others. For example, criminal cases are affirmed at a higher rate than civil cases. Many criminal appeals involve excessive sentence claims that are reviewed under a "clearly mistaken" standard of review that is very deferential to the trial court's action. Criminal appeals are more likely to include issues

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<sup>1</sup> Cases are classified as general civil, tort, child in need of aid ("CINA"), family law/domestic relations, administrative appeal, criminal, and juvenile delinquency. If a case has issues relating to more than one category, staff decides which category predominates.

<sup>2</sup> "Criminal" includes criminal, post-conviction relief, and juvenile delinquency cases. All other cases are classified as "civil." Because the supreme court reviews administrative appeals independently of the superior court's rulings, administrative appeals are not analyzed as part of the judge's civil affirmance rate, although they are included in the database.

that have less merit than issues raised in civil appeals because, unlike most civil appeals, most criminal appeals are brought at public expense. The cost of raising an issue on appeal is therefore more of a factor in determining whether an issue is raised in a civil appeal than it is in a criminal appeal. Also, court-appointed counsel in a criminal appeal must abide by a defendant's constitutional right to appeal his or her conviction and sentence unless counsel files a brief in the appellate court explaining reasons why the appeal would be frivolous. This circumstance can result in the pursuit of issues in criminal cases that have a low probability of reversal on appeal. Accordingly, a judge's affirmance rate in criminal cases is almost always higher than that judge's affirmance rate in civil cases. Judges who hear a higher percentage of criminal cases tend to have higher overall affirmance rates than those who hear mostly civil cases. For this reason, staff breaks out each judge's criminal and civil appellate rates.

Fourth, the analysis of appellate affirmance rates does not include any cases appealed from the district court to the superior court. Those decisions are not published or otherwise easily reviewable. Staff has reviewed all published decisions from the Alaska Supreme Court and Alaska Court of Appeals and unpublished Memorandum Opinion and Judgments (MO&Js) from the Alaska Supreme Court and the Alaska Court of Appeals since 2002. These decisions are published on the Alaska Court System's website and elsewhere and are easily reviewable.

Fifth, administrative appeals pose a problem. Administrative decisions are appealed first to the superior court, which acts as an intermediate appellate court.<sup>3</sup> Those cases may then be appealed to the supreme court, which gives no deference to the superior court's decision and takes up the case *de novo*. Because the supreme court evaluates only the agency's decision, and not the superior court judge's decision, there is little value to these cases as an indicator of a judge's performance and they can be misleading. We have excluded administrative appeals from this analysis for the past several retention cycles.

Sixth, the present analysis involves only a relatively small number of cases for some judges. The fewer the number of cases in a sample, the less reliable the analysis is as an indicator of a judge's performance. Affirmance rates for judges having fewer than ten cases reviewed on appeal can be more misleading than helpful. For descriptive purposes, appellate review records are included for all judges, regardless of the number of cases reviewed. Affirmance rates based on fewer than ten cases, however, are not considered by staff as a reliable indicator of performance. In 2014, all four of the superior court judges and seven of the nine district court judges have fewer than ten cases.

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<sup>3</sup> The Alaska Workers Compensation Appeals Commission hears appeals from Alaska Workers' Compensation Board decisions that were decided after November 7, 2005. Those cases may then be appealed to the Alaska Supreme Court. Because workers' compensation appeals are no longer reviewed by the superior court as an intermediate court of appeal, the supreme court decisions are no longer included in this database and are not included in the "administrative appeals" category.

## II. Analysis of Appellate Affirmance Rates

### A. Superior Court Judges

For sixteen years, affirmance rates for superior court judges had remained at about 75%. In the previous and current retention periods, the overall affirmance rate crept upward to 77%. Criminal rates have ranged within eight percentage points, from 78%-85%, over twenty years. Civil rates have mostly ranged within six percentage points, from 67%-72% with one period (1996-2001) lower, at 61%. The last several retention cycles suggest that criminal affirmance rates were trending downward since the 1998-2003 period but have recently rebounded, and that civil affirmance rates have been trending upward since 1996 and have stabilized at 71%-72% for the past three retention cycles. Overall, the affirmance rate of all cases has remained remarkably stable at 75-77% over the twenty years that have been analyzed.

<b>Overall Affirmance Rates Superior Court Judges</b>			
<b>Years</b>	<b>Criminal</b>	<b>Civil</b>	<b>Overall</b>
<b>1994-1999</b>	85%	67%	75%
<b>1996-2001</b>	81%	61%	75%
<b>1998-2003</b>	82%	67%	75%
<b>2000-2005</b>	80%	70%	76%
<b>2002-2007</b>	79%	70%	75%
<b>2004-2009</b>	78%	72%	75%
<b>2006-2011</b>	81%	72%	77%
<b>2008-2013</b>	82%	71%	77%

Affirmance rates for superior court judges who are standing for retention in 2014 are summarized in the following table. The table shows the number of civil cases appealed during the judge's term, the percent of issues in those cases that were affirmed by the appellate court, the number of criminal cases appealed during the judge's term, the percent of issues in those cases that were affirmed by the appellate court, and the combined civil and criminal appeals information. Comparisons of final column figures should be made carefully. As discussed above, judges with higher percentages of criminal appeals will generally have higher overall affirmance rates than those with a greater percentage of civil appeals. Comparisons between the first two columns are likely to be more meaningful. Also, judges having fewer than ten cases reviewed should not be compared with other judges. The figures for those judges are provided for descriptive purposes only.

To provide even more information for this evaluation, an overall affirmance rate has been calculated for all superior court judges, including judges not standing for retention, and retired or inactive judges, for the period in question. This comparison may provide a better performance measure than comparing retention judges against each other.

<b>Judicial Affirmance Rates 2014 Superior Court Judges</b>						
Judge (Date of appointment)	Criminal Affirmance		Civil Affirmance		Overall	
	Number Reviewed	Rate	Number Reviewed	Rate	Number Reviewed	Rate
<b>First Judicial District</b>						
Menendez, Louis (5/23/11)	2	100%	0	n/a	2	100%
<b>Second Judicial District</b>						
Roetman, Paul (7/9/10)	0	n/a	0	n/a	0	n/a
<b>Third Judicial District</b>						
Guidi, Andrew (7/12/10)	2	50%	6	78%	8	71%
Miller, Gregory (1/3/11)	0	n/a	0	n/a	0	n/a
<b>Fourth Judicial District</b>						
(None)						
Mean affirmance rates of all superior court judges 2008 - 2013	841	82%	657	71%	1498	77%

*Note: Data in shaded cells is provided for descriptive purposes only because too few cases are available for meaningful analysis.*

Statistically, the smaller the number of cases in a sample, the less reliable the conclusions drawn from that are likely to be. Samples of fewer than ten cases are likely to be misleading. In the past we have taken alternative steps to help the reader evaluate appellate court review of decisions by judges with fewer than ten cases. We reviewed and discussed judges' appellate cases individually when a judge had fewer than ten cases.

For this retention cycle, all of the superior court judges eligible for retention had fewer than ten cases.

**Judge Menendez:** Judge Menendez had two criminal cases reviewed and decided by the Court of Appeals since he was appointed in 2011. Both were sentence appeals; both were affirmed at 100%.

**Judge Roetman:** Judge Roetman had no appeals reviewed and decided since his appointment in 2010.

**Judge Guidi:** Judge Guidi had two criminal cases reviewed and decided. One was affirmed at 100% and the other was 0% affirmed, for an average of 50%. In the 100% case, the Court of Appeals found that superior court did not err by finding that the defendant's petition for post-conviction relief failed to raise any genuine issues of material fact that would warrant a hearing. In the 0% case, the superior court dismissed the defendant's petition for a writ of habeas corpus and instructed the defendant to refile the proper petition for post-conviction relief. The Court of Appeals held that the superior court erred by dismissing the defendant's petition and instead should have, *sua sponte*, converted it to the proper form.

Two of Judge Guidi's family law cases were appealed and decided since his appointment. One was affirmed at 100%. In that case, the court affirmed Judge Guidi's decision to decline jurisdiction in a divorce case where another state had jurisdiction over child custody and property division issues. The other case was affirmed at 67%. In that case the court affirmed Judge Guidi's custody and attorney's fees determinations but found that Judge Guidi had abused his discretion by not clearly stating the basis for the child support award.

In three of the general civil cases that were appealed and decided, the Supreme Court affirmed Judge Guidi's decisions 100%. The court reversed the fourth (0%). In that case, a plaintiff had filed, but not served, the complaint upon the defendant, so the original complaint was dismissed. When served with a later complaint, the defendant asserted a statute of limitations defense. The Supreme Court reversed Judge Guidi's grant of summary judgment for the defendant, holding that the statute of limitations did not require notice of the suit to the defendant for a suit to "commence." Justice Stowers dissented.

Overall, Judge Guidi was affirmed an average of 71% in six civil and two criminal cases.

**Judge Gregory Miller:** Judge Miller had no cases reviewed and decided since his appointment in 2011.



**B. District court judges**

The mean criminal affirmance rate for all district court judges from 2010-2013 was 79%. Civil appellate affirmance rates for district court judges are not meaningful because no district court judge regularly has ten or more civil cases appealed to the supreme court. District court affirmance rates have ranged from 77% - 85% over the past fifteen years.

<b>Criminal Affirmance Rates District Court Judges</b>	
<b>Years</b>	<b>Mean</b>
<b>1998-2001</b>	81%
<b>2000-2003</b>	77%
<b>2002-2005</b>	77%
<b>2004-2007</b>	85%
<b>2006-2009</b>	84%
<b>2008-2011</b>	81%
<b>2010-2013</b>	79%

District court judges' affirmance rates are summarized in the following table. The table shows the number of criminal cases appealed to the Alaska Court of Appeals and Alaska Supreme Court during the judge's term, and the percent of issues in those cases that were affirmed by the appellate court. As discussed above, judges having fewer than ten cases reviewed should not be compared with other judges.

<b>Judicial Affirmance Rates 2014 District Court Judges</b>		
	<b>Criminal Affirmance</b>	
Judge (Date of appointment)	Number Reviewed	Rate
<b>First Judicial District:</b>		
Miller, Kevin (8/30/99)	12	71%
<b>Second Judicial District:</b>		
(None)		
<b>Third Judicial District:</b>		
Chung, Jo-Ann (5/26/11)	1	100%
Clark, Brian (1/23/03)	4	100%
Estelle, William (6/11/02)	5	80%
Illsley, Sharon (6/14/07)	5	80%
Motyka, Gregory (7/26/91)	5	60%
Rhoades, Stephanie (9/20/92)	6	83%
Wolfe, John (11/01/04)	12	83%
<b>Fourth Judicial District:</b>		
Seekins, Ben (1/13/12)	0	n/a
<b>Mean criminal affirmance rate of all district court judges 2010- 2013</b>	118	79%

*Note: Data within shaded cells is provided for descriptive purposes only because too few cases are available for meaningful analysis.*

**First Judicial District:**

**Judge Kevin Miller:** Judge Kevin Miller had twelve cases reviewed and decided, for an affirmance rate of 71%. The mean overall of district court judges was 79%, so his was slightly below average.

**Third Judicial District:**

**Judge Chung:** Judge Chung had one case appealed; it was 100% affirmed. That case involved a sentence appeal for the defendant's failure to register as a sex offender. The Court of Appeals affirmed the sentence Judge Chung imposed.

**Judge Clark:** Judge Clark had four cases appealed and decided. All were 100% affirmed. In the first case, the Court of Appeals upheld Judge Clark's ruling that a breath test for operating a vehicle under the influence was a valid search incident to arrest because the hour delay between the arrest and the test was reasonable. In the second case, the court upheld Judge Clark's ruling denying a motion to suppress evidence and dismiss a case because the police had probable cause to stop the defendant for leaving the scene of an accident and for failing as a driver to exercise due care. In the third case, the court affirmed Judge Clark's denial of a motion to reconsider the denial of a motion to compel evidence from the Municipality of Anchorage, when the evidence was not relevant to any viable defense. In the fourth case, the court affirmed Judge Clark's ruling that there was sufficient evidence to convict a defendant of theft and attempting to negotiate a stolen check, and the subsequent sentences for the two offenses.

**Judge Estelle:** Judge Estelle had five cases appealed and decided for an average of 80%. Three cases were affirmed at 100%. The first was a criminal sentence appeal in which the Court of Appeals affirmed Judge Estelle's finding that the defendant was a worst offender and affirmed the sentence. The second case was a domestic violence case in which the Court of Appeals upheld Judge Estelle's rulings admitting prior evidence of domestic violence and declining to recall the jury for an additional instruction after they had already retired to consider its verdict. In the third case, the Court of Appeals affirmed 100% and upheld the district court's jurisdiction over the defendant when Judge Estelle had ordered the defendant, who was in custody on other charges, to be transported to the court for arraignment rather than issuing an arrest warrant or presenting him with a complaint. In the fourth case, the Court of Appeals reversed (0%) Judge Estelle's denial of a motion for acquittal by a defendant convicted for resisting arrest when the evidence showed that the defendant was not aware of the police's intent to arrest him.

**Judge Illsley:** Judge Illsley had four cases appealed and decided, for an average of 100%. First, the Court of Appeals upheld Judge Illsley's denial of a motion to suppress evidence based on an alleged illegal seizure of the defendant, finding the police stop was a valid community caretaker stop. Second, as above, the Court of Appeals affirmed Judge Illsley's denial of a motion to suppress evidence, finding that the police's stop of the defendant was a valid community caretaker stop. In the third case, the Court of Appeals affirmed a defendant's conviction for fourth degree assault and held that Judge Illsley had not erred by not instructing the jury on the lesser charge of disorderly conduct. In the fourth case, the Court of Appeals affirmed Judge Illsley's judgement of conviction.

of the defendant for DUI, rejecting the defendant's claim that his right to consult an attorney had been violated when the police denied his request to call an attorney in the middle of the administration of the breath test.

**Judge Motyka:** Judge Motyka had five cases appealed and decided for an affirmance rate of 60%. Three cases were affirmed at 100%. In one, the Court of Appeals affirmed Judge Motyka's denial of a motion to suppress evidence, finding that the police's initial stop was proper after the officer observed the defendant littering. In the second, the Court of Appeals affirmed Judge Motyka's denial of a motion to suppress evidence, finding that irregularities in handling a blood sample went to the weight of the evidence, and not its admissibility. In the third, the court affirmed Judge Motyka's denial of a motion to suppress evidence of a DUI, finding that the police was justified in conducting a welfare check on a sleeping man in a running vehicle.

Two cases were reversed (0%). In one, the Court of Appeals reversed a defendant's convictions for shoplifting and failure to appear when it found that the defendant had not been brought to trial within the time allowed by Alaska's speedy trial rule, Criminal Rule 45. In the second, the Court of Appeals held that Judge Motyka erred by not submitting the defendant's criminal history to the jury when prior convictions were an element of the charged offense of "habitual minor consuming."

**Judge Rhoades:** Judge Rhoades had six cases appealed and decided, for an average of 83%. Five cases were affirmed at 100%. In the first, the Court of Appeals upheld the judgement of the district court when there had been sufficient evidence supporting the defendant's conviction for fourth-degree assault. In the second, the Court of Appeals affirmed Judge Rhoades's rulings holding that a municipal ordinance prohibiting driving while a license was revoked was not fatally inconsistent with a state statute, and that the defendant's request to continue his trial to hire private counsel was untimely when it was made the morning trial began. In the third, the court affirmed Judge Rhoades's denial of a petition for post-conviction relief when the defendant failed to present a *prima facie* case of ineffective assistance of counsel. In the fourth the Court of Appeals affirmed the defendant's conviction for DUI and sixth-degree misconduct involving a controlled substance even if Judge Rhoades's admission of hearsay evidence was error, finding that the error (if any) was harmless. In the fifth case, the court upheld Judge Rhoades's imposition of suspended jail time and the conditions of probation that included a no-contact order in a domestic violence case. In the sixth case, the court reversed (0%) Judge Rhoades's conviction of a defendant criminal contempt of court when the evidence showed that the defendant had not violated a valid court order.

**Judge Wolfe:** Judge Wolfe had twelve cases appealed and decided in his term, for an average of 83%. The mean overall of district court judges was 79%, so his was slightly above average.

#### **Fourth Judicial District:**

**Judge Seekins:** Judge Seekins had no cases appealed and decided since his appointment.

## **Salary Warrant Withholdings**

Alaska law states: “A salary disbursement may not be issued to a [justice or judge] until the [justice or judge] has filed with the state officer designated to issue salary disbursements an affidavit that no matter referred to the [justice or judge] for opinion or decision has been uncompleted or undecided by the judge for a period of more than six months.” AS 22.05.140(b) (Supreme Court); AS 22.07.090(b) (Court of Appeals); AS 22.10.190(b) (Superior Court); AS 22.15.220(b) (District Court). The Judicial Council’s performance evaluation of judges standing for retention includes a review of whether and how often a judge or justice’s pay was withheld for an untimely decision.