

**Alaska Judicial Council
Summary of Performance Evaluation for:**

**Judge Kevin G. Miller
Ketchikan District Court**

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

Summary

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

In addition, the Council researched specific aspects of Judge Miller’s performance such as how many times his decisions were affirmed on appeal, whether his 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 Miller. Performance evaluation information about Judge Miller is detailed below.

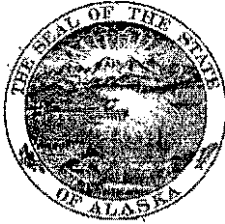
Details

1. **Biographical Information.** Judge Miller has been a district court judge since 1999. This is his fifth retention election. For more biographical information about Judge Miller click [here](#).

2. **Survey Ratings.** People who had direct experience with the judge took a survey to rate him on qualities such as legal ability, impartiality and fairness, integrity, judicial temperament, diligence, and overall performance. These survey participants used a 1 to 5 scale to evaluate the judge’s performance, where 5.0 was “excellent,” 4.0 was “good,” 3.0 was “acceptable,” 2.0 was “deficient,” and 1.0 was “poor.”
 - a. **Attorney Survey Results.** Attorneys who responded to the Judicial Council’s survey on Judge Miller performance gave him an average rating of 4.7 overall. For detailed attorney survey results on Judge Miller click [here](#).

 - b. **Peace and Probation Officer Survey Results.** Peace and probation officers who responded to the Judicial Council’s survey on Judge Miller’s performance gave him an average 4.8 overall. For detailed peace officer survey results on Judge Miller click [here](#).

- c. **Court Employee Survey Results.** Court employees who responded to the Judicial Council's survey on Judge Miller gave him an average rating of 4.8. For detailed court employee survey results on Judge Miller click [here](#).
 - d. **Juror Survey Results.** Jurors who served on trials in Judge Miller's courtroom rated him 5.0 in overall performance. For detailed juror survey results on Judge Miller, click [here](#).
3. **Peremptory Challenge Rates.** Alaska law and court rules allow a party one opportunity to request assignment of a new judge. For more information about peremptory challenge rates for Judge Miller 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 the number of times Judge Miller recused himself from a case, click [here](#).
5. **Appellate Affirmance Rate.** The Council studies how often trial judges are reversed on appeal. For Judge Miller'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 Miller during this time. For general information about salary withholding, click [here](#).



alaska judicial council

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Alaska Judicial Council Trial Judge Questionnaire

2018 Candidates for Judicial Retention

November 2017

Kevin Miller

Ketchikan District Court

Name

Court

1. Please estimate your workload during your present term.

a) $\frac{25}{70}$ % civil cases	b) $\frac{5}{36}$ # of jury trials/year
$\frac{70}{5}$ % criminal cases	$\frac{36}{0}$ # of non-jury trials/year
$\frac{5}{100}$ % court administrative work	$\frac{0}{100}$ # 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.

Training Judge
Statewide Magistrate Evaluation Panel 2013-2015
Ketchikan Therapeutic Court
Ketchikan PACE Program

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.

I continue to serve as a training judge for our Magistrate Judges in the First District. I have held this position for the past ten years. I enjoy imparting my knowledge and experience while at the same time learning from our Magistrate Judges.

I served as the judge for the Ketchikan Therapeutic Court since 2005 and recently but reluctantly closed that court in September of this year.

I continue to serve as the Superior Court Judge pro-tem for Wrangell, for Ketchikan as needed and as the Ketchikan PACE judge.

I enjoy my work on the district court bench and hopefully, it shows.

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 2018 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 Case Number: IKE-16-466 CR
 v. Steven Richards

Attorneys Involved:

Name: <u>Jeremy Terral</u>	Name: <u>David Rosendin</u>
Address: <u>415 Main St., Rm 304</u>	Address: <u>1289 Tongass Ave</u>
City, State, Zip: <u>Ketchikan, AK 99901</u>	City, State, Zip: <u>Ketchikan, AK 99901</u>
Name: <u>Joe Kovac</u>	Name: _____
Address: <u>1289 Tongass</u>	Address: _____
City, State, Zip: <u>Ketchikan, AK 99901</u>	City, State, Zip: _____

Case Number 2

Case Name: State Case Number: IKE-16-606 CR
 v. Martin Carroll

Attorneys Involved:

Name: <u>Jeremy Terral</u>	Name: <u>Margret Bergerud</u>
Address: <u>415 Main St., Rm 304</u>	Address: <u>415 Main St., Ste 204</u>
City, State, Zip: <u>Ketchikan, AK 99901</u>	City, State, Zip: <u>Ketchikan, AK 99901</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 3

Case Name: State Case Number: IKE-16-478 CR
 v. Ralph Bolton

Attorneys Involved:

Name: <u>Tim McGillicuddy</u>	Name: <u>Margret Bergerud</u>
Address: <u>415 Main St., Rm 304</u>	Address: <u>415 Main St., Ste 204</u>
City, State, Zip: <u>Ketchikan, AK 99901</u>	City, State, Zip: <u>Ketchikan, AK 99901</u>
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 Case Number: 1KE-15-40 CR
 v. Krista Michels (Ther. Ct)

Attorneys Involved:

Name: <u>Ben Hofmeister</u>	Name: <u>Deborah Macaulay</u>
Address: <u>415 Main St., Rm 304</u>	Address: <u>211 4th St, Ste 209</u>
City, State, Zip: <u>Ketchikan, AK 99901</u>	City, State, Zip: <u>Juneau, AK 99801</u>
Name: <u>Margret Bergerud</u>	Name: _____
Address: <u>415 Main St., Ste 204</u>	Address: _____
City, State, Zip: <u>Ketchikan, AK 99901</u>	City, State, Zip: _____

Case Number 2

Case Name: State Case Number: 1KE-16-14 CR
 v. Michael Baham

Attorneys Involved:

Name: <u>Ben Hofmeister</u>	Name: <u>Deborah Macaulay</u>
Address: <u>415 Main St., Rm 304</u>	Address: <u>211 4th St, Ste 209</u>
City, State, Zip: <u>Ketchikan, AK 99901</u>	City, State, Zip: <u>Juneau, AK 99801</u>
Name: <u>Margret Bergerud</u>	Name: _____
Address: <u>415 Main St., Ste 204</u>	Address: _____
City, State, Zip: <u>Ketchikan, AK 99901</u>	City, State, Zip: _____

Case Number 3

Case Name: Allen Case Number: 1WR-16-51 CI
 v. Allen

Attorneys Involved:

Name: <u>Elizabeth Varela</u>	Name: <u>Michael Heiser</u>
Address: <u>800 E. Dimond Blvd Ste 3-620</u>	Address: <u>300 Mill St, Ste 20</u>
City, State, Zip: <u>Anchorage, AK 99515</u>	City, State, Zip: <u>Ketchikan, AK 99901</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Table 13
Kevin G. Miller
Demographic Description of Respondents

	<i>n</i>	<i>%</i>
All respondents	67	100.0
Experience with Judge		
Direct professional experience	59	88.1
Professional reputation	8	11.9
Other personal contacts	-	-
Detailed Experience*		
Recent experience (within last 5 years)	48	81.4
Substantial amount of experience	26	44.1
Moderate amount of experience	13	22.0
Limited amount of experience	20	33.9
Type of Practice		
No response	1	1.5
Private, solo	15	22.4
Private, 2-5 attorneys	12	17.9
Private, 6+ attorneys	1	1.5
Private, corporate employee	-	-
Judge or judicial officer	18	26.9
Government	17	25.4
Public service agency or organization	2	3.0
Retired	1	1.5
Other	-	-
Length of Alaska Practice		
No response	7	10.4
5 years or fewer	5	7.5
6 to 10 years	8	11.9
11 to 15 years	6	9.0
16 to 20 years	8	11.9
More than 20 years	33	49.3
Cases Handled		
No response	1	1.5
Prosecution	5	7.5
Criminal	6	9.0
Mixed criminal & civil	31	46.3
Civil	22	32.8
Other	2	3.0
Location of Practice		
No response	1	1.5
First District	40	59.7
Second District	2	3.0
Third District	18	26.9
Fourth District	6	9.0
Outside Alaska	-	-
Gender		
No response	3	4.5
Male	42	62.7
Female	22	32.8

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

Table 14
Kevin G. Miller
Detailed Responses

	<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	67	4.5	4.7	4.8	4.7	4.6	4.7
Basis for Evaluation							
Direct professional experience	59	4.5	4.7	4.8	4.7	4.7	4.7
Experience within last 5 years	48	4.5	4.7	4.9	4.8	4.7	4.8
Experience not within last 5 years	6	4.2	4.5	4.5	4.3	4.3	4.3
Substantial amount of experience	26	4.5	4.9	4.9	4.9	4.8	4.8
Moderate amount of experience	13	4.6	4.7	5.0	4.8	4.7	4.7
Limited amount of experience	20	4.4	4.5	4.6	4.6	4.5	4.6
Professional reputation	8	4.4	4.5	4.4	4.4	4.3	4.4
Other personal contacts	-	-	-	-	-	-	-
Type of Practice*							
Private, solo	13	4.3	4.5	4.7	4.7	4.8	4.5
Private, 2-5 attorneys	12	4.6	4.8	4.8	4.7	4.6	4.7
Private, 6+ attorneys	1	5.0	5.0	5.0	5.0	5.0	5.0
Private, corporate employee	-	-	-	-	-	-	-
Judge or judicial officer	16	4.6	4.9	5.0	4.8	4.7	4.8
Government	15	4.5	4.8	4.9	4.9	4.7	4.9
Public service agency or organization	1	5.0	4.0	5.0	5.0	4.0	5.0
Retired	1	3.0	3.0	3.0	3.0	3.0	3.0
Other	-	-	-	-	-	-	-
Length of Alaska Practice*							
5 years or fewer	5	4.4	4.8	4.8	5.0	5.0	4.8
6 to 10 years	8	4.5	4.5	4.9	4.9	4.8	4.8
11 to 15 years	6	4.3	4.5	4.5	4.5	4.5	4.7
16 to 20 years	5	4.6	4.8	4.8	4.8	4.6	4.8
More than 20 years	30	4.6	4.8	4.9	4.7	4.7	4.7
Cases Handled*							
Prosecution	3	4.0	5.0	5.0	4.7	4.7	4.7
Criminal	6	4.8	4.7	4.8	5.0	4.8	4.8
Mixed criminal & civil	28	4.5	4.8	5.0	4.8	4.7	4.8
Civil	21	4.4	4.6	4.6	4.6	4.6	4.6
Other	1	5.0	4.0	5.0	5.0	4.0	5.0
Location of Practice*							
First District	37	4.6	4.8	4.9	4.8	4.8	4.8
Second District	2	4.5	5.0	5.0	5.0	5.0	5.0
Third District	15	4.2	4.4	4.6	4.5	4.4	4.5
Fourth District	5	4.8	5.0	5.0	4.8	4.8	4.8
Outside Alaska	-	-	-	-	-	-	-
Gender*							
Male	39	4.5	4.7	4.8	4.8	4.7	4.7
Female	19	4.6	4.6	4.8	4.7	4.5	4.7

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

Table 13
Kevin G. Miller
Demographic Description of Respondents

	<i>n</i>	<i>%</i>
All respondents	21	100.0
Experience with Judge		
Direct professional experience	17	81.0
Professional reputation	3	14.3
Other personal contacts	1	4.8
Detailed Experience*		
Recent experience (within last 5 years)	15	88.2
Substantial amount of experience	5	29.4
Moderate amount of experience	5	29.4
Limited amount of experience	7	41.2
Type of Work		
No response	-	-
State law enforcement officer	13	61.9
Municipal/Borough law enforcement officer	7	33.3
Village Public Safety Officer (VPSO)	-	-
Probation/Parole officer	1	4.8
Length of Time as Alaskan Officer		
No response	-	-
5 years or fewer	2	9.5
6 to 10 years	2	9.5
11 to 15 years	5	23.8
16 to 20 years	4	19.0
More than 20 years	8	38.1
Community Population		
No response	-	-
Under 2,000	1	4.8
Between 2,000 and 35,000	18	85.7
Over 35,000	2	9.5
Location of Work		
No response	-	-
First District	17	81.0
Second District	-	-
Third District	3	14.3
Fourth District	1	4.8
Gender		
No response	-	-
Male	18	85.7
Female	3	14.3

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

Table 14
Kevin G. Miller
Detailed Responses

		Impartiality/ Fairness	Integrity	Judicial Temperament	Diligence	Overall
	<i>n</i>	<i>M</i>	<i>M</i>	<i>M</i>	<i>M</i>	<i>M</i>
All respondents	21	4.7	4.8	4.8	4.7	4.7
Basis for Evaluation						
Direct professional experience	17	4.8	4.9	4.8	4.8	4.8
Experience within last 5 years	15	4.7	4.9	4.8	4.7	4.8
Experience not within last 5 years	-	-	-	-	-	-
Substantial amount of experience	5	4.8	4.8	4.6	4.8	5.0
Moderate amount of experience	5	4.8	4.8	5.0	4.8	4.8
Limited amount of experience	7	4.7	5.0	4.9	4.7	4.7
Professional reputation	3	5.0	5.0	5.0	4.7	5.0
Other personal contacts	1	2.0	2.0	3.0	3.0	2.0
Type of Work*						
State law enforcement officer	10	4.9	4.8	4.9	4.9	5.0
Municipal/Borough law enforcement officer	6	4.5	5.0	4.8	4.5	4.5
Village Public Safety Officer (VPSO)	-	-	-	-	-	-
Probation/Parole officer	1	5.0	5.0	4.0	5.0	5.0
Length of Time as Alaskan Officer*						
5 years or fewer	2	5.0	5.0	5.0	5.0	5.0
6 to 10 years	1	5.0	5.0	5.0	5.0	5.0
11 to 15 years	4	4.8	4.5	4.3	4.8	5.0
16 to 20 years	3	5.0	5.0	5.0	5.0	5.0
More than 20 years	7	4.6	5.0	4.9	4.6	4.6
Community Population*						
Under 2,000	1	5.0	5.0	5.0	5.0	5.0
Between 2,000 and 35,000	15	4.8	4.9	4.9	4.8	4.8
Over 35,000	1	4.0	4.0	4.0	4.0	5.0
Location of Work*						
First District	15	4.8	4.9	4.9	4.8	4.8
Second District	-	-	-	-	-	-
Third District	1	5.0	5.0	5.0	5.0	5.0
Fourth District	1	4.0	4.0	4.0	4.0	5.0
Gender*						
Male	15	4.7	4.9	4.9	4.7	4.8
Female	2	5.0	5.0	4.5	5.0	5.0

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

Table 7
Kevin G. Miller
Demographic Description of Respondents

	<i>n</i>	<i>%</i>
All respondents	25	100.0
Experience with Judge		
Direct professional experience	24	96.0
Professional reputation	1	4.0
Other personal contacts	-	-
Detailed Experience*		
Recent experience (within last 5 years)	23	95.8
Substantial amount of experience	15	62.5
Moderate amount of experience	4	16.7
Limited amount of experience	5	20.8

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

Table 8
Kevin G. Miller
Detailed Responses

	<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	25	4.7	4.8	4.8	4.9	4.8
Basis for Evaluation						
Direct professional experience	24	4.7	4.8	4.8	4.9	4.8
Experience within last 5 years	23	4.7	4.8	4.8	4.9	4.8
Experience not within last 5 years	-	-	-	-	-	-
Substantial amount of experience	15	4.9	4.9	5.0	5.0	4.9
Moderate amount of experience	4	4.5	4.5	4.5	4.8	4.5
Limited amount of experience	5	4.0	4.3	4.0	4.3	4.3
Professional reputation	1	-	-	-	-	-
Other personal contacts	-	-	-	-	-	-



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: April 27, 2018
RE: Juror Survey Report

The Alaska Judicial Council surveyed all jurors who sat in trials during 2016 and 2017. The jurors sat before 14 of the 15 trial court judges eligible to stand for retention in 2018 (no jurors sat before Kirsten Swanson). A total of 838 jurors responded on Council-provided postcards that judges distributed to jurors at the end of each trial (see attached 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				
2018 Retention Juror Survey				
Judge	Civil	Criminal	No Answer	Total
Carey, William Barker	4	6	3	13
Chung, Jo-Ann M.	0	29	1	30
Clark, Brian K.	33	59	6	98
Corey, Michael D.	0	171	7	178
Estelle, William L.	1	16	4	21
Illsley, Sharon A.S.	0	75	8	83
Lyle, Paul R.	1	45	1	47
McConahy, Michael P.	0	32	2	34
Miller, Kevin	2	7	3	12
Morse, William F.	9	29	1	39
Seekins, Ben	2	58	9	69
Walker, Herman G., Jr.	15	0	0	15
Wolfe, John W.	4	16	0	20
Wolverton, Michael L.	5	163	11	179

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

Table 2: Distribution of Days Served Alaska Judicial Council 2018 Retention Juror Survey		
Number of Days Served	%	N
1 - 2 Days	17	141
3 - 4 Days	33	275
5 - 7 Days	27	226
8 - 10 Days	9	79
11 - 20 Days	9	72
21 or More Days	1	10
No Answer	4	35
Total		838

Individual Results

Table 3 shows each judge’s mean rating for each question on the survey. Each judge’s individual survey results are provided in separate tables. Jurors used a five-point scale, with ***excellent* rated as five, and *poor* rated as one**. The closer the jurors' ratings 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 Rating for each Variable and for “Overall Performance,” by Judge
 Alaska Judicial Council
 2018 Retention Juror Survey

	Impartiality and Fairness	Respectful and Courteous	Attentive During Proceedings	Control During Proceedings	Intelligence and Skill as a Judge	Overall Mean	Total Count
Carey, William Barker	4.8	4.8	4.8	4.8	4.8	4.8	13
Chung, Jo-Ann M.	4.9	5.0	5.0	5.0	4.9	4.9	30
Clark, Brian K.	4.9	5.0	4.9	5.0	5.0	5.0	98
Corey, Michael D.	5.0	5.0	5.0	4.9	5.0	5.0	178
Estelle, William L.	4.8	4.9	4.5	4.8	4.9	4.9	21
Illsley, Sharon A.S.	4.8	4.8	4.7	4.7	4.7	4.7	83
Lyle, Paul R.	4.8	4.8	4.8	4.9	4.8	4.8	47
McConahy, Michael P.	4.9	4.8	4.8	4.9	4.9	4.9	34
Miller, Kevin	5.0	5.0	5.0	4.9	5.0	5.0	12
Morse, William F.	5.0	4.9	4.9	4.9	4.9	5.0	39
Seekins, Ben	4.8	4.8	4.7	4.8	4.8	4.7	66
Walker, Herman G., Jr.	4.8	5.0	4.5	4.7	4.8	4.9	15
Wolfe, John W.	4.8	4.8	4.7	4.8	4.8	4.8	20
Wolverton, Michael L.	4.9	4.9	4.8	4.9	4.9	4.9	179

Juror Survey Results
2018 Retention Evaluation

Miller, Kevin

Survey Category	Mean	Poor (1)	Deficient (2)	Acceptable (3)	Good (4)	Excellent (5)	Total Responses
Impartiality / Fairness	5.0	0	0	0	0	12	12
Respectful / Courteous	5.0	0	0	0	0	12	12
Attentive During Proceedings	5.0	0	0	0	0	12	12
Control Over Proceedings	4.9	0	0	0	1	11	12
Intelligence / Skill as a Judge	5.0	0	0	0	0	12	12
Overall Evaluation	5.0	0	0	0	0	12	12



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: July 19, 2018
RE: Peremptory Challenges of Judges Eligible for Retention in 2018

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 2018. 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.

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”.

Blank spaces in the tables represent years that preceded the judge’s appointment to his or her current position.

A. Superior Court

Peremptory Challenges of Judges - Superior Court																			
Judicial District	Judge	Party	2012		2013		2014		2015		2016		2017		Judge Statistics			Summary Statistics	
			Total		Total		Total		Total		Total		Total		Total	Mean	Median	District	All
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal					
First	Carey, William B	Defendant	1	0	1	2	0	2	0	0	0	2	0	1	14	2.3	1.5	See Judge Statistics	
		Plaintiff	0	0	1	0	0	0	0	0	1	0	0	0					
		Other	0	0	0	0	0	0	1	0	2	0	0	0					
Third	Corey, Michael D	Defendant					2	0	4	1	0	8	0	26	53	13.3	10.0	Mean 8.7 Median 8.0 Min/Max 0/29	Mean 14.4 Median 9.0 Min/Max 0/83
		Plaintiff					2	0	6	0	1	0	1	2					
		Other					0	0	0	0	0	0	0	0					
	Morse, William F	Defendant	3	0	6	0	8	0	4	0	3	0	7	0	63	10.5	9.5		
		Plaintiff	5	0	10	0	2	0	2	0	2	1	6	3					
		Other	1	0	0	0	0	0	0	0	0	0	0	0					
	Walker, Herman G	Defendant					0	0	11	0	12	0	15		38	9.5	11.5		
		Plaintiff					0	0	5	0	7	0	6	0					
		Other					0	0	6	0	5	0	9	0					
	Wolverton, Michael L	Defendant	0	0	0	0	0	1	0	2	0	0	0	0	19	3.2	3.0		
		Plaintiff	0	1	1	1	0	4	0	0	0	7	0	2					
		Other	0	0	0	0	0	0	0	0	0	0	0	0					
Fourth	Lyle, Paul R	Defendant	83		13		11		9		20		7	143	23.8	12.0			
		Plaintiff	2	1	3	1	5	1	2	2	3	0	1				0		
		Other	3	74	4	5	3	0	4	0	7	1	5				0		
	McConahy, Michael P	Defendant	65		22		40		56		22		28	233	38.8	34.0			
		Plaintiff	5	40	2	10	4	30	5	39	4	7	5				10		
		Other	8	0	8	0	2	0	9	0	8	0	12				0		
			12	0	2	0	4	0	12	0	3	0	1	0					

No value

Defendant - defendant in both criminal and civil cases

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 2018 was 14.4 per year. The average number of peremptory challenges for the superior court judges on the ballot for other recent years has ranged from a low of 27 (2010) to a high of 36 (2006 and 2008). Peremptory challenges were unusually low for 2018, but only seven superior court judges are eligible for retention so the sample size is also lower than normal.

First Judicial District: The judge standing for retention in the First Judicial District, Judge William B. Carey, had lower than average peremptory challenges. This is typical for First Judicial District Judges.

Second Judicial District: No judges are standing for retention in the Second Judicial District in 2018.

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

Fourth Judicial District: Peremptory challenge rates tend to be higher in the Fourth Judicial District. Although the statewide average was 14.4 per year, the Fourth Judicial District mean for superior court judges standing for retention in 2018 was 31.3 per year. Although much higher than the statewide average, this was much lower than the Fourth Judicial District mean of 59 challenges per year for judges on the 2016 ballot.

Judge Paul Lyle - Judge Lyle received an average of 23 peremptory challenges per year during the 2012-2017 evaluation period. He received 83 in 2012, with most coming from the state in criminal cases. He received many fewer in the years between 2013 and 2017, the highest coming in 2016 with 20. Those came from a variety of types of parties, mostly in civil cases.

Judge Michael McConahy – Judge McConahy received an average of 38.8 peremptory challenges during the 2012-2017 evaluation period. He received 40 of 65 challenges from defendants in criminal cases in 2012. His second highest year was in 2014, with 29 of 56 coming from defendants in criminal cases. His challenges, however, are increasingly evenly spread out between the types of parties, except he received no challenges from the state in criminal cases during this period.

B. District Court

Peremptory Challenges of Judges - District Court																					
Judicial District	Judge	Party	2012		2015		2016		2017		Judge Statistics			Summary Statistics							
			Total		Total		Total		Total		Total	Mean	Median	District	All						
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal											
First	Miller, Kevin G	Defendant	1	2	1	2	1	0	1	0	10	2.5	3.0	Mean 2.0 Median 3.0 Min/Max 0/3							
		Plaintiff	0	0	0	0	1	1	0	0											
		Other	0	0	0	0	0	0	0	0											
	Swanson, Kirsten L	Defendant							0	0											
		Plaintiff							0	0											
		Other							0	0											
Third	Chung, Jo-Ann M	Defendant	1	7	1	3	0	0	1	5	20	5.0	5.5	Mean 34.9 Median 6.0 Min/Max 0/621							
		Plaintiff	0	0	0	1	1	0	0	0						0					
		Other	0	0	0	0	0	0	0	0						0					
	Clark, Brian K	Defendant	0	0	0	0	0	1	0	0						7	1.8	2.0			
		Plaintiff	2	0	2	0	0	0	2	0											
		Other	0	0	0	0	0	0	0	0											
	Estelle, William L	Defendant	2	26	2	12	0	10	4	2						143	35.8	29.5			
		Plaintiff	29	7	22	1	10	2	14	0											
		Other	0	0	0	0	0	0	0	0											
	Illsley, Sharon A.S.	Defendant	1	13	2	14	1	2	0	1						45	11.3	10.5			
		Plaintiff	0	4	5	0	0	0	2	0											
		Other	0	0	0	0	0	0	0	0											
	Wolfe, John W	Defendant	1	25	1	27	3	51	0	618						736	184.0	43.5			
		Plaintiff	0	2	1	2	0	2	3	0											
		Other	0	0	0	0	0	0	0	0											
	Fourth	Seekins, Ben A	Defendant	1	0	1	5	0	16	3						13	52	13.0	14.0	See Judge Statistics	
			Plaintiff	0	5	1	5	0	0	1						1					
			Other	0	0	0	0	0	0	0						0					
Total			6	5	12	15	16	18	18	13											

No value
 Defendant = defendant in both criminal and civil cases

Plaintiff = plaintiff in civil cases and prosecutor in criminal cases
 Other = Judge Disqualified for Cause; Peremptory Disqualification by Father/Mother/GAL/State

Overall: The mean number of peremptory challenges for a district court judge appearing on the ballot in 2018 was 34.9. This mean was skewed drastically upward largely due to one judge, Judge John Wolfe, receiving 621 challenges in 2017, almost all coming from defendants in criminal cases.

First Judicial District: District court judges in the First Judicial District received very few peremptory challenges.

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 47.6 peremptory challenges per year.

Judge John Wolfe - Judge Wolfe received a mean of 184 challenges per year. As mentioned above, Judge Wolfe received 621 peremptory challenges in 2017 alone, which

skewed his mean and the Third Judicial District mean very high. This number of peremptory challenges is unprecedented since the Alaska Judicial Council began keeping records. After investigation, the council staff determined that the challenges came predominately from the Public Defender Agency.

Judge William Estelle – Judge Estelle received a mean of 35.8 challenges per year during the evaluation period of 2014-2017. He received the most in 2014 (64). The number of challenges declined every year and he received only 20 in 2017. The challenges in the high years came mostly from plaintiffs in civil cases and defendants in criminal cases.

Fourth Judicial District:

Only one district court judge is on the 2018 ballot, Judge Ben Seekins. He received a mean of 13 challenges per year, which was significantly below the statewide mean for District Court judges in 2018. A better comparison may be with the Fourth Judicial District district court judges who were on the ballot in 2016. Their mean was 41.6 peremptory challenges per year.



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: July 19, 2018
RE: Recusal Records of Judges Eligible for Retention in 2018

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 2018.

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 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	2012		2013		2014		2015		2016		2017		Judge Statistics			Summary Statistics								
		Total		Total		Total		Total		Total		Total		Total	Mean	Median	By Judicial District	All							
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean	Median									
First	Carey, William B	2		4		1		1		2		0		10	1.7	1.5	See Judge Statistics	Mean 4.7 Median 2.0 Min/Max 0/24							
		1	1	2	2	1	0	1	0	0	2	0	0												
Third	Corey, Michael D					6		5		0		1		12	3.0	3.0	Mean 3.0 Median 0.0 Min/Max 0/19								
						6		4		1		0		4	0.7	0									
	0		2		0		2		0		0		0		0										
	0		0		0		0		2		0		0		0										
	Walker, Herman G					0		4		19		15		38	9.5	9.5									
						0		4		0		19		15		0									
	Wolverton, Michael L	0		5		0		0		0		0		5	0.8	0									
		0		0		5		0		0		0		0		0									
Fourth	Lyle, Paul R	1		3		2		4		2		1		13	2.2	2.0	Mean 9.5 Median 5.5 Min/Max 1/24								
		1		0		2		1		2		2		2		0									
	24		21		11		23		15		7		101		16.8			18							
	McConahy, Michael P	23		1		21		0		11		0		21		2		15		0		7		0	

No value

Overall, the recusal rates for superior court judges eligible for retention election in 2018 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 superior court judges, Judge Walker experienced that pattern, recusing himself 19 times in 2016 (his first full year on the superior court bench) and 15 times in 2017. All other superior court judges who will appear on the ballot recused themselves infrequently except for Judge McConahy in Fairbanks, who averaged about seventeen recusals per year, mostly in civil cases. His number of recusals has declined recently to 15 in 2016 and 7 in 2017.

IV. Recusal Records - District Court Judges

Judge Recusals - District Court														
Judicial District	Judge	2014		2015		2016		2017		Judge Statistics			Summary Statistics	
		Total		Total		Total		Total		Total	Mean	Median	By Judicial District	All
		Civil	Crim-inal	Civil	Crim-inal	Civil	Crim-inal	Civil	Crim-inal					
First	Miller, Kevin G	0		4		1		2		7	1.8	1.5	Mean 1.6 Median 1.0 Min/Max 0/4	Mean 1.7 Median 1.0 Min/Max 0/7
	Swanson, Kirsten L	0	0	1	3	0	1	1	1	1	1.0	1.0		
Third	Chung, Jo-Ann M	0		1		0		0		1	0.3	0.0	Mean 1.6 Median 1.0 Min/Max 0/7	
	Clark, Brian K	2		2		1		0		5	1.3	1.5		
	Estelle, William L	2	0	2	0	1	0	0	0	7	4.3	4.0		
	Illsley, Sharon A.S.	3	4	3	2	1	2	1	1	3	0.5	0.5		
	Wolfe, John W	0		0		2		2		6	1.5	2.0		
	Seekins, Ben A	0	3	0	0	0	2	0	2	11	2.8	2.0		
Fourth	Seekins, Ben A	6		1		3		1		11	2.8	2.0	See Judge Statistics	

No value

District court judges typically recuse themselves infrequently. The recusal data for all district court judges standing for retention in 2018 was unremarkable.



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: July 19, 2018
RE: Appellate Evaluation of Judges Eligible for Retention in 2018

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,¹ 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,”² 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 in 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

¹ 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.

² “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.

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 independently 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 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.³ 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 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.

³ 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.

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.

II. Analysis of Appellate Affirmance Rates

A. Superior Court Judges

Generally, the trends of civil, criminal and overall affirmance rates have been stable or moderately upward since the Council began reviewing them in 1994. Criminal affirmance rates have ranged within eight percentage points, from 78%-85%, over the past twenty-four years. Criminal affirmance rates dipped in the early 2000's but then climbed and have stabilized at around 81-82% since the 2006-2011 period. Civil affirmance rates mostly ranged within six percentage points, from 67%-72%, until the 2010-2015 retention period, with one period (1996-2001) lower, at 61%. In the past two retention cycles the civil affirmance rate has trended upward to 76%. Overall, the affirmance rate of all cases was stable at about 75% until 2006 – 2011 period, when the rates began a moderate climb to the current rate of 79%.

Overall Affirmance Rates Superior Court Judges			
Years	Criminal	Civil	Overall
1994-1999	85%	67%	75%
1996-2001	81%	61%	75%
1998-2003	82%	67%	75%
2000-2005	80%	70%	76%
2002-2007	79%	70%	75%
2004-2009	78%	72%	75%
2006-2011	81%	72%	77%
2008-2013	82%	71%	77%
2010-2015	82%	75%	79%
2012-2017	81%	76%	79%

Affirmance rates for superior court judges who are standing for retention in 2018 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.

Judicial Affirmance Rates 2018 Superior Court Judges						
	Criminal Affirmance		Civil Affirmance		Overall	
	Number Reviewed	Rate	Number Reviewed	Rate	Number Reviewed	Rate
First Judicial District						
Carey, William Barker	16	84%	12	83%	28	83%
Second Judicial District						
Greene, Angela	--		--		--	
Third Judicial District						
Cole, Steve	13	92%	7	29%	20	70%
Corey, Michael D.	1	100%	1	50%	2	75%
Morse, William F.	5	80%	28	68%	33	70%
Walker, Herman G., Jr.	--		1	50%	1	50%
Wolverton, Michael L.	59	79%	1	0%	60	77%
Summary						
Lyle, Paul R.	14	84%	15	87%	29	85%
McConahy, Michael P.	15	80%	23	82%	38	81%
Number and mean affirmance rates, superior court judges 2012 - 2017	123	82%	87	73%	210	78%

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, two of the superior court judges eligible for retention -- Judge Michael D. Corey and Judge Herman G. Walker, Jr. -- had fewer than ten cases. They were judges newly appointed to the superior court. Judge Walker had one case appealed and decided during the review period. Judge Corey had two.

Judge Michael D. Corey:

Pomeroy v. State – This case presented the petitioner’s fourth petition for post-conviction relief. The Court of Appeals affirmed at 100% Judge Corey’s denial of the petition on the grounds it was untimely, successive, and raised claims that were, or could have been, raised in prior proceedings.

Lee-Magana v. Carpenter – The appeal involved two petitions for long-term domestic violence protective orders. The woman successful defended a petition against her and successfully petitioned for an order against her ex-boyfriend. She moved for attorney’s fees based on work for both petitions. Judge Corey denied both motions. The Supreme Court upheld the denial of fees for the defense against her ex-boyfriend’s petition because the statute did not allow fees for a respondent, but reversed the denial of fees to her as the prevailing petitioner because the statute permitted fees and there was no evidence to support their denial.

Judge Herman G. Walker, Jr.

State of Alaska, Dep’t of Health and Human Services, Office of Children’s Services v. Doe, et al. – In this tort case brought by a former child in OCS custody. The plaintiffs requested that OCS disclose confidential records regarding other children (the plaintiff’s adoptive siblings and non-siblings placed in the same home) who had been in OCS custody to show patterns of negligence. OCS argued against disclosure of records of the siblings and non-siblings, citing privacy concerns, prejudice, and unfair burdens on OCS resources. Judge Walker ordered disclosure of all the records without addressing OCS’s concerns or its request for *in camera* review. OCS petitioned for an immediate review by the Supreme Court. The Supreme Court resolved the petition by upholding the discovery of the sibling files (the siblings had consented to the discovery, so there were no privacy concerns) but directing the superior court to revisit the portions of its discovery order regarding OCS files on the non-sibling, non-parties and requiring the superior court to conduct an inquiry which balanced the plaintiff’s interest in the records and the privacy interests of the non-party subjects of the records. The Supreme Court also directed the superior court to express its reasoning in writing when determining whether to conduct an *in camera* review of the records before any release.

B. District court judges

The mean criminal affirmance rate for all district court judges from 2014-2017 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 nineteen years.

Criminal Affirmance Rates District Court Judges	
Years	Mean
1998-2001	81%
2000-2003	77%
2002-2005	77%
2004-2007	85%
2006-2009	84%
2008-2011	81%
2010-2013	79%
2012-2015	84%
2014-2017	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.

Judicial Affirmance Rates		
2018 District Court Judges		
	Criminal Affirmance	
	Number Reviewed	Rate
First Judicial District		
Miller, Kevin	5	100%
Swanson, Kirsten	--	--
Third Judicial District		
Chung, Jo-Ann M.	7	86%
Clark, Brian K.	6	100%
Estelle, William L.	7	86%
Illsley, Sharon A.S.	8	88%
Wolfe, John W.	17	83%
Fourth Judicial District		
Seekins, Ben	2	50%
Number and mean affirmance rates, district court judges 2014 – 2017	54	83%

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

As discussed above, judges having fewer than ten cases reviewed should not be compared with other judges. In the current retention period, only one district court judge, Judge John W. Wolfe, had more than ten cases.

Judge Kevin Miller – Judge Miller had six cases reviewed and decided. Five were affirmed at 100%. One case was reversed, but not due to any decision by Judge Miller but because the Alaska Supreme Court had announced a new constitutional rule relating to *ex post facto* laws after the defendant was convicted. That case was not considered in Judge Miller’s affirmance rate.

Judge Kirstin Swanson – Judge Swanson had no cases appealed and decided since her appointment.

Judge Jo-Ann Chung – Judge Chung had seven cases appealed and decided. Six were affirmed at 100%. One was reversed (0% affirmed).

Hillman v. State – Judge Chung presided over a trial of a defendant charged with promoting contraband in the second degree for bringing contraband into a correctional facility. The defendant argued that the statute was not intended to apply to her because she was already incarcerated inside a correctional facility. The court of appeals agreed and reversed her conviction. (The defendant was not tried under another section that prohibited possession of contraband.)

Judge Brian K. Clark – Judge Clark had six cases appealed and decided. All were affirmed at 100%.

Judge William L. Estelle – Judge Estelle had seven cases appealed and decided. Five were affirmed at 100%. Two were affirmed at 50%.

McCord v. State – The defendant argued that the district court violated her Sixth Amendment right of confrontation by allowing the State to prove that the defendant had intoxicating drugs in her blood through hearsay testimony. The Court of Appeals agreed that her Sixth Amendment rights had been violated and reversed her conviction. The defendant also argued that her motion for acquittal should have been granted, thus prohibiting her retrial. The Court of Appeals affirmed Judge Estelle’s denial of that motion.

Pederson v. State – The defendant raised numerous claims of error relating to initial search warrants, bail, pre-trial proceedings, and his trial on appeal. The Court of Appeals affirmed all of Judge Estelle’s decisions relating to the pretrial and trial and upheld the defendant’s conviction. The court, however, reversed Judge Estelle’s sentence, holding that it was an illegal sentence because it was longer than the presumptive sentencing statute allowed without an aggravating factor. (Judge Estelle had found an aggravating factor but it applied only to a lesser offense.) The Court of Appeals directed the superior court to resentence the defendant, permitting resentencing on all counts, so that the initial composite sentence might be legally lodged.

Judge Sharon A.S. Illsley – Judge Illsley had eight cases appealed and decided. Seven were affirmed at 100%. One was reversed (0% affirmed).

State v. Ruzika – Judge Illsley ruled that a search of the defendant was inadmissible and granted the defendant’s motion to suppress the evidence of his drug possession. The state appealed. The Court of Appeals found that the defendant had admitted to possession of drugs, thus giving the officer probable cause for arrest and the search, even though the officer had not found the defendant to be driving impaired. The Court of Appeals reversed and remanded for further proceedings.

Judge Ben Seekins – Judge Seekins had two cases appealed and decided. One was affirmed at 100%. One was reversed (0% affirmed).

State v. Spencer – Judge Seekins ruled that a police stop of an individual on an ATV was not legal because the police did not have probable cause, and dismissed the individual’s charge for DUI. The state appealed. The Court of Appeals reversed and remanded, deciding that probable cause was not required; the lower standard of reasonable suspicion applied to stops for field sobriety tests.



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Salary Warrant Withholding

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 soon as the judge completes or decides the matter and signs the affidavit, the salary warrant may be issued.

No appellate judges are eligible for retention in 2018.

Of the seven superior court judges on the ballot in 2018, one had pay withheld during the evaluation period:

Judge Morse had two salary warrants withheld during the evaluation period:

<u>Pay period</u>	<u>Regular warrant date:</u>	<u>Late Pay issued:</u>
10/15/2014	10/28/2014	11/4/2014
5/15/2017	5/25/2017	6/9/2017

Judges William B. Carey, Michael D. Corey, Paul R. Lyle, Michael P. McConahy, Herman Walker, Jr. and Michael L. Wolverton had no salary warrants withheld.

No district court judge appearing on the 2016 ballot had salary warrants withheld. The district court judges on the 2018 ballot are Jo-Ann M. Chung, Brian K. Clark, William L. Estelle, Sharon A. S. Illsley, Kevin Miller, Benjamin Seekins, Kirsten Swanson, and John W. Wolfe.