



alaska judicial council

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MEMORANDUM

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

I. Introduction

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

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

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

²See *id.*; AS 22.20.020.

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

⁴See *id.*

II. Context for evaluating peremptory challenge data

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

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

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

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

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

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

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

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

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

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

III. Peremptory Challenge Records - Superior Court Judges

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

. = No value

Defendant = defendant in both criminal and civil cases

* Mean and median unit of analysis is judge/year

Plaintiff = plaintiff in civil cases and prosecutor in criminal cases

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

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

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

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

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

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

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

IV. Peremptory Challenge Records - District Court Judges

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

. = No value

Defendant = defendant in both criminal and civil cases

* Mean and median unit of analysis is judge/year

Plaintiff = plaintiff in civil cases and prosecutor in criminal cases

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

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

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

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

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