



alaska judicial council

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TO: Judicial Council

FROM: Staff

DATE: May 13, 1996

RE: Appellate Affirmance Rates for 1996 Retention Judges

I. Context for Interpreting the Appellate Affirmance Data

To interpret appellate affirmance data, understand that some types of cases generally are affirmed more often than other types, regardless of the trial court judge.¹ First, criminal cases are affirmed on appeal more frequently than civil cases. Criminal case affirmance rates range from about 70% to 85%, while civil case affirmance rates range from about 40% to 50%. One explanation for the different outcomes on appeal is that criminal law is less complex than civil law, and therefore criminal case rulings depend less on interpretation of the law and more on the specific facts of the case. According to this theory, appellate courts find fewer errors in criminal cases because the standard of review for findings of fact is less exacting than the standard of review for proper interpretation of the law. Another explanation hinges on the fact that most criminal appeals are filed at public expense by court-appointed counsel, while most civil cases are litigated at the parties' expense. Thus, the cost of filing and briefing a civil appeal may deter civil litigants who otherwise would have filed. Whatever the explanation, expect a judge's criminal case affirmance rate to be higher than his or her civil case affirmance rate.

Second, domestic case affirmance rates are higher than other civil case affirmance rates. One explanation for this disparity is that divorce law is less complex than other civil law, and trial judges have broad discretion to make findings in domestic cases. Appellate courts find fewer errors in divorce cases than in other civil cases because the standard of review for findings of fact is less exacting than the standard of review for proper interpretation of the law. Thus, any judge who handles a substantial number of domestic cases could be expected to have a higher civil case

¹ The appellate court clerk groups outcomes into six categories: affirmed, affirmed in part and reversed in part, reversed, remanded, vacated, and "other." For purposes of this analysis, only opinions that affirm or affirm in part are counted as affirmances. All other outcomes count as "not affirmed."

affirmance rate than judges who handle few or no domestic relations cases.

Finally, understand that the smaller the number of cases in the sample, the less reliable are the results of any statistical analysis. We find that calculating overall affirmance rates for judges with fewer than ten cases reviewed on appeal is misleading more often than it is helpful. Thus, we include all judges' appellate records for the sake of completeness but do not show an overall affirmance rate for those with fewer than ten cases reviewed on appeal.

II. Analysis of 1996 Retention Judges' Appellate Records

The tables starting on page three of this memo summarize the outcomes of all the trial court retention judges' cases reviewed by the state's appellate courts during the judges' last term in office.² The table shows three things for each judge:

- the number of cases that were affirmed and not affirmed on appeal each year (sorted by whether the case was civil or criminal),
- the total number of cases that were affirmed and not affirmed on appeal during the judge's entire term, and
- the percentage of cases that were affirmed on appeal during the judge's entire term, sorted by whether the case was civil or criminal.

The tables on the following pages show that none of the 1996 retention judges appears to have a problem with being reversed on appeal. For 1996, six of the thirteen judges had more than ten criminal cases decided on appeal during their previous terms in office, and three had more than ten civil cases. In criminal cases, the six judges were affirmed 75-90% of the time. Judges Carpeneti and Pengilly fall at the lower end of the range (77% and 78%, respectively) and Judges Wood and Ashman are at the high end (90% and 81% respectively).³

In civil cases, the 1996 retention judges were affirmed on appeal about half the time (55% for Judge Savell and 59% for Judge Shortell). Judge Carpeneti's civil case affirmance rate of 82% is unusually high.⁴

² The table includes both published and unpublished opinions. Unpublished opinions (called MO&Js) are used by the Alaska Court of Appeals and, to a lesser degree, by the Alaska Supreme Court to dispose summarily of cases containing routine or straightforward issues. *Rule of Appellate Procedure* 214(a).

³ Note however that the small number of cases in Judge Wood's appellate record render this figure less reliable.

⁴ Of all the judges who stood for retention in 1994 and 1992, only one other had a civil appellate affirmance rate approaching Carpeneti's: Judge Steinkruger had a civil case affirmance rate of 71% for her 1992 retention evaluation.

1996 District Court Retention Judges Appellate Affirmance Rates

(n/n = affirmed and affirmed in part/not affirmed)

Judge	1993		1994		1995		1996		Totals		Percent Affirmed	
	Civil Cases	Criminal Cases	Civil Cases	Criminal Cases	Civil Cases	Criminal Cases	Civil Cases	Criminal Cases	Civil Cases	Criminal Cases	Civil Cases	Criminal Cases
Ashman	0	11/2	0	9/1	0	6/3	1/0	0	1/0	26/6	*	81%
Finn	0	0	0	2/0	0	1/0	0	1/0	0	4/0	*	*
Fuld	0	3/0	0	1/0	0	2/0	0	0	0	6/0	*	*
Joannides	---	---	---	---	0	0	0	0	0	0	*	*
Pengilly**	1/0	9/0	1/1	2/1	0	2/2	0	1/1	2/0	14/4	*	78%
Wanamaker	0	0	0	0	0	4/1	0	0/1	0	4/2	*	*
Wood	0	0	0	2/0	2/1	5/1	0/2	2/0	2/3	9/1	*	90%

* Fewer than 10 cases.

** During 1995, several hundred of Judge Pengilly's criminal cases were appealed on the same issue, which involved interpretation of Criminal Rule 39(c) and Appellate Rule 209(b). The Court of Appeals disagreed with Judge Pengilly's interpretation, and reversed all the cases. For purposes of this chart, we counted all those cases as one reversal.

1996 Superior Court Retention Judges Appellate Affirmance Rates

(n/n = affirmed and affirmed in part/not affirmed)

Judge	1991		1992		1993		1994		1995		1996		Totals		Percent Affirmed	
	Civil Cases	Crim Cases	Civil Cases	Crim Cases	Civil Cases	Crim Cases	Civil Cases	Crim Cases	Civil Cases	Crim Cases	Civil Cases	Crim Cases	Civil Cases	Crim Cases	Civil Cases	Crim Cases
Beistline	---	---	0	0	0	0	3/0	2/1	2/1	2/2	0	2/0	5/1	6/3	*	*
Card**	---	---	---	---	0	0	0	0	5/3	2/0	1/0	0	6/3	2/0	*	*
Carpeneti	1/0	7/1	1/1	3/5	2/0	1/0	3/0	7/0	2/1	1/0	0	1/0	9/2	20/6	82%	77%
Savell	4/4	1/1	8/1	22/2	7/12	8/1	5/0	7/5	6/5	5/2	1/3	2/1	31/25	45/12	55%	79%
Shortell	1/6	0	6/0	0	2/1	1/0	5/0	0	2/3	0	1/2	0	17/12	1/0	59%	*
Thompson	---	---	---	---	0	0	0	1/0	2/1	7/2	1/0	1/0	3/1	9/2	*	82%

* Fewer than 10 cases.

** In 1995, about 20 of Judge Card's cases involving an interpretation of child support rules all were appealed and vacated. For purposes of this table, those cases were counted as one reversal.