



# alaska judicial council

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## MEMORANDUM

**TO:** Judicial Council

**FROM:** Staff

**DATE:** May 5, 1998

**RE:** Appellate Affirmance Rates for 1998 Retention Judges

### **I. Context for Interpreting the Appellate Affirmance Data**

Evaluating a judge's performance by how often he or she is reversed on appeal is problematic. One problem is how to define "affirmed." Take the example of an appeal from a complex civil case in which the parties raise fifteen different issues on appeal. If the appellate court affirms on fourteen of the issues but reverses on one small issue, should that be counted as a reversal or an affirmance? What about the case in which the parties raise fifteen different issues on appeal and the appellate court affirms on fourteen but reverses on the fifteenth issue, and the fifteenth issue changes the outcome? For purposes of retention evaluation, this memo uses three categories of appellate outcomes: (1) totally affirmed, (2) affirmed in part and reversed in part, and (3) not affirmed. When interpreting the information on the following pages, remember that the category of "affirmed in part and reversed in part" includes cases that were affirmed on all grounds but one and cases that were reversed on all grounds but one. Further, a trial court judge may decide dozens of complex issues and still have one issue appealed and reversed.

A second problem with appellate affirmance data is that some types of cases generally are affirmed more often than other types, regardless of the trial court judge. 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.

Another problem is that our information about the number of appeals decided is not complete for every judge. This is especially true for the district court judges' civil cases, because small claims cases heard by district court judges are appealed to the superior court. **This memo does not include any district court cases appealed to the superior court.**

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 1998 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.<sup>1</sup> The table shows two things for each judge:

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

None of the 1998 retention judges appears to have a problem with being reversed on appeal. For 1998, seven of the twelve judges had more than ten criminal cases decided by the supreme court or the court of appeals during their previous terms in office, and three had more than ten civil cases. In criminal cases, the judges were affirmed between 83-93% of the time. These results are consistent with or better than results from previous retention evaluations in which most judges were affirmed between 70-85% of the time in criminal cases.

In civil cases, the 1998 retention judges were affirmed on appeal more than half the time. This rate is consistent with results from previous retention evaluations in which most judges were affirmed between 50-60% of the time in civil cases.

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<sup>1</sup> 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).

## Appellate Affirmance Rates for Retention Judges By Casetype

Judge	Civil Cases					Criminal Cases				
	Affirmed	Partially affirmed	Percent affirmed, partially affirmed	Not affirmed	Total number civil cases	Affirmed	Partially affirmed	Percent affirmed, partially affirmed	Not affirmed	Total number criminal cases
Jeffrey	5	0	--	2	7	13	2	83%	3	18
Cutler	5	2	64%	4	11	35	5	89%	5	45
Reese	15	8	56%	17	40	6	2	--	0	8
Steinkruger	8	5	62%	8	21	23	2	76%	8	33
Collins	0	0	--	0	0	6	0	--	0	6
Froelich	0	0	--	0	0	7	0	--	1	8
Lohff	0	2	--	0	2	13	1	93%	1	15
Motyka	0	0	--	0	0	10	1	92%	1	12
Murphy	0	0	--	0	0	6	2	--	1	9
Neville	1	0	--	0	1	3	1	--	0	4
Rhoades	0	0	--	0	0	10	1	92%	1	12
Kauvar	1	1	--	1	3	11	1	80%	3	15