



# alaska judicial council

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## Memorandum

**To:** Alaska Judicial Council

**From:** Staff

**Date:** April 21, 1998

**Re:** Retention Judges' Peremptory Challenge Records

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Alaska Statutes § 22.20.020, Alaska Civil Rule 42(c) and Alaska Criminal Rule 25(d) permit each party in any court case to change the judge assigned to a case once as a matter of right (also known as a peremptory challenge). This memo discusses each retention judge's peremptory challenge record during his or her previous term in office.

When evaluating this information, please remember that many different factors can prompt litigants or attorneys to peremptorily challenge judges. While some parties might challenge a judge because they perceive the judge as unfair in a certain type of case, others might challenge a judge because they perceive the judge to be too fair and they hope that the case will be reassigned to another judge who is perceived as favoring their case. Other reasons to challenge a judge include wanting to delay proceedings, being unfamiliar with a new judge, or wanting to avoid the demands of a judge who insists on high standards of practice or timeliness.

Please take care when comparing challenge records between judges with different caseloads. Remember that judges with higher-volume caseloads (for example, judges in urban areas) are expected to have more challenges than those with lower-volume caseloads. Also, expect an increase in challenges when a judge is newly appointed or is reassigned to a different caseload (parties have the right to challenge a newly assigned judge). Understand also that because these data are recorded manually by the court system, they may not be complete or accurate.

Challenge records for Anchorage Superior Court judges are more complicated than those from other courts, because Anchorage judges have different caseload assignments. In the late 1980s

and early 1990s, Anchorage had four divisions: fast track, “slow track,” family and criminal.<sup>1</sup> In 1995, the Anchorage court consolidated into two divisions: criminal and civil. Since then, domestic relations cases have been assigned equally to each of the eight Anchorage superior court judges in the civil division.<sup>2</sup> Criminal division judges do not routinely handle domestic cases.

This memo examines retention judges’ peremptory challenge records by court level and judicial district.

## II. Superior Court

Superior Court Judge: Second Judicial District												
Year	1992		1993		1994		1995		1996		1997	
Judge	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr
Jeffery	5	2	5	2	4	2	1	1	4	1	not avail.	

**Judge Jeffrey:** Judge Jeffrey received very few challenges during his previous term. All of the challenges in criminal cases were filed by defense attorneys.

Superior Court Judges: Third Judicial District												
Year	1992		1993		1994		1995		1996		1997	
Judge	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr
Cutler	45	0	1	5	11	0	27	1	18	18	30	8
Reese	59	0	87	4	74	5	86	2	116	5	135	0

**Judge Cutler:** Judge Cutler received remarkably few challenges, especially considering the Palmer Superior Court’s heavy caseload.

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<sup>1</sup> Fast-track judges were assigned high volumes of short, relatively simple cases; slow track judges received more complex civil litigation; the family judge(s) took all the divorces and dissolutions; and the criminal judges received only criminal cases. Before 1990, one judge handled all domestic relations cases in Anchorage. After 1990, two judges handled that caseload.

<sup>2</sup> Child in Need of Aid, probate, domestic violence and juvenile delinquency cases generally are handled by masters, with the assigned judges stepping in only when necessary.

**Judge Reese:** From his appointment in 1989 through October of 1993, Judge Reese was assigned to the domestic relations division. During that time, he consistently received more challenges than the other domestic relations judge (Judge Andrews). After October of 1993, he was assigned to the high-volume civil fast track. During that assignment, he received about the same number of challenges as the other fast-track judge, Judge Woodward.<sup>3</sup> Since July of 1995, Judge Reese has been assigned to the civil division. During his tenure on the civil division, he has received significantly more challenges than any other Anchorage superior court civil case judge (for example, in 1996 Judge Reese received about 40% more challenges than the next-most-frequently-challenged judge, Judge Hunt, and more than double the challenges of any other judge). In 1997, he received more than twice as many challenges as the second-most-frequently-challenged judge (Judge Michalski, who had 59 that year).<sup>4</sup>

Superior Court Judge: Fourth Judicial District												
Year	1992		1993		1994		1995		1996		1997	
Judge	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr
Steinkruger	146	107	47	40	66	56	43	53	44	72	104	67

**Judge Steinkruger:** During her previous term in office, Judge Steinkruger’s civil and criminal challenges were comparable to or higher than the number received by Judge Greene but higher than those received by Judges Beistline and Savell. For example, in 1997, Judge Beistline received 24 criminal challenges, Judge Savell received 13 and Judge Greene received 91. That same year, Judges Beistline and Savell each received 28 civil case challenges and Judge Greene received 96. In 1996, Judges Beistline and Savell each had around 20 civil case challenges and a handful of criminal case challenges, while Judge Greene had 57 criminal case challenges and 78 civil case challenges, and Judge Hodges had no criminal challenges and 20 civil challenges. In 1995, Judges Beistline and Savell each received around 20 criminal case challenges and around 20 civil case challenges, while Judge Greene received 96 criminal case challenges and 68 civil case challenges. In 1992 and 1997, child protection cases accounted for a significant number of Judge Steinkruger’s total civil challenges (about 23% in 1992 and about 40% in 1997).

<sup>3</sup> Previous retention evaluations showed that Judge Woodward typically received slightly more challenges than often-challenged fast-track judges like Judges Souter and Ripley, and substantially more challenges than seldom-challenged fast-track judges like Rowland and Fabe.

<sup>4</sup> Data for 1996 and 1997 do not include Judge Card.

## II. District Court

District Court Judges: First Judicial District												
Year	1992		1993		1994		1995		1996		1997	
Judge	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr
Collins	--	--	--	--	--	--	0	13	1	13	0	15
Froehlich	6	80	5*	16*	1	50	4	191	5	162	6	54

\*Information incomplete

**Judge Collins:** Judge Collins received few challenges during her previous term in office.

**Judge Froehlich:** Judge Froehlich received an unusually high number of challenges from criminal defendants in 1995 and 1996. The Juneau assistant public defender confirmed in a phone interview that she was bumping him from every case in 1996 because of her concern about his temperament. She reported that she met with him and Judge Weeks in 1996, and during that meeting Judge Froehlich acknowledged her concern. She then stopped bumping him in every case. By 1997, Judge Froehlich's criminal challenges had fallen significantly, although they continued to be high and were still filed almost always by criminal defendants. During his previous term in office, Judge Froehlich also received relatively large numbers of challenges from criminal defendants.

District Court Judges: Third Judicial District												
Year	1992		1993		1994		1995		1996		1997	
Judge	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr
Lohff							1	18	0	26	1	23
Motyka							0	7	0	29	0	14
Murphy							1	18	17	18	10	23
Neville							4	1	5	0	3	2
Rhoades	2	9	2	25	0	54	1	38	0	31	3	35

**Judge Lohff:** Like many of his colleagues on the Anchorage District Court, Judge Lohff received very few civil case challenges and a few dozen criminal case challenges during each year of his previous term.

**Judge Motyka:** Judge Motyka received no civil case challenges and a few dozen criminal case challenges during each year of his previous term. This record is comparable to or better than those of his colleagues on the Anchorage District Court.

**Judge Murphy:** In 1996 and 1997, Judge Murphy received more challenges in civil cases than most other Anchorage district court judges. However, he did not have that problem in 1992, 1993 or 1994. The 1996-97 numbers may be related to his service as a pro tem superior court judge. His criminal case challenges were similar to those received by his colleagues.

**Judge Neville:** Judge Neville received very few challenges during her previous term in office.

**Judge Rhoades:** Judge Rhoades received more criminal challenges than other Anchorage district court judges. Most of her criminal challenges came from defendants, although a few were from prosecutors. For example, in 1995, she received the most criminal challenges on the Anchorage District Court (Judge Finn, who was in second place, received eight fewer). In 1996, she received thirteen fewer than Judge Finn but more than the other district court judges (Judges Wanamaker and Motyka had 29, Judge Lohff had 26, Judge Murphy had 18, Judges Fuld and Wolverton had six and Judge Mason had three). In 1997, she received twenty-two fewer criminal challenges than Judge Finn but more than the other judges (Judges Lohff and Murphy had 23, Judge Wanamaker had 18, Judge Motyka had 14, Judge Fuld had nine and Judge Wolverton had none). She had a similar criminal peremptory challenge record in 1993 and 1994, but had fewer challenges than others 1992 (she was appointed in July of 1992).

District Court Judges: Fourth Judicial District												
Year	1992		1993		1994		1995		1996		1997	
Judge	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr	Cv	Cr
Kauvar	13	64	17	87	15	40	12	64	13	86	30	114

**Judge Kauvar:** Judge Kauvar consistently received more criminal case challenges than the other two Fairbanks district court judges. For example, in 1995 Judge Pengilly received six criminal case challenges and Judge Wood received 39. In 1996, Judge Pengilly received 5 and Judge Wood received 31. In 1997, Judge Pengilly received 2 and Judge Wood received 69. Most, though not all, of Judge Kauvar's criminal case challenges were filed by criminal defendants. This also was true during her prior term in office.