



alaska judicial council

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MEMORANDUM

TO: Judicial Council

FROM: Staff

DATE: August 13, 2024

RE: Peremptory Challenges of Judges Eligible for Retention in 2024

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 2024. 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.

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

² See *id.*; AS 22.20.020.

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

⁴ See *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 tables. 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 the 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 cells 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	2018		2019		2020		2021		2022		2023		Summary				
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*		
Third	Ahrens, Rachel L	Defendant	.	.	0	0	1	0	0	0	0	0	0	.	5	1	1		
		Plaintiff	.	.	0	0	0	0	0	0	0	1	0	.					
		Other	.	.	0	0	0	0	1	0	0	0	2	.					
	Seifert, Bride A	Defendant	.	.	0	0	1	8	3	1	0	1	2	.	21	4.2	4		
		Plaintiff	.	.	0	0	1	0	0	0	1	0	0	.					
		Other	.	.	0	0	0	0	0	0	0	0	0	.					
	Walker, Herman G	Defendant	8	1	17	0	13	0	15	0	9	0	12	8	105	17.5	17		
		Plaintiff	3	0	10	0	5	0	3	0	7	0	2	3					
		Other	0	0	0	0	0	0	0	0	0	0	0	0					
	Zeman, Adolf V	Defendant	3	0	3	0	1	0	1	.	16	4	4		
		Plaintiff	.	.	.	.	3	0	1	0	1	0	1	.	
		Other	.	.	.	.	0	0	0	0	2	0	0	.	
Summary																147	7.3	4	
Fourth	Haines, Patricia L	Defendant	0	0	0	0	1	0	19	6.3	2		
		Plaintiff	.	.	.	.	.	.	1	0	0	0	1	14
		Other	.	.	.	.	.	.	0	0	2	0	0	0
	Summary																19	6.3	2
All	Summary																166	7.2	4

. = 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 2024, including the years of 2018 – 2023 (the years of their terms in office), was 7.2 per year, reflecting the recent trend of lower numbers of challenges. The mean number of peremptory challenges for superior court judges standing for retention from 2010 to 2021 was 21.4 per year and the median was 10 per year.⁵ During that period, the mean ranged from a high of 34.9 per year (2010) to 9.4 per year (2021).

First and Second Judicial Districts: No judges are eligible for retention in the First or Second Judicial Districts in 2024.

⁵ All data available at Alaska Judicial Council.

Third Judicial District: The judges eligible for retention in the Third Judicial District averaged 7.3 challenges per year. None of the superior court judges in the Third Judicial District received unusually high numbers of peremptory challenges.

Fourth Judicial District: The Fourth Judicial District judges averaged 6.3 challenges per year, a low number.

IV. Peremptory Challenge Records - District Court Judges

Peremptory Challenges of Judges - District Court													
Judicial District	Judge	Party	2020		2021		2022		2023		Summary		
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
First	Pickrell, Kristian B	Defendant	.	.	.	.	0	1	0	4	5	2.5	2.5
		Plaintiff	.	.	.	.	0	0	0	0			
	Summary											5	2.5	2.5
Third	Dickson, Leslie N	Defendant	0	0	0	0	0	0	1	0	5	1.2	0.5
		Plaintiff	0	0	0	0	1	3	0	0			
	Franciosi, Michael J	Defendant	0	0	0	0	0	0	0	0	0	0	0
		Plaintiff	0	0	0	0	0	0	0	0			
	Hanley, J. Patrick	Defendant	0	0	0	1	0	0	0	0	9	2.2	1
		Plaintiff	0	2	0	6	0	0	0	0			
	Logue, Michael B	Defendant	0	0	0	0	0	0	0	0	6	1.5	1.5
		Plaintiff	2	0	0	1	0	2	0	1			
	McCrea, Kari L	Defendant	0	0	0	2	0	1	0	0	16	4	5
		Plaintiff	0	6	0	2	0	5	0	0			
	Wallace, David R	Defendant	0	1	0	0	0	1	0	0	2	0.5	0.5
		Plaintiff	0	0	0	0	0	0	0	0			
Washington, Pamela S	Defendant	1	0	4	0	2	0	1	0	35	8.8	9	
	Plaintiff	9	0	9	0	5	1	2	1				
Summary											73	2.6	1
Fourth	Bahr, Maria P	Defendant	.	.	0	64	1	26	0	6	160	53.3	66
		Plaintiff	.	.	0	3	1	38	0	21			
	Christian, Matthew C	Defendant	0	0	1	0	1	0	0	2	17	4.2	3
		Plaintiff	0	0	1	9	0	0	1	2			
	Summary											177	25.3	11
All	Summary										255	6.9	1

. = 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 district court judges on the ballot for 2024, including the years 2020 – 2023 (the years of their terms in office), was 6.9 per year and the median was 1. The mean number of peremptory challenges for district court judges standing for retention from 2010 to 2021 was 1.3 and the median was 1. During that period, the mean ranged from the low of 0.9 per year (2010) to a high of 46.9 per year (2017). The means are highly variable and often reflect the bar’s reluctance to try out a new judge.

First Judicial District: District court judges in the First Judicial District, like their superior court colleagues, typically receive fewer peremptory challenges than judges in other judicial districts. From 2020 to 2023, the average for the one judge eligible for retention in 2024 was 2.5 challenges per year, a low number.

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 2.6 peremptory challenges per year, a similarly low number.

Fourth Judicial District: Two district court judges in the Fourth Judicial District are eligible for retention. Judge Christian received an average of 4.2 challenges per year, a low number. Judge Bahr received an average of 66 challenges per year in her first three years on the bench, a relatively high number. She received a total of 67 challenges in her first year, 66 in her second year, and only 27 in her third year. Most of the challenges came in criminal cases, at first from the defense bar, and then more frequently from prosecutors. This pattern of frequent peremptory challenges and then diminishing over time is common for new judges.