

## David A. Nesbett - Profile

Judge Nesbett was appointed to the Anchorage District Court in March of 2019. . Judge Nesbett handles civil and criminal cases. This is his first retention evaluation.

### Performance Summary

After conducting its performance review, the Judicial Council determined that Judge Nesbett met or exceeded [performance standards](#) on all criteria, including legal ability, integrity, impartiality/fairness, temperament, diligence, and administrative skills.

The Council also determined that Judge Nesbett met or exceeded educational requirements set by the Alaska Supreme Court, complied with required judicial ethics requirements, and made positive contributions to his community and to the administration of justice.

Because Judge Nesbett met or exceeded all performance and professional development standards, the Alaska Judicial Council **recommends a “yes” vote** on retention in office.

### Performance Findings

The Council conducts a [thorough performance review](#) of each judge standing for retention. Key findings for Judge Nesbett include:

- **Ratings by justice system professionals:** Attorneys and peace and probation officers who appeared before Judge Nesbett gave him excellent reviews, as did court employees. The chart shows the survey ratings received by Judge Nesbett.
- **Ratings by jurors:** The Judicial Council surveyed jurors who served in trials before Judge Nesbett during 2020, 2021, and the first part of 2022. The jurors rated Judge Nesbett 4.9 overall on a five-point scale. One juror commented, “[He was] very professional and attentive to the needs of all in the courtroom.”
- **Professional activities:** The Council’s review of Judge Nesbett’s professional activities showed positive contributions to the administration of justice and his community. During his term, Judge Nesbett was involved with the Anchorage Veterans Court. He participated in the In-Court Pilot Project, an effort to retain court system employees. He was involved in youth activities, including courthouse tours and a presentation about the role of judges and Alaska’s merit selection system of judges.
- **Other performance indicators:** The Council reviewed other performance indicators, including Judge Nesbett’s financial and conflict of interest statements, disqualifications from cases, and appellate reversal rates. Judge Nesbett performed well in these areas.
- **Timeliness:** Alaska law requires judges’ pay be withheld if a decision is pending longer than six months. The Council verified that Judge Nesbett was paid on schedule, and he certified that he had no untimely decisions.
- **Ethics:** There were no public disciplinary proceedings against Judge Nesbett, and the Council’s review found no ethical concerns.



Print Questionnaire

Received

DEC 21 2021

Alaska Judicial Council

# alaska judicial council

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## Alaska Judicial Council Trial Judge Questionnaire

### 2022 Candidates for Judicial Retention

November 2021

David A. Nesbett

Name

Anchorage District Court

Court

1. Please estimate your workload during your present term.

a) 30 % civil cases

70 % criminal cases

       % court administrative work

100 % Total

b) 2 # of jury trials/year

12 # of non-jury trials/year

       # of administrative appeals/year

2. Please describe your participation on court/bar committees or other administrative activities during your current term of office.

I have become involved with the Anchorage Veterans Court with the ultimate goal of working alongside Judge Wallace, who currently presides over this Court. Veterans Court is a specialized court designed to help facilitate the rehabilitation of eligible veterans who are charged with criminal offenses. I am also a committee member for the In-Court Pilot program, which is an effort to improve employee retention for Alaska Court System staff. I also am working with the Alaska Court System to increase the Court's presence in our community through public outreach and education.

3. Please describe any judicial or legal education you have undertaken or provided during your current term in office.

During this term, I have annually attended the Alaska Judicial Conference and the Newer Judges Conference. These conferences provide judges with education and training on many topics, including judicial ethics, best practices in the courtroom, diversity, and various substantive areas of the law.

I also attended a two-week, General Jurisdiction trial judges course at the National Judicial College in Reno, NV, and an additional one-week course from the National Judicial College on advanced evidence. These courses focus on educating judges on managing the courtroom and individual cases - including cases involving self-represented litigants - improving communication and listening skills, conducting jury trials efficiently and effectively, and reviewing recent developments in the law and procedure, judicial discretion, ethics, and fair and balanced sentencing in criminal cases.

I also attend Continuing Legal Education courses locally when offered, including diversity training and training related to therapeutic courts.

4. Please describe any public outreach activities.

As a trial judge, much of my community outreach occurs every day during the course of hearing cases, listening to litigants, and interacting with the public from the bench. This process is critical to ensuring that all parties are truly heard and have had a full and fair opportunity to participate in our judicial system.

I have also guided tours of the courthouse for middle schoolers and spoken to students at West High School. Topics include the role of the judiciary in our government and the role of the judge in our judicial system, as well as Alaska's method of selecting and retaining judges through the Judicial Merit Selection System.

5. This question pertains to Superior Court judges only.

State law requires the Council to conduct an evaluation of judges standing for retention, and to provide information to the public about the judges. Under a provision added in 2013, the information the Council provides to the public "shall include the judge's consideration of victims when imposing sentence on persons convicted of felony offenses where the offenses involve victims" (see AS 22.10.150). Although the Council's evaluations address all aspects of judicial performance, including felony sentencing, they have not in the past explicitly solicited judges' thoughts on this topic.

Please submit a short statement about how you consider victims when imposing sentences in felony offenses.

N/A

6. Please assess, in one or two paragraphs, your judicial performance during your present term. Appropriate areas of comment could include: satisfaction with your judicial role, specific contributions to the judiciary or the field of law, increases in legal knowledge and judicial skills, or other measures of judicial abilities that you believe to be important.

As this is my first term, I have spent this time learning to approach each case as a judge, not an attorney advocate. I feel passionate about doing what is right in each case, being fair to all parties involved, and treating everyone with respect and dignity. I have developed an increased appreciation and respect for the dedicated and hardworking members of our court system, and strive every day to meet the high bar set by the other judges.

I've made every effort to recognize any of my mistakes or misunderstandings and correct them as quickly as possible. I have also worked to increase my knowledge and awareness of existing law and court decisions, and also to stay current with appellate court decisions and the decisions of the other trial court judges. I work to keep an open mind about both the law and the facts in each case, and to remain patient and understanding, even when there are many cases to attend to in a limited amount of time. I also have worked to improve my written decisions to ensure that my communication is clear to both sides, including not only the conclusion that was reached but also the reasoning behind each conclusion.

Contributing to the cooperative and impassioned spirit of the Anchorage District Court leaves me feeling like we are a team providing the best possible product to our community, which is very rewarding.

7. During your most recent term as a judge, have you:
- a) had a tax lien filed or other collection procedure instituted against you by federal, state, or local authorities?  Yes  No
  - b) been involved in a non-judicial capacity in any legal proceeding whether as a party or otherwise?  Yes  No
  - c) engaged in the practice of law (other than as a judge)?  Yes  No
  - d) held office in any political party?  Yes  No
  - e) held any other local, state or federal office?  Yes  No
  - f) had any complaints, charges or grievances filed against you with the Alaska Commission on Judicial Conduct, the Alaska Bar Association, the Alaska Court System, or any other agency that resulted in public proceedings or sanctions?  
 Yes  No

8. If your answer to any of the questions above is "yes," please give full details, including dates, facts, case numbers, and outcomes.

N/A

9. Please provide any other information which you believe would assist the Council in conducting its evaluations and in preparing its recommendations for the 2022 retention elections.

None

For questions 10 - 13, please do not list any cases that have pending issues in your court.

- 10. Please list your three most recent jury trials during your current term in office including case names and numbers. Please list the names and current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these trials. (Attach additional pages if necessary.)

**Case Number 1**

**Case Name:** Municipality of Anchorage **Case Number:** 3AN-19-11142 CR  
 v. Lenea Woods

**Attorneys Involved:**

Name: Angela Garay, Asst. Municipal Prosecutor	Name: Wallace Tetlow, Tetlow & Christie, LLC
Address: 632 W 6th Ave UNIT 210	Address: 745 W 4th Ave STE 250
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99501
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 2**

**Case Name:** State of Alaska **Case Number:** 3AN-19-6045 CR  
 v. Brandon Hughes

**Attorneys Involved:**

Name: Amy Miller, Asst. District Attorney	Name: Mary Burnell, Public Defender Agency
Address: 310 K St #520	Address: 900 W 5th Ave #200
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99501
Name: _____	Name: Eric Mortensen-Nemore, Public Defender Agency
Address: _____	Address: 900 W 5th Ave #200
City, State, Zip: _____	City, State, Zip: Anchorage, AK 99501

**Case Number 3**

**Case Name:** Municipality of Anchorage **Case Number:** 3AN-19-3133 CR  
 v. Beverly Austin

**Attorneys Involved:**

Name: Michael Shaffer, Asst. Municipal Prosecutor	Name: Lynn Bechtol, Denali Law Group
Address: 632 W 6th Ave, UNIT 210	Address: 750 W. 2nd Ave, Ste 104
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99501
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

- 11. Please list your three most recent non-jury trials during your current term in office including case names and numbers. Please list the names and current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these trials. (Attach additional pages if necessary.)

**Case Number 1**

**Case Name:** Kalamarides & Lambert **Case Number:** 3AN-20-5115 CI  
 v. Eric Froelich

***Attorneys Involved:***

Name: <u>Andrew Lambert</u>	Name: _____
Address: <u>750 W. 2nd, Ste 200</u>	Address: _____
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 2**

**Case Name:** Cornerstone Credit Services, LLC **Case Number:** 3AN-21-0451 SC  
 v. Miya Robinson

***Attorneys Involved:***

Name: <u>Brian Heady, Law Office of Brian Heady</u>	Name: _____
Address: <u>205 E. Benson Blvd, Ste 102</u>	Address: _____
City, State, Zip: <u>Anchorage, AK 99503</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 3**

**Case Name:** Michael Selhay **Case Number:** 3AN-19-1498 SC  
 v. Jeffrey and Amber Barney

***Attorneys Involved:***

Name: <u>Taylor Thompson, Law Office of Darryl Thompson</u>	Name: _____
Address: <u>880 N St, Ste 101</u>	Address: _____
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: _____
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____



- 12. Please list your three most recent cases during your current term in office, including case names and numbers, which did not go to trial, but on which you did significant work (such as settlement conference, hearings, motion work, etc.). Please list the names and current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these cases. (Attach additional pages if necessary.)

**Case Number 1**

**Case Name:** Municipality of Anchorage **Case Number:** 3AN-19-3147 CR  
 v. Chance Wolfley

**Attorneys Involved:**

Name: <u>Sarah Stanley, Municipal Prosecutor</u>	Name: <u>Leigh Ann Bauer, Law Office of Leigh Ann Bauer</u>
Address: <u>632 W 6th Ave, UNIT 210</u>	Address: <u>821 N St #202</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Anchorage, AK 99501</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 2**

**Case Name:** Municipality of Anchorage **Case Number:** 3AN-18-1355 CR  
 v. Gary Rozelle

**Attorneys Involved:**

Name: <u>Michael Shaffer</u>	Name: <u>Henry Graper, Denali Law Group</u>
Address: <u>632 W 6th Ave, UNIT 210</u>	Address: <u>750 W. 2nd Ave, Ste 104</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Anchorage, AK 99501</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 3**

**Case Name:** Municipality of Anchorage **Case Number:** 3AN-20-1614 CR  
 v. Tusialofa Lagai

**Attorneys Involved:**

Name: <u>Heather Stenson, Office of Criminal Appeals</u>	Name: <u>Samuel Fortier, Fortier &amp; Mikko, PC</u>
Address: <u>1031 W. 4th Avenue, Ste 200</u>	Address: <u>1600 A St, #101</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Anchorage, AK 99501</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

13. *Optional:* If you deem it helpful to the Council, please list up to three other cases during your current term in which you believe your work was particularly noteworthy. Please list the names and current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these cases. (Attach additional pages if necessary.)

**Case Number 1**

*Case Name:* \_\_\_\_\_ *Case Number:* \_\_\_\_\_  
v. \_\_\_\_\_

***Attorneys Involved:***

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 2**

*Case Name:* \_\_\_\_\_ *Case Number:* \_\_\_\_\_  
v. \_\_\_\_\_

***Attorneys Involved:***

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Case Number 3**

*Case Name:* \_\_\_\_\_ *Case Number:* \_\_\_\_\_  
v. \_\_\_\_\_

***Attorneys Involved:***

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

**Table 57**  
**Judge David A. Nesbett**  
**Demographic Description of Respondents - Attorneys**

	<i>n</i>	<i>%</i>
<b>All respondents</b>	<b>120</b>	<b>100</b>
<b>Experience with Judge</b>		
Direct professional experience	97	80.8
Professional reputation	12	10.0
Other personal contacts	11	9.2
<b>Detailed Experience*</b>		
Recent experience (within last 5 years)	89	94.7
Substantial amount of experience	41	43.6
Moderate amount of experience	27	28.7
Limited amount of experience	26	27.7
<b>Type of Practice</b>		
No response	2	1.7
Private, solo	21	17.5
Private, 2-5 attorneys	11	9.2
Private, 6+ attorneys	19	15.8
Private, corporate employee	4	3.3
Judge or judicial officer	23	19.2
Government	32	26.7
Public service agency or organization	5	4.2
Retired	3	2.5
Other	-	-
<b>Length of Alaska Practice</b>		
No response	23	19.2
5 years or fewer	20	16.7
6 to 10 years	9	7.5
11 to 15 years	10	8.3
16 to 20 years	14	11.7
More than 20 years	44	36.7
<b>Cases Handled</b>		
No response	3	2.5
Prosecution	18	15.0
Criminal	22	18.3
Mixed criminal & civil	33	27.5
Civil	40	33.3
Other	4	3.3
<b>Location of Practice</b>		
No response	3	2.5
First District	2	1.7
Second District	1	0.8
Third District	110	91.7
Fourth District	3	2.5
Outside Alaska	1	0.8
<b>Gender</b>		
No response	3	2.5
Male	79	65.8
Female	38	31.7
Another identity	-	-

\*Only among those respondents reporting direct professional experience with the judge.

**Table 58**  
**Judge David A. Nesbett**  
**Detailed Responses - Attorneys**

	<i>n</i>	Legal Ability <i>M</i>	Impartiality/ Fairness <i>M</i>	Integrity <i>M</i>	Judicial Temperament <i>M</i>	Diligence <i>M</i>	Overall <i>M</i>
All respondents	120	4.3	4.5	4.6	4.7	4.5	4.5
<b>Basis for Evaluation</b>							
<b>Direct professional experience</b>	<b>97</b>	<b>4.3</b>	<b>4.5</b>	<b>4.6</b>	<b>4.7</b>	<b>4.4</b>	<b>4.5</b>
Experience within last 5 years	89	4.3	4.5	4.5	4.7	4.4	4.5
Experience not within last 5 years	5	4.4	4.6	4.8	4.4	4.4	4.6
Substantial amount of experience	41	4.3	4.5	4.6	4.7	4.4	4.5
Moderate amount of experience	27	4.3	4.4	4.4	4.6	4.3	4.4
Limited amount of experience	26	4.4	4.7	4.7	4.7	4.7	4.7
Professional reputation	12	4.2	4.5	4.6	4.4	4.3	4.4
Other personal contacts	11	4.8	4.9	4.9	5.0	4.9	4.9
<b>Type of Practice*</b>							
Private, solo	17	4.3	4.2	4.4	4.3	4.2	4.3
Private, 2-5 attorneys	9	3.9	4.4	4.1	4.4	4.0	4.4
Private, 6+ attorneys	15	4.6	4.7	4.7	4.7	4.5	4.7
Private, corporate employee	1	5.0	5.0	5.0	5.0	5.0	5.0
Judge or judicial officer	20	4.5	4.7	4.7	4.8	4.6	4.7
Government	29	4.1	4.4	4.5	4.7	4.4	4.4
Public service agency or organization	3	4.3	4.7	4.7	5.0	4.7	4.7
Retired	2	5.0	5.0	5.0	5.0	5.0	5.0
Other	-	-	-	-	-	-	-
<b>Length of Alaska Practice*</b>							
5 years or fewer	20	4.2	4.4	4.6	4.8	4.5	4.4
6 to 10 years	8	4.3	4.3	4.1	4.6	4.4	4.4
11 to 15 years	5	4.0	4.4	4.6	4.6	3.8	4.2
16 to 20 years	11	4.6	4.7	4.7	4.7	4.7	4.7
More than 20 years	37	4.3	4.5	4.5	4.5	4.4	4.5
<b>Cases Handled*</b>							
Prosecution	16	3.9	4.3	4.5	4.6	4.3	4.3
Criminal	21	4.5	4.7	4.8	4.9	4.6	4.7
Mixed criminal & civil	29	4.3	4.5	4.4	4.7	4.5	4.5
Civil	28	4.4	4.5	4.6	4.5	4.3	4.5
Other	1	4.0	5.0	5.0	5.0	5.0	5.0
<b>Location of Practice*</b>							
First District	1	5.0	5.0	5.0	5.0	5.0	5.0
Second District	1	5.0	5.0	5.0	5.0	5.0	5.0
Third District	90	4.3	4.5	4.5	4.6	4.4	4.5
Fourth District	3	4.7	4.7	5.0	4.7	4.7	4.7
Outside Alaska	-	-	-	-	-	-	-
<b>Gender*</b>							
Male	66	4.4	4.6	4.6	4.7	4.5	4.6
Female	29	4.1	4.4	4.4	4.6	4.3	4.3
Another identity	-	-	-	-	-	-	-

\*Ratings from only those respondents reporting direct professional experience with the judge.

**Table 48**  
**Judge David A. Nesbett**  
**Demographic Description of Respondents - Peace and Probation Officers**

	<i>n</i>	<i>%</i>
<b>All respondents</b>	<b>26</b>	<b>100</b>
<b>Experience with Judge</b>		
Direct professional experience	20	76.9
Professional reputation	6	23.1
Other personal contacts	-	-
<b>Detailed Experience*</b>		
Recent experience (within last 5 years)	20	100.0
Substantial amount of experience	1	5.0
Moderate amount of experience	7	35.0
Limited amount of experience	12	60.0

\*Only among those respondents reporting direct professional experience with the judge.

**Table 49**  
**Judge David A. Nesbett**  
**Detailed Responses - Peace and Probation Officers**

	<i>n</i>	<b>Impartiality/ Fairness</b> <i>M</i>	<b>Integrity</b> <i>M</i>	<b>Judicial Temperament</b> <i>M</i>	<b>Diligence</b> <i>M</i>	<b>Overall</b> <i>M</i>
All respondents	26	4.1	4.3	4.1	4.2	4.1
<b>Basis for Evaluation</b>						
<b>Direct professional experience</b>	<b>20</b>	<b>4.2</b>	<b>4.4</b>	<b>4.3</b>	<b>4.3</b>	<b>4.3</b>
Experience within last 5 years	20	4.2	4.4	4.3	4.3	4.3
Experience not within last 5 years	-	-	-	-	-	-
Substantial amount of experience	1	5.0	5.0	5.0	5.0	5.0
Moderate amount of experience	7	4.4	4.6	4.3	4.6	4.6
Limited amount of experience	12	4.0	4.2	4.2	4.0	4.1
Professional reputation	6	3.8	4.0	3.5	4.0	3.4
Other personal contacts	-	-	-	-	-	-

\*Ratings from only those respondents reporting direct professional experience with the judge.

**Table 51**  
**Judge David A. Nesbett**  
**Description of Respondents' Experience - Court Employees**

	<i>n</i>	<i>%</i>
<b>All respondents</b>	<b>20</b>	<b>100</b>
<b>Experience with Judge</b>		
Direct professional experience	16	80.0
Professional reputation	4	20.0
Other personal contacts	-	-
<b>Detailed Experience*</b>		
Recent experience (within last 5 years)	15	93.8
Substantial amount of experience	4	25.0
Moderate amount of experience	6	37.5
Limited amount of experience	6	37.5

\*Only among those respondents reporting direct professional experience with the judge.

**Table 52**  
**Judge David A. Nesbett**  
**Detailed Responses - Court Employees**

	<i>n</i>	<b>Impartiality/ Fairness</b> <i>M</i>	<b>Integrity</b> <i>M</i>	<b>Judicial Temperament</b> <i>M</i>	<b>Diligence</b> <i>M</i>	<b>Overall</b> <i>M</i>
All respondents	20	4.9	4.9	4.8	4.8	4.9
<b>Basis for Evaluation</b>						
<b>Direct professional experience</b>	<b>16</b>	<b>4.8</b>	<b>4.9</b>	<b>4.8</b>	<b>4.8</b>	<b>4.9</b>
Experience within last 5 years	15	4.8	4.9	4.7	4.7	4.9
Experience not within last 5 years	1	5.0	5.0	5.0	5.0	5.0
Substantial amount of experience	4	5.0	5.0	4.8	5.0	5.0
Moderate amount of experience	6	4.8	5.0	5.0	4.8	5.0
Limited amount of experience	6	4.7	4.7	4.5	4.5	4.7
Professional reputation	4	5.0	5.0	5.0	5.0	5.0
Other personal contacts	-	-	-	-	-	-



# alaska judicial council

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## MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** May 17, 2022  
**RE:** Juror Survey Report

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The Alaska Judicial Council collected surveys from jurors who sat in trials during 2020, 2021, and the first part of 2022. The jurors sat before 27 of the 28 trial court judges eligible to stand for retention in 2022 (no jurors sat before Judge John C. Cagle). A total of 538 jurors responded on Council-provided postcards that judges distributed to jurors at the end of each trial (see attached Juror Survey Card Example). Jurors completed the surveys on the postage-paid cards and mailed them to the Council.

Council staff entered the data from the surveys and ran basic descriptive statistics. This memorandum summarizes the findings. It is distributed to Council members and judges, and posted on the Council's website.

Table 1 shows the distribution of jurors by type of trial reported for each judge. Some jurors only wrote comments and did not rate the judge on the specific variables. Thus, there may be more respondents shown on Table 1 than appear on the judges' individual tables.

<b>Table 1: Distribution of Jurors by Type of Trial, by Judge Alaska Judicial Council 2022 Retention Juror Survey</b>				
<b>Judge</b>	<b>Civil</b>	<b>Criminal</b>	<b>No Answer</b>	<b>Total</b>
Bennett, Brent	0	23	1	24
Chung, Jo-Ann M.	16	44	1	61
Clark, Brian K.	5	7	0	12
Easter, Catherine	1	42	1	44
Fallon, Martin C.	0	24	0	24
Gandbhir, Una Sonia	3	0	0	3
Garton, Josie	0	14	0	14
Gist, Jason	1	42	4	47
Haas, Terrence	0	7	2	9
Jamgochian, Tom V.	2	12	0	14
Joanis, Lance	0	23	0	23
Kristiansen, Kari	0	13	0	13
Matthews, Thomas A.	0	3	1	4
Mead, Amy Gurton	3	23	0	26
Nesbett, David A.	1	22	1	24
Pate, Jude	2	22	5	29
Peterson, Andrew	0	32	0	32
Peterson, Earl	12	23	3	38
Ramgren, Peter	8	0	0	8
Saxby, Kevin	0	4	0	4
Schally, Daniel	3	9	1	13
Seekins, Ben	0	16	0	16
Stohler, Kristen C.	0	4	0	4
Swanson, Kirsten	0	4	1	5
Temple, Thomas I.	0	23	2	25
Traini, Shawn	6	4	1	11
Wallace, Stephen	1	9	1	11



Table 2 shows the distribution of number of days served, as reported by the jurors. Fifty-seven percent of the jurors served fewer than five days.

<b>Table 2: Distribution of Days Served Alaska Judicial Council 2022 Retention Juror Survey</b>		
<b>Number of Days Served</b>	<b>%</b>	<b>N</b>
1 - 2 Days	20.6	111
3 - 4 Days	36.2	195
5 - 7 Days	20.1	108
8 - 10 Days	12.1	65
11 - 20 Days	3.2	17
21 or More Days	5.4	29
No Answer	2.4	13
Total		538

## Individual Results

Table 3 shows each judge’s mean rating for each question on the survey. Each judge’s individual survey results are provided in separate tables. Jurors used a five-point scale, with *excellent* rated as five, and *poor* rated as one. The closer the jurors' ratings were to five, the higher that judge's evaluation by the jurors. The last column shows the total number of jurors who evaluated the judge on at least one variable.

**Table 3:**  
**Mean Rating for each Variable and for “Overall Performance,” by Judge**  
 Alaska Judicial Council  
 2022 Retention Juror Survey

	Impartiality and Fairness	Respectful and Courteous	Attentive During Proceedings	Control During Proceedings	Intelligence and Skill as a Judge	Overall Mean	Total Count
Bennett, Brent	4.8	5.0	4.9	4.7	4.8	4.8	24
Chung, Jo-Ann M.	4.8	4.9	4.8	4.8	4.8	4.8	61
Clark, Brian K.	4.8	4.8	4.8	4.8	4.8	4.8	12
Easter, Catherine	5.0	5.0	5.0	5.0	5.0	5.0	44
Fallon, Martin C.	5.0	5.0	4.8	5.0	4.9	4.9	24
Gandbhir, Una Sonia	5.0	5.0	5.0	5.0	5.0	5.0	3
Garton, Josie	4.9	4.9	4.6	4.7	4.8	4.8	14
Gist, Jason	4.9	4.9	4.9	4.9	4.9	4.9	47
Haas, Terrence	4.8	4.9	4.9	4.9	4.9	4.9	9
Jamgochian, Tom V.	5.0	4.9	4.9	4.9	4.9	4.9	14
Joanis, Lance	5.0	5.0	5.0	4.9	5.0	5.0	23
Kristiansen, Kari	5.0	5.0	4.8	5.0	4.9	5.0	13
Matthews, Thomas A.	5.0	4.8	5.0	5.0	4.8	5.0	4
Mead, Amy Gurton	4.8	5.0	5.0	4.5	4.8	4.8	26
Nesbett, David A.	4.9	4.9	4.9	4.9	4.9	4.9	24
Pate, Jude	4.9	5.0	5.0	4.9	4.9	4.9	29
Peterson, Andrew	5.0	5.0	5.0	4.9	5.0	5.0	32
Peterson, Earl	4.9	4.9	4.9	4.9	5.0	4.9	38
Ramgren, Peter	5.0	5.0	5.0	5.0	5.0	5.0	8
Saxby, Kevin	5.0	5.0	5.0	4.8	5.0	5.0	4
Schally, Daniel	4.9	5.0	4.8	4.9	5.0	5.0	13
Seekins, Ben	4.9	4.9	4.8	4.9	4.9	4.8	16
Stohler, Kristen C.	5.0	5.0	5.0	5.0	5.0	5.0	4
Swanson, Kirsten	4.6	4.6	4.6	4.6	4.6	4.6	5
Temple, Thomas I.	4.8	4.8	4.8	4.8	4.8	4.8	25
Traini, Shawn	4.9	5.0	5.0	4.8	4.8	5.0	11
Wallace, Stephen	4.9	5.0	4.9	5.0	5.0	5.0	11

Juror Survey Results 2022  
Retention Evaluation  
**Nesbett, David A.**

<b>Survey Category</b>	<b>Mean</b>	<b>Poor (1)</b>	<b>Deficient (2)</b>	<b>Acceptable (3)</b>	<b>Good (4)</b>	<b>Excellent (5)</b>	<b>Total Responses</b>
Impartiality / Fairness	4.9	0	0	0	3	21	24
Respectful / Courteous	4.9	0	0	0	2	22	24
Attentive During Proceedings	4.9	0	0	0	2	22	24
Control Over Proceedings	4.9	0	0	0	2	22	24
Intelligence / Skill as a Judge	4.9	0	0	0	3	21	24
Overall Evaluation	4.9	0	0	0	2	22	24



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## MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** July 15, 2022  
**RE:** Peremptory Challenges of Judges Eligible for Retention in 2022

---

### **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.<sup>1</sup> Two different authorities govern the challenge right. The legislature created the substantive right and defines its scope by statute.<sup>2</sup> The court regulates peremptory challenge procedures by court rules.<sup>3</sup> In general, each side in a case gets one peremptory challenge.<sup>4</sup>

This memo examines peremptory challenge records for judges who are eligible to stand for retention in November 2022. 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.

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

<sup>2</sup>See *id.*; AS 22.20.020.

<sup>3</sup>See Alaska R. Crim. P. 25(d); Alaska R. Civ. P. 42(c).

<sup>4</sup>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 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	2016		2017		2018		2019		2020		2021		Summary			
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*	
First	Mead, Amy G	Defendant	.	.	.	.	0	0	2	1	0	0	0	1	41	10.2	9.5	
		Plaintiff	.	.	.	.	11	0	7	4	6	0	6	0				
		Other	.	.	.	.	0	0	1	0	0	1	1	0				
	Pate, M Jude	Defendant	.	.	.	.	0	4	1	3	0	7	2	2	19	4.8	4	
		Plaintiff	.	.	.	.	0	0	0	0	0	0	0	0				
		Other	.	.	.	.	0	0	0	0	0	0	0	0				
	Schally, Daniel	Defendant	.	.	.	.	0	0	0	14	0	1	0	0	20	5	1.5	
		Plaintiff	.	.	.	.	1	0	1	1	0	0	0	0				
		Other	.	.	.	.	0	0	0	0	0	0	2	0				
	<b>Summary</b>														<b>80</b>	<b>6.7</b>	<b>5.5</b>	
Third	Aarseth, Eric A	Defendant	4	0	5	0	5	0	2	0	0	27	0	6	76	12.7	11	
		Plaintiff	6	0	9	0	6	0	3	0	1	0	1	0				
		Other	0	0	0	0	1	0	0	0	0	0	0	0				
	Cagle, John C	Defendant	.	.	.	.	.	.	.	4	0	4	1	2	0	67	22.3	18
		Plaintiff	.	.	.	.	.	.	14	0	4	2	3	0				
		Other	.	.	.	.	.	.	0	0	30	0	3	0				
	Easter, Catherine M	Defendant	13	0	5	6	0	0	0	0	0	0	0	0	46	7.7	1	
		Plaintiff	14	0	6	0	0	0	0	0	1	0	0	0				
		Other	0	0	0	0	0	0	0	0	0	0	0	1				
	Gandbhir, Una	Defendant	.	.	.	.	5	0	3	0	7	0	2	0	35	8.8	7	
		Plaintiff	.	.	.	.	0	0	1	0	9	0	7	0				
		Other	.	.	.	.	0	0	0	0	1	0	0	0				
	Garton, Josie	Defendant	.	.	.	.	1	0	0	0	0	0	1	0	12	3	3	
		Plaintiff	.	.	.	.	1	0	1	0	5	0	3	0				
		Other	.	.	.	.	0	0	0	0	0	0	0	0				
	Gist, Jason M	Defendant	.	.	.	.	0	0	3	2	5	1	2	0	42	10.5	10	
		Plaintiff	.	.	.	.	1	0	5	6	6	9	2	0				
		Other	.	.	.	.	0	0	0	0	0	0	0	0				
	Joanis, Lance	Defendant	.	.	.	.	5	20	1	60	7	19	6	7	143	35.8	30	
		Plaintiff	.	.	.	.	6	0	4	0	3	0	3	1				
		Other	.	.	.	.	0	0	1	0	0	0	0	0				
	Kristiansen, Kari C	Defendant	2	10	2	8	5	1	9	7	3	7	4	2	173	28.8	25	
		Plaintiff	6	11	8	1	9	0	13	0	8	0	8	0				
		Other	20	0	6	0	5	2	2	0	3	0	11	0				
	Marston, Erin B	Defendant	1	0	1	20	0	21	0	3	0	0	0	1	65	10.8	6.5	
		Plaintiff	9	0	6	0	1	0	0	0	1	0	0	0				
		Other	0	0	1	0	0	0	0	0	0	0	0	0				
	Matthews, Thomas A	Defendant	.	.	.	.	3	0	4	1	1	0	1	0	17	4.2	4.5	
		Plaintiff	.	.	.	.	1	0	1	0	4	0	1	0				
		Other	.	.	.	.	0	0	0	0	0	0	0	0				
	Peterson, Andrew	Defendant	.	.	.	.	3	0	0	11	0	2	0	1	26	6.5	6.5	
		Plaintiff	.	.	.	.	9	0	0	0	0	0	0	0				
		Other	.	.	.	.	0	0	0	0	0	0	0	0				
	Ramgren, Peter R	Defendant	.	.	.	.	.	.	4	0	1	0	2	0	16	5.3	6	
		Plaintiff	.	.	.	.	.	.	2	0	1	0	6	0				

**Peremptory Challenge Memorandum**

July 15, 2022

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Fourth	Saxby, Kevin M	Other	.	.	.	.	.	.	0	0	0	0	0	0			
		Defendant	0	53	0	31	0	29	0	14	0	5	0	0	136	22.7	22.5
		Plaintiff	0	0	0	0	0	0	0	2	1	1	0	0			
	Other	0	0	0	0	0	0	0	0	0	0	0	0				
	Stohler, Kristen C	Defendant	.	.	.	.	.	.	3	0	3	1	1	0	23	7.7	8
		Plaintiff	.	.	.	.	.	.	0	1	1	0	2	0			
		Other	.	.	.	.	.	.	4	0	6	1	0	0			
	Wallace, Stephen B	Defendant	.	.	.	.	.	.	3	30	4	20	0	7	77	25.7	25
		Plaintiff	.	.	.	.	.	.	7	0	1	0	2	0			
		Other	.	.	.	.	.	.	3	0	0	0	0	0			
	<b>Summary</b>														<b>954</b>	<b>14.5</b>	<b>9.5</b>
	Fourth	Bennett, Brent E	Defendant	.	.	.	.	.	.	4	0	3	0	3	0	16	5.3
Plaintiff			.	.	.	.	.	.	1	0	1	0	2	2			
Other			.	.	.	.	.	.	0	0	0	0	0	0			
Haas, Terrence P		Defendant	.	.	.	.	0	0	2	1	0	0	0	0	19	4.8	1.5
		Plaintiff	.	.	.	.	0	0	1	12	0	2	0	0			
		Other	.	.	.	.	0	0	0	0	0	0	1	0			
Peterson, Earl A		Defendant	.	.	.	.	.	.	2	0	0	0	4	0	66	22	13
		Plaintiff	.	.	.	.	.	.	7	0	3	0	8	0			
		Other	.	.	.	.	.	.	4	0	1	0	37	0			
Temple, Thomas I		Defendant	.	.	.	.	5	1	2	1	8	5	5	3	93	23.2	23
		Plaintiff	.	.	.	.	2	0	6	0	22	0	7	7			
		Other	.	.	.	.	0	1	0	0	3	0	15	0			
<b>Summary</b>														<b>194</b>	<b>13.9</b>	<b>8</b>	
<b>All</b>	<b>Summary</b>													<b>1228</b>	<b>13.3</b>	<b>8</b>	

. = 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 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.<sup>1</sup> During that period, the mean ranged from a high of 34.9 per year (2010) to the recent low of 9.4 per year (2021). The average number of peremptory challenges for the superior court judges on the ballot for 2022, including the years of 2016 – 2021 (the years of their terms in office), was 13.3 per year, reflecting the recent trend of lower numbers of challenges.

**First Judicial District:** The number of peremptory challenges in the First District is typically lower than in other districts. From 2016-2021 judges in the First District averaged 6.7 challenges per year, lower than the statewide average of 13.3.

**Second Judicial District:** No judges are eligible for retention in the Second Judicial District in 2022.

**Third Judicial District:** The judges eligible for retention in the Third Judicial District averaged 14.5 challenges per year. None of the superior court judges in the Third Judicial District received unusually high numbers of peremptory challenges. Although several judges averaged more than 20 challenges per year, the numbers of challenges were not unusual when compared to judges' averages over the last ten years.

<sup>1</sup> All data available at Alaska Judicial Council.



**Fourth Judicial District:** The Fourth Judicial District judges averaged 13.9 challenges per year, only slightly higher than the overall average of 13.3 per year. None of the superior court judges on the ballot 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	2018		2019		2020		2021		Summary		
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
First	Miller, Kevin G	Defendant	0	0	0	0	2	2	1	3	9	2.2	2
		Plaintiff	0	0	0	0	1	0	0	0			
	Swanson, Kirsten L	Defendant	0	0	0	1	0	0	0	0	2	0.5	0.5
		Plaintiff	0	0	0	0	1	0	0	0			
	<b>Summary</b>										<b>11</b>	<b>1.4</b>	<b>0.5</b>
Third	Chung, Jo-Ann M	Defendant	2	4	6	10	1	2	0	0	48	12	10
		Plaintiff	7	0	12	0	4	0	0	0			
	Clark, Brian K	Defendant	0	0	0	2	0	1	1	0	6	1.5	1.5
		Plaintiff	1	0	0	0	1	0	0	0			
	Fallon, Martin C	Defendant	.	.	0	0	1	1	0	3	11	3.7	3
		Plaintiff	.	.	0	0	6	0	0	0			
	Jamgochian, Thomas V	Defendant	.	.	.	.	0	2	0	0	2	1	1
		Plaintiff	.	.	.	.	0	0	0	0			
	Nesbett, David A	Defendant	.	.	0	0	0	0	0	0	1	0.3	0
		Plaintiff	.	.	0	0	0	0	1	0			
	Traini, Shawn D	Defendant	.	.	0	0	1	1	0	1	5	1.7	2
Plaintiff		.	.	0	0	1	0	1	0				
<b>Summary</b>										<b>73</b>	<b>3.8</b>	<b>2</b>	
Fourth	Seekins, Ben A	Defendant	0	0	0	2	0	0	0	0	3	0.8	0
		Plaintiff	0	0	1	0	0	0	0	0			
	<b>Summary</b>										<b>3</b>	<b>0.8</b>	<b>0</b>
<b>All Summary</b>										<b>87</b>	<b>2.8</b>	<b>1</b>	

. = 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 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 average number of peremptory challenges for the district court judges on the ballot for 2022, including the years 2018 – 2021 (the years of their terms in office), was 2.8 per year.

**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 2018-2021 the average was 1.4 challenges per year.

**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 3.8 peremptory challenges per year. Although nominally higher than other districts, this is still very low.

**Fourth Judicial District:** Judge Seekins, the only district court judge on the ballot in the Fourth Judicial District in 2022, received, on average, less than one challenge per year.



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## MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** July 15, 2022  
**RE:** Recusal Records of Judges Eligible for Retention in 2022

---

### **I. Introduction**

One tool that the Judicial Council uses for evaluating judges is a judge's record of self-disqualification from cases, or "recusals." Judges are required to disclose potential reasons for disqualification and then step down from cases when there is a conflict. If a judge's activities prevent them from sitting on an inordinate number of cases, however, that judge may not be as effective as other judges in handling their caseload.

This memo examines recusal records of those judges who are eligible for retention in 2022. The data show that no judge has a record of high recusals that requires further investigation. Although one judge recused himself 89 times in his first year, he was required to do so by Alaska law.

### **II. Context for interpreting recusal data**

Conflicts and resulting disqualifications are unavoidable. Judges must recuse themselves when conflicts arise. Alaska law and ethics rules govern when judges must recuse themselves from cases. Sometimes high numbers of recusals can indicate that a judge is not regulating their extra-judicial activities appropriately. High numbers of recusals do not necessarily indicate that a judge has failed to do so. Only very high disqualification rates should trigger an inquiry about whether a

judge is acting in a matter to perform their judicial duties effectively. The law and ethics rules are set forth below.

Alaska Statute 22.20.020 sets forth the matters in which a judge may not participate. Judges may not act in matters: when the judge is a party; when the judge is related to a party or an attorney; when the judge is a material witness; when the judge or a member of the judge's family has a direct financial interest; when one of the parties has recently been represented by the judge or the judge's former law firm; or when the judge for any reason feels that a fair and impartial decision cannot be given. Judicial officers must disclose any reason for possible disqualification at the beginning of a matter.

Alaska Code of Judicial Conduct Canon 3E presents even broader bases for recusal. The canon states that a judge is disqualified whenever the judge's impartiality might reasonably be questioned. The rule also requires a judge to disclose on the record any information that the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. The canon provides examples, including instances when the judge has a personal bias or prejudice concerning a party or an attorney, the judge has personal knowledge of the disputed facts, the judge or the judge's former law partner served as a lawyer in the matter in controversy, or when the judge knows that he or she, or the judge's spouse, parent, or child has an economic or other interest in the matter, or is likely to be a material witness in the proceeding.

Canon 4 requires judges to conduct their extra-judicial activities so as to comply with the requirements of the Code and so that the activities do not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties. Canon 4 restricts a judge's activities so as to minimize the instances that would require disqualification.

The following tables list the number of instances each judge recused their self in the preceding six (for superior court judges) and four (for district court judges) years. Blank cells indicate that the judge had not yet been appointed to his or her current position.

**III. Recusal Records - Superior Court Judges**

		Judge Recusals - Superior Court												Summary		
Judicial District	Judge	2016		2017		2018		2019		2020		2021		Total	Mean*	Median*
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal			
First	Mead, Amy G	.	.	.	.	1	0	6	1	0	0	4	0	12	3	2.5
	Pate, M Jude	.	.	.	.	3	2	6	1	3	2	3	2	22	5.5	5
	Schally, Daniel	.	.	.	.	0	0	1	0	0	0	0	0	1	0.2	0
	<b>Summary</b>													35	2.9	2.5
Third	Aarseth, Eric A	3	0	3	0	4	0	2	0	2	2	1	2	19	3.2	3
	Cagle, John C	.	.	.	.	.	.	12	33	10	12	8	1	76	25.3	22
	Easter, Catherine M	6	0	3	3	0	5	0	4	0	7	0	7	35	5.8	6
	Gandbhir, Una	.	.	.	.	1	0	6	0	4	0	4	0	15	3.8	4
	Garton, Josie	.	.	.	.	8	0	4	0	13	0	3	0	28	7	6
	Gist, Jason M	.	.	.	.	0	0	4	5	2	1	2	1	15	3.8	3
	Joanis, Lance	.	.	.	.	11	0	6	0	3	4	5	2	31	7.8	7
	Kristiansen, Kari C	4	2	2	1	6	2	4	4	7	1	16	4	53	8.8	8
	Marston, Erin B	5	0	8	0	0	0	0	1	2	0	0	0	16	2.7	1.5
	Matthews, Thomas A	.	.	.	.	3	0	5	0	3	0	4	0	15	3.8	3.5
	Peterson, Andrew	.	.	.	.	9	0	2	4	1	5	1	1	23	5.8	6
	Ramgren, Peter R	.	.	.	.	.	.	3	0	4	0	6	0	13	4.3	4
	Saxby, Kevin M	1	0	0	0	0	0	0	1	1	1	0	0	4	0.7	0.5
	Stohler, Kristen C	.	.	.	.	.	.	21	10	19	7	10	4	71	23.7	26
Wallace, Stephen B	.	.	.	.	.	.	4	17	1	5	8	6	41	13.7	14	
<b>Summary</b>													455	6.9	5	
Fourth	Bennett, Brent E	.	.	.	.	.	.	48	41	18	5	11	9	132	44	23
	Haas, Terrence P	.	.	.	.	1	0	9	5	1	4	0	0	20	5	3
	Peterson, Earl A	.	.	.	.	.	.	5	4	1	4	3	0	17	5.7	5
	Temple, Thomas I	.	.	.	.	10	9	22	7	11	7	8	5	79	19.8	18.5
	<b>Summary</b>													248	17.7	13.5
<b>All</b>	<b>Summary</b>													738	8	5

. = No value

\* Mean and median unit of analysis is judge/year

The average number of recusals between 2010 and 2021 for superior court judges standing for retention was 6.1 per year.<sup>1</sup> The recusal rates for superior court judges eligible for retention election in 2022 are unremarkable. All of the judges who had higher recusals per year than average were new judges, except for Judge Kristiansen, who was only slightly over the average. The judge with the highest number of recusals was Judge Bennett, who averaged 44 recusals per year. Most of the recusals (89 of 132) came in his first year on the bench. Judge Bennett had previously served as the supervisor of the Office of Public Advocacy in Fairbanks and was required to recuse himself from cases in which clients of the agency appeared. Other judges who had much higher recusals than the average were new judges who had many recusals the first year and fewer in subsequent years.

<sup>1</sup> All data available from the Alaska Judicial Council.

**IV. Recusal Records - District Court Judges**

Judge Recusals - District Court												
Judicial District	Judge	2018		2019		2020		2021		Summary		
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
First	Miller, Kevin G	1	2	0	0	1	0	2	1	7	1.8	2
	Swanson, Kirsten L	0	0	0	0	0	1	0	1	2	0.5	0.5
	<b>Summary</b>									9	1.1	1
Third	Chung, Jo-Ann M	0	0	0	0	0	0	0	0	0	0	0
	Clark, Brian K	0	0	0	0	0	0	0	0	0	0	0
	Fallon, Martin C	.	.	0	0	0	0	0	0	0	0	0
	Jamgochian, Thomas V	.	.	.	.	0	0	0	0	0	0	0
	Nesbett, David A	.	.	0	0	3	0	0	0	3	1	0
	Traini, Shawn D	.	.	0	0	0	7	2	0	9	3	2
	<b>Summary</b>									12	0.6	0
Fourth	Seekins, Ben A	0	0	3	0	2	0	1	0	6	1.5	1.5
	<b>Summary</b>									6	1.5	1.5
All	<b>Summary</b>									27	0.9	0

. = No value  
 \* Mean and median unit of analysis is judge/year

District court judges typically recuse themselves infrequently. The recusal data for all district court judges standing for retention in 2022 was unremarkable.



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## MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** September 30, 2022  
**RE:** Appellate Evaluation of Judges Eligible for Retention in 2022

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### **I. Introduction**

The Judicial Council staff has several ways of evaluating judges' performance. One way is to review how often each judge's rulings were affirmed or reversed by an appellate court. One must be careful when looking at this information because:

- Different types of cases are affirmed at different rates;
- Comparing judges is not always helpful because of different caseloads;
- Many 2022 judges (16 of 20) have had only a few cases decided on appeal so far; the fewer the number of cases, the less useful the data are as a performance measure.

More information on how appellate affirmance rate information is analyzed can be found in the Methodology Section, below. In 2022, for the first time, we reviewed individual judicial affirmance rates in the context of typical past affirmance rate ranges, which voters may find helpful.

## **II. Analysis of Appellate Affirmance Rates**

### **A. Superior Court Judges, 2016 - 2021**

Generally, the trends of civil, criminal and overall affirmance rates have been stable since the Council began reviewing them in 1994. Criminal affirmance rates have ranged within six percentage points, from 78% - 83%, over the past twenty-eight years. Civil affirmance rates ranged between 62% to a high of 76%. Overall, the affirmance rate of all cases was stable at about 75% until the 2006 - 2011 period, when the rate began an upward climb to 78 - 79%, driven first by a rise in criminal affirmance rates, and then by a rise in civil affirmance rates.

<b>Overall Affirmance Rates</b>			
<b>Superior Court Judges</b>			
<b>Years</b>	<b>Criminal</b>	<b>Civil</b>	<b>Overall</b>
<b>1994-1999</b>	83%	62%	74%
<b>1996-2001</b>	81%	63%	73%
<b>1998-2003</b>	81%	66%	74%
<b>2000-2005</b>	80%	70%	75%
<b>2002-2007</b>	79%	70%	75%
<b>2004-2009</b>	78%	71%	75%
<b>2006-2011</b>	81%	72%	77%
<b>2008-2013</b>	82%	72%	78%
<b>2010-2015</b>	82%	75%	79%
<b>2012-2017</b>	81%	75%	79%
<b>2014-2019</b>	80%	76%	78%
<b>2016-2021</b>	80%	73%	78%

Affirmance rates for superior court judges who are standing for retention in 2022 are summarized in the following table. The table shows the number of civil cases appealed during the judge's term, the percent of issues in those cases that were affirmed by the appellate court, the number of criminal cases appealed during the judge's term, the percent of issues in those cases that were affirmed by the appellate court, and the combined civil and criminal appeals information. Comparisons of final column figures should be made carefully. As discussed in the Methodology section, judges with higher percentages of criminal appeals will generally have higher overall affirmance rates than those with a higher percentage of civil appeals. Comparisons



between the first two columns are likely to be more meaningful. Also, judges having fewer than ten cases reviewed should not be compared with other judges. The figures for those judges are provided for descriptive purposes only. To provide even more information for this evaluation, an overall affirmance rate has been calculated for all superior court judges, including judges not standing for retention, and retired or inactive judges, for the evaluation period. This comparison provides a better performance measure than comparing retention judges against each other.

<b>Judicial Affirmance Rates 2022 Superior Court Judges</b>						
	Criminal Affirmance		Civil Affirmance		Overall	
	Number Reviewed	Rate	Number Reviewed	Rate	Number Reviewed	Rate
<b>First Judicial District</b>						
<i>Mead, Amy Gurton</i>	2	50%	2	75%	4	62%
<i>Pate, Jude</i>	2	100%	1	67%	3	89%
Schally, Daniel	5	60%	5	60%	10	60%
<b>Third Judicial District</b>						
<i>Cagle, John C.</i>	1	100%	5	100%	6	100%
Easter, Catherine M.	3	100%	16	86%	19	88%
<i>Gandbhir, Una Sonia</i>	--	--	4	50%	4	50%
<i>Garton, Josie</i>	--	--	4	62%	4	62%
<i>Gist, Jason</i>	1	100%	2	100%	3	100%
<i>Joanis, Lance</i>	1	100%	3	100%	4	100%
Kristiansen, Kari	33	77%	31	85%	64	81%
<i>Matthews, Thomas A.</i>	--	--	4	75%	4	75%
<i>Peterson, Andrew</i>	3	33%	7	71%	10	55%
<i>Ramgren, Peter</i>	--	--	3	83%	3	83%
Saxby, Kevin M.	53	76%	--	--	53	76%
<i>Stohler, Kristen C.</i>	--	--	3	67%	3	67%
<i>Wallace, Stephen B.</i>	1	0%	1	0%	2	0%
<b>Fourth Judicial District</b>						
<i>Bennett, Brent</i>	1	100%	--	--	1	100%
<i>Haas, Terrence</i>	1	100%	--	--	1	100%
<i>Peterson, Earl</i>	--	--	3	67%	3	67%
<i>Temple, Thomas</i>	1	100%	7	86%	8	88%
Number and mean affirmance rates, superior court judges 2016 - 2021	106	76%	101	80%	207	78%

*Note: Includes only those judges who are standing for retention in 2022. All appellate review information is included for the judges listed since appointment to their current position. Only appellate review decisions between 2016 and 2021 are used in the calculations. Data for judges having fewer than ten cases is provided for descriptive purposes only because too few cases are available for meaningful analysis.*

Statistically, the smaller the number of cases in a sample, the less reliable the conclusions drawn from that are likely to be. Samples of fewer than ten cases are likely to be misleading. Judges with fewer than ten cases are likely to be new judges without sufficient time for a case to go through all the steps of trial court and appeal court processes.

In the past, we have taken alternative steps to help the reader evaluate appellate court review of decisions by judges with fewer than ten cases. To assist the reader, we describe individual cases that were not affirmed at 100%. For this retention cycle, only four of the twenty superior court judges eligible for retention had more ten or more cases reviewed. Sixteen had fewer than ten. These judges were all newly appointed to the superior court and this is their first retention evaluation. Some of these judges had previously been either magistrates or district court judges but appeals decided before their appointment to their current position was not considered in this evaluation.

### **Judge Amy Mead**

In LaFavour v. State, the Court of Appeals summarily affirmed Judge Mead (100%) after she held an evidentiary hearing and revoked the probation of a sex offender who she found failed to complete sex offender program in Washington state. The Court of Appeals determined Judge Mead based her finding on an extensive review of the record.

In State v. Simile, on a petition for review from the superior court, the Court of Appeals reversed Judge Mead (0%), finding her interpretation of a new statute was contrary to legislative intent. The appeal was about whether a judge had the authority to revoke probation when a probationer committed a fourth “technical” violation of absconding. The Court of Appeals determined that judges have authority to revoke probation in those circumstances.

In Moore v. Ketah, the Alaska Supreme Court affirmed Judge Mead (100%) after she denied a grandmother’s petition for court-ordered visitation with her grandchildren over the parents’ objection. The supreme court affirmed Judge Mead’s findings that the parents were fit and the grandmother had not proved that the parents’ preference to limit contact with the grandmother was clearly contrary to the children’s best interests.

In Jason B. v. Heather B., the Alaska Supreme Court affirmed Judge Mead’s denial of a domestic violence protective order against a wife but reversed her grant of one against the husband (50%). The Supreme Court found neither the judge’s written order or oral findings provided an indication of the evidence on which they were based, so the court could not review the grounds for the decision or the application of the law to the facts. The court vacated the order and remanded the case back to the judge for further consideration.

### **Judge Jude Pate**

The Court of Appeals affirmed two criminal cases (100% each).

In, Forrer v. State, a civil case, the Alaska Supreme Court partially affirmed and partially reversed Judge Pate (67%). The case was about whether the legislature could create a public corporation capable of borrowing up to \$1 billion through the issuance of subject-to-appropriation bonds when the Alaska constitution Article IX prohibits “state debt” except under certain conditions. The court affirmed Judge Pate’s decision to decline to convert the state’s motion to dismiss into a motion for summary judgment, finding that the state’s submission of legislative history did not create a factual dispute. But the court reversed Judge Pate’s decision granting the state’s motion to dismiss, concluding that the debt entered into by the public corporation by means of the subject-to-appropriation bonds violated the prohibition in Article IX because it did not qualify for the exception in Article IX section 8 that the state claimed. Last, the court held that Judge Pate correctly concluded that no other exception applied. The supreme court remanded the case for further consideration.

### **Judge John C. Cagle**

The court of appeals affirmed one criminal case in its entirety (100%). The supreme court affirmed Judge Cagle in five civil cases (100% each). Four cases were child-in-need-of-aid cases. One case was a family law case in which the plaintiff was seeking relief from a previously entered judgment, claiming newly discovered evidence.

### **Judge Una Sonia Gandbhir**

Judge Gandbhir had no criminal appeals reviewed and decided.

The supreme court reviewed four cases. Three cases involved civil commitment orders. In two cases the supreme court affirmed Judge Gandbhir’s decisions in their entirety (100% each). In one consolidated appeal involving two cases (one of which was Judge Gandbhir’s, the other was Judge Garton’s), In the Matter of the Necessity for the Hospitalization of Mabel B. and Sarah D., the supreme court reversed Judge Gandbhir’s order (0%). Two women had been under 72-hour involuntary holds for psychiatric evaluation because they were deemed at risk of danger to themselves or others, but no authorized psychiatric facility had capacity to perform the evaluations due to understaffing. The judges authorized the women’s continued involuntary detention at hospitals for two weeks until evaluations could be performed. After review, the supreme court determined that the continued detentions violated the patients’ due process rights and vacated the detention orders.

In one tort case, Mulligan v. HMS Host International, the supreme court reversed Judge Gandbhir’s dismissal of a sexual harassment case due to the plaintiff’s failure to serve the defendants properly. The self-represented plaintiff had tried to file the case two other times but had failed to serve the defendants so the court closed the case. The plaintiff tried a third time and finally served the defendants properly but the Judge Gandbhir declined to allow her to reopen the case. The supreme court concluded it was an abuse of discretion to not relax the rules and allow

the self-represented plaintiff to reopen the case, when the plaintiff could have opened a new case in the circumstances.

### **Judge Josie Garton**

The supreme court affirmed a family law case involving custody (100%) and an involuntary commitment case (100%). Judge Garton issued a decision in another involuntary commitment case, In the Matter of the Necessity for the Hospitalization of Mabel B. and Sarah D., discussed above in relation to Judge Gandbhir's case. Like in Judge Gandbhir's case, the supreme court reversed her detention decision (0%), holding the continued detention of the petitioner was a violation of the woman's right to due process.

In Pruitt v. State, an elections case, the Alaska Supreme Court affirmed in part and reversed in part (50%). The court concluded that Judge Garton erred by dismissing one count of the complaint, finding that heightened particularity was not required in election cases and that the complaint sufficiently stated an election contest claim. Nonetheless, the supreme court held that Judge Garton did not err in concluding the Division of Elections did not commit malconduct.

### **Judge Jason Gist**

The Court of Appeals affirmed Judge Gist in a post-conviction relief case, Seaman v. State, which was about a defendant's eligibility for discretionary parole (100%).

In Cordelia P. v. State of Alaska DHSS, OCS, the Supreme Court affirmed Judge Gist's decision to terminate parental rights in a child-in-need-of-aid case (100%) but noted that the judge erred when he considered information that was not admitted into evidence. The Supreme Court determined the error was not reversible because other evidence supported that the finding that the children were in need of aid.

In Randle v. Bay Watch Condominium Association, a condominium owner appealed the superior court's granting of a preliminary injunction and declaratory relief allowing a condominium association the right to enter the condo owner's unit to inspect and repair plumbing located in a crawl space under the owner's unit. The supreme court affirmed, concluding the judge did not err in finding the condominium association governing documents permitted access to common areas in such circumstances.

### **Judge Lance Joanis**

The supreme court reviewed three civil cases, and the court of appeals reviewed one criminal case over which Judge Joanis presided. The appellate courts affirmed all four cases at 100%.

### **Judge Thomas A. Matthews**

The supreme court reviewed four civil cases over which Judge Matthews presided. It affirmed three cases at 100%. It reversed one case, Seal v. Welty, in which the superior court granted summary judgment to the employers of an employee who had been killed while working at a construction site. The supreme court concluded that the superior court misinterpreted and misapplied a settlement agreement the employee's estate had entered into with the property owner. The supreme court vacated the judgment and remanded the case for further proceedings.

### **Judge Andrew Peterson**

The Court of Appeals reviewed three criminal cases over which Judge Peterson presided. It affirmed one, a bail appeal, in its entirety (100%). It reversed (0%) a bail order, Francis v. State, finding the judge abused his discretion when he declined to lower the bail amount to an amount the defendant could pay, even after the defendant proposed and the court accepted highly restrictive bail conditions designed to ensure the defendant's appearance and public safety. The supreme court also reversed Barracrough v. State, in its entirety (0%). In that case the defendant, who was convicted of second-degree sexual abuse of a minor, appealed a probation condition the judge imposed prohibiting the defendant from possessing a concealed weapon, firearm, switchblade or gravity knife. The state conceded the probation condition lacked sufficient connection to the offense, so the court of appeals vacated it.

The supreme court affirmed two child-in-need-of-aid cases in their entirety (100% each). The supreme court also affirmed two general civil case at 100%.

In Oliver N. v. State, Department of Health & Social Services, Office of Children's Services and Lisa B. v. State, Department of Health and Social Services, Office of Children's Services, it reversed (0%). In that case, the parent appealed the court's termination of parental rights. The supreme court reversed the superior court, concluding that the superior court erred when it allowed a person to testify about the likelihood of harm to the child if returned to the parent when the person was not qualified to testify pursuant to Indian Child Welfare Act rules.

In In the Matter of the Necessity for the Hospitalization of April S., the supreme court partly affirmed and partly reversed (50%) Judge Peterson. It first concluded that the superior court did not deny the plaintiff due process by holding an *ex parte* hearing before granting a petition to order the plaintiff be hospitalized for 72 hours for an evaluation to determine if she was gravely disabled or presented a likelihood of serious harm to self or others. The supreme court then determined the superior court erred when it concluded the plaintiff was voluntarily committed by the Office of Children's Services because the relevant statute did not provide for voluntary commitment by the office, only by parents or legal guardians.

In Alaska Public Offices Commission v. Not Tammie and Citizens for Clean Air – No on Proposition 1, the supreme court partially affirmed (50%). The supreme court affirmed Judge Peterson's ruling that the governor must explicitly assign APOC hearing officers to conduct

certain agency hearings, according to Alaska law. The supreme court then reversed Judge Peterson's ruling that a governor-appointed hearing officer cannot be an agency employee or commissioner when there was nothing in the law that prohibited them from acting in that capacity.

### **Judge Peter Ramgren**

Judge Ramgren had three cases reviewed and decided during his term. The supreme court affirmed a family law case (100%) and a child-in-need-of-aid case (100%) in their entirety.

In Mulligan v. Municipality of Anchorage, a tort case (50%), the supreme court partly affirmed and partly reversed Judge Ramgren. The court affirmed Judge Ramgren's dismissal of the person's complaint for false arrest when the complaint failed to allege an arrest warrant was issued unlawfully. The court then reversed Judge Ramgren's dismissal of the count alleging excessive force, when the complaint alleged sufficient facts to provide notice to the municipality of the incident so that it could conduct discovery into the underlying facts.

### **Judge Kristen C. Stohler**

The supreme court reviewed three cases over which Judge Stohler presided. It affirmed a child-in-need-of-aid case and a family law case in their entirety (100% each).

In Carpenter v. Blue, the Supreme Court reversed (0%). It found the court erred by failing to conduct a symmetrical analysis required when a custodial parent moves out of state, weighing the geographical and relational impact on the child both of moving and of staying behind.

### **Judge Stephen Wallace**

The appellate courts reviewed two cases over which Judge Stephen Wallace presided. It reversed both (0% each).

In the consolidated cases of C.L., D.R., F.P., and J.P. v. OPA Guardian Ad Litem Brenda Finley and State of Alaska Department of Health & Social Services, Office of Children's Services, the supreme court reviewed the superior court's denial of the petitioners' motion for an evidentiary hearing on disqualification of the guardian ad litem, whom they claimed was potentially biased. The supreme court ruled that the petitioners were entitled to a limited evidentiary hearing to determine whether the appointed guardian ad litem had a disqualifying conflict of interest.

In Twiford v. State, the court of appeals reviewed Judge Wallace's denial of a peremptory challenge to his sitting as trial judge as untimely. The judge concluded the defendant had waived his ability to challenge him after participating in a series of Rule 11 change of plea hearings, which ultimately ended in Judge Wallace rejecting the proposed plea agreement. The supreme court concluded that the defendant had not forfeited his right to a peremptory challenge

because it was ambiguous whether the Judge Wallace had been permanently assigned to the case at the time of the Rule 11 hearings.

### **Judge Brent Bennet**

The court of appeals one criminal case and affirmed at 100%.

The court of appeals also reviewed Judge Bennet's bail order in Francis-Fields v. State. It partly affirmed and partly reversed (50%). The court found Judge Bennet did not abuse his discretion when he found the proposed third party custodians did not appreciate the gravity of the allegations and were thus not prepared to take on the responsibilities of a custodian. The court then found Judge Bennet erred when he imposed a \$250,00 cash performance bond without explaining why such high bail was necessary, rather than a lesser amount that might be closer to an amount the defendant was able to pay. The court remanded for reconsideration.

### **Judge Terrence Haas**

The court of appeals reviewed one criminal case and affirmed it (100%).

### **Judge Earl Peterson**

The supreme court affirmed two child-in-need-of-aid cases in their entirety (100% each).

In Titus v. State, Department of Corrections, et al., a medical malpractice case, the supreme court reversed Judge Peterson's grant of summary judgment dismissing the estate's claim against emergency room care providers (0%). The court concluded the judge erred in deciding the decedent's estate's board-certified expert was not qualified to testify about the relevant standard of care.

### **Judge Thomas Temple**

The supreme court affirmed five child-in-need-of-aid cases, a delinquency case, and a tort case in their entirety (100% each).

It reversed (0%) another child-in-need of aid case, Norman S., The supreme court reversed Judge Temple's decision to terminate a parent's rights based on an offer of proof when the parent was not present and their attorney did not accept the offer of proof. The supreme court vacated the termination of parental rights and remanded for further proceedings.

## **B. District Court Judges, 2018 - 2021**

The mean criminal affirmance rate for all district court judges from 2018 - 2021 was 75%. District court criminal case affirmance rates have ranged from 74% - 85%. Civil appellate

affirmance rates for district court judges are not provided. They are not meaningful because no district court judge regularly has ten or more civil cases appealed to the supreme court.

<b>Criminal Affirmance Rates</b>	
<b>District Court Judges</b>	
<b>Years</b>	<b>Mean</b>
<b>1998-2001</b>	83%
<b>2000-2003</b>	79%
<b>2002-2005</b>	79%
<b>2004-2007</b>	85%
<b>2006-2009</b>	83%
<b>2008-2011</b>	80%
<b>2010-2013</b>	80%
<b>2012-2015</b>	82%
<b>2014-2017</b>	78%
<b>2016-2019</b>	74%
<b>2018-2021</b>	75%

Affirmance rates of district court judges eligible for retention are summarized in the following table. The table shows the number of criminal cases appealed to the Alaska Court of Appeals and Alaska Supreme Court during the judge’s term, and the percent of issues in those cases that were affirmed by the appellate court. Please note that none of these judges had more than ten cases appealed and decided during their term in office.

<b>Judicial Affirmance Rates</b>		
<b>2022 District Court Judges</b>		
	<b>Criminal Affirmance</b>	
	<b>Number Reviewed</b>	<b>Rate</b>
<b>First Judicial District</b>		
Swanson, Kirsten	2	50%
<b>Third Judicial District</b>		
Chung, Jo-Ann M.	6	60%
Clark, Brian K.	4	75%
Fallon, Martin C.	-	--
Jamgochian, Tom V.	--	--
Nesbett , David A.	--	--
Traini, Shawn	--	--



Fourth Judicial District		
Seekins, Ben	8	50%
Number and mean affirmance rates, district court judges 2018 - 2021	25	58%

*Note: Includes only those judges who are standing for retention in 2022 – this is also true of the final row in the table. All appellate review information is included for the judges listed since appointment to their current position. Only appellate review decisions between 2018 and 2021 are used in the calculations. Data for judges having fewer than ten cases is provided for descriptive purposes only because too few cases are available for meaningful analysis.*

As discussed above, judges having fewer than ten cases reviewed should not be compared with other judges. In the current retention period, no district court judge had more than ten cases. Three of the judges had no cases reviewed. To provide more context, the judges are discussed individually below.

#### **Judge Kirsten Swanson**

Judge Swanson had two criminal cases reviewed. The court of appeals affirmed one in its entirety (100%).

In J.K. v. State, the court of appeals reversed (0%). The defendant in the case was charged with a misdemeanor, fourth degree assault, and was committed to the custody of the Department of Health and Social Services for competency restoration treatment under a 90 day commitment order. However, he could not be transferred to the Alaska Psychiatric Institute for the evaluation because there was no space and he remained in jail. When it became clear the 90-day order was likely to expire, the defense attorney moved to dismiss the case; the attorney also moved to dismiss after it did expire. Both motions were denied. Instead, the court entered another 90-day commitment order. The defendant petitioned the court to review their continued incarceration as a violation of the constitutional right to due process. Instead of answering, the state dismissed the charge against the defendant. Nonetheless, the court agreed to hear the petition because the issue was one likely to otherwise evade review. The court of appeals concluded the defendant’s constitutional right to due process had been violated. It urged judges “to be vigilant ensuring that defendants who have been found to be incompetent are not left languishing in jail and that the nature and duration of their commitment bear a reasonable relationship to the purpose for which the defendant is committed.”

#### **Judge Jo-Ann Chung**

Judge Chung had six cases reviewed. The court of appeals affirmed three of them in their entirety (100% each).

In Pohland v. State, the court of appeals reviewed the conviction of a former attorney general for official misconduct. The evidence against her included incriminating text messages

between her and her friend/landlord that were stored on her laptop computer located in the defendant's apartment, which was in the landlord's house. The police seized and examined the laptop when executing a search warrant for financial records in a separate case against the landlord. The court of appeals concluded the search was unconstitutional because the police did not have probable cause to search the defendant's laptop for the landlord's financial records when there was no allegation before the search that the defendant was complicit in the landlord's alleged financial and business crimes. The court of appeals reversed the conviction and held the results of the search were suppressed.

In Johnson v. Municipality of Anchorage, the court of appeals partly reversed Judge Chung (60%) when it addressed whether a judge is disqualified from participating in a case if, before the judge's appointment to the bench, the judge appeared as a lawyer at a hearing in an earlier stage of the same case. Judge Chung had presided over a consolidated sentencing of the defendant in three recent cases and two probation revocation proceeding in older cases. The defendant moved to disqualify Judge Chung from presiding over the sentencing because she had appeared as a municipal prosecutor in one of the older cases. Judge Chung denied the motion because she did not remember anything from the previous cases and did not perform substantive work on them. The court of appeals concluded that Judge Chung was not required to disqualify herself from the three most recent cases, but was required to disqualify herself from the two older cases in which she personally appeared. Even though the disqualification statute expressly required only a two-year lookback, the statute was intended to include disqualification for same cases, and the code of judicial conduct required disqualification for all cases in which a judge appeared as an attorney for one of the parties.

In Quezada v. State, the court of appeals reversed Judge Chung (0%). The court remanded a case after Judge Chung ruled a defendant had failed to complete a batterer's intervention program as required by a plea agreement. The defendant presented a certificate of completion but there was evidence to suggest the defendant forced his partner to complete the homework and committed acts of violence against her. The court of appeals remanded for an evidentiary hearing, holding the judge could not rely on their own judgment about whether the defendant completed the program, without evidence from the program provider.

### **Judge Brian Clark**

The court of appeals reviewed four criminal cases. It affirmed four in their entirety (100% each).

In Davis v. State, the court of appeals reviewed Judge Clark's dismissal of an application for post-conviction relief. It vacated and remanded the case, concluding that the defendant's certificate of no-merit was deficient under Alaska law because it did not provide the court with a full explanation of all the claims the attorney has considered and why the attorney concluded the claims were frivolous.

### **Judge Martin C. Fallon**

Judge Fallon had no appeals decided that arose after his appointment to the district court. Five criminal cases that arose while he was under appointment as a magistrate judge were appealed and decided by the court of appeals but those cases are excluded from the analysis because they did not relate to his present term in office.

### **Judge Tom Jamgochian**

Judge Jamgochian had no appellate cases reviewed and decided.

### **Judge David A. Nesbett**

Judge Nesbett had no appellate cases reviewed and decided.

### **Judge Shawn Traini**

Judge Traini had no appellate cases reviewed and decided.

### **Judge Ben Seekins**

The court of appeals reviewed eight criminal cases. It affirmed four in their entirety (100% each). It reversed four in their entirety (0% each).

In McDermott v. State, Judge Seeking dismissed an application for post-conviction relief after the petitioner failed to appear at two court hearings. The court reversed the dismissal, concluding the court had failed to support the dismissal with proper findings. The court remanded the case for further findings.

In State v. Johnson, the state appealed a ruling by Judge Seekins in a DUI case that suppressed evidence of a breath test administered by the police. The police had dissuaded the defendant from seeking an independent chemical test of his own choosing, as was allowed by statute. The court concluded the exclusion of the evidence was not necessary to deter future misconduct by the police and the defendant's ability to present a defense was not impacted by the statutory violation because he chose to receive an independent test at the state's expense. \

In Rogers v. State, a defendant appealed his conviction for driving under the influence of a controlled substance and refusal to submit to a chemical test, claiming insufficient evidence. The defendant told the police after he was stopped that he had take Adderall and "Klonopin or some other benzodiazepine." The defendant performed poorly on field sobriety tests and was arrested. At trial the state presented no evidence of substances the defendant consumed and the officer was the only witness. The court of appeals agreed and reversed the conviction, concluding the judge erred when he denied the defendant's motion to acquit because the state

failed to prove the defendant was impaired and the impairment was a direct result of a controlled substance.

In State v. Savage, the state petitioned for a review of Judge Seekins's suppression of evidence in a dui case. The defendant did not dispute the validity of an initial traffic stop, but argued that the police officer lacked reasonable suspicion to shift focus from a speeding infraction to her possible impairment. The court of appeals disagreed with Judge Seekins, concluding that the officer's observations of red, bloodshot and watery eyes, her difficulty in locating her insurance documents, and her admission of consuming one or two alcoholic beverages twenty minutes before driving were sufficient to establish reasonable suspicion.

### **III. Methodology**

The review process begins with a staff member, usually the staff attorney, reading every published appellate decision and every memorandum opinion and judgment released by the appellate courts. Staff first determines how many issues were on appeal and then decides whether the appellate court "affirmed" each of the trial judge's decisions on appeal. Decisions requiring reversal, remand or vacating of the trial court judge's ruling or judgment are not classified as "affirmed." Mooted issues and issues arising only upon appeal, which were not ruled on by the trial judge, are not taken into account. When the Alaska Supreme Court or Alaska Court of Appeals *clearly* overrules a prior statement of law upon which the trial court reasonably relied to decide an issue, that issue is not considered. These cases are very rare.

After deciding how many issues in a case were affirmed, the case is given a score. For instance, if two of ten issues are affirmed, the case is given a score of "20% affirmed." This scoring system is different than the court system's methodology, which notes only whether the case was affirmed, partly affirmed, reversed, remanded, vacated, or dismissed. Also, the court system tends to attribute the appeal to the last judge of record rather than determine which judge's decisions were appealed. In this analysis, if a case includes more than one judge's decisions, an attempt is made to determine which judge made which rulings and to assign affirmance scores appropriate with those decisions. If it is not possible to make that determination from the text of the case, the overall affirmance score for that case is assigned to each judge of record.

After the case has been scored, another staff member enters information about the case into a database. The data fields include case type,<sup>1</sup> judge, affirmance score, date of publication or release, opinion number, and trial case number.

Before a retention election, staff cross-checks the cases in its database to make sure the database is as complete as possible. Staff then analyzes each retention judge's "civil,"

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<sup>1</sup> Cases are classified as general civil, tort, child in need of aid ("CINA"), family law/domestic relations, administrative appeal, criminal, and juvenile delinquency. If a case has issues relating to more than one category, staff decides which category predominates.

“criminal,”<sup>2</sup> and overall (combined) affirmance rates. Staff also calculates civil, criminal, and overall affirmance rates for all the judges in the database for the retention period. Staff then compares affirmance rates for that year against affirmance rates for prior years. Cases that are included in the calculation of these rates are only those cases that have been decided in the current retention term, which is a six-year span for superior court judges and a four-year span for district court judges.

Several problems are inherent in this process. First, the division of an opinion into separate “issues” is sometimes highly subjective. Some opinions have only one or two clearly defined issues and are easy to categorize. Other opinions present many main issues and even more sub-issues. Deciding whether a topic should be treated as a “sub-issue” or an “issue” deserving separate analysis can be problematic and varies depending on the complexity of a given case. Generally, the analysis follows the court’s outlining of the case; if the court has given a sub-issue its own heading, the sub-issue will likely have its own affirmed/not affirmed decision.

Second, each issue is weighted equally, regardless of its effect on the case outcome, its legal importance, or the applicable standard of review. For instance, a critical constitutional law issue is weighted equally with a legally less important issue of whether a trial judge properly awarded attorney’s fees. Issues that the appellate court reviews independently of the trial court’s decision (*de novo* review) are weighted equally with issues that are reviewed under standards of review that defer to the trial court’s discretion. The Judicial Council staff has considered ways to weigh each issue to reflect its significance but has decided not to implement a weighted analysis.

Third, appellate courts tend to affirm some types of cases more often than others. For example, criminal cases are affirmed at a higher rate than civil cases. Many criminal appeals involve excessive sentence claims that are reviewed under a “clearly mistaken” standard of review that is very deferential to the trial court’s action. Criminal appeals are more likely to include issues that have less merit than issues raised in civil appeals because, unlike most civil appeals, most criminal appeals are brought at public expense. The cost of raising an issue on appeal is therefore more of a factor in determining whether an issue is raised in a civil appeal than it is in a criminal appeal. Also, court-appointed counsel in a criminal appeal must abide by a defendant’s constitutional right to appeal his or her conviction and sentence unless counsel files a brief in the appellate court explaining reasons why the appeal would be frivolous. This circumstance can result in the pursuit of issues in criminal cases that have a low probability of reversal on appeal. Accordingly, a judge’s affirmance rate in criminal cases is almost always higher than that judge’s affirmance rate in civil cases. Judges who hear a higher percentage of criminal cases tend to have higher overall affirmance rates than those who hear mostly civil cases. For this reason, staff breaks out each judge’s criminal and civil appellate rates.

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<sup>2</sup> “Criminal” includes criminal, post-conviction relief, and juvenile delinquency cases. All other cases are classified as “civil.” Because the supreme court reviews administrative appeals independently of the superior court’s rulings, administrative appeals are not analyzed as part of the judge’s civil affirmance rate, although they are included in the database.

Fourth, the analysis of appellate affirmance rates does not include any cases appealed from the district court to the superior court. Those decisions are not published or otherwise easily reviewable. Staff has reviewed all published decisions from the Alaska Supreme Court and Alaska Court of Appeals and unpublished Memorandum Opinion and Judgments (MO&Js) from the Alaska Supreme Court and the Alaska Court of Appeals since 2002. These decisions are published on the Alaska Court System’s website and elsewhere and are easily reviewable.

Fifth, administrative appeals pose a problem. Administrative decisions are appealed first to the superior court, which acts as an intermediate appellate court.<sup>3</sup> Those cases may then be appealed to the supreme court, which gives no deference to the superior court’s decision and takes up the case *de novo*. Because the supreme court evaluates only the agency decision, and not the superior court judge’s decision, there is little value to these cases as an indicator of a judge’s performance and they can be misleading. We have excluded administrative appeals from this analysis for the past several retention cycles.

Sixth, the present analysis involves only a relatively small number of cases for some judges. The fewer the number of cases in a sample, the less reliable the analysis is as an indicator of a judge’s performance. Affirmance rates for judges having fewer than ten cases reviewed on appeal can be more misleading than helpful. For descriptive purposes, appellate review records are included for all judges, regardless of the number of cases reviewed. Affirmance rates based on fewer than ten cases, however, are not considered by staff as a reliable indicator of performance.

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<sup>3</sup> The Alaska Workers Compensation Appeals Commission hears appeals from Alaska Workers’ Compensation Board decisions that were decided after November 7, 2005. Those cases may then be appealed to the Alaska Supreme Court. Because workers’ compensation appeals are no longer reviewed by the superior court as an intermediate court of appeal, the supreme court decisions are no longer included in this database and are not included in the “administrative appeals” category.