

**Alaska Judicial Council
Performance Evaluation for:**

**Judge Paul A. Roetman
Kotzebue Superior Court**

The Alaska Judicial Council finds Judge Roetman met or exceeded performance standards, and recommends a **“YES”** vote for another term in office

Judge Roetman was appointed to the Kotzebue Superior Court in July of 2010. This is his second retention evaluation. Judge Roetman handles both civil and criminal cases.

Performance Summary:

After conducting its performance review, the Judicial Council determined that Judge Roetman 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 Roetman met or exceeded educational requirements set by the Alaska Supreme Court.

Because Judge Roetman 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 Roetman include:

- **Ratings by justice system professionals:** Attorneys and law enforcement officers who appeared before Judge Roetman gave him good reviews, as did court employees.
- **Ratings by jurors:** Jurors who served in trials before Judge Roetman during 2018 and 2019 rated him 4.8 overall on a five-point scale. One juror commented, “He did a great job! Very respectful and courteous.”
- **Professional activities:** The Council’s review of Judge Roetman’s professional activities showed exceptional contributions to his community and to the administration of justice. Judge Roetman served as Presiding Judge of the Second Judicial District, handling administrative matters for the courts in the Second District. He was active on several court system committees, including the Criminal and Civil Rules Committees, the Access to Justice Committee (a group that address the array of justice needs Alaskans face), and the Court Security Committee. He regularly gave presentations to students from Kotzebue and

surrounding villages. He worked with local mental health professionals to ensure they understood the legal process for mental health commitments, and he issued an administrative order making it easier for local tribal courts to interact with the state court system.

- **Other performance indicators:** The Council's review of other performance indicators, including Judge Roetman's financial and conflict of interest statements, disqualifications from cases, and appellate reversal rates, raised no performance concerns.
- **Timeliness:** Alaska law requires judges' pay be withheld if a decision is pending longer than six months. The Council verified that Judge Roetman was paid on schedule, and he certified that he had no untimely decisions.
- **Ethics:** There were no public disciplinary proceedings against Judge Roetman, and the Council's review found no ethical concerns.

Documents:

- [Judge Roetman's Judge Questionnaire](#)
- [Judge Roetman's Attorney Survey Ratings](#)
- [Judge Roetman's Peace and Probation Officer Survey Ratings](#)
- [Judge Roetman's Court Employee Survey Ratings](#)
- [Juror Survey Memo](#)
- [Peremptory Challenges Memo](#)
- [Recusal Records Memo](#)
- [Appellate Evaluation Memo](#)



Print Questionnaire

Received

NOV 28 2019

Alaska Judicial Council

alaska judicial council

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Alaska Judicial Council Trial Judge Questionnaire

2020 Candidates for Judicial Retention

November 2019

Paul A. Roetman

Name

Kotzebue Superior Court

Court

1. Please estimate your workload during your present term.

a) 60 % civil cases

25 % criminal cases

15 % court administrative work

100 % Total

b) 1 # of jury trials/year

10 # of non-jury trials/year

1 # of administrative appeals/year

Civil cases also include post conviction relief cases. The longest trial during the term was two weeks, the shortest a portion a day. I held trial in Nome, Unalakleet, and Utqiagvik as well.

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

Since my last retention, I have continued involvement in several Supreme Court Advisory Committees including Criminal Rules, Civil Rules, Access to Justice, and Court Security and Emergency Preparedness. I served on the Criminal Rules Committee for five years before transitioning to the Civil Rules committee. While on Criminal Rules, we undertook revision of Criminal Rule 6 related to grand jury and Criminal Rule 38 related to presence requirements for defendants. My participation was primarily in person, which required travel from Kotzebue to Anchorage, though there were times when I participated telephonically due to judicial calendar constraints. (Continued on Attachment 1)

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

I have participated in the annual fall judicial conferences offered by the Alaska Court System each year. Additionally, I have annual opportunities to attend training courses offered by the National Judicial College. This past June, I was awarded a Certificate in General Jurisdiction Trial Skills after attending my seventh NJC course since 2010. Courses I have taken include topics on judicial writing, 4th Amendment Search and Seizure, Advanced Evidence, Threats to the Judiciary (with a visit to the National Holocaust Museum), Current issues in the Law (with discussion on state by state changes in marijuana law).

As presiding judge, I have attended and participated in Magistrate Judge Conferences held in the spring and a few specialized conferences including training in Child In Need of Aid case processing for judges.

This past October, I attended a multi-day national conference with the other Alaska Commission on Judicial Conduct Members I serve with. The conference courses required active participation to discuss real judicial misconduct scenarios. It was a great opportunity to build important perspective and training experience to inform our commission's approach in evaluating judicial complaints and assessing appropriate sanctions.

I appreciate the opportunity to attend and hear from State and National experts on areas of law in cases that I handle frequently by attending conferences and continuing judicial education courses. It is important that judges in single judge locations, like myself, take opportunities to learn from others from across the state and if possible, in other states to gain perspective and to keep grounded in current legal trends.

4. Please describe any public outreach activities.

Presentations to students—Since I was appointed to the bench in Kotzebue, I have been committed to providing opportunities for students to visit the court house. At the beginning of each school year I send a welcome letter to school principals as a way to invite grade school, middle school, and high school teachers to bring their students to court. Over the years, the presentation has evolved and now includes an interactive overview on the three branches of government and covers foundational principles of due process in the context of a criminal case that I provide to them. The presentation culminates in a mock trial with the teacher playing the role of a witness, students playing the role of defendant, defense lawyer and juror. The students are usually curiously interactive and ask challenging questions. At times, our discussion includes question and answer on college preparation and career goals. I enjoy working with kids and do what I can to encourage and challenge them to work hard to achieve their goals.

Recently, I have also given presentations to students from local villages through the REDISTAR program with our regional school district. The kids come from villages outside Kotzebue—up the Kobuk and Noatak Rivers, or farther up the coast in Pt. Hope—to visit and listen to local business leaders and professionals talk about the work they do. During one of their recent visits, Chief Justice Bolger was in Kotzebue and able to participate with the kids and acted as co-defense counsel during our mock trial. Since my last retention, I have given dozens of presentations to hundreds of students. The presentations have been a great experience for the students and me as well. (Continued on Attachment 2)

5. 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.

There are two primary areas of focus in answering this question. First, as a superior court judge, starting into my tenth year on the bench, after handling hundreds of cases, I have grown in my knowledge and understanding both of the law and of the people in my region. I manage a wide variety of legal issues each day, whether it is Child In Need of Aid proceedings, the interplay of tribal jurisdiction and state law, or the various issues that arise in the criminal or cases that I preside over. It is all challenging work, but with the advantage of years in service, I have learned to refine judicial decision making—by careful listening, and being more efficient with my time. My writing has evolved with an effort to bring clarity and understanding, instead of overusing legal words and terms to judicial opinion writing. I am thankful for the opportunity to serve my region as a judge, to listen, exercise restraint, and to do my best to help parties understand the law and decisions that are made in their cases.

The second area of focus is my role as a presiding judge (PJ) for the Second Judicial District over the past five years. During this time, our district has had many challenges. From a staffing standpoint, we have had four new judges appointed in two of our superior courts, and I have hired three new magistrate judges. There has also been significant turnover in the court clerk's offices throughout the district. Adding new staff and new judicial officers means restarting training, and adjusting to new personalities, while focusing on the business of maintaining high functioning courts. I have enjoyed the additional challenge of helping manage the district and am grateful for the opportunity to help organize and guide the various courts in the district to be competent, efficient, and well-managed. (I also discuss the presiding judge administrative duties in response to question 2).

An important aspect of being an effective PJ for the district, is to identify better ways to increase access to courts. (A specific example is discussed in question 4, attachment 2 related to Restorative Justice in working with our local tribes.)

6. 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
7. If your answer to any of the questions above is "yes," please give full details, including dates, facts, case numbers and outcomes.

Louis Holger has filed civil actions against various members of Alaska State government including Governor Walker, Justice Craig Stowers, the Alaska Bar Association, the City of Kotzebue and myself. A known associate of Holger is Dawn Leigh who has also made at least one similar filing. The cases are 3AN-18-05065CI, 2KB-17-218CI, 3AN-18-4720CI, 2KB-19-00109CI, 3AN-18-4902CI and 2KB-17-219CI. All of the cases were dismissed, only the 2019 is pending.

I received a speeding ticket on my way to a wrestling tournament in Nikiski in 2014. I paid the ticket. The case was 3KN-14-05833MO.

8. Please provide any other information which you believe would assist the Council in conducting its evaluations and in preparing its recommendations for the 2020 retention elections.

I am including an Alaska Supreme Court opinion from one of the Child in Need of Aid cases that I presided over. In the opinion, the court commended the way I handled an ongoing disruptive situation involving a parent. My goal in that particular case was to focus on the parent being represented by counsel and that he was being heard and not on the disruptive nature of his interactions with the court proceedings. (See attachment 5).

I am also including a copy of a letter from former Superior Court Judge Ben Esch to the Alaska Judicial Council a few years ago. The letter had been sent to the Nome City Council and was published in their local agenda and included in a packet to each city council member. I was humbled what Judge Esch expressed about my performance as a lawyer, judge, and presiding judge. (See attachment 6).

For questions 9 - 12, please do not list any cases that have pending issues in your court.

9. Please list your three most recent jury trials including case names and numbers. Please list the names, 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: State of Alaska **Case Number:** 2KB-13-397CR
v. Alex Tom Sheldon Jr.

Attorneys Involved:

Name: Christopher Darnall	Name: Daniel Dalle-Molle
Address: 310 K St. Suite 601	Address: PO Box 276
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Kotzebue, AK 99752
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 2

Case Name: State of Alaska **Case Number:** 2KB-18-407CR
v. Michael D. Logan Jr.

Attorneys Involved:

Name: Bride Seifert	Name: Erin Lillie
Address: PO Box 349	Address: PO Box 61
City, State, Zip: Kotzebue, AK 99752	City, State, Zip: Nome, AK 99762
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 3

Case Name: State of Alaska **Case Number:** 2KB-16-468CR
v. Braedyn Schaeffer

Attorneys Involved:

Name: Rachel Ahrens	Name: Wallace H. Tetlow
Address: PO Box 349	Address: 745 W. 4th Ave Ste. 250
City, State, Zip: Kotzebue, AK 99752	City, State, Zip: Anchorage, AK 99501
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

10. Please list your three most recent non-jury trials including case names and numbers. Please list the names, 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: Shepherd Case Number: 2KB-18-9SC
v. Hall Enterprises

Attorneys Involved:

Name: <u>Corey Shepherd (Self-represented)</u>	Name: <u>Kenneth Hall (Self-represented)</u>
Address: <u>PO Box 522</u>	Address: <u>PO Box 211255</u>
City, State, Zip: <u>Kotzebue, AK 99752</u>	City, State, Zip: <u>Anchorage, AK 99521</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

Case Number 2

Case Name: Lie Case Number: 2KB-19-147CI
v. Sours

Attorneys Involved:

Name: <u>Cynthia Dubell</u>	Name: <u>Marc Chicklo</u>
Address: <u>1207 W. 8th Ave.</u>	Address: <u>807 G. St. Suite 100</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: Morena Case Number: 2KB-15-200CI
v. State of Alaska

Attorneys Involved:

Name: <u>David Seid</u>	Name: <u>Bride Seifert</u>
Address: <u>PO Box 110216</u>	Address: <u>PO Box 349</u>
City, State, Zip: <u>Juneau, AK</u>	City, State, Zip: <u>Kotzebue, AK 99752</u>
Name: _____	Name: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____

11. Please list your three most recent cases, 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, 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: Valhalla Mining, LLC **Case Number:** 2KB-18-216CI
 v. State of Alaska, Department of Natural Resources

Attorneys Involved:

Name: Matthew Singer	Name: Colleen Moore
Address: 420 L. St. Suite 400	Address: 1031 West 4th Ave. Suite 200
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99501
Name: Jessica Brown	Name: Ashley Brown
Address: 420 L. St. Suite 400	Address: 1031 West 4th Ave. Suite 200
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99501

Case Number 2

Case Name: State of Alaska **Case Number:** 2KB-16-203CR
 v. Leavitt

Attorneys Involved:

Name: Jessica Haines	Name: Rex Lamont Butler
Address: 510 2nd Ave #200	Address: 745 W. 4th Ave. #300
City, State, Zip: Fairbanks, AK	City, State, Zip: Anchorage, AK 99501
Name: Shaun M. Sehl	Name:
Address: 1007 W. 3rd Ave. #205	Address:
City, State, Zip: Anchorage, AK 99501	City, State, Zip:

Case Number 3

Case Name: State of Alaska **Case Number:** 2BA-17-289CR
 v. Harry Ahkivgak

Attorneys Involved:

Name: James Fayette	Name: Mary Bullis
Address: 310 K St. Ste 308	Address: 529 5th Ave. Ste. 1
City, State, Zip: Anchorage, AK 99502	City, State, Zip: Fairbanks, AK 99701
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

12. *Optional:* If you deem it helpful to the Council, please list up to three other cases during your past term in which you believe your work was particularly noteworthy. Please list the names, 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: In the Matter of G.B.

Case Number: 2KB-16-25CN

v.

Attorneys Involved:

Name: Courtney Lewis

Name: Margaret Thomas

Address: 900 W. 5th Ave. Ste. 200

Address: PO Box 160

City, State, Zip: Anchorage AK, 99501

City, State, Zip: Nome, AK 99762

Name:

Name:

Address:

Address:

City, State, Zip:

City, State, Zip:

Case Number 2

Case Name: In the Matter of J.H, L.H, J.H.

Case Number: 2KB-13-06/08/09

v.

Attorneys Involved:

Name: Courtney Lewis

Name: Margaret Thomas

Address: 900 W. 5th Ave. Ste. 200

Address: PO Box 160

City, State, Zip: Anchorage AK, 99501

City, State, Zip: Nome, AK 99762

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:

Continued from Question 2

The Civil Rules committee was recently reconstituted after a several year hiatus. The work has quickly picked up and we have had discussions resulting in rule revision recommendations to the Supreme Court. The Access to Justice Committee has a broad membership and promotes access to the courts through coordinated projects and committee endorsements of grant proposals. The Court Security Committee is comprised of the presiding judges and area court administrators from each of the four judicial districts as well as two Supreme Court justices, the administrative director and law enforcement representatives. The primary focus is on safety improvements to court spaces throughout the state. The committee also approves and recommends expenditures related to security funds. In this role, I have represented the Second Judicial District and made security recommendations related to each of the four courts in the district.

I have also held bar/bench meetings with local attorneys in Nome, Kotzebue, and Utqiagvik to promote court responsiveness and provide opportunities for local input so the court can be responsive to the needs of parties it serves.

As the presiding judge for the Second Judicial District, I have also been deeply involved in keeping the four courts in the district running smoothly, which has been a challenge during repeat judicial vacancies in Nome and Utqiagvik. My role as presiding judge has involved multiple trips to each of these courts, conducting telephonic and in-person civil and criminal hearings. I have also coordinated hiring committees to select and appoint new magistrate judges. I interviewed attorneys, court staff, and law enforcement in preparing written performance evaluations for the magistrate judges in the district. As the presiding judge for the district I coordinate monthly meetings with the judges to inform and advise on policy changes and to promote working judicial relationships. I meet weekly with our area court administrator to keep apprised of happenings in the four courts in the district. This can include policy adoption, staff issues, budget approval, and judicial issues. In my role as a presiding judge, I am quite busy, but it is very rewarding to see hard work yield a well-run court. We have great people working in our district and our ACA is hardworking and an excellent administrative colleague.

Since 2018, I have served as an elected judicial member of the Alaska Commission on Judicial Conduct. In this role, I work with the other judicial, attorney, and public member commissioners

to review complaints of judges and justices and evaluate judicial conduct in light of the judicial canons and ethics rules. The work involves reviewing complaints, supporting documents, and listening to audio of hearings in concert with commission staff memos and commission meetings. I appreciate the opportunity to serve the judiciary and the public in this important oversight role.

Continued from Question 4 -

Involuntary Mental Health Evaluations—Over the years, I have given presentations to local behavioral health professionals from Maniilaq Health Center in the area of Title 47 involuntary mental health evaluations. The presentation includes an overview of the statutes and case law governing petition requests for involuntary mental health evaluations. The Alaska Court System forms and order provide context for the discussion. I was encouraged to give presentations in this area of law from my former colleague and friend, Nome Judge Ben Esch, who found that when behavioral health professionals are informed on the law, the involuntary commitment petitions that are submitted to the court are more complete and succinct, which saves judicial resources. It also provides an opportunity for the judge to interact with mental health professionals outside of court to increase both understanding of court processes and remove limitations in accessing this important judicial relief, so that those with acute needs can be seen without unnecessary delay.

Restorative Justice – At the beginning of 2019, I was approached by the Native Village of Buckland who expressed an interest in establishing an agreement between the Buckland tribe and the Alaska Court System so that defendants in criminal cases could participate in restorative justice provided by the tribe as provided in Alaska Criminal Rule 11(i). A formalized agreement had been the method to formalize this process with various tribes and courts around Alaska. However, because the Second Judicial District is comprised of over twenty villages and corresponding tribes, and entering into individual agreements with each tribe would prove cumbersome, I discussed the idea of adopting a presiding judge administrative order that would streamline the process. Discussions that initially began with the Buckland tribe were expanded to include the Chief Justice of the Alaska Supreme Court, the Administrative Director, attorneys from the local Public Defender Agency office, and the District Attorney's office. After this input I issued a Presiding Judge's Administrative Order that outlined a streamlined process. Now every tribe in the Second Judicial District, utilizing customized court forms, can have a case referred to the tribe to conduct a restorative justice program with the goal of recommending a sentence to the court. Buckland tribe expressed their support and praise for the PJ Administrative Order. I have also been contacted by Kawerak, Inc. the regional non-profit corporation organized to provide services throughout the Bering Strait Region, expressing excitement about tribes being more involved through the streamlined process. I am thankful for the Native Village of

Buckland's desire to be involved in the cases affecting their community and how their interest evolved into a process that every tribe in the judicial district will be able to use. (See PJ Admin Order Attachment 3).

Alaska Court System outreach efforts – Since my last retention, I was invited to help the Alaska Court System update the criminal arraignment video. In the video, I describe the substantive rights that a criminal defendant has when charged with a crime. A handful of judges were invited to participate in this project. I also was invited to be part of a “perspectives poster” that promotes diversity in the judiciary. This poster has judicial portraits of judges of color, and includes an African American, an Indian American, an Asian American and me—a Mexican American (See Attachment 4A). I have also written articles that were submitted to the local newspaper thanking jurors for their service. The most recent article was published in The Nome Nugget. (See Attachment 4B)

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT KOTZEBUE

In the Matter of:

REFERRING CASES TO TRIBAL
RESTORATIVE JUSTICE PROGRAMS
UNDER CR 11(i) and DL 23(f)

Presiding Judge Administrative
Order No. 19-02

1. Criminal Rule 11(i) and Delinquency Rule 23(f) allow referral of criminal and juvenile delinquency cases to restorative justice programs.¹ To implement these rules, the Alaska Court System has entered into more than a dozen agreements with Alaska tribes throughout the state to promote tribal input in local cases.
2. The Second Judicial District is comprised almost entirely of villages large and small. To avoid the cumbersome process of entering into individual agreements with each tribe, this Presiding Judge Administrative Order establishes a process to facilitate referral of cases to restorative justice programs in the region.² The following procedures apply:
3. Referring a case to a restorative justice program:
 - a. A tribe may submit a request for a copy of the relevant case documents from the case file, such as complaints, petitions, or indictments using form CR-805. No fee will be charged for this document request.³
 - b. Ordinarily no later than the final pretrial conference, the tribe may notify the Court and serve the defendant, the prosecutor, and victim of its interest to have the case referred to the tribe's restorative justice program for a sentencing recommendation using form CR-810 2JD.

¹ Under the rules a "restorative justice program" is a program using a process in which persons having an interest in a specific offense collectively resolve how to respond to the offense, its aftermath, and its implications for the future. Restorative justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation. Under this rule, the term "restorative justice program" does not include the Alaska Court System's therapeutic courts.

² Nothing in this Administrative Order prevents a sentencing judge referring to a nontribal restorative justice program.

³ Administrative Rule 9(f)(6).

- c. Within 30 days of receiving form CR-810 2JD, the defendant, the prosecutor, and the named victim will notify the court and the tribe whether consent will be given for referral of the case to a tribe's restorative justice program.
 - d. At the defendant's change of plea hearing or following guilty verdict at trial, the judge handling the case may refer the case to the tribe's restorative justice program using form CR-815 2JD. The judge's order must set the sentencing at least 60 days after the conviction date and, with the advice of the defendant and the prosecutor, specify any applicable mandatory sentencing provisions.
4. Once referral is made to a tribe's restorative justice program:
- a. Within 45 days of referral, using form CR-820, a tribe shall take the necessary steps to conduct its restorative justice program to assist in developing sentencing recommendations to submit to the court. The sentencing recommendations may include culturally relevant activities, drug and alcohol assessments and treatment, restitution (such as money or services for the victim), or other remedies.
 - b. The parties (defendant and the prosecutor) may include the sentencing recommendations of the restorative justice program in a sentencing agreement subject to the provisions of Criminal Rule 11(e). Any sentencing agreement shall be filed no later than 7 days prior to the court sentencing hearing.
 - c. The tribe may prepare its sentencing recommendations using form CR-825 which shall be filed with the court, and sent to the defendant, the prosecutor, and the victim. Any sentencing recommendations shall be filed no later than 7 days prior to the court sentencing hearing.
 - d. The sentencing judge shall consider the sentencing recommendations submitted by a tribe, in weighing the *Chaney* criteria⁴. Parties understand that the judge is not bound by the sentencing recommendations.

Dated at Kotzebue, Alaska, this 9th day of October, 2019.

IT IS SO ORDERED.

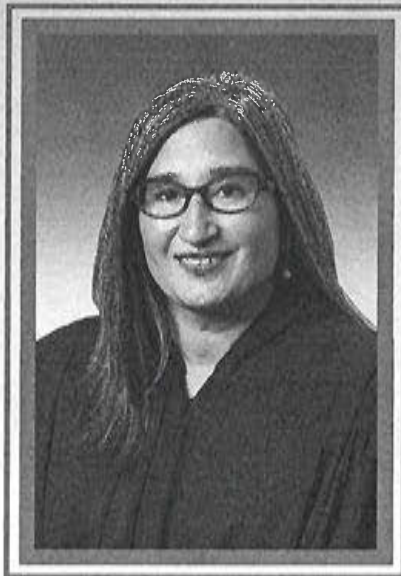

PAUL A. ROETMAN
Presiding Judge
Second Judicial District

⁴ *Chaney v. State* 477 P.2d 441 (Alaska 1970); See also AS 12.55.005.

Perspective Matters



Judge Jo-Ann Chung
Anchorage District Court
2011 - Present
Asian American



Judge Una Gandhir
Anchorage Superior Court
2018 - Present
Indian American



Judge Kari McCrea
Anchorage District Court
2017 - Present
African American



Judge Herman Walker
Anchorage Superior Court
2015 - Present
African American



Judge Paul Roetman
Kotzebue Superior Court
2010 - Present
Mexican American

You?

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... Become a Judge*



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Color of Justice Program: <http://www.courts.alaska.gov/media/outreach.htm#coj>

ATTACHMENT 4A

Letters

Dear Nancy,
As always enjoyed this week's Nugget. I do have a couple concerns that I might pass on for discussion.

The possibility of the expansion of the Port of Nome, is both exciting and needed. The Port and Harbor are already crowded, and with the almost certain increase in ship traffic in the future should be addressed. My concern is as a property owner in Nome.

The City seem's to be eager to be the "Non-Federal Sponsor"? Why? Would the State of Alaska not be in a better position to take this role? What financial obligations would the City be locked into if we take on this role? \$113,000,000 is a lot of money! How would we pay for it?

The City has a poor track record when it comes to Finance. A few examples being -

The Nome Public Safety Building. Over budget and overbuilt.

The New State Building. We had the funding for it, \$21 Million, and we end up not only loosing the Building but the funds, the Jobs and Tax base that came with it.

And just last week the City Council sold 17 lots they were leasing to UAA for \$500,000 a year for one payment of \$500,000. Ending those taxes that we were getting every year?

There are many more examples, but these come to mind. Anyway as a property owner in this fair City, who will be on the hook for the \$113,000,000 when (NOT IF) they fail to secure the funds? Food for thought?

As always
your Neighbor
Terry Day
Nome, Alaska

Letters to the editor must be signed and include an address and phone number. Thank you notes and political endorsements are considered ads.

Editorial

It's About Time

There is a legislative move to change Alaska's time zone. It's a move whose time has come. Some of us old geezers remember when Alaska had four time zones and there were six hours between the East Coast and Nome. It was a multi-year, complex process to bring us into one time zone.

It's time to bring us into a more user-friendly process of not losing an hour of sleep and coping with the process of losing sleep in the midst of the late winter. We don't have to milk the cows, but we enjoy the extra daylight in the morning while we walk to work of school. We spend four months from the beginning of November till the beginning of March on Standard Time. Let's spend one last time change with Daylight Savings Time and then let's stay on it and spare us the changes in sleep patterns and business connections. With our long length of summer daylight and wintry nights there is no problem with light in the evenings if our wintry nights are an hour shorter.

It would make sense to put us in the same time zone as California because we know that in reality nothing makes sense with our time zones. Standard Time is not a Standard issue when Daylight Savings Time makes more sense with the rest of the Nation. It's time for a change. —N.L. M. —

Sound-Off

Jurors are essential to a well-functioning Justice System

By Superior Court Judge Paul A. Roetman

Thousands of Alaskans serve as jurors throughout our state. Everyone acknowledges the importance of the right to a jury trial. But most folks, at least at the outset, would admit that jury service seems more of an inconvenient imposition than an opportunity to serve. Countless times, however, I have seen this perspective change once people have served on a jury. Increasingly, however, I have observed a trend of people not responding to court summons and not appearing for jury service. This trend jeopardizes our system of justice and burdens those who do appear by shifting the burden of jury service to fewer people.

Serving on a jury gives a person an up-close view of the legal process. The jury's main role is to determine the facts and the weight to give them. Jurors observe witnesses and decide who is truthful, who has bias, and ultimately who to believe. Jurors listen to the attorneys' arguments and the judge's instructions and decide whether the burden of proof has been met. These important decisions require careful, thoughtful deliberations and can only occur when there are a sufficient number of jurors.

Jury service is from one perspective, an exercise in patience. Once you enter the courtroom doors, at times you may feel as if time is standing still. Trial is a deliberative process—information can only be presented in pieces, by attorneys asking questions of witnesses. Depending on the complexity of the case, there may be more or less information to communicate. And evidence can be presented in various ways: live testimony, pictures, audio, reports, video, or jury views outside the courtroom of places where the dispute or crime took place. This process necessarily takes time.

A trial requires no less patience for judges and attorneys. Criminal trials can determine whether a person is guilty of a crime which may result in the person found guilty spending time in jail. Civil cases can affect a person's business or personal affairs that result in financial liability and myriad other detrimental outcomes. Judges and court staff are committed to making sure that everyone has a full and fair opportunity to present their case, and that jurors have the support they need to fulfill their central role in listening, evaluating, and deliberating the outcome of a case.

By the end of a trial, my experience has shown time and again that most jurors have an increased appreciation and understanding of their role in the lives of people

in their community and in particular the parties to the case. Their first-hand experience has allowed them to feel the weight of their responsibility as jurors, the importance of the right to trial by jury and the need for people to serve as jurors. For most, the experience affirms the necessity and importance of the justice concepts found within the trial by jury.

But increasingly, there have been instances in trials held across Alaska where not enough jurors have appeared for service. When too few jurors appear in court, justice for the parties to the case—persons charged with crimes, victims and families to both—is unnecessarily delayed. This delay impacts jurors too, for those who took the time to serve as jurors, but were forced to wait until a sufficient number of jurors came to court to allow the jury selection process to continue.

Within the past year, I presided over a criminal case where an insufficient number of jurors showed up for trial. It was a serious sex assault case where the State alleged the victim suffered extensive physical injury from the assault. On the first day of trial, there were too few jurors to complete jury selection—the number of jurors required for trial, plus alternates, and sufficient jurors to account for the State and the Defendant's juror challenges allowed by the criminal rules. Less than half of the jurors summoned appeared in court. The trial had to be continued until the next day so additional jurors could be called. I issued orders that were served by law enforcement during the night to increase the number of jurors available for jury selection. The next day there were enough available jurors to seat jurors for the felony trial.

As an attorney and judge, I am well aware of the time and effort jury service takes. But I am also aware of the difference dedicated jurors make to our justice system. Without you, we simply could not function, and those coming before our courts seeking justice would lose one of the fundamental promises of our democracy. To those of you who will be called as jurors, thank you in advance for the important role you will serve in the lives of the people in your community. To those who have already reported for jury service, thank you very much for your time and efforts. Jurors make our justice system work.

Paul A. Roetman is a superior court judge in Kotzebue, Alaska and is the presiding judge of the 2nd Judicial District which includes Barrow, Nome, Kotzebue and Unalakleet Courts.

Weather Statistics

Sunrise	03/12/15	9:31 a.m.	High Temp	+31	03/06/15	National Weather Service Nome, Alaska (907) 443-2321 1-800-472-0391
	03/18/15	9:09 a.m.	Low Temp	-21	03/10/15	
Sunset	03/12/15	8:53 p.m.	Peak Wind	49 mph, W	03/07/15	
			Total Precip. for 2015 (as of 3/10)		2.34"	
			Normal Total to Date (as of 3/10)		2.09"	
			Seasonal Snowfall	52.00"	Normal 59.90"	
03/18/15	9:11 p.m.	Snow on Ground	19.00"			

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ATTACHMENT 4B

BARRY H., Appellant,

v.

STATE of Alaska, DEPARTMENT OF
HEALTH & SOCIAL SERVICES, Of-
fice of Children's Services, Appellee.

Supreme Court No. S-16415

Supreme Court of Alaska.

August 11, 2017

Background: After the Office of Children's Services (OCS) of the Department of Health and Social Services took emergency custody of children following receipt of reports that father was physically and sexually abusing members of his family, OCS sought to terminate father's parental rights to children in a Child in Need of Aid (CINA) proceeding. After denying father's motion to dismiss his court-appointed attorney and represent himself, the Superior Court, Kotzebue, Second Judicial District, Paul A. Roetman, J., terminated father's parental rights. Father appealed.

Holdings: The Supreme Court, Carney, J., held that:

- (1) rule governing a parent's waiver of counsel in child in need of aid (CINA) proceedings effectively incorporates the standard a trial court uses to determine whether to allow self-representation, under *McCracken v. State*, 518 P.2d 85, into CINA proceedings, and
- (2) trial court acted within its discretion in denying father's request to represent himself in CINA proceeding regarding the termination of father's parental rights to his children.

Affirmed.

1. Appeal and Error ⚖️893(1)

Supreme Court reviews matters of constitutional and statutory interpretation de novo.

2. Infants ⚖️2337

Rule governing a parent's waiver of counsel in child in need of aid (CINA) proceedings effectively incorporates the standard a trial court uses to determine whether to allow self-representation, under *McCracken v. State*, 518 P.2d 85, into CINA proceedings. CINA Rule 12(c).

3. Appeal and Error ⚖️949

Supreme Court reviews decisions limiting or denying self-representation for abuse of discretion. U.S. Const. Amend. 6; Alaska Const. art. 1, § 11.

4. Infants ⚖️2337

Trial court acted within its discretion in denying father's request to represent himself in child in need of aid (CINA) proceeding regarding the termination of father's parental rights to his children; record did not support father's claim that court denied request because court disagreed with father's view of the law, father presented pleadings and courtroom objections that were neither rational nor coherent, father repeatedly interrupted proceedings despite multiple warnings, father covertly broadcasted confidential CINA hearing over the radio, and father persisted in arguing eccentric defenses to the point where it was virtually impossible to hold any meaningful discussion of his case. Alaska St. § 47.10.070(c); CINA Rule 3(f), 12(c).

Appeal from the Superior Court of the State of Alaska, Second Judicial District, Kotzebue, Paul A. Roetman, Judge. Superior Court No. 2KB-13-00006/00008/00009 CN

J. Adam Bartlett, Anchorage, for Appellant.

Joanne M. Grace, Assistant Attorney General, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for Appellee.

Before: Stowers, Chief Justice, Winfree, Maassen, Bolger, and Carney, Justices.

ATTACHMENT 5

OPINION

CARNEY, Justice.

I. INTRODUCTION

The father in a Child in Need of Aid (CINA) proceeding sought to dismiss his court-appointed counsel and represent himself. The trial court found that the father could not conduct himself in a rational and coherent manner sufficient to allow him to proceed without an attorney and denied his request. After a six-day trial the court terminated his parental rights to three of his children. The father appeals, arguing that the trial court erroneously deprived him of his right to represent himself during the CINA proceeding. We affirm the trial court's decision.

II. FACTS AND PROCEEDINGS

Barry¹ and his wife, Donna, live in Kiana. The Office of Children's Services (OCS) took emergency custody of four of their children in February 2013 after receiving reports that Barry was physically and sexually abusing members of his family.² At their initial hearings both Barry and Donna agreed to have counsel appointed for them.

In April 2013 Barry submitted a document to the court entitled "Opposition Response to Claims and Demand to show Apparent Authority and Actual Authority with Affidavit in Support." He did not submit it through his attorney. He asserted that he was participating in the case by "special appearance and only as a courtesy, objecting to STATE OF ALASKA subject matter jurisdiction, and personal jurisdiction over [himself, as a] natural Inupiaq man, vessels for Gods living souls." (Emphasis in original.) He also asked to be relieved of counsel, claiming that the Public Defender Agency was "restrained" in its advocacy "by a power seemingly higher, such as, Alaska Bar Association, that might be administering to it's [sic] members over [his] free will choice of what should be made into [his] record of truths." He also demand-

ed that the court "prove up apparent authority, and actual authority first, before we [proceed] any further." At a scheduling conference later in the month, the court indicated that it would not take action on Barry's filing because it had not been filed by his attorney.

Barry and his wife appeared by telephone at the next hearing the following month. They appeared by telephone at all subsequent hearings as well. He again asserted that he and his wife were "here on special appearance and as a courtesy." When the court asked about his desire to dismiss his attorney, Barry confirmed that he wanted to represent himself, reiterated that he was there "by special appearance," and again challenged the court's "actual authority [and apparent] authority." When the court explained that it would have to ask him some questions to determine whether he could represent himself, Barry repeated, "We're here on special appearance and as a courtesy. . . . We'd like that from here on we—we have no business with you."

The court interpreted Barry's "authority" statements as a challenge to its jurisdiction. It carefully explained that the Alaska Constitution and the legislature had established the court system and outlined its authority.³ The court then asked Barry if he was willing to answer questions to help it make a decision regarding Barry's representation. In response Barry "object[ed]," telling the court, "You need to answer my opposition before you can even proceed in this matter." The court repeated its question, and Barry repeated his "special appearance" assertion and "object[ed] to the State of Alaska subject matter jurisdiction and personal jurisdiction over [his] natural Inupiaq family." The court again asked Barry to answer its questions, but received no audible response. Because Barry did not answer, the court noted that it had no information either supporting his request or not, and moved on to other issues.

1. We use pseudonyms to protect the family's privacy.

2. One of the children turned 18 and was released from OCS custody before the final termination hearing.

3. See Alaska Const. art. IV, §§ 1, 3; AS 22.10.020.

The rest of Barry's appearances leading up to his termination trial were similar. He objected to the court's authority again at the adjudication hearing in June. At a permanency hearing in 2014 Barry continued to insist that the court and OCS "might not have . . . the actual authority and apparent authority to do what they're doing here," and he refused to answer the court when it asked him why he wanted to dismiss his attorney. Instead he told the court that "the State of Alaska is, quote, a private company, a corporation, not a proper seat of government." The hearing was continued until later in the month. When it resumed, Barry argued at such length against the court's authority that the court had to threaten to disconnect him before proceedings could resume as normal. Shortly afterward, the guardian ad litem filed a motion to require Barry and Donna to appear in person for any future court hearings; he alleged that Barry had been broadcasting the confidential proceedings locally over the VHF radio.⁴ The court declined to order that Barry and Donna personally appear, but did require that their future participation by telephone be supervised by the local Village Public Safety Officer (VPSO).

In April 2015 Barry's attorney moved to withdraw, citing Barry's right and desire to represent himself. The court was skeptical of the request. It noted that our decision in *McCracken v. State*⁵ required parties to "present[] themselves in a way that is rational and coherent" in order to be permitted to represent themselves. Despite its reservations, the court agreed to hold a hearing on Barry's request.

Barry appeared by telephone and immediately repeated his objections to the court's authority and asserted that he was making a special appearance out of courtesy. He demanded that the court "accept [his] affidavit into the court record, the opposition and demand to show apparent and actual authority for signature authority." The court once again explained that it had to ask him ques-

tions to determine whether to dismiss his attorney and allow him to represent himself. Barry again asserted that the court lacked authority over him and his family and asked the judge to recuse himself.

The court then denied his request to represent himself. It noted that in other cases before it Barry had been able to answer questions, but that in this proceeding it had "been very difficult to determine what [Barry] wants other than the challenges to . . . the court's jurisdiction, challenges to the court's authority." The court concluded:

I don't believe that based on the filings that he's made pro se, based on the statements that he's said even today which are statements that the court has heard before, that [Barry] is capable of presenting his case in a manner that is rational and coherent and consistent with the law that governs the case, primarily because he just doesn't believe that that law applies to him. And . . . the court doesn't agree with that, but I understand [Barry], what he's saying, and I appreciate that he is heartfelt and passionate about those beliefs. And I respect them, even though I don't agree with them.

The court encouraged Barry to move past his jurisdictional objections and to consult with his attorney. Instead Barry continued interrupting with objections to the court's authority. The hearing concluded with Barry exclaiming, "You're all fired," demanding that his attorney be appointed as his "trustee," and accusing the court of "practicing law from the bench."

The termination trial began in February 2016. Barry once again questioned the state's authority, and during one witness's testimony he objected so vigorously that the court temporarily muted his telephone connection. After the VPSO revealed that Barry had been surreptitiously recording the proceedings,

4. See AS 47.10.070(c); CINA Rule 3(f) (establishing confidentiality rules for CINA hearings). It is not uncommon in rural Alaska, where telephone service has often been unreliable, for people to communicate over VHF radio. See OFFICE OF THE GOVERNOR, LETTER TO NATIONAL TELECOMMUNICATIONS

AND INFORMATION ADMINISTRATION (Nov. 25, 2014), available at https://www.ntia.doc.gov/files/ntia/state_of_alaska.pdf.

5. 518 P.2d 85 (Alaska 1974).

Barry launched into an extended argument with the court about his “right” to do so. Throughout OCS’s case he interrupted witnesses to argue with them. Although he managed to cooperate with his attorney through his own direct examination, he retreated to his usual arguments under OCS’s cross examination. At one point OCS referred Barry to a letter he had written to the court, in which he warned that judges who took action against him would be “personally liable” under “[a] new legal system of genuine fairness.” Barry insisted on reading the entire letter into the record, despite OCS’s insistence that it was not asking him to read the letter. At another point he asked the court if he could “charge a counterclaim here of fraud” against OCS. And when OCS began to question him about his criminal record, he declared the Alaska judicial system to be a “slave-created court,” announced his intent to remain silent, and left the building from which he was giving his testimony by telephone until his attorney coaxed him back in.

The court ultimately terminated Barry’s parental rights to the children at issue. Barry appeals.

III. DISCUSSION

[1] Barry argues that parents in CINA proceedings have a constitutional right to represent themselves and that the trial court erred in refusing to dismiss his counsel once he invoked this right for himself. Regardless of whether the constitution guarantees such a right,⁶ we find no error in the trial court’s decision.

6. We review matters of constitutional and statutory interpretation *de novo*. See *Alaskans for a Common Language v. Kritz*, 170 P.3d 183, 189 (Alaska 2007) (citations omitted).

7. Alaska Const. art. I, § 11. See U.S. Const. amend. VI.

8. *Faretta v. California*, 422 U.S. 806, 819, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

9. 518 P.2d 85, 90-91 (Alaska 1974). Post-conviction relief cases are civil proceedings brought to challenge an underlying conviction or sentence on constitutional, jurisdictional, or other grounds. See AS 12.72.010; Alaska R. Crim. P. 35.1; *Nelson v. State*, 273 P.3d 608, 611 (Alaska

A. We Do Not Decide Whether The Constitution Guarantees Parents The Right To Represent Themselves In A CINA Proceeding.

[2, 3] The right to self-representation in CINA cases (or other civil matters) has no specific support in the constitutions of either Alaska or the United States. But both constitutions guarantee a criminal defendant’s right “to have the assistance of counsel for his defense.”⁷ The United States Supreme Court has held that criminal defendants therefore also have the right to decline to be represented by counsel in criminal trials.⁸ In *McCracken v. State* we held that the right to self-representation under the Alaska Constitution extends to proceedings for post-conviction relief, which are civil proceedings.⁹ We also clarified that the right to represent oneself is not absolute:

In order to prevent a perversion of the judicial process, the trial judge should first ascertain whether a prisoner is capable of presenting his allegations in a rational and coherent manner before allowing him to proceed *pro se*. Second, the trial judge should satisfy himself that the prisoner understands precisely what he is giving up by declining the assistance of counsel. . . . Finally, the trial judge should determine that the prisoner is willing to conduct himself with at least a modicum of courtroom decorum.^[10]

Although we have not previously addressed whether there is a right to self-representation in CINA matters,¹¹ the CINA rules themselves provide that a court “shall accept a valid waiver of the right to counsel by any party if the court determines that the party understands the benefits of counsel and

2012) (“Post-conviction relief proceedings are civil in nature.” (citing *Hensel v. State*, 604 P.2d 222, 230-31 (Alaska 1979))).

10. *McCracken*, 518 P.2d at 91-92.

11. See *Matthew H. v. State, Dep’t of Health & Soc. Servs. Office of Children’s Servs.*, 397 P.3d 279, 283 n.8 (Alaska 2017) (noting that we have not decided whether the constitutional right to self-representation applies to CINA proceedings); *Donna A. v. State, Dep’t of Health & Soc. Servs. Office of Children’s Servs.*, No. S-11391, 2005 WL 564143, at *3 n.4 (Alaska March 9, 2005) (same).

knowingly waives those benefits.”¹² We conclude that this rule effectively incorporates the *McCracken* standard into CINA proceedings. And like the Court of Appeals, we review decisions limiting or denying self-representation for abuse of discretion.¹³

B. The Trial Court Did Not Abuse Its Discretion In Denying Barry’s Request To Represent Himself.

[4] Barry argues that the trial court erroneously denied him the opportunity to represent himself because it believed that his jurisdictional arguments lacked merit. But the record shows that the trial court did not make its decision based on Barry’s attacks on its authority; rather, the court looked to the criteria from *McCracken* to decide whether he could represent himself.

The Alaska Court of Appeals applied the same criteria in a similar case. In *Falcone v. State* it upheld a trial court’s refusal to allow Falcone to represent himself.¹⁴ The trial court’s decision in that case was based on a number of factors:

[the defendant’s] pretrial psychological evaluation, his pleadings, and his courtroom behavior. When given the chance to represent himself, Falcone filed bizarre pretrial motions, and insisted on presenting a defense based on the Uniform Commercial Code, admiralty jurisdiction, and his religious beliefs. Falcone also raised unintelligible objections in court. In addition, Falcone repeatedly interrupted the judge, eventually requiring the judge to warn Falcone that he could be removed from the courtroom.¹⁵

The Court of Appeals affirmed, noting that Falcone’s pleadings and objections “were neither rational nor coherent” and that “[h]is personality disorder and obstreperous courtroom conduct suggested that his trial presen-

tation would be similarly unintelligible.”¹⁶ And it noted that his “behavior suggested that [Falcone] would not comport himself with the ‘modicum of courtroom decorum’ required by *McCracken*.”¹⁷

Barry’s behavior was similar. He “presented pleadings and courtroom objections that were neither rational nor coherent.”¹⁸ His “obstreperous courtroom conduct”¹⁹ included repeatedly interrupting proceedings, despite warnings, until the court was forced to temporarily mute his telephone line at trial. He covertly broadcast a confidential hearing over VHF radio, which required the court to direct the VPSO to supervise his phone calls before he could participate again. His behavior during pretrial proceedings provided the trial court with ample basis to conclude that his trial presentation would be “similarly unintelligible,”²⁰ and his behavior at trial largely confirmed the wisdom of the court’s decision to require that he be represented by counsel.

Barry insists that the trial court denied his request to represent himself “because [Barry] just [didn’t] believe that [the] law applie[d] to him,” i.e., because the court disagreed with Barry’s view of the law. The record does not support him. The trial court did refer to Barry’s beliefs about the law and noted its disagreement with his position. But the court emphasized that it understood his beliefs and that it “appreciate[d] that he [was] heartfelt and passionate about those beliefs.” The court further noted that it “respect[ed]” those beliefs, even though it did not agree with them.

The court clearly based its decision not on Barry’s beliefs, but on his behavior in “persist[ing] in his eccentric defenses to the point where it was virtually impossible to hold any meaningful discussion of his case, and to the

12. CINA Rule 12(c).

13. See *Falcone v. State*, 227 P.3d 469, 473 (Alaska App. 2010) (citing *Ramsey v. State*, 834 P.2d 811, 815 (Alaska App. 1992); *Gargan v. State*, 805 P.2d 998, 1001 (Alaska App. 1991)).

14. *Id.* at 474.

15. *Id.* at 473.

16. *Id.*

17. *Id.* at 474 (quoting *McCracken*, 518 P.2d 85, 92 (Alaska 1974)).

18. See *id.* at 473.

19. See *id.*

20. See *id.*

point where [his] behavior suggested that he would not comport himself with the ‘modicum of courtroom decorum’ required by *McCracken*.²¹ Barry responded to virtually every question from the court—why he wanted to dismiss his attorney, if it was okay to reschedule a hearing, whether he had received certain paperwork, whether he could hear the court over the telephone—with a challenge to the court’s authority or a demand that the court prove its authority to Barry’s satisfaction.

We therefore conclude that the trial court did not abuse its discretion in denying Barry’s request to represent himself. We commend the trial court for the unfailing respect and patience that it exhibited throughout these proceedings.

IV. CONCLUSION

The decision of the trial court is AFFIRMED.



Rex Raymond RASK, Appellant,

v.

STATE of Alaska, Appellee.

Court of Appeals No. A-11407

Court of Appeals of Alaska.

April 28, 2017

Background: Defendant was convicted in the Superior Court, Third Judicial District, Anchorage, No. 3AN-11-8528 Cr, Gregory Miller, J., of felony refusal to submit to breath test. Defendant appealed.

Holding: The Court of Appeals, Allard, J., held that defendant’s due process rights were violated when police gave objectively misleading advice regarding criminal nature of act of refusing to submit to breath test.

Reversed.

Suddock, J., filed concurring opinion.

1. Automobiles ⚖️324

Constitutional Law ⚖️4509(19)

Breath test refusal is a crime of omission; due process therefore requires that the defendant be given adequate notice of his legal duty to take the breath test. U.S. Const. Amend. 14.

2. Automobiles ⚖️421

Because the criminal consequences of breath test refusal are so severe, care must be taken to ensure that the arrested person is not misled about his or her rights, or the absence thereof, under the implied consent statute. Alaska St. § 28.35.032.

3. Automobiles ⚖️421

Officer must explain that the arrested motorist has no right to refuse the breath test without suffering adverse consequences, and that refusal to submit to the breath test is a crime.

4. Automobiles ⚖️421

Constitutional Law ⚖️4509(19)

Defendant’s due process rights were violated when police gave him objectively misleading advice regarding criminal nature of his act of refusing to submit to a breath test; police had already secured warrant for blood test based largely on fact that breath test administered earlier at hospital had not indicated any alcohol on defendant’s breath sample, reasonable person might have been confused about why police were seeking both blood test and breath test and why both tests would be required under law, officer misread implied consent form and told defendant he had duty to submit to “chemical test of his breath or blood,” or face criminal prosecution for “refusal to submit to a chemical test,” and officer repeatedly framed decision of whether to take breath test as “choice” that defendant was allowed to make, choice that officer distinguished from blood test, over which defendant had no such “choice.” U.S. Const. Amend. 14; Alaska St. § 28.35.032(a, p).

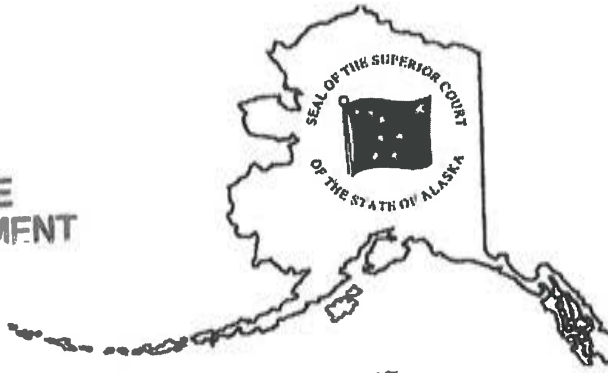
21. See *id.* at 474 (quoting *McCracken*, 518 P.2d at

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Dear Council Members;

I write in support of the application of Paul Roetman for the position of Supreme Court Justice. I believe that I am very familiar with Paul's abilities and think he would do a very good job in that position. I first had contact with Paul in 2005 or 2006. I was then the Superior Court Judge for Nome, and I would often be asked to handle cases in Kotzebue. The travel was often necessitated by peremptory challenges to the local judge or disqualifications. Paul was the local prosecutor had a very good court room presence and argued forcefully on behalf of the State. His analysis was always good, evidencing a solid legal knowledge. He seemed to be fair and objective in his prosecution, and I thought that his decisions with respect his offers and resolutions showed an appreciation for victims and the local community.

In the latter part of 2008, Paul moved to Palmer and I had no contact with him there. Later, he applied for appointment to the Kotzebue Court and was successful in mid-2010. At that time, I was the Presiding Judge of the Second District. This position put me in a position to work closely with him in the transition to the bench. I did not act as a mentor judge, but as the Presiding Judge, I watched his progress moving into his new position. I was very impressed with Paul's actions in the new position. I believe that it would have been easy for him to use his prior experience as a prosecutor to influence his day-to-day actions. This did not happen. He continued to demonstrate an objective attitude toward the litigants who appeared before him. His decisions reflected excellent legal analysis, objectivity, and fairness.

I retired from the bench at the end of January 2013. By that time, Paul had been appointed as the Presiding Judge for the District. After retirement, I continued to act as the training judge for the Magistrate Judges for the district. In that capacity, I continued to work closely because the Magistrate Judges were employed at the discretion of the Presiding Judge. Paul and I work closely in analyzing the work of the four limited jurisdiction judges. In this capacity, I continue to see the positive characteristics of Paul. He demonstrates fairness, competence, and good judgment. My experience over the past ten plus years makes it clear that Paul is an excellent candidate for our highest court. I recommend him without reservation. Please let this letter go to the Governor.

Ben Esch, Superior Court Judge Ret'd.

ATTACHMENT 6

(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.

Each judge is obligated to work through a statutory framework to eliminate unjustified disparity in sentences and to promote uniformity for similarly situated defendants. At each sentencing, I consider the nature and circumstances of the current charge, the prior criminal history if any; the effect of the sentence in deterring this defendant or others from future criminal conduct, the effect the sentence imposed has on community condemnation of defendant's criminal act and as a reaffirmation of societal norms.

In cases involving victims, I consider the impact of the case to the victim, look to the victim impact statement, and ask if the victim would like to be heard during the sentencing hearing. At each sentencing it is important that I convey an appropriate message condemning the criminal conduct, and providing a safe forum for the victim to be heard.

Paul Roetman

Table 17
Judge Paul A. Roetman
Demographic Description of Respondents - Bar Association Members

	<i>n</i>	<i>%</i>
All respondents	122	100
Experience with Judge		
Direct professional experience	108	88.5
Professional reputation	10	8.2
Other personal contacts	4	3.3
Detailed Experience*		
Recent experience (within last 5 years)	87	87.0
Substantial amount of experience	33	30.8
Moderate amount of experience	35	32.7
Limited amount of experience	39	36.4
Type of Practice		
No response	2	1.6
Private, solo	21	17.2
Private, 2-5 attorneys	15	12.3
Private, 6+ attorneys	13	10.7
Private, corporate employee	-	-
Judge or judicial officer	34	27.9
Government	26	21.3
Public service agency or organization	1	0.8
Retired	10	8.2
Other	-	-
Length of Alaska Practice		
No response	3	2.5
5 years or fewer	1	0.8
6 to 10 years	11	9.0
11 to 15 years	4	3.3
16 to 20 years	22	18.0
More than 20 years	81	66.4
Cases Handled		
No response	2	1.6
Prosecution	9	7.4
Criminal	15	12.3
Mixed criminal & civil	52	42.6
Civil	39	32.0
Other	5	4.1
Location of Practice		
No response	2	1.6
First District	6	4.9
Second District	8	6.6
Third District	84	68.9
Fourth District	21	17.2
Outside Alaska	1	0.8
Gender		
No response	4	3.3
Male	77	63.1
Female	41	33.6

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

Table 18
Judge Paul A. Roetman
Detailed Responses - Bar Association Members

		Legal Ability	Impartiality/ Fairness	Integrity	Judicial Temperament	Diligence	Overall
	<i>n</i>	<i>M</i>	<i>M</i>	<i>M</i>	<i>M</i>	<i>M</i>	<i>M</i>
All respondents	122	3.9	4.1	4.4	4.3	4.1	4.1
Basis for Evaluation							
Direct professional experience	108	3.9	4.1	4.4	4.3	4.1	4.1
Experience within last 5 years	87	4.0	4.2	4.5	4.4	4.2	4.2
Experience not within last 5 years	13	3.2	3.3	3.8	3.4	3.6	3.3
Substantial amount of experience	33	3.8	4.2	4.3	4.3	4.2	4.2
Moderate amount of experience	35	4.0	4.1	4.5	4.2	4.2	4.1
Limited amount of experience	39	3.9	4.1	4.4	4.3	4.1	4.1
Professional reputation	10	3.7	3.8	4.1	4.3	3.8	3.7
Other personal contacts	4	4.3	4.3	4.7	4.7	4.3	4.5
Type of Practice*							
Private, solo	19	4.4	4.7	4.7	4.5	4.4	4.6
Private, 2-5 attorneys	14	3.8	3.9	4.4	4.3	4.0	3.9
Private, 6+ attorneys	10	3.6	3.7	4.1	3.9	4.0	3.7
Private, corporate employee	-	-	-	-	-	-	-
Judge or judicial officer	30	4.2	4.4	4.7	4.6	4.5	4.5
Government	23	3.4	3.8	3.9	3.9	3.7	3.6
Public service agency or organization	1	5.0	4.0	5.0	4.0	5.0	5.0
Retired	9	3.4	3.7	3.9	3.9	3.8	3.7
Other	-	-	-	-	-	-	-
Length of Alaska Practice*							
5 years or fewer	1	4.0	5.0	5.0	5.0	4.0	4.0
6 to 10 years	10	3.0	3.3	3.4	3.7	3.5	3.4
11 to 15 years	4	4.3	4.5	4.8	4.3	4.3	4.5
16 to 20 years	17	3.9	4.1	4.3	4.3	4.1	4.0
More than 20 years	73	4.0	4.2	4.5	4.3	4.2	4.2
Cases Handled*							
Prosecution	8	3.3	3.5	4.1	4.1	3.4	3.5
Criminal	13	3.3	3.7	3.8	3.8	3.9	3.5
Mixed criminal & civil	48	4.0	4.3	4.4	4.4	4.2	4.3
Civil	33	4.2	4.3	4.5	4.3	4.4	4.3
Other	4	3.8	4.3	4.5	4.3	3.8	3.8
Location of Practice*							
First District	3	2.7	3.3	3.0	2.7	3.7	2.7
Second District	8	4.1	4.1	4.4	4.5	4.3	4.4
Third District	74	3.9	4.2	4.4	4.3	4.1	4.1
Fourth District	20	4.2	4.2	4.5	4.4	4.4	4.4
Outside Alaska	1	3.0	3.0	4.0	3.0	3.0	3.0
Gender*							
Male	69	4.0	4.2	4.4	4.3	4.2	4.2
Female	35	3.7	3.9	4.2	4.1	3.9	3.9

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

Table 8:
Judge Paul A. Roetman
Description of Respondents' Experience - Peace and Probation Officers

	<i>n</i>	<i>%</i>
All respondents	18	100.0
Experience with Judge		
Direct professional experience	14	77.8
Professional reputation	4	22.2
Other personal contacts	-	-
Detailed Experience*		
Recent experience (within last 5 years)	11	84.6
Substantial amount of experience	4	28.6
Moderate amount of experience	8	57.1
Limited amount of experience	2	14.3

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

Table 9:
Judge Paul A. Roetman
Detailed Responses - Peace and Probation Officers

	<i>n</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	18	4.5	4.5	4.6	4.6	4.6
Basis for Evaluation						
Direct professional experience	14	4.6	4.6	4.7	4.7	4.7
Experience within last 5 years	11	4.5	4.5	4.7	4.6	4.6
Experience not within last 5 years	2	4.5	5.0	4.5	5.0	5.0
Substantial amount of experience	4	5.0	5.0	4.8	5.0	5.0
Moderate amount of experience	8	4.4	4.3	4.6	4.5	4.5
Limited amount of experience	2	4.5	5.0	5.0	5.0	5.0
Professional reputation	4	4.3	4.3	4.0	4.0	4.3
Other personal contacts	-	-	-	-	-	-

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

Table 11
Judge Paul A. Roetman
Description of Respondents' Experience - Court Employees

	<i>n</i>	<i>%</i>
All respondents	20	100
Experience with Judge		
Direct professional experience	18	90.0
Professional reputation	-	-
Other personal contacts	2	10.0
Detailed Experience*		
Recent experience (within last 5 years)	17	94.4
Substantial amount of experience	6	35.3
Moderate amount of experience	2	11.8
Limited amount of experience	9	52.9

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

Table 12
Judge Paul A. Roetman
Detailed Responses - Court Employees

		Impartiality/ Fairness	Integrity	Judicial Temperament	Diligence	Overall
	<i>n</i>	<i>M</i>	<i>M</i>	<i>M</i>	<i>M</i>	<i>M</i>
All respondents	20	4.5	4.6	4.6	4.4	4.6
Basis for Evaluation						
Direct professional experience	18	4.5	4.5	4.6	4.4	4.5
Experience within last 5 years	17	4.5	4.6	4.6	4.4	4.6
Experience not within last 5 years	1	4.0	4.0	4.0	4.0	4.0
Substantial amount of experience	6	5.0	5.0	5.0	5.0	5.0
Moderate amount of experience	2	4.5	4.5	4.5	4.5	4.5
Limited amount of experience	9	4.0	4.1	4.2	3.9	4.1
Professional reputation	-	-	-	-	-	-
Other personal contacts	2	5.0	5.0	5.0	5.0	5.0



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: March 17, 2020
RE: Juror Survey Report

The Alaska Judicial Council surveyed all jurors who sat in trials during 2018 and 2019. The jurors sat before all of the 20 trial court judges eligible to stand for retention in 2020. A total of 754 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.

Table 1: Distribution of Jurors by Type of Trial, by Judge Alaska Judicial Council 2020 Retention Juror Survey				
Judge	Civil	Criminal	No Answer	Total
Christian, Matthew	0	34	0	34
Crosby, Dani	19	0	1	20
DiBenedetto, Romano D.	0	26	2	28
Dickson, Leslie N.	3	72	5	80
Franciosi, Michael	1	46	1	48
Guidi, Andrew	25	29	7	61
Hanley, J. Patrick	4	38	5	47
Henderson, Jennifer	29	3	0	32
Lamoureux, Yvonne	15	12	0	27
Logue, Michael	0	30	1	31
McCrea, Kari	0	28	3	31
Miller, Gregory	1	0	0	1
Montgomery, Will	3	64	14	81
Peters, Nathaniel	1	21	12	34
Reigh, Christina	0	43	3	46
Roetman, Paul A.	4	5	0	9
Wallace, David	1	35	2	38
Washington, Pamela S.	1	37	3	41
Wells, Jennifer	0	39	9	48
Woodman, Jonathan	0	16	1	17

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

Table 2: Distribution of Days Served Alaska Judicial Council 2020 Retention Juror Survey		
Number of Days Served	%	N
1 - 2 Days	20	152
3 - 4 Days	53	397
5 - 7 Days	15	114
8 - 10 Days	6	46
11 - 20 Days	2	11
21 or More Days	0	1
No Answer	4	33
Total		754

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
 2020 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
Christian, Matthew	4.9	4.8	4.9	4.8	4.9	4.9	34
Crosby, Dani	5.0	5.0	5.0	5.0	5.0	5.0	20
DiBenedetto, Romano D.	4.8	4.8	4.7	4.8	4.7	4.8	28
Dickson, Leslie N.	4.8	4.9	4.8	4.7	4.7	4.8	80
Franciosi, Michael	4.9	5.0	4.9	4.9	4.9	5.0	48
Guidi, Andrew	5.0	5.0	5.0	5.0	5.0	5.0	61
Hanley, J. Patrick	4.9	5.0	4.9	4.9	4.9	4.9	47
Henderson, Jennifer	5.0	5.0	5.0	5.0	5.0	5.0	32
Lamoureux, Yvonne	4.8	5.0	5.0	4.9	4.9	5.0	27
Logue, Michael	4.8	4.9	4.9	4.8	4.9	4.9	31
McCrea, Kari	4.8	4.9	4.9	4.7	4.8	4.8	31
Miller, Gregory	5.0	5.0	5.0	5.0	5.0	5.0	1
Montgomery, Will	4.6	4.7	4.7	4.6	4.7	4.6	81
Peters, Nathaniel	4.5	4.5	4.5	4.6	4.5	4.5	34
Reigh, Christina	4.7	4.8	4.7	4.7	4.8	4.7	46
Roetman, Paul A.	4.8	4.8	4.9	4.9	4.8	4.8	9
Wallace, David	4.8	4.9	4.9	4.9	4.9	4.9	38
Washington, Pamela S.	5.0	5.0	5.0	4.9	4.9	4.9	41
Wells, Jennifer	4.9	5.0	4.9	4.8	5.0	4.9	48
Woodman, Jonathan	4.9	4.9	4.9	4.9	4.9	4.9	17

Juror Survey Results 2020
Retention Evaluation
Roetman, Paul A.

Survey Category	Mean	Poor (1)	Deficient (2)	Acceptable (3)	Good (4)	Excellent (5)	Total Responses
Impartiality / Fairness	4.8	0	0	0	2	7	9
Respectful / Courteous	4.8	0	0	0	2	7	9
Attentive During Proceedings	4.9	0	0	0	1	8	9
Control Over Proceedings	4.9	0	0	0	1	8	9
Intelligence / Skill as a Judge	4.8	0	0	0	2	7	9
Overall Evaluation	4.8	0	0	0	2	7	9



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: July 15, 2020
RE: Peremptory Challenges of Judges Eligible for Retention in 2020

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 2020. 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.

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

²See *id.*; AS 22.20.020.

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

⁴See *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	2014		2015		2016		2017		2018		2019		Summary		
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Second	DiBenedetto, Romano D	Defendant	0	1	1	1	0	2	21	7	5
		Plaintiff	.	.	.	.	.	.	1	0	0	0	1	0
		Other	.	.	.	.	.	.	12	0	0	0	2	0
	Roetman, Paul A	Defendant	0	1	1	3	0	9	0	5	0	0	0	0	32	5.3	5
		Plaintiff	0	0	3	0	2	1	1	0	1	1	3	0			
		Other	0	0	0	0	0	0	1	0	0	0	0	0			
	Summary														53	5.9	5
Third	Crosby, Dani R	Defendant	.	.	0	0	5	0	3	0	1	0	3	0	28	5.6	6
		Plaintiff	.	.	3	0	4	0	5	0	0	0	3	0			
		Other	.	.	1	0	0	0	0	0	0	0	0	0			
	Guidi, Andrew	Defendant	6	0	2	0	2	0	6	1	9	0	31	1	157	26.2	21
		Plaintiff	7	0	11	0	14	0	23	0	16	0	22	0			
		Other	0	0	3	0	1	0	0	0	0	0	2	0			
	Henderson, Jennifer S	Defendant	2	0	3	0	0	0	28	9.3	10
		Plaintiff	.	.	.	.	.	.	8	0	3	0	4	0
		Other	.	.	.	.	.	.	0	0	8	0	0	0
	Lamoureux, Yvonne	Defendant	7	0	2	0	1	0	21	7	9
		Plaintiff	.	.	.	.	.	.	2	0	1	0	2	0
		Other	.	.	.	.	.	.	0	0	6	0	0	0
	Miller, Gregory A	Defendant	7	0	3	0	8	1	4	1	11	0	13	0	106	17.7	18
		Plaintiff	4	0	0	0	10	1	9	0	10	0	7	7			
		Other	3	0	3	0	2	0	0	0	2	0	0	0			
	Reigh, Christina L	Defendant	1	1	0	1	2	0	9	3	2
		Plaintiff	.	.	.	.	.	.	1	0	0	0	0	0
		Other	.	.	.	.	.	.	3	0	0	0	0	0
	Wells, Jennifer K	Defendant	8	1	3	0	5	3	38	12.7	11
		Plaintiff	.	.	.	.	.	.	2	0	3	1	2	0
		Other	.	.	.	.	.	.	6	0	4	0	0	0
	Woodman, Jonathan A	Defendant	1	0	1	1	2	3	6	6	37	9.2	8
		Plaintiff	.	.	.	.	0	0	1	0	3	0	8	0
		Other	.	.	.	.	0	0	2	0	3	0	0	0
	Summary														424	12.8	10
Fourth	Peters, Nathaniel	Defendant	0	22	1	5	3	6	37	12.3	9
		Plaintiff	.	.	.	.	.	.	0	0	0	0	0	0
		Other	.	.	.	.	.	.	0	0	0	0	0	0
All	Summary														514	11.4	9

. = 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 2020 was 11.4 per year. The number of peremptory challenges averaged over the last five election cycles was 27.8 (2010-2018). Since 2006, average numbers of peremptory

challenges for judges eligible for retention have ranged from a low of 11.4 (2020) to a high of 36 (2006 and 2008). The peremptory challenge average was 14.4 in 2018.

First Judicial District: No judges are eligible for retention in the First Judicial District in 2020.

Second Judicial District: None of the superior court judges in the Second Judicial District received unusually high numbers of peremptory challenges. Judge DiBenedetto and Judge Roetman received low averages of 7 and 5.3, respectively.

Third Judicial District: None of the superior court judges in the Third Judicial District received unusually high numbers of peremptory challenges. Although the number of challenges Judge Guidi received was higher than that received by other judges in this particular group, the number was not unusual when compared to judges' averages over the last ten years.

Fourth Judicial District: None of the superior court judges 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	2016		2017		2018		2019		Summary		
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Third	Dickson, Leslie N	Defendant	0	0	0	0	0	0	0	0	9	2.2	1.5
		Plaintiff	1	0	3	3	1	1	0	0			
	Franciosi, Michael J	Defendant	.	.	0	0	0	1	1	0	6	2	2
		Plaintiff	.	.	0	0	1	2	0	1			
	Hanley, J Patrick	Defendant	0	0	0	0	0	0	0	0	7	1.8	1
		Plaintiff	0	5	0	1	0	1	0	0			
	Logue, Michael B	Defendant	.	.	.	.	0	0	0	0	9	4.5	4.5
		Plaintiff	.	.	.	.	0	2	1	6			
	McCrea, Kari L	Defendant	.	.	0	0	1	0	0	0	18	6	7
		Plaintiff	.	.	0	0	0	10	0	7			
	Wallace, David R	Defendant	0	0	0	0	0	1	0	0	4	1	1
		Plaintiff	1	0	1	0	1	0	0	0			
	Washington, Pamela S	Defendant	.	.	.	.	.	.	0	2	6	6	6
		Plaintiff	.	.	.	.	.	.	3	1			
	Summary										59	2.8	2
Fourth	Christian, Matthew C	Defendant	1	0	0	1	0	0	0	0	19	4.8	3
		Plaintiff	0	12	0	5	0	0	0	0			
	Montgomery, William T	Defendant	.	.	.	.	0	4	0	3	7	3.5	3.5
		Plaintiff	.	.	.	.	0	0	0	0			
	Summary										26	4.3	3.5
All	Summary										85	3.1	2

. = 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

Overall: The mean number of peremptory challenges for a district court judge appearing on the ballot in 2020 was 3.1. This mean was much lower than in 2018 when the average was skewed upward largely due to one judge's numbers to 34.9.

First Judicial District: No district court judges in the First Judicial District are eligible for retention in 2020.

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 2.8 peremptory challenges per year. Judge Washington has no data from 2016 to 2018 because she served temporarily on the Anchorage Superior Court during that time. She received only six challenges during the year she served on the Anchorage District Court, the court to which she was appointed.

Fourth Judicial District: The two district court judges from the Fourth Judicial District eligible for retention received very few challenges. Judge Christian received an average of 4.8 challenges per year and Judge Montgomery received an average of 3.5 challenges per year.



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: July 15, 2020
RE: Recusal Records of Judges Eligible for Retention in 2020

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 him or her from sitting on an inordinate number of cases, however, that judge may not be as effective as other judges in handling his or her caseload. This memo examines recusal records of those judges who are eligible for retention in 2020.

II. Context for interpreting recusal data

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.

Conflicts and resulting disqualifications are unavoidable. Judges must recuse themselves when conflicts arise. Recusals do not necessarily indicate that a judge has failed to sufficiently regulate his or her extra-judicial activities. Only very high disqualification rates should trigger an inquiry about whether a judge is comporting him or herself so as to perform his or her judicial duties effectively.

The following tables list the number of instances each judge recused him or herself 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																
Judicial District	Judge	2014		2015		2016		2017		2018		2019		Summary		
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Second	DiBenedetto, Romano D	.	.	.	.	.	.	0	0	0	0	0	0	0	0	0
	Roetman, Paul A	2	0	1	1	7	1	12	0	5	0	11	0	40	6.7	6.5
	Summary													40	4.4	2
Third	Crosby, Dani R	.	.	1	0	18	0	26	0	11	0	8	0	64	12.8	11
	Guidi, Andrew	6	0	3	0	11	0	6	0	6	0	3	0	35	5.8	6
	Henderson, Jennifer S	.	.	.	.	.	.	6	0	4	0	8	0	18	6	6
	Lamoureux, Yvonne	.	.	.	.	.	.	1	0	1	0	2	0	4	1.3	1
	Miller, Gregory A	6	0	8	0	6	0	5	3	3	0	2	0	33	5.5	6
	Reigh, Christina L	.	.	.	.	.	.	1	1	1	0	0	2	5	1.7	2
	Wells, Jennifer K	.	.	.	.	.	.	5	0	3	0	5	0	13	4.3	5
	Woodman, Jonathan A	.	.	.	.	3	1	1	1	5	0	6	3	20	5	4.5
	Summary													192	5.8	5
Fourth	Peters, Nathaniel	.	.	.	.	.	.	0	0	2	2	0	2	6	2	2
All	Summary													238	5.3	4

. = No value

* Mean and median unit of analysis is judge/year

The recusal rates for superior court judges eligible for retention election in 2020 are unremarkable. The judge with the highest number of recusals (though still low) was Judge Crosby, who averaged 12.8 recusals per year. Most of these came in her first two years on the bench, with declining numbers afterwards. Judge Crosby had previously been in private practice in Anchorage, and her numbers likely reflect her previous activity as a practicing lawyer.

IV. Recusal Records - District Court Judges

Judge Recusals - District Court												
Judicial District	Judge	2016		2017		2018		2019		Summary		
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Third	Dickson, Leslie N	4	0	2	0	2	0	2	0	10	2.5	2
	Franciosi, Michael J	.	.	0	0	0	0	0	0	0	0	0
	Hanley, J Patrick	1	0	1	0	0	0	0	0	2	0.5	0.5
	Logue, Michael B	.	.	.	.	0	0	0	0	0	0	0
	McCrea, Kari L	.	.	0	0	1	0	0	0	1	0.3	0
	Wallace, David R	1	0	0	0	0	0	0	0	1	0.2	0
	Washington, Pamela S	3	0	5	0	3	0	0	0	11	2.8	3
	Summary									25	1	0
Fourth	Christian, Matthew C	3	0	1	4	1	0	4	0	13	3.2	3.5
	Montgomery, William T	.	.	.	.	1	25	0	9	35	17.5	17.5
	Summary									48	8	4.5
All	Summary									73	2.4	1

. = 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 2020 was unremarkable.



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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: August 7, 2020
RE: Appellate Evaluation of Judges Eligible for Retention in 2020

I. Introduction

The Judicial Council staff has several ways of evaluating judges' performance. One way is to compare how each judge's decisions withstand appellate review.

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,¹ 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,” “criminal,”² 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

¹ 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.

² “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.

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.

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.³ 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.

³ 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.

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.

II. Analysis of Appellate Affirmance Rates

A. Superior Court Judges, 2014 - 2019

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 eight percentage points, from 78% - 85%, over the past twenty-six years and have stayed around 81% - 82% most of that time. Civil affirmance rates mostly ranged within six percentage points, from 67% - 72%, until the 2010 - 2015 retention period, with one period (1996 - 2001) lower, at 61%. Over the past three retention cycles, the civil affirmance rate rose to 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 the rise in criminal affirmance rates, and then by the rise in civil affirmance rates.

Affirmance Rates All Superior Court Judges			
Years	Criminal	Civil	Overall
1994-1999	85%	67%	75%
1996-2001	81%	61%	75%
1998-2003	82%	67%	75%
2000-2005	80%	70%	76%
2002-2007	79%	70%	75%
2004-2009	78%	72%	75%
2006-2011	81%	72%	77%
2008-2013	82%	71%	77%
2010-2015	82%	75%	79%
2012-2017	81%	76%	79%
2014-2019	80%	76%	78%

Affirmance rates for superior court judges who are standing for retention in 2020 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 above, 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.

Judicial Affirmance Rates						
Superior Court Judges Eligible for Retention 2020						
	Criminal Affirmance		Civil Affirmance		Overall	
	Number Reviewed	Rate	Number Reviewed	Rate	Number Reviewed	Rate
Second Judicial District						
DiBenedetto, Romano	1	0%	--	--	1	0%
Roetman, Paul A	7	64%	2	100%	9	72%
Third Judicial District						
Crosby, Dani	--	--	7	90%	7	90%
Guidi, Andrew	1	100%	31	77%	32	77%
Henderson, Jennifer	--	--	6	83%	6	83%
Lamoureux, Yvonne	--	--	1	100%	1	100%
Miller, Gregory	25	80%	23	86%	48	83%
Reigh, Christina	--	--	2	62%	2	62%
Wells, Jennifer	1	100%	3	83%	4	88%
Woodman, Jonathan	3	67%	7	62%	10	63%
Fourth Judicial District						
Peters, Nathaniel	1	100%	1	100%	2	100%
Number and mean affirmance rates, superior court judges eligible for retention, 2014 - 2019	39	76%	83	81%	122	79%
Number and mean affirmance rates, all superior court judges 2014 - 2019	990	80%	692	76%	1,682	78%

Note: 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. Most of the current cases were affirmed at 100%. To assist the reader, we describe individual cases that were not affirmed at 100%. Alaska Supreme Court cases are designated with simply a date: (2018); Alaska Court of Appeals cases are designated as a date and (Alaska App.).

For this retention cycle, eight of the eleven superior court judges eligible for retention had fewer than ten cases reviewed. With the exception of Judge Roetman, these judges were all newly appointed to the superior court. Some of these judges had previously been either magistrates or district court judges. Appeals concerning their work in those former positions was not considered in this aspect of the evaluation for their current position.

Judge Romano DiBenedetto: Judge DiBenedetto had one criminal case reviewed. It was affirmed at 0% (reversed):

State of Alaska, Department of Public Safety v. Superior Court (Alaska App. 2018) (0%) - In this case, Judge DiBenedetto ordered the Department of Public Safety to transport a defendant from one correctional facility to another for a psychological assessment by the defendant's expert. The Department petitioned for review, arguing that Judge DiBenedetto did not have authority to order the transport. The court of appeals agreed, explaining that while the court had authority to order transport to court proceedings, it did not generally have authority to order transport between two correctional facilities.

Judge Paul Roetman: Judge Roetman had nine appeals reviewed. Six were affirmed at 100%. One was affirmed at 50% and two were affirmed at 0% (reversed):

State of Alaska v. Sheldon (Alaska App. 2018) (0%) - The defendant, a convicted felon, was found in possession of a firearm and arrested. He also admitted to possessing child pornography. He entered a plea agreement to a misconduct involving weapons charge and judgment was entered. Seventeen months later, he was indicted on possession of child pornography charges. He moved to dismiss those charges, arguing that the state violated his right to a speedy trial. Judge Roetman agreed and dismissed the charges. The state appealed. The court of appeals agreed with the state that the two sets of charges did not arise from the same criminal episode and the time to trial on the pornography charges should be considered separately. It reinstated the charges and remanded for further proceedings.

Olanna v. State of Alaska (Alaska App. 2019) (0%) - In this case, the defendant was convicted of second-degree murder for strangling and killing his girlfriend. Judge Roetman imposed a sentence of 75 years with no suspended time. The defendant appealed. The court of appeals reviewed Judge Roetman's sentencing remarks and found that he had improperly considered the defendant's eligibility for discretionary parole when imposing sentence. It remanded the case for resentencing.

Russell v. State of Alaska (2019) (50%) - A jury convicted the defendant of manufacturing alcohol in a local option community. The defendant appealed, arguing that there was insufficient evidence. The court of appeals reviewed the record and concluded the evidence was sufficient to uphold the conviction based in eyewitness testimony of the manufacturing. The defendant also appealed his sentence. The court of appeals did not review his argument because it found the judge and parties made a

different error when they did not consider prior felonies that should have been taken into account when sentencing the defendant. It therefore remanded the case for resentencing.

Judge Dani Crosby: Judge Crosby had seven appeals. Six were affirmed at 100%. One family case was affirmed at 33%:

Gray v. Gray (2019) (33%) - This case involved a custody dispute. The father had successfully moved to modify a previous order allowing him only supervised visitation. The new order allowed increased visitation. He then moved to modify custody to shared physical custody. The mother cross-moved for an order requiring the father to pay unpaid childcare, tutoring, and healthcare expenses. Judge Crosby denied the father's motion for custody and ordered the father to pay the unpaid expenses. The judge also awarded the mother attorney's fees. The father appealed. The supreme court upheld the denial of the motion to modify custody but vacated the order to pay the expenses, remanding so Judge Crosby could interpret how a parenting agreement affected the payment of expenses. The court also vacated and remanded the attorney's fees order.

Judge Jennifer Henderson: Judge Henderson had six appeals considered. Five were affirmed at 100%. One, a family law case, was affirmed at 0% (reversed):

Engeberg. Engeberg (2019) (0%) - A father appealed a child support under, arguing that the judge should have imputed income to the mother because she was underemployed. The court reviewed the record and determined that the judge had not made factual findings on the record about the parties' incomes or the father's request for the judge to impute income. The supreme court therefore remanded the case back to the superior court for further proceedings.

Judge Yvonne Lamoureux: Judge Lamoureux had one case reviewed. It was affirmed at 100%.

Judge Christina Reigh: Judge Reigh had two cases reviewed. One was affirmed at 100%. The other, a family law case, was affirmed at 25%:

Thompson v. Thompson (2019) (25%) - In this case, Judge Reigh issued several orders regarding child custody, marital property division, child support, and attorney's fees. The ex-wife appealed. The supreme court upheld the custody order granting shared physical and legal custody. When it reviewed the child support order, however, it found that Judge Reigh had not made sufficient factual findings on the record that would allow it to review the order so it remanded that issue. The supreme court next reviewed the property division and concluded that Judge Reigh had abused her discretion when she considered the value of a fishing vessel separately and in the husband's favor, rather than together with the rest of the marital estate as marital property. The fishing vessel was acquired during the marriage and was not a gift or separate inheritance. The supreme court therefore reversed that aspect of the property division and remanded that issue. It also vacated the attorney's fees award stemming from the property division order.

Judge Jennifer Wells: Judge Wells had four cases reviewed. Three were affirmed at 100%. One was affirmed at 50%:

In the Matter of the Estate of Alexina Rodman (2019) (50%) - This case concerned an ex-husband's interest in his former spouse's estate. The parties had divorced but had maintained a

relationship and lived together until her death. The supreme court affirmed Judge Wells's ruling that the ex-husband had no property rights in the estate by virtue of their domestic relationship because Alaska Statutes do not provide for domestic partner intestate inheritance. However, the supreme court vacated Judge Wells's orders pertaining to some real property because Judge Wells had never issued final judgments on some of the petitioner's claims that the ex-wife had sold him some of the property.

Judge Nathaniel Peters: Judge Peters had two cases reviewed. Both were affirmed at 100%.

B. District Court Judges, 2016 - 2019

The mean criminal affirmance rate for all district court judges from 2016 - 2019 was 74%, the lowest in the past twenty-two years. 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.

Criminal Affirmance Rates All District Court Judges	
Years	Mean
1998-2001	81%
2000-2003	77%
2002-2005	77%
2004-2007	85%
2006-2009	84%
2008-2011	81%
2010-2013	79%
2012-2015	84%
2014-2017	79%
2016-2019	74%

District court judges' affirmance rates 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.

Judicial Affirmance Rates District Court Judges Eligible for Retention 2020		
	Criminal Affirmance	
	Number Reviewed	Rate
Third Judicial District		
Dickson, Leslie N	4	100%
Franciosi, Michael	--	--
Hanley, J Patrick	--	--
Logue, Michael	--	--
McCrea, Kari	--	--
Wallace, David	7	100%
Washington, Pamela S	5	40%
Fourth Judicial District		
Christian, Matthew	1	50%
Montgomery, Will	--	--
Number and mean affirmance rates, district court judges eligible for retention, 2016 - 2019	17	79%
Number and mean affirmance rates, all district court judges, 2016 - 2019	137	74%

Note: Data 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. Five of the judges had no cases reviewed: Judge Michael Franciosi, Judge J. Patrick Hanley, Judge Michael Logue, Judge Kari McCrea, and Judge William Montgomery. To provide more context, the judges are discussed individually below.

Judge Leslie Dickson: Judge Dickson had four cases reviewed and was affirmed on all issues in every case.

Judge David Wallace: Judge Wallace had seven cases reviewed and was affirmed on all issues in every case, except for one minor correction to a judgment due to a clerical error.

Judge Pamela Washington: Judge Washington had five criminal cases reviewed. Two cases were affirmed at 100%. Three cases were affirmed at 0% (reversed):

Prince v. State of Alaska, (Alaska App. 2016) (0%) - The defendant was convicted of fourth degree assault. He appealed, arguing that the judge had prevented him from presenting a defense that his conduct involved “mutual combat” and thus qualified for the lesser offense of disorderly conduct. The court of appeals agreed, holding that the judge erred by not allowing testimony that the other person had touched the defendant’s granddaughter in a sexual manner several days before the day of the incident and had taunted the defendant to come over and do something about it.

State of Alaska v. Borowski, (Alaska App. 2016) (0%) - The defendant was convicted of second-degree harassment for posting a message on Assemblyman Dick Traini’s Facebook page that said, “Your going to get assassinated.”[sic] Judge Washington dismissed the charge, ruling that the defendant’s post was protected speech under the First Amendment. The court of appeals reversed, holding that the court

improperly made several findings of fact before it had heard evidence, and that the ruling was based on a mistaken legal premise that the defendant could not be prosecuted unless he seriously intended to harm Mr. Traini. The court of appeals explained that the correct standard was whether the communication would be viewed as a threat.

State of Alaska v. Barber, (Alaska App. 2017) (0%) - The defendant was convicted of possession of a controlled substance. He later applied for post-conviction relief, contending that the document charging him and the judgment contained the wrong statutory subsection for his crime. Judge Washington granted his application and the state appealed. The court of appeals reversed, holding that the factual basis of the crime (possession of two tablets of suboxone) was uncontested and the discrepancy was a clerical error that could be corrected as long as the defendant had not detrimentally relied on the error when making his plea. The court remanded for further proceedings.

Judge Matthew Christian: Judge Christian had one case reviewed since his appointment as a district court judge. It was affirmed at 50%:

Kinmon v. State of Alaska (Alaska App. 2019) (50%) - The defendant was a licensed game guide in Alaska and was licensed to sell big game tags in the field to nonresident hunters. He was convicted of five counts of tampering with a public record, five counts of committing or aiding the commission of a violation of a big game statute or regulation, and one count of failing to report a violation of a big game law. The defendant appealed. The court of appeals reversed four of the convictions and upheld the remaining seven. The court of appeals held that Judge Christian erred when he did not instruct the jury on a key element of the offense, leaving it for the jury to decide the definition of a legal term. The court then held that Judge Christian did not err when giving a jury instruction on the defendant's "mistake of law" defense. Although the instruction was not ideal, it was an accurate description of Alaska law and the defendant did not object or propose a different instruction.