

alaska judicial council

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MEMORANDUM

TO: Alaska Judicial Council

FROM: Staff

DATE: April 5, 2010

RE: Peremptory Challenge Rates for Judges Eligible for Retention in 2010

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 2010. 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. Most courts also track peremptory challenges in children's cases, including Child in Need of Aid ("CINA") cases and juvenile delinquency cases. Children's delinquency cases are included among criminal cases in this analysis because procedurally they are more like criminal cases than civil cases. Child in Need of Aid cases are included in the "civil" category. Please note that in Child in Need of Aid cases, guardian ad litem and parents have the right to preempt the judge. These are noted as "other" on the following charts.

Three different information systems were used for compiling peremptory challenge data. First, in recent years, the court has instituted a new computerized case management system (CourtView) that has facilitated the collection and reporting of more detailed and accurate data for most locations, including Anchorage, Palmer, Bethel, and Fairbanks. Second, the Kenai court instituted CourtView in 2009, so data previous to that was retrieved from the old case management system ("RUG") and added to the data from the new CourtView system. Last, in the First Judicial District (Southeast Alaska), information was compiled manually by clerical staff and sent to the area court administrator. All of this data was then provided by the Alaska Court System to the Alaska Judicial Council. The judges listed here have been given the opportunity to review and confirm the accuracy of the data and how it has been reported here.

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 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.

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 cases and domestic violence 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.

A. Superior Court⁵

Judge	2004		2005		2006		2007		2008		2009		Average number challenges per year
	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	
First Judicial District:													
George Sitka Appt. 10/25/07									4 2d 2p	2 0d 2p	17 6d 11p	10 4d 6p	17
Pallenberg Juneau Appt. 8/31/07							1 1d 0p	1 1d 0p	5 2d 3p	7 0d 7p	7 4d 3p	15 0d 15p	17
Stephens Ketchikan Appt. 7/31/00	5 1d 4p	11 10d 1p	4 2d 2p	26 26d 0p	1 1d 0p	13 12d 1p	2 2d 0p	7 7d 0p	0 0d 0p	3 3d 0p	3 3d 0p	5 5d 0p	13

⁵"D" signifies "defendant" in both criminal and civil cases.

"P" signifies "plaintiff" in civil cases and "prosecutor" in criminal cases.

"Oth" signifies "other."

If a judge was appointed in the last six months of a year, the number of challenges in that year was not used to calculate the average number of annual challenges for that judge. Blank spaces in the table represent years that preceded the judge's appointment to the current position.

Judge	2004		2005		2006		2007		2008		2009		Average number challenges per year
	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	Civil	Crim	
Third Judicial District:													
Aarseth Anchorage Appt. 11/30/05					2 1d 1p	5 4d 1p	0	82 81d 1p	0	20 20d 0p	2 1d 1p	14 14d 0p	31
Gleason Anchorage Appt. 02/19/01	28 15d 13p	0	31 12d 18p 1 oth	0	18 5d 12p	0	18 5d 12p 1 oth	0	16 7d 9p 2 oth	0	4 3d 1p	0	19
McKay Anchorage Appt. 11/30/05			1 0d 1p	0	19 4d 15p	0	3 0d 1p 1 oth	1 1d 0p	0	21 14d 7p	23 4d 8p 11 oth	8 8d 0p	19
Rindner Anchorage Appt. 10/20/00	17 5d 12p	0	29 13d 13p 3 oth	0	26 5d 11p 10oth	0	12 6d 6p	0	24 9d 15p	0	21 10d 7p 4 oth	0	22
Smith, J. Anchorage Appt. 11/17/06					1 1d 0p	3 1d 2p	32 11d 21P	0	22 5d 16p 1 oth	0	20 9d 11p	1 1d 0p	25

Judge	2004		2005		2006		2007		2008		2009		Average number challenges per year
	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	
Third Judicial District (cont.)													
Spaan Anchorage Appt. 11/17/06							38 16d 15p 7 oth	0	0	10 10d 0p	2 0d 2p	5 5d 0p	18
Bauman Kenai Appt. 08/03/07							0	1 0d 1p	5 3d 2p	19 19p 0d	7 6p 1d	5 5d 0p	18
Moran Kenai Appt. 03/05/07							13 4d 7p 2 oth	34 34d 0p	10 3d 4p 3oth	105 105d 0p	7 4d 2p 1 oth	15 15d 0p	61
Kristiansen Palmer Appt. 11/17/06							17 1d 8p 8oth	63 63d 0p	22 5d 11p 6oth	25 25d 0p	36 5d 7p 24oth	62 25d 37p	75
White Palmer Appt. 11/17/06					1 0d 1p	0	18 11d 7p	2 2d 0p	1 1d 0p	0	28 1d 3p 24oth	1 1d 0p	17

Overall: The average number of peremptory challenges for the superior court judges on the ballot for 2010 was 27 per year. The average number of peremptory challenges for the superior court judges on the ballot in both 2008 and 2006 was 36 per year. As discussed above, caution should be used when comparing a particular judge's annual average with the average for all judges. The location of the judgeship, the size of a judge's caseload, the type of cases heard by the judge, and the local legal culture can and do affect peremptory challenge rates. Peremptory challenge rates must be considered in the context of other available information about a judge's performance.

First Judicial District:

Judge George (Sitka): Judge George had an average of seventeen challenges per year, which was lower than the overall average of 27.

Judge Pallenberg (Juneau): Judge Pallenberg had an average of seventeen challenges per year, which was lower than the overall average of 27.

Judge Stephens (Ketchikan): Judge Stephens had an average of thirteen challenges per year, which was among the lowest rates for the judges on the ballot in 2010.

Third Judicial District:

Judge Aarseth (Anchorage): Judge Aarseth had an average of 31 challenges per year, which was only slightly higher than the overall average of 27. In his first year as a judge he had only seven challenges. In 2007, he had 81 challenges from defendants in criminal cases alone, suggesting a blanket challenge situation or that he had been newly assigned to the criminal calendar. In 2008, he had only 20 challenges from criminal defendants and in 2009 he had only fourteen, suggesting that the criminal defense attorneys became more willing to accept him.

Judge Gleason (Anchorage): Judge Gleason had an average of nineteen challenges per year, which was lower than the average of 27. Judge Gleason has been assigned to the civil case calendar during her most recent term and therefore has no challenges in criminal cases. Her challenges come from plaintiffs slightly more frequently than from defendants.

Judge McKay (Anchorage): Judge McKay had an average of nineteen challenges per year, which was lower than the overall average of 27. He had the most challenges in 2009, when he was newly assigned to the civil calendar.

Judge Rindner (Anchorage): Judge Rindner had an average of 22 challenges per year, which was slightly lower than the overall average of 27. Judge Rindner has been assigned to the civil case calendar during his most recent term and therefore has no challenges in criminal cases. His challenges come slightly more frequently from plaintiffs than from defendants.

Judge Jack Smith (Anchorage): Judge Smith had an average of 25 challenges per year, which was near the average of 27.

Judge Spaan (Anchorage): Judge Spaan had an average of eighteen challenges per year, which was lower than the overall average of 27.

Judge Bauman (Kenai): Judge Bauman had an average of eighteen challenges per year, which was lower than the overall average of 27. This number is lower than expected because he was newly appointed in 2007.

Judge Moran (Kenai): Judge Moran had an average of 62 challenges per year, which was more than twice the overall average of 27. Judge Moran had 47 challenges in her first year as a superior court judge in Kenai, which could be expected due to her new appointment. She had 115 challenges in 2008, 105 of which were from criminal defendants. In 2009, Judge Moran had only 22 challenges, and only fifteen challenges from criminal defendants, which was lower than average. This pattern indicated that the Kenai criminal defense attorneys were blanket challenging Judge Moran and that the practice stopped before 2009. Judge Moran was asked for additional information about the high number of challenges in 2008. Her response is attached to this memorandum.

Judge Kristiansen (Palmer): Judge Kristiansen had an average of 75 challenges per year, a much higher average than the overall average of 27 for all superior court judges. In 2007, her first year as a judge, she had 80 challenges, 63 of which came from criminal defendants. In 2008 she had 47 challenges, 25 of which were from criminal defendants. In 2009 she experienced 98 challenges, 25 of which were from criminal defendants, 37 from prosecutors, and 24 from “others” in civil cases. Challenges from criminal defendants have declined but are still higher than would be expected. Judge Kristiansen was asked for additional information about the high number of challenges. Her response is attached to this memorandum.

Judge White (Palmer): Judge White had an average of seventeen challenges per year, which is lower than the overall average of 27. Like Judge Kristiansen, she experienced 24 challenges from “others” in civil cases in 2009, suggesting that counsel in child in need of aid cases may have been strategically using peremptory challenges. Judge White had very few other challenges.

Fourth Judicial District:

Judge Blankenship (Fairbanks): Judge Blankenship had an average of 37 challenges per year. He had 77 challenges in 2006, his first year as a judge. He then had 24 challenges in 2007 and only four in 2008. This decline is expected as counsel become familiar with a new judge. In 2009, however, he experienced 42 challenges which were split about evenly in civil and criminal cases.

Judge MacDonald (Fairbanks): Judge MacDonald had an average of only eight challenges per year, much lower than the overall average of 27. This was the lowest rate of all the superior court judges eligible for retention in 2010.

Judge Hamilton (Bethel): Judge Hamilton had an average of 32 challenges per year, which was higher than the average of 27 for all the 2010 superior court judges. In 2007, his first year as a judge, he had nineteen challenges. In 2008, he had 65 challenges, 59 of which came from prosecutors in criminal cases. This pattern suggests that one or more prosecutors were blanket challenging him in that year. The next year, 2009, he had only twelve challenges, eight of which came from prosecutors, indicating that there was a prosecutorial change or that the reasons for the blanket challenges were resolved.

B. District Court⁶

	2006		2007		2008		2009		Average Number Challenges per year
Judge	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	
First Judicial District									
Miller Ketchikan Appt. 08/30/99	0	6 6d 0p	0	6 6d 0p	0	10 10d 0p	1 1d 0p	9 9d 0p	8
Third Judicial District									
Clark Anchorage Appt. 01/23/03	0	1 1d 0p	3 2d 1p	0	2 0d 2p	0	5 0d 5p	0	3
Easter Anchorage Appt. 06/05/08					0	2 0d 2p	2 2d 0p	0	2
Estelle Palmer Appt. 06/11/03	0	23 20d 3p	0	21 18d 3p	10 0d 10p	24 24d 0p	119 4d 115p	12 12d 0p	52
Illsley Kenai Appt. 06/14/07					1 1d 0p	444 444d 0p	5 0d 5p	106 106d 0p	278
Motyka Anchorage Appt. 07/26/91	3 3d 0p	1 0d 1p	2 2d 0p	4 4d 0p	2 2d 0p	2 2d 0p	0	1 1d 0p	4
Postma Anchorage Appt. 06/14/07			3 2d 1p	0	0	1 1d 0p	3 0d 3p	2 0d 2p	3

⁶"D" signifies "defendant" in both criminal and civil cases.

"P" signifies "plaintiff" in civil cases and "prosecutor" in criminal cases.

"U" signifies unknown whether challenge raised by plaintiff or defendant.

If a judge was appointed in the last six months of his or her first year, the number of challenges in that year was not used to calculate the average number of annual challenges for that judge. Blank spaces in the table represent years that preceded the judge's appointment to the current position.

	2006		2007		2008		2009		Average number challenges per year
Judge	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	
Rhoades Anchorage Appt. 07//30/92	12 3d 9p	7 3e 4p	5 1d 4p	23 3d 20p	9 3d 6p	2 2d 0p	13 3d 10p	14 10d 4p	21
Wolfe Palmer Appt. 11/01/04	0	29 28d 1p	1 1d 0p	16 16d 0p	2 1d 1p	15 15d 0p	0	5 5d 0p	17
Fourth Judicial District									
Kauvar Fairbanks Appt. 02/18/81	5 1d 4p	12 12d 0p	3 1d 2p	7 6d 1p	1 1d 0p	12 10d 2p	0	11 10d 1p	13
Average number of challenges for district court judges on 2010 ballot (Excluding Illsley)									
									14

Overall: Except in two instances, many fewer peremptory challenges were reported for district court judges than for superior court judges, particularly considering the substantially higher caseloads in district court. The average number of peremptory challenges for a district court judge in 2010 was fourteen, excluding one judge who had an unprecedented average number (278) of peremptory challenges during her term. If that judge's average had been included, the average would have been 40. The average number of challenges for a district court judge in 2008 was sixteen. The 2006 average was seventeen. In district court, criminal cases are not assigned until trial call, which means that attorneys in district court cases have relatively fewer opportunities to bring a peremptory challenge than those in superior court cases.

Judge Miller (Ketchikan): Judge Miller experienced very few peremptory challenges. The challenges he does receive tend to come mostly from defendants in criminal cases.

Judge Clark (Anchorage): Judge Clark has received very few peremptory challenges during his current term, averaging only three per year.

Judge Easter (Anchorage): Since her appointment to the bench in 2008, Judge Easter has experienced very few peremptory challenges, averaging only two per year.

Judge Estelle (Palmer): Judge Estelle experienced a higher than average number of challenges in 2006, 2007, and 2008, mostly from criminal defendants. In 2009, however, he experienced an unusually high number of challenges (115) from civil plaintiffs. Judge Estelle was asked for additional information about the high number of challenges. His response is attached to this memorandum.

Judge Illsley (Kenai): The number of peremptory challenges filed in Judge Illsley's cases is unprecedented in recent years: 445 in 2008, and 111 in 2009. She explained in her judicial questionnaire that she was "blanket" challenged by criminal defendants for a time in 2008. In response to the peremptory challenge problem, the Kenai court instituted some changes in how it assigned judges. The number of challenges was much lower in 2009 but even that number was extraordinarily high compared to other district court judges in this term and in previous years. The Judicial Council solicited and considered feedback from the court and Kenai attorneys about the high rate of challenges. Judge Illsley was also asked for additional information about the high number of challenges. Her response is attached to this memorandum.

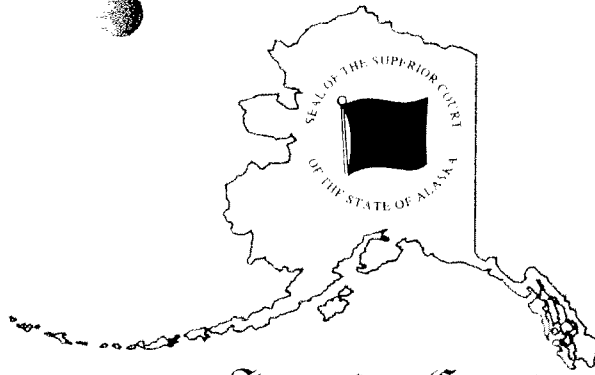
Judge Motyka (Anchorage): Judge Motyka has been a judge for almost twenty years. He receives very few peremptory challenges, averaging only four a year during his current term.

Judge Postma (Anchorage): Judge Postma has experienced a low number of peremptory challenges since his appointment in 2007, averaging only three a year.

Judge Rhoades (Anchorage): Judge Rhoades has averaged twenty-one challenges per year in her most recent term. Although this number is higher than the average of fourteen for 2010 district court judges, it is not unusually high.

Judge Wolfe (Palmer): Judge Wolfe's average of seventeen is only slightly higher than the 2010 average of fourteen.

Judge Kauvar (Fairbanks): Judge Kauvar experienced an average of thirteen challenges a year in her current term, which is about average.



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APR 26 2010

ALASKA JUDICIAL COUNCIL

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT

ANNA M. MORAN
Superior Court Judge

125 TRADING DRIVE, SUITE 100
KENAI, ALASKA 99611

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April 23, 2010

Susie Dosik
Alaska Judicial Council
1029 W. Third Avenue, Suite 201
Anchorage, Alaska 99501

Re: Peremptory challenges for Judge Moran

Dear Ms. Dosik,

The Alaska Judicial Council has asked me to explain the high rate of peremptory challenges I received in 2008. As your letter notes, I received an average number of peremptory challenges for a new judge in 2007, and a lower than average number of peremptory challenges in 2009.

I can't fully explain the why I received a high number of peremptory challenges in 2008 except to say that the practice to use blanket peremptory challenges is a part of the local legal culture in Kenai, and is often employed by both the Public Defender and the District Attorney. In 2008, it appears that I was targeted for blanket peremptory challenges by the Public Defender's office.

Very truly yours,

Anna M. Moran
Superior Court Judge

April 22, 2010

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APR 23 2010

Alaska Judicial Council
1029 W. Third Avenue, Suite 201
Anchorage, Alaska 99501-1969

ALASKA JUDICIAL COUNCIL

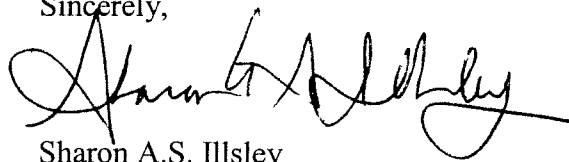
RE: Peremptory Challenge Rate

I hope that those examining my peremptory challenge rate note that the number has been trending downward. While I have not personally kept track, I have no reason to doubt the accuracy of the numbers recited by the Judicial Council. From these numbers, it appears that almost 99% of the challenges were filed by the criminal defense bar. But for the challenges filed by the criminal defense bar, most notably the Public Defender's Office, the number of challenges would not be remarkable. It is important to mention that there are many criminal defense attorneys who regularly appear in front of me who have rarely, if ever, filed a peremptory challenge. On some cases where the Public Defender's Office disqualified me and then conflicted out, conflict counsel has expressed that they would withdraw the disqualification if the law allowed them to do so.

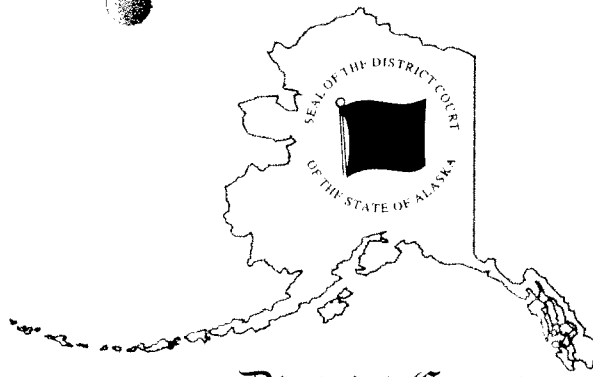
Prior to being given the opportunity to serve as a judge, I was a prosecuting attorney in Colorado, in Kenai and in Anchorage for a total of approximately 20 years. I only mention my professional background because this background may be a factor in motivating challenges from the criminal defense bar. Anyone appointed to the bench, regardless background, is required to uphold the law. While I do not know the reason for the challenges, I do know that as an attorney and as a judge I have always tried to treat others with courtesy and respect. As a judge, I make a point of not embarrassing attorneys in front of their clients or in front of jurors. I recognize that the courtroom environment may not be a comfortable one for many individuals who rarely appear in court and I try to make certain that everyone understands what is happening.

In going through 600+ 2010 Kenai criminal files, it appears that I have been disqualified in only a handful at most. (I actually found 2.) While this is not to say that more disqualifications will not be filed in some of these cases at a later point in time, it does reflect a positive trend that I hope will continue. Since I am the only District Court Judge in Kenai, the cases on which I am disqualified often must be reassigned to judges from other locations or courts. I hope to continue to work to avoid putting this burden on the court system.

Sincerely,



Sharon A.S. Illsley



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MAY 17 2010

ALASKA JUDICIAL COUNCIL

District Court

State of Alaska

PALMER DISTRICT COURT

WILLIAM L. ESTELLE
District Court Judge

435 SOUTH DENALI STREET
PALMER, ALASKA 99645

(907) 746-8140
FAX (907) 746-8151

Alaska Judicial Council
1029 W. Third Avenue, Suite 201
Anchorage, Alaska 99501-1969

Re: Civil peremptory challenges.

Dear Council members:

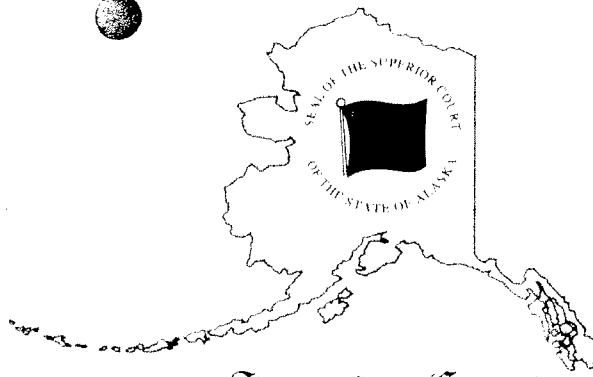
Thank you for providing the statistics regarding peremptory challenges from 2009, including the high number of peremptory challenges in civil cases. Upon reviewing the actual civil files, it appears all but two of these perempts were filed by a single debt-collection law firm, Routh Crabtree APC, in Anchorage. The cases were brought by Routh Crabtree APC on behalf of several consumer credit lenders and on behalf of debt collection firms and assignees. This court has ruled on debt collection practices of longstanding. The preemptions are a matter of right and I respect all parties and attorneys exercising of their rights and opportunities to zealously pursue the interests and claims at issue.

Thank you very much.

Respectfully,



William L. Estelle
District Court Judge



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MAY 5 2010

ALASKA JUDICIAL COUNCIL

Superior Court

State of Alaska

THIRD JUDICIAL DISTRICT

KARI KRISTIENSEN
Superior Court Judge

435 SOUTH DENALI STREET
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(907) 746-8160
FAX (907) 746-8149

May 3, 2010

Alaska Judicial Council
1029 W. Third Avenue, Suite 201
Anchorage, Alaska 99501-1969
Attention: Susie Dosik

Re: Peremptory Challenges

Dear Members of the Judicial Council:

I am writing in response to Ms. Dosik's letter concerning my peremptory challenge numbers. In 2007, I received a number of challenges as a new judge. The challenges were primarily from the criminal defense bar. I found the number understandable given that I previously worked as a prosecuting attorney. In 2008, my peremptory challenge rate reduced significantly to 47 cases. The 2009 peremptory challenge rate of 98, however, is most significant. The recent rise in peremptory challenges is from the Palmer District Attorney's Office. These peremptory challenges began in February of 2009, and since October of 2009 have been filed in every criminal case assigned to me. There were no peremptory challenges from the District Attorney in 2007 and 2008.

Because peremptory challenges do not require counsel to state reasons for the challenge, I do not have a clear indication of the official reasons for their decision. I am working with retired Judge Donald Hopwood to evaluate my judicial performance and style. I do not have much more to offer the Council at this point, but I am hopeful to resolve the peremptory issues.

If I can be of any further assistance, or if you need additional information, please do not hesitate to telephone me. I can be reached at 746-8160.

Sincerely,

Kari Kristiansen
Palmer Superior Court Judge