



Print Questionnaire

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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 _____ Kotzebue Superior Court _____
Name Court

- Please estimate your workload during your present term.

a) <u>60</u> % civil cases	b) <u>1</u> # of jury trials/year
<u>25</u> % criminal cases	<u>10</u> # of non-jury trials/year
<u>15</u> % court administrative work	<u>1</u> # of administrative appeals/year
100 % Total	

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.

- 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: <u>Christopher Darnall</u>	Name: <u>Daniel Dalle-Molle</u>
Address: <u>310 K St. Suite 601</u>	Address: <u>PO Box 276</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Kotzebue, AK 99752</u>
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: <u>Bride Seifert</u>	Name: <u>Erin Lillie</u>
Address: <u>PO Box 349</u>	Address: <u>PO Box 61</u>
City, State, Zip: <u>Kotzebue, AK 99752</u>	City, State, Zip: <u>Nome, AK 99762</u>
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: <u>Rachel Ahrens</u>	Name: <u>Wallace H. Tetlow</u>
Address: <u>PO Box 349</u>	Address: <u>745 W. 4th Ave Ste. 250</u>
City, State, Zip: <u>Kotzebue, AK 99752</u>	City, State, Zip: <u>Anchorage, AK 99501</u>
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: <u>Matthew Singer</u>	Name: <u>Colleen Moore</u>
Address: <u>420 L. St. Suite 400</u>	Address: <u>1031 West 4th Ave. Suite 200</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Anchorage, AK 99501</u>

Name: <u>Jessica Brown</u>	Name: <u>Ashley Brown</u>
Address: <u>420 L. St. Suite 400</u>	Address: <u>1031 West 4th Ave. Suite 200</u>
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: <u>Anchorage, AK 99501</u>

Case Number 2

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

Attorneys Involved:

Name: <u>Jessica Haines</u>	Name: <u>Rex Lamont Butler</u>
Address: <u>510 2nd Ave #200</u>	Address: <u>745 W. 4th Ave. #300</u>
City, State, Zip: <u>Fairbanks, AK</u>	City, State, Zip: <u>Anchorage, AK 99501</u>

Name: <u>Shaun M. Sehl</u>	Name: _____
Address: <u>1007 W. 3rd Ave. #205</u>	Address: _____
City, State, Zip: <u>Anchorage, AK 99501</u>	City, State, Zip: _____

Case Number 3

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

Attorneys Involved:

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

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: <u>Courtney Lewis</u>	Name: <u>Margaret Thomas</u>
Address: <u>900 W. 5th Ave. Ste. 200</u>	Address: <u>PO Box 160</u>
City, State, Zip: <u>Anchorage AK, 99501</u>	City, State, Zip: <u>Nome, AK 99762</u>
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: <u>Courtney Lewis</u>	Name: <u>Margaret Thomas</u>
Address: <u>900 W. 5th Ave. Ste. 200</u>	Address: <u>PO Box 160</u>
City, State, Zip: <u>Anchorage AK, 99501</u>	City, State, Zip: <u>Nome, AK 99762</u>
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) Presiding Judge Administrative
RESTORATIVE JUSTICE PROGRAMS) Order No. 19-02
UNDER CR 11(i) and DL 23(f))
_____)

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.

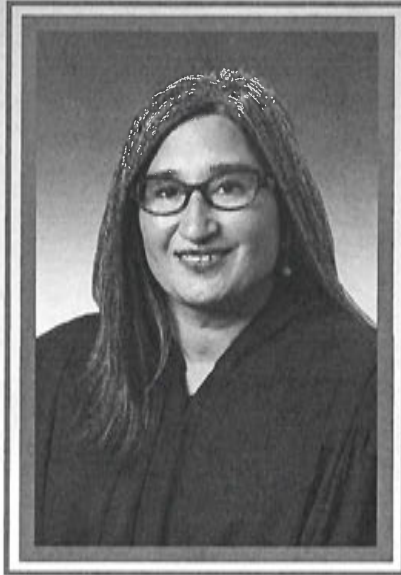

PAUL A. ROETMAN
Presiding Judge
Second Judicial District

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

Perspective Matters



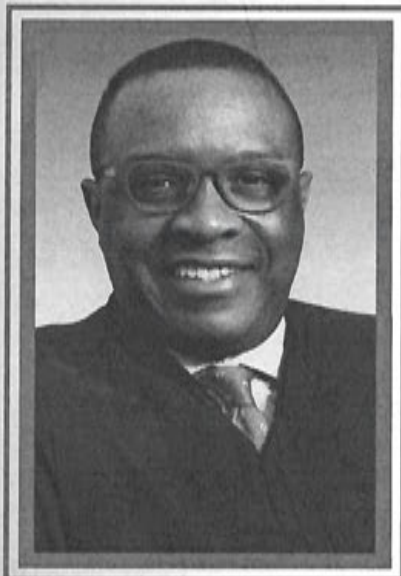
Judge Jo-Ann Chung
Anchorage District Court
2011 - Present
Asian American



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

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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 on one 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	03/08/15	National Weather Service
	03/18/15	9:09 a.m.		Low Temp	-21	
Sunset	03/12/15	8:53 p.m.	Peak Wind	49 mph, W.	03/07/15	Nome, Alaska (907) 443-2321 1-800-472-0391
	03/18/15	9:11 p.m.	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"	
			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.

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).

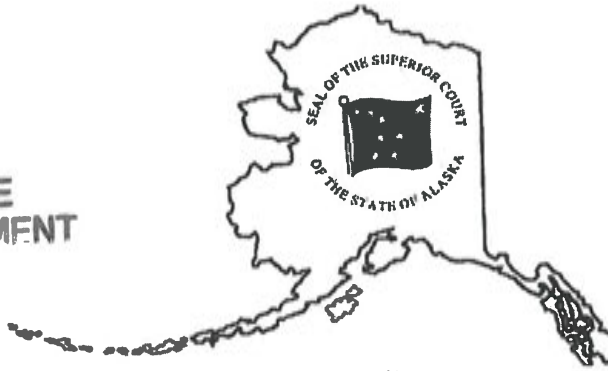
21. See *id.* at 474 (quoting *McCracken*, 518 P.2d at

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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