



# alaska judicial council

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## MEMORANDUM

**TO:** Judicial Council  
**FROM:** Staff  
**DATE:** August 8, 2016  
**RE:** Recusal Records of Judges Eligible for Retention in 2016

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### **I. Introduction**

One tool that the Judicial Council uses for evaluating judges is a judge's record of self-disqualification from cases, or "recusals." Judges are required to disclose potential reasons for disqualification and then step down from cases when there is a conflict. If a judge's activities prevent him or her from sitting on an inordinate number of cases, however, that judge may not be as effective as other judges in handling his or her caseload. This memo examines recusal records of those judges who are eligible for retention in 2016.

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

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

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

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

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

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

### III. Recusal Records - Superior Court Judges

		Superior Court												Judge Statistics			Summary Statistics	
Judicial District	Judge	2010		2011		2012		2013		2014		2015		Total	Mean	Median	District	All
		Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim					
First	George, David V	1	0	1	0	0	0	5	0	1	0	3	0	11	1.8	1.0	Mean 2.6 Median 2.5 Min/Max 0/6	
	Pallenberg, Philip M	2	0	3	1	4	0	5	1	4	0	4	1	25	4.2	4.0		
	Stephens, Trevor N	5	0	3	0	0	0	2	0	0	0	1	0	11	1.8	1.5		
		3	2	3	0	0	0	0	2	0	0	0	1	--	--	--		
Third	Aarseth, Eric A	7	0	5	0	3	0	0	0	5	2	4	0	26	4.3	4.5	Mean 3.8 Median 3.0 Min/Max 0/21	Mean 4.8 Median 3.0 Min/Max 0/36
	Easter, Catherine M	--	--	--	--	6	0	2	0	4	0	4	0	16	4.0	4.0		
	Kristiansen, Karl C	7	0	5	1	6	0	3	1	5	2	7	5	40	6.7	6.5		
	Marston, Erin B	--	--	--	--	--	--	6	0	4	0	6	0	16	5.3	6.0		
	Moran, Anna M	4	0	4	0	3	0	3	0	2	0	0	0	16	2.7	3.0		
	Rindner, Mark	4	0	5	0	5	0	2	0	2	0	3	0	21	3.5	3.5		
	Saxby, Kevin M	--	--	--	--	1	0	3	0	1	0	0	0	5	1.3	1.0		
	Smith, Jack W	0	0	0	0	1	0	0	0	0	0	1	0	2	0.3	0.0		
	White, Vanessa H	3	0	1	0	0	0	8	1	2	0	21	3	35	5.8	2.5		
		3	0	0	1	0	0	7	1	0	2	18	3	--	--	--		
Fourth	Blankenship, Douglas L	8	0	3	0	0	0	3	2	3	0	1	0	18	3.0	3.0	Mean 8.0 Median 4.0 Min/Max 0/36	
	Harbison, Bethany	2	6	2	1	0	0	1	2	3	0	1	0	--	--	--		
		--	--	--	--	--	--	36	1	9	0	7	0	52	17.3	9.0		
	Kauvar, Jane F	--	--	--	--	--	--	35	1	8	1	4	3	--	--	--		
	MacDonald, Michael A	3	0	6	0	0	0	1	0	4	2	5	0	19	3.2	3.5		
		1	2	1	5	0	0	1	0	2	2	5	0	--	--	--		
McConnell, Dwayne W	15	0	8	0	8	1	19	1	23	2	30	2	103	17.2	17.0			
	11	4	8	0	7	1	18	1	21	2	28	2	--	--	--			
	0	0	0	0	17	0	4	0	2	0	1	0	24	4.0	1.5			
	0	0	0	0	14	3	2	2	1	1	0	1	--	--	--			

Civ = Civil  
 Crim = Criminal  
 -- = No value or statistic not applicable

Overall, the recusal rates for superior court judges eligible for retention election in 2016 are unremarkable. Newly appointed judges frequently have a higher recusal rate their first year or two on the bench, and then the number of recusals sharply declines. In this group of superior court judges, Judge Harbison experienced that pattern, recusing herself 36 times in 2013 (her first full year on the superior court bench) and infrequently after that. All other superior court judges who will appear on the ballot recused themselves infrequently except for Judge MacDonald in Fairbanks, who averaged about seventeen recusals per year, mostly in civil cases, due to his many community and family ties in Fairbanks.

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

District Court																		
Judicial District	Judge	2012		2013		2014		2015		Judge Statistics			Summary Statistics					
		Total		Total		Total		Total		Total	Mean	Median	District	All				
		Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim									
First	Nave, Thomas G	2		2		2		1		7	1.8	2.0	See Judge Statistics	Mean 3.0 Median 1.0 Min/Max 0/41				
		1	1	1	1	2	0	1	0	--	--	--						
Third	Dickson, Leslie N	--		0		3		4		7	2.3	3.0	Mean 3.5 Median 1.0 Min/Max 0/41					
		--	--	0	0	3	0	4	0	--	--	--						
	0		3		0		0		3	0.8	0.0							
	--		--		0		3		4		--	--			--			
	--		--		41		25		1		67	22.3			25.0			
	--		--		41		0		25		0				--	--		
	1		0		4		0		5	1.3	0.5							
	0		1		0		0		1		3				0	0		
	0		0		0		1		0		0				0		--	--
	0		0		0		1		0		0				0		--	--
	2		0		0		1		2		5	1.3			1.5			
	2		0		0		1		0		2	--			--			
	0		1		0		1		1		2	0.5			0.5			
0		0		1		0		1		0		--	--					
1		3		1		3		8		2.0	2.0	2.0						
1		0		3		0		3		0		--	--					
3		6		9		2		20	5.0	4.5								
0		3		1		5		1		8		1	1		--	--		
Fourth	Christian, Matthew C	--		--		0		1		1	0.5	0.5	Mean 1.8 Median 1.5 Min/Max 0/4					
		--	--	--	--	0	0	0	1	--	--	--						
	2		4		3		0		9	2.3	2.5							
	2	0	1	3	0	3	0	0	--	--	--							
--		--		3		1		4	2.0	2.0								
--		--		--		--		2	1	0	1	--	--	--				

Civ = Civil  
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 -- = No value or statistic not applicable

With one exception, district court judges recused themselves infrequently, which is typical. The exception was Judge Henderson, who recused herself frequently from civil cases in her first and second year on the bench but only one time in 2015. The recusal data for the other district court judges standing for retention in 2016 was unremarkable.