

MEMORANDUM

TO: Judicial Council Members

FROM: Staff

DATE: April 24, 2000

RE: Disqualification for Cause (Recusal) Records for Judges Eligible for Retention in 2000

Alaska Statutes § 22.20.020 and Canon 3E of the Code of Judicial Conduct describe the circumstances in which a judge should be disqualified from hearing a particular matter. Disqualification under these provisions is referred to as disqualification “for cause.” AS §22.20.020 prohibits a judge from acting in certain matters — for example, matters in which the judge is a party or is related to a party or an attorney, matters in which the judge is a material witness, matters in which the judge or a member of the judge’s family has a direct financial interest, and certain matters in which one of the involved parties has recently been represented by the judge or the judge’s former law firm.

Judicial Canon 3E is a similar rule. It requires a judge to recuse (disqualify) himself or herself from proceedings in which the judge’s impartiality might reasonably be questioned. The Canon provides examples of such proceedings, including proceedings where the judge has a personal bias concerning a party or an attorney, where the judge or a member of the judge’s family is likely to be a material witness, where the judge or the judge’s former law partner served as a lawyer in the matter

in controversy, or where the judge or a member of the judge's family has a financial or other interest in the case.

Judicial Canon 4 requires judges to conduct their extra-judicial activities so as not to call into question their impartiality, or to interfere with the proper performance of their judicial duties. Specifically, Judicial Canon 4D prohibits a judge from engaging in financial or business dealings that would involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court.

The following tables show the number of cases from which superior and district court judges eligible for retention in 2000 recused themselves during their most recent terms. Of course, conflicts and resulting recusals are sometimes unavoidable. Situations can arise, regardless of a judge's compliance with applicable laws and Judicial Canons, where it would be unethical for a judge *not* to recuse himself or herself from a case. Recusals can result from a number of situations, and do not necessarily indicate that a judge has failed to sufficiently regulate his or her extra-judicial activities. However, a very high recusal rate can indicate problems with a judge carrying out the proper performance of his or her judicial duties.¹

¹The accuracy and completeness of some of the data in these tables are questionable. These figures were obtained from court system records, which are the best source of information available for recusal statistics. However, between 1994 and 1997 court record-keeping practices varied throughout the state, and the records for those years are not necessarily either correct or complete. According to the court system's statistics analyst, court data reporting practices have improved greatly since 1997, and the data from the past two years are reliable.

**RECUSAL RECORDS FOR SUPERIOR COURT JUDGES
 RETENTION EVALUATION 2000**

Judicial District	Judge	1994	1995	1996	1997	1998	1999
First	Weeks	4	3	4	6	8	6
	Zervos	4	5	3	0	7	5
Second	Erlich	6	2	4	5	1	0
	Esch			5	5	1	0
Third: Anchorage	Andrews	0	0	0	13	0	2
	Gonzalez	0	0	0	9	9	10
	Hensley			0	9	6	6
	Michalski	0	0	0	3	3	2
	Sanders			0	1	4	7
	Tan			0	0	4	4
	Wolverton	0 (district ct.)	0 (district ct.)	0	3	6	0
Third: Other Than Anchorage	Brown			0	0	0	0
	Hopwood	0	0	0	0	0	0
	Link	0	1	0	0	0	0
	Smith			0	0	4	0
	Torrissi			0	0	0	0
Fourth	Curda	5	13	10	13	7	5
	Greene	4	6	4	6	2	7

As shown in the table, only Judge Andrews, Judge Gonzalez, and Judge Curda had rates in double digits for any year. Judge Curda's rate was the highest. Judge Curda is the sole judge to sit in Bethel, which has a very heavy caseload. (Justice Matthews has announced that the court system will seek funding for an additional superior court position for Bethel next year). A higher caseload logically results in a greater number of potential conflicts, and therefore a greater number of judicial recusals. However, after adjusting for caseload differences, Judge Curda's recusal rate remains among the highest of the judges standing for retention in 2000. Judge Curda recused himself from between one and two percent of the cases assigned to him this term, a rate approximately equal to that of Judge Zervos, and approached by six other superior court judges, all of whom recused themselves from around one percent of their assigned cases this term.

RECUSAL RECORDS FOR DISTRICT COURT JUDGES RETENTION EVALUATION 2000					
Judicial District	Judge	1996	1997	1998	1999
Third	Ashman	1	7	0	0
	Bolger		0	10	0
	Finn	0	1	2	2
	Lombardi		0	1	0
	Wanamaker	0	0	0	1
Fourth	Funk			0	2
	Wood	11	3	4	8

The district court judges' recusal rates are uniformly low. Judge Wood's rate is the highest, but is in line with that of his Fairbanks colleague, Judge Kauvar. Over the four years, Judge Wood recused himself 26 times, while Judge Kauvar recused herself 21 times (Judge Funk, the third Fairbanks district court judge, recused himself 2 times in his first two years). To put these numbers in perspective, over the past four years the Fairbanks district court has averaged 15,834 filings per year. Dividing these filings among the three judges results in each judge receiving over 5,000 new cases per year. The highest annual number of recusals (11) would reflect a recusal rate of about one-fifth of one percent of assigned cases. (Even if the new filings were divided evenly among the three district court judges and two magistrates, each judicial position would receive over 3,000 new cases annually, resulting in a maximum recusal rate of less than one-half of one percent of assigned cases).