



alaska judicial council

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MEMORANDUM

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TO: Alaska Judicial Council

FROM: Staff

DATE: July 15, 2002

RE: Peremptory Challenge Rates for Judges Eligible for Retention in 2002

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 retention judges' peremptory challenge records by court level and judicial district. The tables display civil and criminal case challenges for each judge, by year. This memo examines the records of those judges who are eligible to stand for retention in November 2002. The tables display civil and criminal case challenges for each trial court judge, by year. Because superior court judges' terms are six years, a six year period is examined. Because district court judges' terms are four years, a four year period is examined. Parties have no right to peremptorily challenge an appellate judge, so those judges are not discussed.

II. Context for evaluating recusal 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

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

² See id.; AS 22.20.020.

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

⁴ See id.

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.

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. Presumably, when a judge records a disqualification by an attorney it is by peremptory challenge, and when a judge records a disqualification by the judge it is by recusal.

Each judge collects the data and provides it to the court system analyst for compilation quarterly. According to the court system analyst, until this year the data collection was uneven and unreliable for some judges. The court’s new collection methods using its new case management system should increase the accuracy of this data for future retention election evaluations.

Care must be taken when comparing judges with different caseloads. Judges with higher-volume caseloads generally will have more peremptory challenges than those with lower-volume caseloads. The caseload tables should only be used as a rough guide, however. 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, statistics in the district court caseload tables may reflect cases handled by magistrates as well as by district court judges. Finally, the court system’s caseload data does not reflect when a judge regularly travels to another community to hear cases, such as when Judge Thompson travels to Petersburg to hear cases for one week out of each month, or when Judge Miller travels to Craig to hear cases.

Parties who have not exercised their right of peremptorily challenge may challenge newly assigned judges, as if their case had been newly filed. Consequently, challenges often increase when a judge is assigned to a different caseload and challenges often occur when a new judge is appointed. 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 challenge rate of an Anchorage Superior Court judge with the rate of a superior court judge in another judicial district.

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A. Superior Court⁵

Year	1996		1997		1998		1999		2000		2001		Average Number Challenges per year	Average Caseload 1996-2001	Rate
Judge	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim			
Collins	1 1D 0P	13 13D 0P	0	15 15D 0P	0	15 15D 0P	1 1D 0P	3 1D 2P	7 4D 3P	1 1D 0	7 5D 2P	3 3D 0P	11	514	2%
Thompson	4 3D 1P	6 1D 5P	6 4D 2P	1 0D 1P	6 3D 3P	3 2D 1P	11 10D 1P	5 2D 3P	11 4D 7P	8 6D 2P	11 7D 4P	6 3D 3P	13	363	4%
Card	48 20D 28P	0	0	1 1D 0P	0	4 4D 0P	0	5 4D 1P	0	5 4D 1P	0	5 5D 0P	11	796	1%
Pengilly	3 1D 2P	6 4D 2P	3 0D 3P	2 2D 0P	7 6D 1P	6 3D 3P	24 6D 18P	0	26 11D 15P	5 1D 4P	23 3D 20P	1 0D 1P	18	533	3%
Savell	21 10D 11P	12 12D 0P	26 9D 17P	15 9D 6P	25 10D 15P	11 11D 0P	24 13D 11P	22 21D 1P	20 8D 12P	6 5D 1P	19 10D 9P	9 8D 1P	35	533	7%

⁵

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

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

Judge Collins (Juneau): Judge Collins received an average of 11 challenges a year over the past six years. In the first four years of her term, most of her challenges came from criminal defendants. During the past two years, her challenges have increasingly come from civil defendants. She is challenged in about 2% of her cases.

Judge Thompson (Ketchikan): Judge Thompson received an average of 13 challenges a year over the past six years. The most challenges he has received in a given year was 19 in 2000; the fewest was seven in 1997. He is challenged in about 4% of his cases.

Judge Card (Anchorage): Judge Card received 48 challenges in 1996. The most challenges he received in any other year was five. Discounting the challenges he received in 1996, he is challenged in fewer than 1% of his cases.

Judge Pengilly (Fairbanks): Judge Pengilly received few challenges until 1999, when he received 24. In 2000 and 2001 he received 31 and 24 challenges respectively. Most of these challenges come from civil litigants and more often came from plaintiffs than defendants. He is rarely challenged in criminal cases. He is challenged in about 3% of his cases.

Judge Savell (Fairbanks): Judge Savell has averaged 35 challenges a year during the past six years. Two other Fairbanks judges averaged over 100 challenges during their most recent terms. The mode for Fairbanks superior court judges is 27 challenges per year. Judge Savell's challenges come most often in civil cases and come more often from plaintiffs than from defendants. He is challenged in about 7% of his cases.

B. District Court⁶

1. Anchorage

Year	1998		1999		2000		2001		Average challenges per year	Average caseload	Rate
Judge	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim			
Adams					1 0D 1P	7 4D 3P	1 1D 0P	2 2D 0P	6	6,385	.1%
Lohff	2 2D 0P	3 3D 0P	2 2D 0P	6 6D 0P	3 2D 1P	88 88D 0P	13 6D 7P	9 9D 0P	32	6,385	.5% .2%
Motyka	0	8 8D 0P	1 1D 0P	3 3D 0P	1 0D 1P	3 3D 0P	1 0D 1P	3 3D 0P	5	6,385	.1%
Murphy	1 1D 13P	3 2D 1P	4 0D 4P	6 3D 3P	3 3D 0P	28 25D 3P	2 1D 1P	5 4D 1P	13	6,385	.2%
Rhoades	11 1D 10P	12 12D 0P	16 6D 10P	14 14D 0P	5 2D 3P	7 6D 1P	8 2D 6P	1 0D 1P	19	6,385	.3%

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

The district court figures for peremptory challenges are much lower than superior court challenges when adjusted for caseload. There are several reasons for the lower figures. First, district court cases are not assigned until trial call. According to Wendy Lyford, Area Court Administrator for the Third Judicial District, only 1.3% of district court criminal cases, and 40% of district court civil cases are ever assigned to a judge in advance of a court proceeding. Thus, attorneys in district court cases have relatively fewer opportunities to bring a peremptory challenge than those in superior court cases. Moreover, before 2000, the district court judges reported criminal case disqualification and recusal data on manual forms and not did not enter the data into the case management system. Due to the manual tracking, not all the data were reliably captured.

Judge Adams (Anchorage): Judge Adams was challenged eight times in 2000 and three times in 2001, averaging about six challenges a year which is less than .1% of his caseload.

Judge Lohff (Anchorage): Judge Lohff had one year, 2000, when 88 criminal defendants disqualified him. The most he was challenged in any other year was 22 times. In 2000, Judge Lohff acted on the superior court *pro tem* when Judge Souter retired, taking over Judge Souter's felony trials. This circumstance likely accounts for his high number of disqualifications for that year. When adjusted for caseload, his challenge rate is about .5%. When his 2000 challenges are discounted, his challenge rate falls to .2%.

Judge Murphy (Anchorage): Judge Murphy was disqualified four times in 1998 and ten times in 1997. He faced 25 disqualifications by criminal defendants in 2000. The next year, in 2001, he was peremptorily challenged only seven times. When adjusted for caseload, his challenge rate is less than .2%.

Judge Rhoades (Anchorage): Judge Rhoades was challenged an average of about 19 times per year during the past four years. When adjusted for caseload, her challenge rate is about .3%. She received 20 challenges in 1999, 12 in 2000, and nine in 2001. The number of times she is peremptorily challenged appears to be decreasing over time.

2. District Court Judges - Fairbanks, Juneau, Ketchikan, Homer:

Year	1998		1999		2000		2001		Average challenges per year	Average caseload	Rate
Judge	Civ	Crim	Civ	Crim	Civ	Crim	Civ	Crim			
Neville	4 4D 0P	6 6D 0P	4 3D 1P	8 8D 0P	2 1D 1P	9 9D 0P	7 6D 1P	8 6D 2P	12	2,620	.5%
Miller			7 7D 0P	5 4D 1P	0	2 2D 0P	0	3 3D 0P	6	3,263	.2%
Kauvar	48 40D 8P	71 70D 1P	24 11D 13P	58 57D 1P	17 6D 11P	33 32D 1P	2 2D 0P	8 8D 0P	65	5,835	1.1%
Froehlich	6 5D 1P	56 55D 1P	6 6D 0P	63 58D 5P	5 5D 0P	62 58D 4P	2 2D 0P	91 89D 2P	72	8,067	.9%

Judge Neville (Homer): Judge Neville was disqualified an average of about 12 challenges a year for the past four years. Because she is assigned to fewer cases than the Anchorage judges, her challenge rate is higher for about the same number of challenges. She is challenged in about .5% of her cases.

Judge Miller (Ketchikan): Judge Miller was disqualified an average of about six times a year in the past three years. He was challenged twelve times in 1999, the year he was appointed, and then two times in 2000 and three times in 2001. He is challenged in .2% of his cases.

Judge Froehlich (Juneau): Judge Froehlich had the highest number of disqualifications of any district court judge eligible for retention in 2002, averaging about 72 disqualifications per year over the four-year term. Judge Froehlich has the highest caseload of any district court judge evaluated for this term. When adjusted for caseload, his challenge rate is .9%.

Judge Kauvar (Fairbanks): Judge Kauvar averaged about 65 challenges per year over her four-year term. She was disqualified 40 times in 2000. She was only disqualified ten times in 2000 but spent most of that year on sabbatical. When adjusted for caseload, she has the highest challenge rate of the district court judges up for retention this election. She is challenged in about 1% of her cases. She has averaged fewer challenges than some other Fairbanks judges, however, who have averaged more than 100 challenges per year.

**Appendix A
Comparative Caseloads - Alaska Superior Court**

Locale	Case Filings by Year	1996	1997	1998	1999	2000	2001	Average filings/ judge
Juneau (2 Judges)		1,156	1,242	960	952	871	990	1,029 514
Ketchikan (2 Judges)		798	813	708	679	718	640	726 363
Anchorage (12-13 Judges)		11,575	10,916	11,328	8,343	8,490	8,214	9,811 796
Fairbanks (5 Judges)		2,520	2,740	2,833	2,787	2,546	2,556	2,664 533

Comparative Caseloads - Alaska District Court:

Locale	Case Filings by Year	1998	1999	2000	2001	Average filings/ judge
Juneau (1 Judge)		8,549	8,835	7,119	7,764	8,067 8,067
Ketchikan (1 Judge)		2,987	3,316	3,179	3,569	3,263 3,263
Anchorage (9 Judges)		53,669	61,446	56,649	58,089	57,463 6,385
Homer (1 Judge)		2,775	2,855	2,116	2,734	2,620 2,620
Fairbanks (3 Judges)		15,082	16,161	21,100	17,677	17,505 5,835