



# alaska judicial council

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## MEMORANDUM

**TO:** Judicial Council

**FROM:** Staff

**DATE:** April 10, 2006

**RE:** Recusal records for judges eligible for retention in 2006

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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 2006.

### **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.

**III. Recusal Records - Superior Court Judges**

| <b>Recusal Records for Superior Court Judges<br/>Retention Evaluation 2006</b> |             |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Judge</b>   | <b>2000</b> | <b>2001</b> | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> |
| <b>Joel Bolger</b> (Kodiak)  |             |             |             |             | 0           | 0           |
| <b>Harold M. Brown</b> (Kenai)   | 0           | 0           | 0           | 0           | 0           | 1           |
| <b>Leonard R. Devaney III</b> (Bethel)   |             |             | 5           | 2           | 7           | 12          |
| <b>Richard H. Erlich</b> (Kotzebue)  | 1           | 0           | 0           | 0           | 6           | 2           |
| <b>Ben Esch</b> (Nome)   | 0           | 0           | 0           | 0           | 0           | 1           |
| <b>Charles T. Huguelet<sup>1</sup></b> (Kenai)                                 |             |             |             |             | 0           | 0           |
| <b>Peter A. Michalski</b> (Anchorage)  | 4           | 20          | 2           | 6           | 3           | 7           |
| <b>William F. Morse</b> (Anchorage)  |             |             | 23          | 0           | 2           | 3           |
| <b>Randy M. Olsen</b> (Fairbanks)  |             |             |             | 21          | 12          | 13          |
| <b>Eric Smith</b> (Palmer)   | 0           | 0           | 0           | 0           | 2           | 1           |
| <b>John Suddock</b> (Anchorage)  |             |             |             | 3           | 5           | 2           |
| <b>Sen K. Tan</b> (Anchorage)  | 3           | 3           | 1           | 1           | 2           | 0           |
| <b>Fred Torrisi</b> (Dillingham)   | 0           | 0           | 2           | 2           | 3           | 3           |
| <b>Philip R. Volland</b> (Anchorage)   |             |             |             | 3           | 0           | 3           |
| <b>Larry Weeks</b> (Juneau)  | 3           | 5           | 3           | 4           | 1           | 2           |
| <b>Michael L. Wolverton</b> (Anchorage)  | 0           | 3           | 3           | 0           | 2           | 0           |
| <b>Mark I. Wood</b> (Fairbanks)  |             |             | 18          | 22          | 25          | 16          |
| <b>Larry C. Zervos</b> (Sitka)   | 3           | 1           | 2           | 3           | 0           | 0           |

Judges Olsen and Wood recused themselves more frequently than other judges. Both judges have been residents of Fairbanks for a long time and are active community members. It is not surprising that they would have more occasions to recuse themselves. Judge Morse recused himself 23 times in his first year of appointment, likely due to conflicts created by his prior employment as an assistant attorney general. This explanation is confirmed by the sharp decline in his recusal rate in subsequent years. Judge Devaney's rate of recusal is moderate and has gradually increased in recent years probably due to the relatively small Bethel population and his family's involvement in the community. Overall, the recusal rates for superior court judges are unremarkable.

<sup>1</sup>Spaces are blank in years that preceded the judge's appointment to their current position.

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

| <b>Recusal Records for District Court Judges<br/>Retention Evaluation 2006</b> |             |             |             |             |
|--|-------------|-------------|-------------|-------------|
| <b>Judge</b>   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> |
| <b>Winston S. Burbank</b> <sup>2</sup> (Fairbanks)                             |             | 1           | 7           | 1           |
| <b>Brian K. Clark</b> (Anchorage)  |             | 0           | 0           | 0           |
| <b>William L. Estelle</b> (Palmer)   |             | 0           | 2           | 6           |
| <b>Gregory Louis Heath</b> (Palmer)  |             | 1           | 4           | 0           |
| <b>Jane F. Kauvar</b> (Fairbanks)  | 1           | 2           | 3           | 3           |
| <b>David S. Landry</b> (Kenai)   |             |             | 5           | 4           |
| <b>John R. Lohff</b> (Anchorage)   | 0           | 0           | 0           | 0           |
| <b>Kevin G. Miller</b> (Ketchikan)   | 22          | 9           | 26          | 20          |
| <b>Gregory Motyka</b> (Anchorage)  | 0           | 0           | 1           | 0           |
| <b>Sigurd E. Murphy</b> (Anchorage)  | 0           | 0           | 1           | 0           |
| <b>Stephanie Rhoades</b> (Anchorage)   | 2           | 0           | 3           | 0           |
| <b>Jack W. Smith</b> (Anchorage)   |             | 0           | 0           | 1           |
| <b>John W. Wolfe</b> (Palmer)  |             |             |             | 0           |

District court judges had very few recusals. Judge Miller's recusals were nearly two-thirds of the total number of recusals of district court judges on the ballot in 2006. Judge Miller is the sole district court judge in Ketchikan, and a long term resident of Ketchikan. He has relatives that are local attorneys. These circumstances likely contribute to his higher rate of recusal.

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<sup>2</sup>Spaces are blank in years that preceded the judge's appointment to the bench.