



# alaska judicial council

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## MEMORANDUM

**TO:** Judicial Council

**FROM:** Staff

**DATE:** May 8, 2008

**RE:** Recusal records for judges eligible for retention in 2008

### **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 2008.

### **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.

### III. Recusal Records - Superior Court Judges

Recusal Records for Superior Court Judges Retention Evaluation 2008						
Judge	2002	2003	2004	2005	2006	2007
<b>Collins, Patricia A.</b> (Juneau)	Data unavailable from Alaska Court System		3	3	7	7
<b>Downes, Robert B.</b> (Fairbanks)	n/a	n/a	n/a	107	29	46
<b>Stowers, Craig F.</b> (Anchorage)	n/a	n/a	8	28	17	8

Judge Downes recused himself more frequently than other superior court judges. He was appointed only in 2005 and has been a long-time resident of Fairbanks and an active community member. Even so, the number of times he recused himself in 2005 (107 times) was highly unusual. Although this number declined to 29 the following year, he recused himself 46 times in 2007. The number of recusals in all three years is high compared to other judges. His rates in 2005 and 2007 are among the highest recusal rates noted since the Judicial Council began reviewing recusal data. The Council requested Judge Downes to comment on the high number of recusals. Judge Downes explained that he was a high-volume trial attorney before being appointed and that he was very active in the community with organizations and family interests. He further explained that in late 2006 he hired a local attorney as a law clerk and was required to recuse himself from a few cases on which she had worked.

Judge Stowers's recusal rate shows a typical pattern for a new judge – many at first (2005 was his first full year as a judge) and then sharply declining as the judge's previous contacts as an attorney become more distant in time. Judge Collins's recusal rate is unremarkable. The court system did not provide any data regarding the number times Judge Collins recused herself in 2002 or 2003.

### IV. Recusal Records - District Court Judges

Recusal Records for District Court Judges Retention Evaluation 2008				
Judge	2004	2005	2006	2007
<b>Cummings, Dennis P.</b> (Bethel)	n/a	n/a	6	2
<b>Funk, Raymond</b> (Fairbanks)	4	1	3	6
<b>Hanley, J. Patrick</b> (Anchorage)	n/a	0	3	0
<b>Levy, Keith B.</b> (Juneau)	n/a	3	2	10
<b>Murphy, Margaret L.</b> (Homer)	n/a	2	2	0
<b>Schally, Daniel</b> (Valez)	n/a	0	0	0
<b>Swiderski, Alex M.</b> (Anchorage)	n/a	1	8	2

District court judges had very few recusals. This is typical.