



alaska judicial council

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MEMORANDUM

TO: Judicial Council

FROM: Staff

DATE: April 5, 2010

RE: Recusal records for judges eligible for retention in 2010

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 2010.

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 tables on the following pages 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. Please note that no judges in the Second Judicial District are eligible for retention election in 2010. Blank cells indicate that the judge had not yet been appointed to his or her current position.

III. Recusal Records - Superior Court Judges

Recusal Records for Superior Court Judges Retention Evaluation 2010						
Judge	2004	2005	2006	2007	2008	2009
First District:						
George, David V. (Sitka)					9	3
Pallenberg, Philip M. (Juneau)				20	9	10
Stephens, Trevor N. (Ketchikan)	4	9	9	4	2	8
Third District:						
Aarseth, Eric A. (Anchorage)			1	1	0	1
Bauman, Carl (Kenai)				3	5	5
Gleason, Sharon (Anchorage)	0	3	5	0	0	0
Kristiansen, Kari C. (Palmer)				1	1	4
McKay, Patrick J. (Anchorage)			13	2	2	6
Moran, Anna M. (Kenai)				5	2	2
Rindner, Mark (Anchorage)	2	4	3	1	0	3
Smith, Jack (Anchorage)		1	1	2	0	0
Spaan, Michael R. (Anchorage)				10	0	0
White, Vanessa (Palmer)			0	13	1	3
Fourth District:						
Blankenship, Douglas (Fairbanks)			16	24	4	13
Hamilton, Marvin C. (Bethel)				10	8	16
MacDonald, Michael S. (Fairbanks)				34	29	13

Overall, the recusal rates for superior court judges eligible for retention election in 2010 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, as in the case of Judges Pallenberg, McKay, Spaan, and White. Fairbanks judges typically have higher rates of recusal than judges in other locations, perhaps due to local legal practices or the small number of practitioners, or judges who are very active in community activities. To compare, in 2006 Judge Wood had an average of 20 recusals per year and Judge Olson had an average of 15 recusals per year for their six year terms. Judge Blankenship's current average of 15 recusals per year and Judge MacDonald's current average of 25 recusals per year are within the normal ranges for Fairbanks superior court judges, particularly because they were also both newly appointed. Both judges' recusal rates declined in 2009.

IV. Recusal Records - District Court Judges

Recusal Records for District Court Judges Retention Evaluation 2010				
Judge	2006	2007	2008	2009
First District:				
Kevin G. Miller (Ketchikan)	17	21	12	10
Third District:				
Clark, Brian K. (Anchorage)	1	1	1	0
Easter, Catherine M. (Anchorage)			3	3
Estelle, William L. (Palmer)	5	1	2	0
Illsley, Sharon S. (Kenai)			1	3
Motyka, Gregory J.	2	1	0	0
Postma, Richard		0	0	0
Rhoades, Stephanie L.	1	0	2	1
Wolfe, John W. (Palmer)	1	0	0	0
Fourth District:				
Kauvar, Jane F.	1	10	7	4

Aside from Judge Miller, district court judges recused themselves infrequently. This is typical. Judge Miller is the sole district court judge in Ketchikan and a long term resident there. He has relatives who are local attorneys. These circumstances likely contribute to his higher rate of recusal. From 2001-2005, Judge Miller averaged 19 recusals per year. From 2006-2009, he averaged 15 recusals per year, so his rate of recusal is declining.