Alaska Judicial Council
Performance Evaluation for:

Judge Romano D. DiBenedetto
Nome Superior Court

The Alaska Judicial Council finds Judge DiBenedetto met or exceeded performance standards, and recommends a **"YES"** vote for another term in office

Judge Romano DiBenedetto was appointed to the Nome Superior Court in February of 2017. This is his first retention evaluation. Judge DiBenedetto handles civil and criminal cases.

Performance Summary:

After conducting its performance review, the Judicial Council determined that Judge DiBenedetto met or exceeded performance standards on all criteria, including legal ability, integrity, impartiality/fairness, temperament, diligence, and administrative skills.

The Council also determined that Judge DiBenedetto met or exceeded educational requirements set by the Alaska Supreme Court.

Because Judge DiBenedetto met or exceeded all performance and professional development standards, the Alaska Judicial Council recommends a "yes" vote on retention in office.

Performance Findings:

The Council conducts a thorough performance review of each judge standing for retention. Key findings for Judge DiBenedetto include:

- **Ratings by justice system professionals:** Attorneys and law enforcement officers who appeared before Judge DiBenedetto gave him good reviews, as did court employees.

- **Ratings by jurors:** Jurors who served in trials before Judge DiBenedetto during 2018 and 2019 rated him 4.8 overall on a five-point scale. One juror commented, "Thank you for the instructions given to the jury at the beginning, and explaining what the district and defense attorneys proceedings were."

- **Professional activities:** The Council's review of Judge DiBenedetto's professional activities showed positive contributions to his community and to the administration of justice. Judge DiBenedetto served as a member of the court system's criminal pattern jury instruction committee, and as a mentor to newer judges. Judge DiBenedetto spoke at a youth conference in Nome.

- **Other performance indicators:** The Council's review of other performance indicators, including Judge DiBenedetto's financial and conflict of interest statements, disqualifications from cases, and appellate reversal rates, raised no performance concerns.

- **Timeliness:** Alaska law requires judges' pay be withheld if a decision is pending longer than six months. The Council verified that Judge DiBenedetto was paid on schedule, and he certified that he had no untimely decisions.

- **Ethics:** There were no public disciplinary proceedings against Judge DiBenedetto, and the Council's review found no ethical concerns.

Documents:

- Judge DiBenedetto's Judge Questionnaire
- Judge DiBenedetto's Attorney Survey Ratings
- Judge DiBenedetto's Peace and Probation Officer Survey Ratings
- Judge DiBenedetto's Court Employee Survey Ratings
- Juror Survey Memo
- Peremptory Challenges Memo
- Recusal Records Memo
- Appellate Evaluation Memo

Print Questionnaire

Received
OCT 31 2019
Alaska Judicial Council

alaska judicial council

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Alaska Judicial Council
Trial Judge Questionnaire

2020 Candidates for Judicial Retention

November 2019

Romano D. DiBenedetto
Name

Nome
Court

1. Please estimate your workload during your present term.

a) 45 % civil cases
45 % criminal cases
10 % court administrative work
100 % Total

b) 3 # of jury trials/year
10 # of non-jury trials/year
1 # of administrative appeals/year

2. Please describe your participation on court/bar committees or other administrative activities during your current term of office.

I am a member of the criminal pattern instruction committee. Also, I serve as a mentor judge.

3. Please describe any judicial or legal education you have undertaken or provided during your current term in office.

I attend the annual judicial conferences. I also attended a NJC seminar in Seattle and will attend another in Austin. I also coordinated a training for the coastal judges.

4. Please describe any public outreach activities.

I gave a presentation to the state wide youth court conference that was held in Nome. I will be giving another presentation to our local youth court in Nome.

5. Please assess, in one or two paragraphs, your judicial performance during your present term. Appropriate areas of comment could include: satisfaction with your judicial role, specific contributions to the judiciary or the field of law, increases in legal knowledge and judicial skills, or other measures of judicial abilities that you believe to be important.

I enjoy the work of a trial judge, and I enjoy my community.I was a magistrate / standing master before taking this job, and I have enjoyed increasing my knowledge in all areas of superior court work.

6. During your most recent term as a judge, have you:

a) had a tax lien filed or other collection procedure instituted against you by federal, state, or local authorities? ☐ Yes ☑ No

b) been involved in a non-judicial capacity in any legal proceeding whether as a party or otherwise? ☐ Yes ☑ No

c) engaged in the practice of law (other than as a judge)? ☐ Yes ☑ No

d) held office in any political party? ☐ Yes ☑ No

e) held any other local, state or federal office? ☐ Yes ☑ No

f) had any complaints, charges or grievances filed against you with the Alaska Commission on Judicial Conduct, the Alaska Bar Association, the Alaska Court System, or any other agency that resulted in public proceedings or sanctions? ☐ Yes ☑ No

7. If your answer to any of the questions above is "yes," please give full details, including dates, facts, case numbers and outcomes.

8. Please provide any other information which you believe would assist the Council in conducting its evaluations and in preparing its recommendations for the 2020 retention elections.

I do not have any other information at this time.

For questions 9 - 12, please do not list any cases that have pending issues in your court.

9. Please list your three most recent jury trials including case names and numbers. Please list the names, current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these trials. (Attach additional pages if necessary.)

Case Number 1

Case Name: SOA ***Case Number:*** 2UT-18-00143 CR

v. DENIS KATCHATAG

Attorneys Involved:

Name: John Earthman	Name: Zachery Davies
Address: P.O. Box 160	Address: P.O. Box 203
City, State, Zip: Nome, AK 99762	City, State, Zip: Nome, AK 99762
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Case Number 2

Case Name: SOA ***Case Number:*** 2NO-18-00728 CR

v. RYAN ANTOGHAME

Attorneys Involved:

Name: John Earthman	Name: Zachery Davies
Address: P.O. Box 160	Address: P.O. Box 203
City, State, Zip: Nome, AK 99762	City, State, Zip: Nome, AK 99762
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Case Number 3

Case Name: SOA ***Case Number:*** 2KB-16-00008 CR

v. RAYMOND FRANKSON JR.

Attorneys Involved:

Name: Rachel Ahrens	Name: Moshe Zorea
Address: P.O. Box 349	Address: P.O. Box 212043
City, State, Zip: Kotzebue, AK 99762	City, State, Zip: 99521-2043
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

10. Please list your three most recent non-jury trials including case names and numbers. Please list the names, current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these trials. (Attach additional pages if necessary.)

Case Number 1

Case Name: SHAWN POMRENKE ***Case Number:*** 2NO-18-00046 CI

v. JENNIE SCHIELD

Attorneys Involved:

Name: Colleen Baxter	Name:
Address: 310 K Street	Address:
City, State, Zip: Anchorage, AK 99501	City, State, Zip:
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Case Number 2

Case Name: IDA LINCOLN ***Case Number:*** 2NO-17-00079 CI

v. DAVIS LINCOLN

Attorneys Involved:

Name: Erin Lillie	Name: Robert Sato
Address: P.O. Box 61	Address: 500 L Street
City, State, Zip: Nome, AK 99762	City, State, Zip: Anchorage, AK 99501
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Case Number 3

Case Name: MICHAEL D. FANNING ***Case Number:*** 2KB-16-00038 CI

v. SUSAN B. FANNING

Attorneys Involved:

Name: Adam Lambert	Name: Dan Allan
Address: 750 W 2nd Ave., 203	Address: 800 E Diamond Blvd. Suite 3-620
City, State, Zip: Anchorage, AK 99501	City, State, Zip: Anchorage, AK 99515
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

11. Please list your three most recent cases, including case names and numbers, which did not go to trial, but on which you did significant work (such as settlement conference, hearings, motion work, etc.). Please list the names, current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these cases. (Attach additional pages if necessary.)

Case Number 1

Case Name: V.O., et. al. ***Case Number:*** 2NO-17-00191 CI

v. BERING STRAIT SCHOOL DISTRICT, et. al.

Attorneys Involved:

Name: James Valcarce	Name: Donald F. Austin
Address: P.O. Box 409	Address: 2112 Third Ave., 500
City, State, Zip: Bethel, AK 99559	City, State, Zip: Seattle, WA 98121
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Case Number 2

Case Name: PATRICK HUGO ***Case Number:*** 2BA-15-00268 CI

v. ALASKA AIRLINES

Attorneys Involved:

Name: Robert Cambell	Name: James Wilkens
Address: P.O. Box 1303	Address: 310 K Street
City, State, Zip: Utqiagvik, AK 99723	City, State, Zip: Anchorage, AK 99501
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

Case Number 3

Case Name: YONG B. KIM ***Case Number:*** 2NO-17-00047 CI

v. FRANCES C. WHITMORE

Attorneys Involved:

Name: H. Conner Thomas	Name: Zacharia Olson
Address: P.O. Box 61	Address: 1100 Connecticut Ave., N.W 825
City, State, Zip: Nome, AK 99762	City, State, Zip: Washington D.C. 20036
Name:	Name:
Address:	Address:
City, State, Zip:	City, State, Zip:

12. *Optional:* If you deem it helpful to the Council, please list up to three other cases during your past term in which you believe your work was particularly noteworthy. Please list the names, current addresses, including zip codes and suite numbers where applicable, of each attorney involved in these cases. (Attach additional pages if necessary.)

Case Number 1

Case Name: _____ ***Case Number:*** _____

v. _____

Attorneys Involved:

Name: _____ Name: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

Name: _____ Name: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

Case Number 2

Case Name: _____ ***Case Number:*** _____

v. _____

Attorneys Involved:

Name: _____ Name: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

Name: _____ Name: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

Case Number 3

Case Name: _____ ***Case Number:*** _____

v. _____

Attorneys Involved:

Name: _____ Name: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

Name: _____ Name: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

(This question pertains to Superior Court judges only.)

State law requires the Council to conduct an evaluation of judges standing for retention, and to provide information to the public about the judges. Under a provision added in 2013, the information the Council provides to the public "shall include the judge's consideration of victims when imposing sentence on persons convicted of felony offenses where the offenses involve victims." (see AS 22.10.150). Although the Council's evaluations address all aspects of judicial performance, including felony sentencing, they have not in the past explicitly solicited judges' thoughts on this topic.

Please submit a short statement about how you consider victims when imposing sentences in felony offenses.

See attached letter.

Superior Court
State of Alaska
SECOND JUDICIAL DISTRICT

Hon. Romano D. DiBenedetto
Superior Court Judge

P.O. Box 1110
Nome, Alaska 99762-1110
Telephone (907) 443-5216
Fax (907) 443-2192

January 29, 2020

Ms. Susanne DiPietro
Executive Director
Alaska Judicial Council

Re: "short statement about how [I] consider victims when imposing sentences in felony offenses", as requested in your letter dated January 14, 2020

Dear Ms. Pietro:

For felony offenses, in addition to the restoration of the victim and the community, I consider (1) the seriousness of the defendant's present offense in relation to other offenses; (2) the prior criminal history of the defendant and the likelihood of rehabilitation; (3) the need to confine the defendant to prevent further harm to the public; (4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order; (5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; (6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms.

Thus, at sentencing, I consider the victim's trial testimony as well as any sentencing statements made either in writing or in person. That information from the victim, as well as consideration of all of the other factors stated above, form the basis of my sentencing decisions.

Thank you for your inquiry. If you require further information, please do not hesitate to contact me.

Sincerely,

Romano D. DiBenedetto

Table 15
Judge Romano D. DiBenedetto
Demographic Description of Respondents - Bar Association Members

		n	*%*
	All respondents	**109**	**100**
Experience with Judge			
	Direct professional experience	90	82.6
	Professional reputation	11	10.1
	Other personal contacts	8	7.3
Detailed Experience*			
	Recent experience (within last 5 years)	85	97.7
	Substantial amount of experience	22	24.7
	Moderate amount of experience	39	43.8
	Limited amount of experience	28	31.5
Type of Practice			
	No response	1	0.9
	Private, solo	17	15.6
	Private, 2-5 attorneys	13	11.9
	Private, 6+ attorneys	7	6.4
	Private, corporate employee	-	-
	Judge or judicial officer	32	29.4
	Government	31	28.4
	Public service agency or organization	3	2.8
	Retired	5	4.6
	Other	-	-
Length of Alaska Practice			
	No response	2	1.8
	5 years or fewer	7	6.4
	6 to 10 years	14	12.8
	11 to 15 years	12	11.0
	16 to 20 years	19	17.4
	More than 20 years	55	50.5
Cases Handled			
	No response	1	0.9
	Prosecution	10	9.2
	Criminal	7	6.4
	Mixed criminal & civil	51	46.8
	Civil	34	31.2
	Other	6	5.5
Location of Practice			
	No response	1	0.9
	First District	2	1.8
	Second District	10	9.2
	Third District	60	55.0
	Fourth District	34	31.2
	Outside Alaska	2	1.8
Gender			
	No response	4	3.7
	Male	65	59.6
	Female	40	36.7

*Only among those respondents reporting direct professional experience with the judge.

Table 16
Judge Romano D. DiBenedetto
Detailed Responses - Bar Association Members

	n	Legal Ability *M*	Impartiality/ Fairness *M*	Integrity *M*	Judicial Temperament *M*	Diligence *M*	Overall *M*
All respondents	109	3.9	3.9	4.2	3.8	4.1	3.9
Basis for Evaluation							
Direct professional experience	**90**	**3.9**	**3.8**	**4.1**	**3.8**	**4.0**	**3.9**
Experience within last 5 years	85	3.8	3.8	4.1	3.7	4.0	3.8
Experience not within last 5 years	2	4.5	5.0	5.0	5.0	4.5	5.0
Substantial amount of experience	22	3.8	4.0	4.1	3.9	4.2	4.0
Moderate amount of experience	39	3.8	3.8	4.1	3.8	4.0	3.8
Limited amount of experience	28	3.9	3.6	4.1	3.6	4.0	3.8
Professional reputation	11	3.8	4.0	4.5	4.0	4.1	3.9
Other personal contacts	8	4.2	4.0	4.2	3.8	4.3	4.1
Type of Practice*							
Private, solo	15	3.5	3.3	3.9	3.6	3.6	3.6
Private, 2-5 attorneys	13	3.8	4.3	4.5	4.2	4.3	4.2
Private, 6+ attorneys	5	3.4	3.2	3.4	3.2	3.4	3.2
Private, corporate employee	-	-	-	-	-	-	-
Judge or judicial officer	27	4.6	4.4	4.7	4.4	4.6	4.5
Government	24	3.3	3.4	3.7	3.1	3.7	3.2
Public service agency or organization	2	4.0	3.5	4.0	3.5	4.0	3.5
Retired	3	4.0	3.7	4.3	3.3	4.0	4.0
Other	-	-	-	-	-	-	-
Length of Alaska Practice*							
5 years or fewer	6	3.2	3.2	3.8	3.3	3.3	3.2
6 to 10 years	11	3.4	3.8	4.1	3.3	4.3	3.7
11 to 15 years	9	4.2	4.1	4.2	3.9	4.3	3.9
16 to 20 years	16	4.3	4.1	4.4	4.3	4.2	4.3
More than 20 years	46	3.8	3.8	4.1	3.7	3.9	3.8
Cases Handled*							
Prosecution	6	3.3	3.8	4.0	3.5	4.2	3.3
Criminal	7	3.4	2.9	3.6	3.1	3.7	3.3
Mixed criminal & civil	46	4.0	4.0	4.2	4.0	4.1	4.0
Civil	28	3.8	3.8	4.3	3.6	3.9	3.9
Other	2	4.5	4.0	4.5	4.5	4.5	4.0
Location of Practice*							
First District	2	5.0	5.0	5.0	5.0	5.0	5.0
Second District	9	3.8	3.7	3.8	3.1	4.2	3.7
Third District	50	3.7	3.6	4.1	3.6	3.9	3.7
Fourth District	28	4.0	4.1	4.3	4.1	4.1	4.1
Outside Alaska	-	-	-	-	-	-	-
Gender*							
Male	55	3.9	4.0	4.2	3.8	4.1	3.9
Female	31	3.8	3.5	3.9	3.5	3.9	3.7

*Ratings from only those respondents reporting direct professional experience with the judge.

Table 6:
Judge Romano D. DiBenedetto
Description of Respondents' Experience - Peace and Probation Officers

		n	*%*
	All respondents	**18**	**100.0**
Experience with Judge			
	Direct professional experience	13	72.2
	Professional reputation	3	16.7
	Other personal contacts	2	11.1
Detailed Experience*			
	Recent experience (within last 5 years)	11	84.6
	Substantial amount of experience	5	38.5
	Moderate amount of experience	3	23.1
	Limited amount of experience	5	38.5

*Only among those respondents reporting direct professional experience with the judge.

Table 7:
Judge Romano D. DiBenedetto
Detailed Responses - Peace and Probation Officers

	n	**Impartiality/ Fairness** *M*	**Integrity** *M*	**Judicial Temperament** *M*	**Diligence** *M*	**Overall** *M*
All respondents	18	4.4	4.6	4.4	4.3	4.4
Basis for Evaluation						
Direct professional experience	**13**	**4.6**	**4.7**	**4.5**	**4.3**	**4.5**
Experience within last 5 years	11	4.5	4.6	4.4	4.3	4.4
Experience not within last 5 years	2	5.0	5.0	5.0	4.5	5.0
Substantial amount of experience	5	4.6	4.8	4.4	4.2	4.4
Moderate amount of experience	3	4.5	4.5	4.5	4.5	4.5
Limited amount of experience	5	4.6	4.6	4.6	4.4	4.6
Professional reputation	3	3.7	4.3	4.0	4.0	4.0
Other personal contacts	2	4.5	4.5	4.0	4.5	4.5

*Ratings from only those respondents reporting direct professional experience with the judge.

Table 9
Judge Romano D. DiBenedetto
Description of Respondents' Experience - Court Employees

		n	*%*
	All respondents	**24**	**100**
Experience with Judge			
	Direct professional experience	22	91.7
	Professional reputation	1	4.2
	Other personal contacts	1	4.2
Detailed Experience*			
	Recent experience (within last 5 years)	21	95.5
	Substantial amount of experience	6	28.6
	Moderate amount of experience	6	28.6
	Limited amount of experience	9	42.9

*Only among those respondents reporting direct professional experience with the judge.

Table 10
Judge Romano D. DiBenedetto
Detailed Responses - Court Employees

	n	**Impartiality/ Fairness** *M*	**Integrity** *M*	**Judicial Temperament** *M*	**Diligence** *M*	**Overall** *M*
All respondents	24	4.6	4.7	4.4	4.6	4.5
Basis for Evaluation						
Direct professional experience	**22**	**4.5**	**4.7**	**4.4**	**4.5**	**4.5**
Experience within last 5 years	21	4.5	4.7	4.4	4.5	4.5
Experience not within last 5 years	1	5.0	5.0	5.0	5.0	5.0
Substantial amount of experience	6	4.5	4.8	4.3	4.5	4.3
Moderate amount of experience	6	4.8	4.8	4.7	4.7	4.8
Limited amount of experience	9	4.3	4.5	4.1	4.4	4.3
Professional reputation	1	5.0	5.0	5.0	5.0	5.0
Other personal contacts	1	5.0	5.0	5.0	5.0	5.0

alaska judicial council

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MEMORANDUM

TO: Judicial Council

FROM: Staff

DATE: March 17, 2020

RE: Juror Survey Report

The Alaska Judicial Council surveyed all jurors who sat in trials during 2018 and 2019. The jurors sat before all of the 20 trial court judges eligible to stand for retention in 2020. A total of 754 jurors responded on Council-provided postcards that judges distributed to jurors at the end of each trial (see attached Juror Survey Card Example). Jurors completed the surveys on the postage-paid cards and mailed them to the Council.

Council staff entered the data from the surveys and ran basic descriptive statistics. This memorandum summarizes the findings. It is distributed to Council members and judges, and posted on the Council's website.

Table 1 shows the distribution of jurors by type of trial reported for each judge. Some jurors only wrote comments and did not rate the judge on the specific variables. Thus, there may be more respondents shown on Table 1 than appear on the judges' individual tables.

Table 1:
Distribution of Jurors by Type of Trial, by Judge
Alaska Judicial Council
2020 Retention Juror Survey

Judge	Civil	Criminal	No Answer	Total
Christian, Matthew	0	34	0	34
Crosby, Dani	19	0	1	20
DiBenedetto, Romano D.	0	26	2	28
Dickson, Leslie N.	3	72	5	80
Franciosi, Michael	1	46	1	48
Guidi, Andrew	25	29	7	61
Hanley, J. Patrick	4	38	5	47
Henderson, Jennifer	29	3	0	32
Lamoureux, Yvonne	15	12	0	27
Logue, Michael	0	30	1	31
McCrea, Kari	0	28	3	31
Miller, Gregory	1	0	0	1
Montgomery, Will	3	64	14	81
Peters, Nathaniel	1	21	12	34
Reigh, Christina	0	43	3	46
Roetman, Paul A.	4	5	0	9
Wallace, David	1	35	2	38
Washington, Pamela S.	1	37	3	41
Wells, Jennifer	0	39	9	48
Woodman, Jonathan	0	16	1	17

Table 2 shows the distribution of number of days served, as reported by the jurors. Seventy-three percent of the jurors served fewer than five days.

Table 2:
Distribution of Days Served
Alaska Judicial Council
2020 Retention Juror Survey

Number of Days Served	%	N
1 - 2 Days	20	152
3 - 4 Days	53	397
5 - 7 Days	15	114
8 - 10 Days	6	46
11 - 20 Days	2	11
21 or More Days	0	1
No Answer	4	33
Total		754

Individual Results

Table 3 shows each judge's mean rating for each question on the survey. Each judge's individual survey results are provided in separate tables. Jurors used a five-point scale, with ***excellent rated*** **as five, and** ***poor*** **rated as one**. The closer the jurors' ratings were to five, the higher that judge's evaluation by the jurors. The last column shows the total number of jurors who evaluated the judge on at least one variable.

Table 3:
Mean Rating for each Variable and for "Overall Performance," by Judge
Alaska Judicial Council
2020 Retention Juror Survey

	Impartiality and Fairness	Respectful and Courteous	Attentive During Proceedings	Control During Proceedings	Intelligence and Skill as a Judge	Overall Mean	Total Count
Christian, Matthew	4.9	4.8	4.9	4.8	4.9	4.9	34
Crosby, Dani	5.0	5.0	5.0	5.0	5.0	5.0	20
DiBenedetto, Romano D.	4.8	4.8	4.7	4.8	4.7	4.8	28
Dickson, Leslie N.	4.8	4.9	4.8	4.7	4.7	4.8	80
Franciosi, Michael	4.9	5.0	4.9	4.9	4.9	5.0	48
Guidi, Andrew	5.0	5.0	5.0	5.0	5.0	5.0	61
Hanley, J. Patrick	4.9	5.0	4.9	4.9	4.9	4.9	47
Henderson, Jennifer	5.0	5.0	5.0	5.0	5.0	5.0	32
Lamoureux, Yvonne	4.8	5.0	5.0	4.9	4.9	5.0	27
Logue, Michael	4.8	4.9	4.9	4.8	4.9	4.9	31
McCrea, Kari	4.8	4.9	4.9	4.7	4.8	4.8	31
Miller, Gregory	5.0	5.0	5.0	5.0	5.0	5.0	1
Montgomery, Will	4.6	4.7	4.7	4.6	4.7	4.6	81
Peters, Nathaniel	4.5	4.5	4.5	4.6	4.5	4.5	34
Reigh, Christina	4.7	4.8	4.7	4.7	4.8	4.7	46
Roetman, Paul A.	4.8	4.8	4.9	4.9	4.8	4.8	9
Wallace, David	4.8	4.9	4.9	4.9	4.9	4.9	38
Washington, Pamela S.	5.0	5.0	5.0	4.9	4.9	4.9	41
Wells, Jennifer	4.9	5.0	4.9	4.8	5.0	4.9	48
Woodman, Jonathan	4.9	4.9	4.9	4.9	4.9	4.9	17

Juror Survey Results 2020
Retention Evaluation

DiBenedetto, Romano D.

Survey Category	Mean	Poor (1)	Deficient (2)	Acceptable (3)	Good (4)	Excellent (5)	Total Responses
Impartiality / Fairness	4.8	0	0	0	6	22	28
Respectful / Courteous	4.8	0	0	0	5	23	28
Attentive During Proceedings	4.7	0	0	1	6	21	28
Control Over Proceedings	4.8	0	0	0	7	21	28
Intelligence / Skill as a Judge	4.7	0	0	0	9	19	28
Overall Evaluation	4.8	0	0	0	7	21	28

alaska judicial council

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MEMORANDUM

TO: Judicial Council

FROM: Staff

DATE: July 15, 2020

RE: Peremptory Challenges of Judges Eligible for Retention in 2020

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 peremptory challenge records for judges who are eligible to stand for retention in November 2020. The tables display civil and criminal case challenges for each judge, by year. Because superior court judges' terms are six years, a six-year period is examined for them. Because district court judges' terms are four years, a four-year period is examined for them. Parties have no right to challenge an appellate judge, so those judges are not discussed.

[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.

II. Context for evaluating peremptory challenge 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 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. Sometimes an attorney will use a peremptory challenge with the hope that a change of judge will result in additional time to prepare the case.

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. Judge-initiated disqualifications are discussed in a separate memorandum. Children's delinquency cases are included among criminal cases in this analysis because that is how they are accounted for in the court's case management system. Child in Need of Aid cases are included in the civil category.

Please note that in Child in Need of Aid cases, guardians ad litem and parents have the right to preempt the judge. These are noted as "other" on the following charts. Please also note that a CINA "case" that a judge may handle may include several consolidated cases because each child in a family is assigned a different case number. So if a judge receives a peremptory challenge in a consolidated CINA case, challenges are recorded for each individual child's case, magnifying the effect of challenges in CINA cases.

One system was used for compiling the disqualification data. Over the past fourteen years, the court has instituted a computerized case management system (CourtView) that has facilitated the collection and reporting of more detailed and accurate data for all court locations in the state. All of the CourtView data were compiled and reported by the Alaska Court System to the Alaska Judicial Council.

Care must be taken when comparing judges because they have different caseloads. Judges with higher-volume caseloads generally will have more peremptory challenges than those with lower-volume caseloads. 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, district court judges may have very different caseloads. Cases may be handled by magistrates as well as by district court judges. The court system's caseload data do not reflect when a judge regularly travels to another community

to hear cases. Finally, consideration must be taken of judges who handle predominately criminal or predominately civil caseloads, as superior court judges in Anchorage do, versus those judges who handle all cases.

Parties who have not previously exercised their right of peremptory challenge may challenge a judge when one is newly assigned midstream, as if their case had been newly filed. Consequently, challenges often increase when a judge is assigned to a different caseload (e.g., from civil to criminal). Challenges also often occur when a new judge is appointed because those judges are newly assigned to existing cases and because that judge is "unknown" and thus less predictable. 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. This may also occur in high-volume civil cases that involve only a few public attorneys, such as in Child in Need of Aid practice.

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, and domestic violence protective order 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 challenges of a superior court judge in Anchorage with the rate of a superior court judge in another judicial district. Also, some judges in some judicial districts currently handle the therapeutic courts, such as Wellness Court. The impact of those caseloads on a judge's challenge rate is unknown.

Because so many factors may potentially affect the number of peremptory challenges filed, these numbers should only be used as a signal of a potential issue with a judge. Once a high number of challenges is identified from the table, please refer to the explanatory text on the following pages which gives context for the judge's caseload and potential factors which may have affected his or her challenge rates.

Blank spaces in the tables represent years that preceded the judge's appointment to his or her current position. "Other" signifies a parent, or guardian ad litem in a Child in Need of Aid case.

III. Peremptory Challenge Records - Superior Court Judges

Peremptory Challenges of Judges - Superior Court																		
Judicial District	Judge	Party	2014		2015		2016		2017		2018		2019		Summary			
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*	
Second	DiBenedetto, Romano D	Defendant	.	.	.	.	.	.	0	1	1	1	0	2	21	7	5	
		Plaintiff	.	.	.	.	.	.	1	0	0	0	1	0				
		Other	.	.	.	.	.	.	12	0	0	0	2	0				
	Roetman, Paul A	Defendant	0	1	1	3	0	9	0	5	0	0	0	0	32	5.3	5	
		Plaintiff	0	0	3	0	2	1	1	0	1	1	3	0				
		Other	0	0	0	0	0	0	0	1	0	0	0	0				
	Summary														**53**	**5.9**	**5**	
Third	Crosby, Dani R	Defendant	.	.	0	0	5	0	3	0	1	0	3	0	28	5.6	6	
		Plaintiff	.	.	3	0	4	0	5	0	0	0	3	0				
		Other	.	.	1	0	0	0	0	0	0	0	0	0				
	Guidi, Andrew	Defendant	6	0	2	0	2	0	6	1	9	0	31	1	157	26.2	21	
		Plaintiff	7	0	11	0	14	0	23	0	16	0	22	0				
		Other	0	0	3	0	1	0	0	0	0	0	2	0				
	Henderson, Jennifer S	Defendant	.	.	.	.	.	.	2	0	3	0	0	0	28	9.3	10	
		Plaintiff	.	.	.	.	.	.	8	0	3	0	4	0				
		Other	.	.	.	.	.	.	0	0	8	0	0	0				
	Lamoureux, Yvonne	Defendant	.	.	.	.	.	.	7	0	2	0	1	0	21	7	9	
		Plaintiff	.	.	.	.	.	.	2	0	1	0	2	0				
		Other	.	.	.	.	.	.	0	0	6	0	0	0				
	Miller, Gregory A	Defendant	7	0	3	0	8	1	4	1	11	0	13	0	106	17.7	18	
		Plaintiff	4	0	0	0	10	1	9	0	10	0	7	7				
		Other	3	0	3	0	2	0	0	0	2	0	0	0				
	Reigh, Christina L	Defendant	.	.	.	.	.	.	1	1	0	1	2	0	9	3	2	
		Plaintiff	.	.	.	.	.	.	1	0	0	0	0	0				
		Other	.	.	.	.	.	.	3	0	0	0	0	0				
	Wells, Jennifer K	Defendant	.	.	.	.	.	.	8	1	3	0	5	3	38	12.7	11	
		Plaintiff	.	.	.	.	.	.	2	0	3	1	2	0				
		Other	.	.	.	.	.	.	6	0	4	0	0	0				
	Woodman, Jonathan A	Defendant	.	.	.	.	1	0	1	1	2	3	6	6	37	9.2	8	
		Plaintiff	.	.	.	.	0	0	1	0	3	0	8	0				
		Other	.	.	.	.	0	0	2	0	3	0	0	0				
	Summary														**424**	**12.8**	**10**	
Fourth	Peters, Nathaniel	Defendant	.	.	.	.	.	.	0	22	1	5	3	6	37	12.3	9	
		Plaintiff	.	.	.	.	.	.	0	0	0	0	0	0				
		Other	.	.	.	.	.	.	0	0	0	0	0	0				
All	**Summary**														**514**	**11.4**	**9**	

. = No value *Plaintiff = plaintiff in civil cases and prosecutor in criminal cases*
Defendant = defendant in both criminal and civil cases *Other = Judge Disqualified for Cause; Peremptory Disqualification by Father/Mother/GAL/State*
** Mean and median unit of analysis is judge/year*

Overall: The average number of peremptory challenges for the superior court judges on the ballot for 2020 was 11.4 per year. The number of peremptory challenges averaged over the last five election cycles was 27.8 (2010-2018). Since 2006, average numbers of peremptory

challenges for judges eligible for retention have ranged from a low of 11.4 (2020) to a high of 36 (2006 and 2008). The peremptory challenge average was 14.4 in 2018.

First Judicial District: No judges are eligible for retention in the First Judicial District in 2020.

Second Judicial District: None of the superior court judges in the Second Judicial District received unusually high numbers of peremptory challenges. Judge DiBenedetto and Judge Roetman received low averages of 7 and 5.3, respectively.

Third Judicial District: None of the superior court judges in the Third Judicial District received unusually high numbers of peremptory challenges. Although the number of challenges Judge Guidi received was higher than that received by other judges in this particular group, the number was not unusual when compared to judges' averages over the last ten years.

Fourth Judicial District: None of the superior court judges in the Fourth Judicial District received unusually high numbers of peremptory challenges.

IV. Peremptory Challenge Records - District Court Judges

Peremptory Challenges of Judges - District Court													
Judicial District	Judge	Party	2016		2017		2018		2019		Summary		
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Third	Dickson, Leslie N	Defendant	0	0	0	0	0	0	0	0	9	2.2	1.5
		Plaintiff	1	0	3	3	1	1	0	0			
	Franciosi, Michael J	Defendant	.	.	0	0	0	1	1	0	6	2	2
		Plaintiff	.	.	0	0	1	2	0	1			
	Hanley, J Patrick	Defendant	0	0	0	0	0	0	0	0	7	1.8	1
		Plaintiff	0	5	0	1	0	1	0	0			
	Logue, Michael B	Defendant	.	.	.	.	0	0	0	0	9	4.5	4.5
		Plaintiff	.	.	.	.	0	2	1	6			
	McCrea, Kari L	Defendant	.	.	0	0	1	0	0	0	18	6	7
		Plaintiff	.	.	0	0	0	10	0	7			
	Wallace, David R	Defendant	0	0	0	0	0	1	0	0	4	1	1
		Plaintiff	1	0	1	0	1	0	0	0			
	Washington, Pamela S	Defendant	.	.	.	.	.	.	0	2	6	6	6
		Plaintiff	.	.	.	.	.	.	3	1			
	Summary										**59**	**2.8**	**2**
Fourth	Christian, Matthew C	Defendant	1	0	0	1	0	0	0	0	19	4.8	3
		Plaintiff	0	12	0	5	0	0	0	0			
	Montgomery, William T	Defendant	.	.	.	.	0	4	0	3	7	3.5	3.5
		Plaintiff	.	.	.	.	0	0	0	0			
	Summary										**26**	**4.3**	**3.5**
All	**Summary**										**85**	**3.1**	**2**

. = No value *Plaintiff = plaintiff in civil cases and prosecutor in criminal cases*
Defendant = defendant in both criminal and civil cases
** Mean and median unit of analysis is judge/year*

Overall: The mean number of peremptory challenges for a district court judge appearing on the ballot in 2020 was 3.1. This mean was much lower than in 2018 when the average was skewed upward largely due to one judge's numbers to 34.9.

First Judicial District: No district court judges in the First Judicial District are eligible for retention in 2020.

Second Judicial District: The Second Judicial District has no district court judges.

Third Judicial District: District court judges in the Third Judicial District received an average of 2.8 peremptory challenges per year. Judge Washington has no data from 2016 to 2018 because she served temporarily on the Anchorage Superior Court during that time. She received only six challenges during the year she served on the Anchorage District Court, the court to which she was appointed.

Fourth Judicial District: The two district court judges from the Fourth Judicial District eligible for retention received very few challenges. Judge Christian received an average of 4.8 challenges per year and Judge Montgomery received an average of 3.5 challenges per year.

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MEMORANDUM

TO: Judicial Council

FROM: Staff

DATE: July 15, 2020

RE: Recusal Records of Judges Eligible for Retention in 2020

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 2020.

II. Context for interpreting recusal 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 following tables 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. Blank cells indicate that the judge had not yet been appointed to his or her current position.

III. Recusal Records - Superior Court Judges

Judge Recusals - Superior Court																
Judicial District	Judge	2014		2015		2016		2017		2018		2019		Summary		
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Second	DiBenedetto, Romano D	.	.	.	.	.	.	0	0	0	0	0	0	0	0	0
	Roetman, Paul A	2	0	1	1	7	1	12	0	5	0	11	0	40	6.7	6.5
	Summary													**40**	**4.4**	**2**
Third	Crosby, Dani R	.	.	1	0	18	0	26	0	11	0	8	0	64	12.8	11
	Guidi, Andrew	6	0	3	0	11	0	6	0	6	0	3	0	35	5.8	6
	Henderson, Jennifer S	.	.	.	.	.	.	6	0	4	0	8	0	18	6	6
	Lamoureux, Yvonne	.	.	.	.	.	.	1	0	1	0	2	0	4	1.3	1
	Miller, Gregory A	6	0	8	0	6	0	5	3	3	0	2	0	33	5.5	6
	Reigh, Christina L	.	.	.	.	.	.	1	1	1	0	0	2	5	1.7	2
	Wells, Jennifer K	.	.	.	.	.	.	5	0	3	0	5	0	13	4.3	5
	Woodman, Jonathan A	.	.	.	.	3	1	1	1	5	0	6	3	20	5	4.5
	Summary													**192**	**5.8**	**5**
Fourth	Peters, Nathaniel	.	.	.	.	.	.	0	0	2	2	0	2	6	2	2
All	**Summary**													**238**	**5.3**	**4**

. = No value
** Mean and median unit of analysis is judge/year*

The recusal rates for superior court judges eligible for retention election in 2020 are unremarkable. The judge with the highest number of recusals (though still low) was Judge Crosby, who averaged 12.8 recusals per year. Most of these came in her first two years on the bench, with declining numbers afterwards. Judge Crosby had previously been in private practice in Anchorage, and her numbers likely reflect her previous activity as a practicing lawyer.

IV. Recusal Records - District Court Judges

Judge Recusals - District Court												
Judicial District	Judge	2016		2017		2018		2019		Summary		
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Total	Mean*	Median*
Third	Dickson, Leslie N	4	0	2	0	2	0	2	0	10	2.5	2
	Franciosi, Michael J	.	.	0	0	0	0	0	0	0	0	0
	Hanley, J Patrick	1	0	1	0	0	0	0	0	2	0.5	0.5
	Logue, Michael B	.	.	.	.	0	0	0	0	0	0	0
	McCrea, Kari L	.	.	0	0	1	0	0	0	1	0.3	0
	Wallace, David R	1	0	0	0	0	0	0	0	1	0.2	0
	Washington, Pamela S	3	0	5	0	3	0	0	0	11	2.8	3
	Summary									**25**	**1**	**0**
Fourth	Christian, Matthew C	3	0	1	4	1	0	4	0	13	3.2	3.5
	Montgomery, William T	.	.	.	.	1	25	0	9	35	17.5	17.5
	Summary									**48**	**8**	**4.5**
All	**Summary**									**73**	**2.4**	**1**

. = No value
** Mean and median unit of analysis is judge/year*

District court judges typically recuse themselves infrequently. The recusal data for all district court judges standing for retention in 2020 was unremarkable.

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MEMORANDUM

TO: Judicial Council

FROM: Staff

DATE: August 7, 2020

RE: Appellate Evaluation of Judges Eligible for Retention in 2020

I. Introduction

The Judicial Council staff has several ways of evaluating judges' performance. One way is to compare how each judge's decisions withstand appellate review.

The review process begins with a staff member, usually the staff attorney, reading every published appellate decision and every memorandum opinion and judgment released by the appellate courts. Staff first determines how many issues were on appeal and then decides whether the appellate court "affirmed" each of the trial judge's decisions on appeal. Decisions requiring reversal, remand or vacating of the trial court judge's ruling or judgment are not classified as "affirmed." Mooted issues and issues arising only upon appeal, which were not ruled on by the trial judge, are not taken into account. When the Alaska Supreme Court or Alaska Court of Appeals *clearly* overrules a prior statement of law upon which the trial court reasonably relied to decide an issue, that issue is not considered. These cases are very rare.

After deciding how many issues in a case were affirmed, the case is given a score. For instance, if two of ten issues are affirmed, the case is given a score of "20% affirmed." This scoring system is different than the court system's methodology, which notes only whether the case was affirmed, partly affirmed, reversed, remanded, vacated, or dismissed. Also, the court system tends to attribute the appeal to the last judge of record rather than determine which judge's decisions were appealed. In this analysis, if a case includes more than one judge's decisions, an attempt is made to determine which judge made which rulings and to assign affirmance scores appropriate with those decisions. If it is not possible to make that determination from the text of the case, the overall affirmance score for that case is assigned to each judge of record.

After the case has been scored, another staff member enters information about the case into a database. The data fields include case type,[1] judge, affirmance score, date of publication or release, opinion number, and trial case number.

Before a retention election, staff cross-checks the cases in its database to make sure the database is as complete as possible. Staff then analyzes each retention judge's "civil," "criminal,"[2] and overall (combined) affirmance rates. Staff also calculates civil, criminal, and overall affirmance rates for all the judges in the database for the retention period. Staff then compares affirmance rates for that year against affirmance rates for prior years. Cases that are included in the calculation of these rates are only those cases that have been decided in the current retention term, which is a six-year span for superior court judges and a four-year span for district court judges.

Several problems are inherent in this process. First, the division of an opinion into separate "issues" is sometimes highly subjective. Some opinions have only one or two clearly defined issues and are easy to categorize. Other opinions present many main issues and even more sub-issues. Deciding whether a topic should be treated as a "sub-issue" or an "issue" deserving separate analysis can be problematic and varies depending on the complexity of a given case. Generally, the analysis follows the court's outlining of the case; if the court has given a sub-issue its own heading, the sub-issue will likely have its own affirmed/not affirmed decision.

Second, each issue is weighted equally, regardless of its effect on the case outcome, its legal importance, or the applicable standard of review. For instance, a critical constitutional law

[1] Cases are classified as general civil, tort, child in need of aid ("CINA"), family law/domestic relations, administrative appeal, criminal, and juvenile delinquency. If a case has issues relating to more than one category, staff decides which category predominates.

[2] "Criminal" includes criminal, post-conviction relief, and juvenile delinquency cases. All other cases are classified as "civil." Because the supreme court reviews administrative appeals independently of the superior court's rulings, administrative appeals are not analyzed as part of the judge's civil affirmance rate, although they are included in the database.

issue is weighted equally with a legally less important issue of whether a trial judge properly awarded attorney's fees. Issues that the appellate court reviews independently of the trial court's decision (*de novo* review) are weighted equally with issues that are reviewed under standards of review that defer to the trial court's discretion. The Judicial Council staff has considered ways to weigh each issue to reflect its significance but has decided not to implement a weighted analysis.

Third, appellate courts tend to affirm some types of cases more often than others. For example, criminal cases are affirmed at a higher rate than civil cases. Many criminal appeals involve excessive sentence claims that are reviewed under a "clearly mistaken" standard of review that is very deferential to the trial court's action. Criminal appeals are more likely to include issues that have less merit than issues raised in civil appeals because, unlike most civil appeals, most criminal appeals are brought at public expense. The cost of raising an issue on appeal is therefore more of a factor in determining whether an issue is raised in a civil appeal than it is in a criminal appeal. Also, court-appointed counsel in a criminal appeal must abide by a defendant's constitutional right to appeal his or her conviction and sentence unless counsel files a brief in the appellate court explaining reasons why the appeal would be frivolous. This circumstance can result in the pursuit of issues in criminal cases that have a low probability of reversal on appeal. Accordingly, a judge's affirmance rate in criminal cases is almost always higher than that judge's affirmance rate in civil cases. Judges who hear a higher percentage of criminal cases tend to have higher overall affirmance rates than those who hear mostly civil cases. For this reason, staff breaks out each judge's criminal and civil appellate rates.

Fourth, the analysis of appellate affirmance rates does not include any cases appealed from the district court to the superior court. Those decisions are not published or otherwise easily reviewable. Staff has reviewed all published decisions from the Alaska Supreme Court and Alaska Court of Appeals and unpublished Memorandum Opinion and Judgments (MO&Js) from the Alaska Supreme Court and the Alaska Court of Appeals since 2002. These decisions are published on the Alaska Court System's website and elsewhere and are easily reviewable.

Fifth, administrative appeals pose a problem. Administrative decisions are appealed first to the superior court, which acts as an intermediate appellate court.[3] Those cases may then be appealed to the supreme court, which gives no deference to the superior court's decision and takes up the case *de novo*. Because the supreme court evaluates only the agency decision, and not the superior court judge's decision, there is little value to these cases as an indicator of a judge's performance and they can be misleading. We have excluded administrative appeals from this analysis for the past several retention cycles.

[3] The Alaska Workers Compensation Appeals Commission hears appeals from Alaska Workers' Compensation Board decisions that were decided after November 7, 2005. Those cases may then be appealed to the Alaska Supreme Court. Because workers' compensation appeals are no longer reviewed by the superior court as an intermediate court of appeal, the supreme court decisions are no longer included in this database and are not included in the "administrative appeals" category.

Sixth, the present analysis involves only a relatively small number of cases for some judges. The fewer the number of cases in a sample, the less reliable the analysis is as an indicator of a judge's performance. Affirmance rates for judges having fewer than ten cases reviewed on appeal can be more misleading than helpful. For descriptive purposes, appellate review records are included for all judges, regardless of the number of cases reviewed. Affirmance rates based on fewer than ten cases, however, are not considered by staff as a reliable indicator of performance.

II. Analysis of Appellate Affirmance Rates

A. Superior Court Judges, 2014 - 2019

Generally, the trends of civil, criminal and overall affirmance rates have been stable since the Council began reviewing them in 1994. Criminal affirmance rates have ranged within eight percentage points, from 78% - 85%, over the past twenty-six years and have stayed around 81% - 82% most of that time. Civil affirmance rates mostly ranged within six percentage points, from 67% - 72%, until the 2010 - 2015 retention period, with one period (1996 - 2001) lower, at 61%. Over the past three retention cycles, the civil affirmance rate rose to 76%. Overall, the affirmance rate of all cases was stable at about 75% until the 2006 - 2011 period, when the rate began an upward climb to 78 - 79%, driven first by the rise in criminal affirmance rates, and then by the rise in civil affirmance rates.

Affirmance Rates
All Superior Court Judges

Years	Criminal	Civil	Overall
1994-1999	85%	67%	75%
1996-2001	81%	61%	75%
1998-2003	82%	67%	75%
2000-2005	80%	70%	76%
2002-2007	79%	70%	75%
2004-2009	78%	72%	75%
2006-2011	81%	72%	77%
2008-2013	82%	71%	77%
2010-2015	82%	75%	79%
2012-2017	81%	76%	79%
2014-2019	80%	76%	78%

Affirmance rates for superior court judges who are standing for retention in 2020 are summarized in the following table. The table shows the number of civil cases appealed during the judge's term, the percent of issues in those cases that were affirmed by the appellate court, the number of criminal cases appealed during the judge's term, the percent of issues in those

cases that were affirmed by the appellate court, and the combined civil and criminal appeals information. Comparisons of final column figures should be made carefully. As discussed above, judges with higher percentages of criminal appeals will generally have higher overall affirmance rates than those with a higher percentage of civil appeals. Comparisons between the first two columns are likely to be more meaningful. Also, judges having fewer than ten cases reviewed should not be compared with other judges. The figures for those judges are provided for descriptive purposes only.

To provide even more information for this evaluation, an overall affirmance rate has been calculated for all superior court judges, including judges not standing for retention, and retired or inactive judges, for the evaluation period. This comparison provides a better performance measure than comparing retention judges against each other.

Judicial Affirmance Rates
Superior Court Judges Eligible for Retention 2020

	Criminal Affirmance		Civil Affirmance		Overall	
	Number Reviewed	Rate	Number Reviewed	Rate	Number Reviewed	Rate
Second Judicial District						
DiBenedetto, Romano	1	0%	--	--	1	0%
Roetman, Paul A	7	64%	2	100%	9	72%
Third Judicial District						
Crosby, Dani	--	--	7	90%	7	90%
Guidi, Andrew	1	100%	31	77%	32	77%
Henderson, Jennifer	--	--	6	83%	6	83%
Lamoureux, Yvonne	--	--	1	100%	1	100%
Miller, Gregory	25	80%	23	86%	48	83%
Reigh, Christina	--	--	2	62%	2	62%
Wells, Jennifer	1	100%	3	83%	4	88%
Woodman, Jonathan	3	67%	7	62%	10	63%
Fourth Judicial District						
Peters, Nathaniel	1	100%	1	100%	2	100%
Number and mean affirmance rates, superior court judges eligible for retention, 2014 - 2019	**39**	**76%**	**83**	**81%**	**122**	**79%**
Number and mean affirmance rates, all superior court judges 2014 - 2019	**990**	**80%**	**692**	**76%**	**1,682**	**78%**

Note: Data for judges having fewer than ten cases is provided for descriptive purposes only because too few cases are available for meaningful analysis.

Statistically, the smaller the number of cases in a sample, the less reliable the conclusions drawn from that are likely to be. Samples of fewer than ten cases are likely to be misleading. Judges with fewer than ten cases are likely to be new judges without sufficient time for a case to go through all the steps of trial court and appeal court processes.

In the past, we have taken alternative steps to help the reader evaluate appellate court review of decisions by judges with fewer than ten cases. Most of the current cases were affirmed at 100%. To assist the reader, we describe individual cases that were not affirmed at 100%. Alaska Supreme Court cases are designated with simply a date: (2018); Alaska Court of Appeals cases are designated as a date and (Alaska App.).

For this retention cycle, eight of the eleven superior court judges eligible for retention had fewer than ten cases reviewed. With the exception of Judge Roetman, these judges were all newly appointed to the superior court. Some of these judges had previously been either magistrates or district court judges. Appeals concerning their work in those former positions was not considered in this aspect of the evaluation for their current position.

Judge Romano DiBenedetto: Judge DiBenedetto had one criminal case reviewed. It was affirmed at 0% (reversed):

State of Alaska, Department of Public Safety v. Superior Court (Alaska App. 2018) (0%) - In this case, Judge DiBenedetto ordered the Department of Public Safety to transport a defendant from one correctional facility to another for a psychological assessment by the defendant's expert. The Department petitioned for review, arguing that Judge DiBenedetto did not have authority to order the transport. The court of appeals agreed, explaining that while the court had authority to order transport to court proceedings, it did not generally have authority to order transport between two correctional facilities.

Judge Paul Roetman: Judge Roetman had nine appeals reviewed. Six were affirmed at 100%. One was affirmed at 50% and two were affirmed at 0% (reversed):

State of Alaska v. Sheldon (Alaska App. 2018) (0%) - The defendant, a convicted felon, was found in possession of a firearm and arrested. He also admitted to possessing child pornography. He entered a plea agreement to a misconduct involving weapons charge and judgment was entered. Seventeen months later, he was indicted on possession of child pornography charges. He moved to dismiss those charges, arguing that the state violated his right to a speedy trial. Judge Roetman agreed and dismissed the charges. The state appealed. The court of appeals agreed with the state that the two sets of charges did not arise from the same criminal episode and the time to trial on the pornography charges should be considered separately. It reinstated the charges and remanded for further proceedings.

Olanna v. State of Alaska (Alaska App. 2019) (0%) - In this case, the defendant was convicted of second-degree murder for strangling and killing his girlfriend. Judge Roetman imposed a sentence of 75 years with no suspended time. The defendant appealed. The court of appeals reviewed Judge Roetman's sentencing remarks and found that he had improperly considered the defendant's eligibility for discretionary parole when imposing sentence. It remanded the case for resentencing.

Russell v. State of Alaska (2019) (50%) - A jury convicted the defendant of manufacturing alcohol in a local option community. The defendant appealed, arguing that there was insufficient evidence. The court of appeals reviewed the record and concluded the evidence was sufficient to uphold the conviction based in eyewitness testimony of the manufacturing. The defendant also appealed his sentence. The court of appeals did not review his argument because it found the judge and parties made a

different error when they did not consider prior felonies that should have been taken into account when sentencing the defendant. It therefore remanded the case for resentencing.

Judge Dani Crosby: Judge Crosby had seven appeals. Six were affirmed at 100%. One family case was affirmed at 33%:

Gray v. Gray (2019) (33%) - This case involved a custody dispute. The father had successfully moved to modify a previous order allowing him only supervised visitation. The new order allowed increased visitation. He then moved to modify custody to shared physical custody. The mother cross-moved for an order requiring the father to pay unpaid childcare, tutoring, and healthcare expenses. Judge Crosby denied the father's motion for custody and ordered the father to pay the unpaid expenses. The judge also awarded the mother attorney's fees. The father appealed. The supreme court upheld the denial of the motion to modify custody but vacated the order to pay the expenses, remanding so Judge Crosby could interpret how a parenting agreement affected the payment of expenses. The court also vacated and remanded the attorney's fees order.

Judge Jennifer Henderson: Judge Henderson had six appeals considered. Five were affirmed at 100%. One, a family law case, was affirmed at 0% (reversed):

Engeberg. Engeberg (2019) (0%) - A father appealed a child support under, arguing that the judge should have imputed income to the mother because she was underemployed. The court reviewed the record and determined that the judge had not made factual findings on the record about the parties' incomes or the father's request for the judge to impute income. The supreme court therefore remanded the case back to the superior court for further proceedings.

Judge Yvonne Lamoureux: Judge Lamoureux had one case reviewed. It was affirmed at 100%.

Judge Christina Reigh: Judge Reigh had two cases reviewed. One was affirmed at 100%. The other, a family law case, was affirmed at 25%:

Thompson v. Thompson (2019) (25%) - In this case, Judge Reigh issued several orders regarding child custody, marital property division, child support, and attorney's fees. The ex-wife appealed. The supreme court upheld the custody order granting shared physical and legal custody. When it reviewed the child support order, however, it found that Judge Reigh had not made sufficient factual findings on the record that would allow it to review the order so it remanded that issue. The supreme court next reviewed the property division and concluded that Judge Reigh had abused her discretion when she considered the value of a fishing vessel separately and in the husband's favor, rather than together with the rest of the marital estate as marital property. The fishing vessel was acquired during the marriage and was not a gift or separate inheritance. The supreme court therefore reversed that aspect of the property division and remanded that issue. It also vacated the attorney's fees award stemming from the property division order.

Judge Jennifer Wells: Judge Wells had four cases reviewed. Three were affirmed at 100%. One was affirmed at 50%:

In the Matter of the Estate of Alexina Rodman (2019) (50%) - This case concerned an ex-husband's interest in his former spouse's estate. The parties had divorced but had maintained a

relationship and lived together until her death. The supreme court affirmed Judge Wells's ruling that the ex-husband had no property rights in the estate by virtue of their domestic relationship because Alaska Statutes do not provide for domestic partner intestate inheritance. However, the supreme court vacated Judge Wells's orders pertaining to some real property because Judge Wells had never issued final judgments on some of the petitioner's claims that the ex-wife had sold him some of the property.

Judge Nathaniel Peters: Judge Peters had two cases reviewed. Both were affirmed at 100%.

B. District Court Judges, 2016 - 2019

The mean criminal affirmance rate for all district court judges from 2016 - 2019 was 74%, the lowest in the past twenty-two years. District court criminal case affirmance rates have ranged from 74% - 85%. Civil appellate affirmance rates for district court judges are not provided. They are not meaningful because no district court judge regularly has ten or more civil cases appealed to the supreme court.

Criminal Affirmance Rates All District Court Judges	
Years	**Mean**
1998-2001	81%
2000-2003	77%
2002-2005	77%
2004-2007	85%
2006-2009	84%
2008-2011	81%
2010-2013	79%
2012-2015	84%
2014-2017	79%
2016-2019	74%

District court judges' affirmance rates are summarized in the following table. The table shows the number of criminal cases appealed to the Alaska Court of Appeals and Alaska Supreme Court during the judge's term, and the percent of issues in those cases that were affirmed by the appellate court.

Judicial Affirmance Rates District Court Judges Eligible for Retention 2020		
	Criminal Affirmance	
	Number Reviewed	Rate
Third Judicial District		
Dickson, Leslie N	4	100%
Franciosi, Michael	--	--
Hanley, J Patrick	--	--
Logue, Michael	--	--
McCrea, Kari	--	--
Wallace, David	7	100%
Washington, Pamela S	5	40%
Fourth Judicial District		
Christian, Matthew	1	50%
Montgomery, Will	--	--
Number and mean affirmance rates, district court judges eligible for retention, 2016 - 2019	17	79%
Number and mean affirmance rates, all district court judges, 2016 - 2019	137	74%

Note: Data is provided for descriptive purposes only because too few cases are available for meaningful analysis.

As discussed above, judges having fewer than ten cases reviewed should not be compared with other judges. In the current retention period, no district court judge had more than ten cases. Five of the judges had no cases reviewed: Judge Michael Franciosi, Judge J. Patrick Hanley, Judge Michael Logue, Judge Kari McCrea, and Judge William Montgomery. To provide more context, the judges are discussed individually below.

Judge Leslie Dickson: Judge Dickson had four cases reviewed and was affirmed on all issues in every case.

Judge David Wallace: Judge Wallace had seven cases reviewed and was affirmed on all issues in every case, except for one minor correction to a judgment due to a clerical error.

Judge Pamela Washington: Judge Washington had five criminal cases reviewed. Two cases were affirmed at 100%. Three cases were affirmed at 0% (reversed):

Prince v. State of Alaska, (Alaska App. 2016) (0%) - The defendant was convicted of fourth degree assault. He appealed, arguing that the judge had prevented him from presenting a defense that his conduct involved "mutual combat" and thus qualified for the lesser offense of disorderly conduct. The court of appeals agreed, holding that the judge erred by not allowing testimony that the other person had touched the defendant's granddaughter in a sexual manner several days before the day of the incident and had taunted the defendant to come over and do something about it.

State of Alaska v. Borowski, (Alaska App. 2016) (0%) - The defendant was convicted of second-degree harassment for posting a message on Assemblyman Dick Traini's Facebook page that said, "Your going to get assassinated."[*sic*] Judge Washington dismissed the charge, ruling that the defendant's post was protected speech under the First Amendment. The court of appeals reversed, holding that the court

improperly made several findings of fact before it had heard evidence, and that the ruling was based on a mistaken legal premise that the defendant could not be prosecuted unless he seriously intended to harm Mr. Traini. The court of appeals explained that the correct standard was whether the communication would be viewed as a threat.

State of Alaska v. Barber, (Alaska App. 2017) (0%) - The defendant was convicted of possession of a controlled substance. He later applied for post-conviction relief, contending that the document charging him and the judgment contained the wrong statutory subsection for his crime. Judge Washington granted his application and the state appealed. The court of appeals reversed, holding that the factual basis of the crime (possession of two tablets of suboxone) was uncontested and the discrepancy was a clerical error that could be corrected as long as the defendant had not detrimentally relied on the error when making his plea. The court remanded for further proceedings.

Judge Matthew Christian: Judge Christian had one case reviewed since his appointment as a district court judge. It was affirmed at 50%:

Kinmon v. State of Alaska (Alaska App. 2019) (50%) - The defendant was a licensed game guide in Alaska and was licensed to sell big game tags in the field to nonresident hunters. He was convicted of five counts of tampering with a public record, five counts of committing or aiding the commission of a violation of a big game statute or regulation, and one count of failing to report a violation of a big game law. The defendant appealed. The court of appeals reversed four of the convictions and upheld the remaining seven. The court of appeals held that Judge Christian erred when he did not instruct the jury on a key element of the offense, leaving it for the jury to decide the definition of a legal term. The court then held that Judge Christian did not err when giving a jury instruction on the defendant's "mistake of law" defense. Although the instruction was not ideal, it was an accurate description of Alaska law and the defendant did not object or propose a different instruction.