



alaska judicial council

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MEMORANDUM

TO: Judicial Council
FROM: Staff
DATE: August 13, 2024
RE: Appellate Evaluation of Judges Eligible for Retention in 2024

I. Introduction

The Judicial Council staff has several ways of evaluating judges' performance. One way is to review how often each judge's rulings were affirmed or reversed by an appellate court. One must be careful when looking at this information because:

- Different types of cases are affirmed at different rates;
- Comparing judges is not always helpful because of different caseloads;
- Most judges eligible to stand for retention in 2024 had only a few cases decided on appeal during their term; the fewer the number of cases, the less useful the data are as a performance measure.

More information on how appellate affirmance rate information is analyzed can be found in the Methodology section, below. In 2024, the Council reviewed individual judicial affirmance rates in the context of typical past affirmance rate ranges, which voters may find helpful.

II. Analysis of Appellate Affirmance Rates

A. Superior Court Judges, 2018 - 2023

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 six percentage points, from 78% - 83%, over the past thirty years. Civil affirmance rates ranged between 62% to a high of 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 a rise in criminal affirmance rates, and then by a rise in civil affirmance rates. The overall rate has been falling gradually from a high of 79% in 2010 - 2017 to 76% in 2018 - 2023.

Overall Affirmance Rates Superior Court Judges			
Years	Criminal	Civil	Overall
1994-1999	83%	62%	74%
1996-2001	81%	63%	73%
1998-2003	81%	66%	74%
2000-2005	80%	70%	75%
2002-2007	79%	70%	75%
2004-2009	78%	71%	75%
2006-2011	81%	72%	77%
2008-2013	82%	72%	78%
2010-2015	82%	75%	79%
2012-2017	81%	75%	79%
2014-2019	80%	76%	78%
2016-2021	80%	73%	78%
2018-2023	79%	72%	76%

Note: Includes the appellate review information for all judges whether or not the judge is standing for retention. Judge level, in this case Superior, is determined by the level of the judge at the time of appellate review. Years, too, are determined by the year in which the appellate review occurred.

Affirmance rates for superior court judges who are standing for retention in 2024 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 in the Methodology section, 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 (appearing in the last row) 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 2024 Superior Court Judges						
	Criminal Affirmance		Civil Affirmance		Overall	
	Number Reviewed	Rate	Number Reviewed	Rate	Number Reviewed	Rate
First Judicial District						
<i>No superior court judge from the First Judicial District will stand for retention in 2024</i>						
Second Judicial District						
<i>No superior court judge from the Second Judicial District will stand for retention in 2024</i>						
Third Judicial District						
Ahrens, Rachel	--	--	2	50%	2	50%
Seifert, Bride	2	100%	1	100%	3	100%
Walker, Herman G. Jr.	2	75%	21	62%	23	63%
Zeman, Adolf	1	100%	8	57%	9	67%
Fourth Judicial District						
Haines, Patricia L.	--	--	1	100%	1	100%
Number and mean affirmance rates, superior court judges 2018 – 2023	935	79%	655	72%	1590	76%

Note: Includes only those judges who are standing for retention in 2024 – except for the final row in the table, which includes all opinions from superior court judges in our database for the time period. All appellate review information is included for the judges listed since appointment to their current position. Only appellate review decisions between 2018 and 2023 were used in the calculations. 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 appellate 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. To assist the reader, we describe individual cases that were not affirmed at 100%. For this retention cycle, only two of the five superior court judges eligible for retention had ten or more cases reviewed. Three had fewer than ten. These judges were all newly appointed to the superior court, and this is their first retention evaluation.

Judge Rachel Ahrens - Judge Ahrens had two cases appealed and decided during the evaluation period. One was reversed and one was affirmed.

Clark v. State of Alaska, Dept of Health and Children's Services (2021) - The Supreme Court reversed Judge Ahrens (0%) in this Child in Need of Aid case, finding that Judge Ahrens erred when she terminated a parent's rights. The court held that the Office of Children's rights failed to make active efforts at reunification for two years and Judge Ahrens erred when she found the agency had made active efforts.

Rosemarie P. v. Kelly B. (2021) - The Supreme Court upheld Judge Ahrens (100%) in a domestic relations case involving custody of a minor child.

Judge Bride Seifert - Judge Seifert had three cases appealed and decided during the evaluation period. The Alaska Court of Appeals affirmed Judge Seifert (100%) in each of two criminal cases: Landwehr v. State (2023) and Holt v. State (2023). The Alaska Supreme Court affirmed Judge Seifert (100%) in Benjamin C. v. Nalani S. (2021), a domestic relations case involving custody and child support issues.

Judge Tricia Haines - The Supreme Court upheld Judge Haines 100% in a Child in Need of Aid Case, Reed S. v. State of Alaska, Office of Children's Services, (2022).

Judge Adolf Zeman - Judge Zeman had nine cases appealed and decided during the evaluation period. He was affirmed by the Court of Appeals at 100% in one criminal case. He was also affirmed at 100% in each of two Child in Need of Aid cases, one domestic relations case, and two general civil cases. He was reversed in three cases:

LaPoint v. Watkins (2022) - The Supreme Court reversed Judge Zeman's decision to conclude a trial after a party removed himself from the courtroom but indicated that he

wished to return after a witness finished their testimony. The record did not reflect if Judge Zeman attempted to notify the party that they could rejoin the trial, so the Supreme Court vacated the property division order and remanded the case to give the party an opportunity to present their case.

In the Matter of the Necessity for the Hospitalization of Carl S. (2022) - The Supreme Court reversed an order committing an individual to psychiatric hospital for 30 days. The court held that Judge Zeman erred when he found the person was gravely disabled due to extreme neglect when the petitioner had marked a different basis, “distress and disorientation,” for the grave disability on the petition form. The court found that the proceedings violated the individual’s right to due process because they did not have notice or opportunity to be heard on the allegations of extreme neglect.

In the Matter of the Necessity for the Hospitalization of Sergio F. (2023) - The Supreme Court reversed another order committing an individual to psychiatric hospital for 30 days. In this case, the Supreme Court found that the standing court master recommended the hospitalization, and Judge Zeman entered the order, without analyzing whether the state showed by clear and convincing evidence that there was no less-restrictive treatment option available, as required by statute.

B. District Court Judges, 2020 – 2023

The mean criminal affirmance rate for all district court judges from 2020 - 2023 was 70%. District court criminal case affirmance rates have ranged from 70% - 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 District Court Judges	
Years	Mean
1998-2001	83%
2000-2003	79%
2002-2005	79%
2004-2007	85%
2006-2009	83%
2008-2011	80%
2010-2013	80%
2012-2015	82%
2014-2017	78%
2016-2019	74%
2018-2021	75%
2020-2023	70%

Note: Includes the appellate review information for all judges whether or not the judge is standing for retention. Judge level, in this case District, is determined by the level of the judge at the time of appellate review. Years, too, are determined by the year in which the appellate review occurred.

Affirmance rates of district court judges eligible for retention 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 percentage of issues in those cases that were affirmed by the appellate court. **Please note that none of these judges had more than ten cases appealed and decided during their term in office.**

Judicial Affirmance Rates 2024 District Court Judges		
	Criminal Affirmance	
	Number Reviewed	Rate
First Judicial District		
Pickrell, Kristian B.	--	--
Third Judicial District		
Dickson, Leslie	4	88%
Franciosi, Michael	2	50%
Hanley, J. Patrick	5	80%
Logue, Michael	1	100%
McCrea, Kari L.	1	100%
Wallace, David	3	67%
Washington, Pamela	2	25%
Fourth Judicial District		
Bahr, Maria	--	--
Christian, Matthew	6	58%
Number and mean affirmance rates, district court judges 2020 – 2023	98	70%

Note: Includes only those judges who are standing for retention in 2024 – this is also true of the final row in the table. All appellate review information is included for judges listed since appointment to their current position. Only appellate review decisions between 2020 and 2023 are used in the calculations. Data for judges having fewer than ten cases 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. Two of the judges, Judge Kristian Pickrell and Judge Maria Bahr, had no cases reviewed. To provide more context, the judges are discussed individually below.

Judge Kristian Pickrell - Judge Pickrell had no cases appealed and decided in the evaluation period.

Judge Leslie Dickson - Judge Dickson had four cases appealed and decided. Four were affirmed at 100%. The other was affirmed at 50%.

Kuzma v. Municipality of Anchorage (2023) - The Court of Appeals reversed Judge Dickson's dismissal of a petition for post-conviction relief, finding that the defendant's petition sufficiently alleged ineffective assistance of counsel when they alleged their attorney did not sufficiently explain a deferred sentencing agreement. The

Court of Appeals affirmed Judge Dickson's dismissal of the defendant's other claims of ineffective assistance.

Judge Michael Franciosi - Judge Franciosi had two cases appealed and decided. One was affirmed at 100% and the other was reversed in its entirety (0%).

Linden v. Municipality of Anchorage (2020) - The Court of Appeals reversed the district court's acceptance of a guilty plea because the defendant's purported condition of the plea was that he be able to appeal the dismissal of a motion to dismiss he had filed. The Court determined that neither the parties nor the judge (who was a different judge than the one who ruled on the motion to dismiss) articulated the issue that the defendant wished to preserve for appeal. The court therefore remanded the case back to the district court with instructions to allow the defendant to withdraw his plea, and negotiate a new plea or proceed to trial.¹

Judge J. Patrick Hanley - Judge Hanley had five cases appealed and decided. Four were affirmed at 100% and the other was reversed in its entirety (0%). (See above discussion of Linden v. Municipality.)

Judge Michael Logue - Judge Logue had one case appealed and decided. It was affirmed at 100%.

Judge Kari L. McCrea - Judge McCrea had one case appealed and decided. It was affirmed at 100%.

Judge David Wallace - Judge Wallace had three cases appealed and decided. Two were affirmed at 100%. The other was reversed (0%).

Avras v. State of Alaska (2020) - The Court of Appeals reversed Judge Wallace's dismissal of a defendant's petition for post-conviction relief. The defendant argued that his guilty plea in the original case was involuntary because of mental health issues and his post-conviction attorney failed to pursue the claim by providing documentation to the court. The Court of Appeals agreed and remanded for further proceedings.

Judge Pamela Washington - Judge Washington had two cases appealed and decided. One was reversed (0%) and the other was affirmed at 50%.

¹ Both Judge Franciosi and Judge Hanley were listed as judges of record in this case. One ruled on the motion to dismiss, and the other accepted the plea at a change of plea hearing. The memorandum opinion did not state which judge took which action, so the affirmance score is attributed to both judges. Both judges were afforded the opportunity to review the data.

Katchatag v. State (2023) - The Court of Appeals reversed Judge Washington's dismissal of a defendant's petition for post-conviction relief. The Court of Appeals found that instead of dismissing the petition, Judge Washington should have appointed a different attorney for the defendant when their first one failed to provide competent representation, so that the defendant's due process rights to counsel were protected (0%).

Melseth v. State (2020) - The Court of Appeals affirmed Judge Washington's evidentiary decision to allow a witness to testify "a little bit" about his history as an undercover officer after the prosecutor objected, finding the judge did not erroneously restrict the defendant's right to cross-examination and in fact the cross examination was not restricted in any way. The Court of Appeals, however, rejected Judge Washington's imposition of a bail condition when the state conceded the condition was imposed erroneously (50%).

Judge Maria Bahr - Judge Bahr had no cases appealed and decided during the evaluation period.

Judge Matthew Christian - Judge Christian had six cases appealed and decided. Three were affirmed at 100%. Two were reversed (0%) and one was affirmed at 50%.

Gillis v. State (2023) - The Court of Appeals reversed Judge Christian's denial of a motion for a judgment of acquittal after a defendant was convicted of fifth degree weapons misconduct after the defendant failed to disclose his concealed weapon to law enforcement when "chit-chatting" with them after his friend was arrested for DUI. The Court of Appeals reviewed the legislative history of the statute and determined the legislature did not intend to include casual contacts with law enforcement within the prohibited conduct and reversed the conviction (0%).

Hillyer v. State (2023) - The Court of Appeals reversed Judge Christian's decision to deny the defendant's motion to destroy records of DNA material authorized by statute after dismissal of charges, when the assault charge against her was "reduced" to disorderly conduct, an offense not within the DNA collection statute authorization. The Court determined (and the State conceded) there was no functional difference between a "dismissal" and a "reduction" of charges and remanded the case for entry of the expungement order (0%).

Edwin v. State (2021) - The Court of Appeals reversed Judge Christian's failure to find a mitigating factor for "least serious conduct" when sentencing the defendant for first-degree robbery, even though it was not raised by counsel. The court, however, affirmed the defendant's conviction because the evidence was sufficient and the

prosecutor's closing arguments, although improper, did not rise to level of plain error due to the judge's non-interference (50%).

III. Methodology

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 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,² 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,"³ 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

² 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.

³ "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.

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 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 break out each judge’s criminal and civil appellate rates.

It should be noted that some types of civil cases are also affirmed more frequently than others, as the chart below demonstrates. Child in Need of Aid cases are affirmed

more frequently than tort, family law, and general civil cases. The assignment of cases to a particular judge is dictated by the location of the judge, and if there is more than one judge, assignment is usually random.⁴ If a location has more of a certain type of case (e.g., Child in Need of Aid cases) the affirmance rate of the judge in that location could be affected.



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.⁵ 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’s 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

⁴ Anchorage Superior Court judges are assigned to hear mostly criminal, or mostly civil cases but can be reassigned to a different docket during the middle of term.

⁵ 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.

misleading. We have excluded administrative appeals from this analysis for the past several retention cycles.

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.