



# Appellate Affirmance Report

2026 Judicial Performance  
Evaluation

Alaska Judicial Council

## Table of Contents

|                                |    |
|--------------------------------|----|
| Introduction .....             | 2  |
| Superior Court.....            | 2  |
| First Judicial District .....  | 6  |
| Second Judicial District ..... | 8  |
| Third Judicial District .....  | 9  |
| Fourth Judicial District ..... | 21 |
| District Court.....            | 26 |
| Methods .....                  | 29 |

## Introduction

The Judicial Council 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; and
- Most judges eligible to stand for retention in 2026 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 2026, the Council reviewed individual judicial affirmance rates in the context of typical past affirmance rate ranges, which voters may find helpful. This analysis does not include administrative appeals because the appellate review focuses on the actions of the agency and not the intermediate appeal to the superior court.

## Superior Court

As the following table demonstrates, superior court affirmance rates have remained relatively stable over time. Overall combined affirmance rates have ranged from 73% (1996-2001) to 79% (2010 - 2016 and 2012 – 2017). Criminal case affirmance rates have ranged from 78% (2002 – 2007) to 83% (1994 – 1999). Civil case affirmance rates tend to be lower than criminal affirmance rates. Civil affirmance rates have ranged from 62 % (1994 – 1999) to 76% (2014 – 2019).

| <b>Overall Affirmance Rates</b> |                 |              |                |
|---------------------------------|-----------------|--------------|----------------|
| <b>Superior Court Judges</b>    |                 |              |                |
| <b>Years</b>                    | <b>Criminal</b> | <b>Civil</b> | <b>Overall</b> |
| <b>1994-1999</b>                | 83%             | 62%          | 74%            |
| <b>1996-2001</b>                | 81%             | 63%          | 73%            |
| <b>1998-2003</b>                | 81%             | 66%          | 74%            |
| <b>2000-2005</b>                | 80%             | 70%          | 75%            |
| <b>2002-2007</b>                | 79%             | 70%          | 75%            |
| <b>2004-2009</b>                | 78%             | 71%          | 75%            |
| <b>2006-2011</b>                | 81%             | 72%          | 77%            |
| <b>2008-2013</b>                | 82%             | 72%          | 78%            |
| <b>2010-2015</b>                | 82%             | 75%          | 79%            |
| <b>2012-2017</b>                | 81%             | 75%          | 79%            |
| <b>2014-2019</b>                | 80%             | 76%          | 78%            |
| <b>2016-2021</b>                | 80%             | 73%          | 78%            |
| <b>2018-2023</b>                | 79%             | 72%          | 76%            |
| <b>2020-2025</b>                | 78%             | 74%          | 77%            |

*Note: Includes for all judges whether or not the judge is standing for retention. Judge level is determined by the level of the judge at the time of appellate review. Years are determined by the year that the appeal was published.*

Affirmance rates for superior court judges who are standing for retention in 2026 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 for the evaluation period. This comparison provides a better performance measure than comparing retention judges against each other.

| Appellate Review Data<br>Superior Court Judges Eligible for Retention, 2020 - 2025 |            |            |            |            |              |            |
|------------------------------------------------------------------------------------|------------|------------|------------|------------|--------------|------------|
|                                                                                    | Crim       |            | Civil      |            | Overall      |            |
|                                                                                    | Number     | % Aff'd    | Number     | % Aff'd    | Number       | % Aff'd    |
| <b>First Judicial District</b>                                                     |            |            |            |            |              |            |
| Carpeneti, Marianna<br><i>Juneau</i>                                               | 3          | 100%       | 4          | 95%        | 7            | 97%        |
| Doty, Daniel E.<br><i>Ketchikan</i>                                                | 3          | 60%        | 2          | 100%       | 5            | 76%        |
| Lybrand, Katherine H.<br><i>Ketchikan</i>                                          | 2          | 100%       | 3          | 100%       | 5            | 100%       |
| <b>Second Judicial District</b>                                                    |            |            |            |            |              |            |
| Roghair, David L.<br><i>Utqiagvik</i>                                              | 1          | 100%       | 3          | 50%        | 4            | 63%        |
| <b>Third Judicial District</b>                                                     |            |            |            |            |              |            |
| Hartz, Laura<br><i>Anchorage</i>                                                   | 1          | 100%       | 2          | 100%       | 3            | 100%       |
| Lamoureux, Yvonne<br><i>Anchorage</i>                                              | 3          | 100%       | 24         | 86%        | 27           | 88%        |
| Lawson, Kelly<br><i>Kenai</i>                                                      | 0          | n/a        | 1          | 100%       | 1            | 100%       |
| McKenna, Jack R.<br><i>Anchorage</i>                                               | 7          | 95%        | 4          | 70%        | 11           | 86%        |
| Nesbett, David A.<br><i>Anchorage</i>                                              | 0          | n/a        | 2          | 75%        | 2            | 75%        |
| Rankin, Christina<br><i>Anchorage</i>                                              | 0          | n/a        | 2          | 100%       | 2            | 100%       |
| Reigh, Christina "Tina"<br><i>Dillingham</i>                                       | 15         | 68%        | 4          | 100%       | 19           | 75%        |
| Wheeles, Ian<br><i>Anchorage</i>                                                   | 0          | n/a        | 8          | 88%        | 8            | 88%        |
| Woodman, Jonathan A.<br><i>Palmer</i>                                              | 20         | 73%        | 27         | 60%        | 47           | 66%        |
| <b>Fourth Judicial District</b>                                                    |            |            |            |            |              |            |
| Peters, Nathaniel<br><i>Bethel</i>                                                 | 38         | 83%        | 4          | 75%        | 42           | 82%        |
| Schwalm, Kirk<br><i>Fairbanks</i>                                                  | 1          | 100%       | 3          | 100%       | 4            | 100%       |
| Welch, Amy<br><i>Fairbanks</i>                                                     | 0          | --         | 0          | --         | 0            | --         |
|                                                                                    |            |            |            |            |              |            |
| <b>Means*</b>                                                                      | <b>575</b> | <b>78%</b> | <b>649</b> | <b>74%</b> | <b>1,406</b> | <b>77%</b> |

\*Means for all superior court judges, 2020 – 2025.

*Note: The table above Includes only those judges who are standing for retention in 2026, except for the final row in the table, which includes all opinions from superior court judges in our database for the evaluation period, 2020-2025. All appellate review information is included for the judges listed since appointment to their current position. Only appellate review decisions between 2020 and 2025 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 data is as an indicator of performance. 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 cases to go through all the steps of trial court and appellate court processes. For this retention cycle, only five of sixteen judges had ten or more cases reviewed. Eleven of the sixteen superior court judges had fewer than ten cases reviewed. These judges were all newly appointed to the superior court, and this is their first retention evaluation.

In the past, we have taken alternative steps to help the reader evaluate appellate court review of decisions by judges. To assist the reader, especially in assessing judges with fewer than ten cases, we describe individual cases that were not affirmed at 100%.

## First Judicial District

**Judge Carpeneti** had an overall affirmance rate of 97% in seven appeals.

|                     | <b>Crim</b> |         | <b>Civil</b> |         | <b>Overall</b> |         |
|---------------------|-------------|---------|--------------|---------|----------------|---------|
|                     | Number      | % Aff'd | Number       | % Aff'd | Number         | % Aff'd |
| Carpeneti, Marianna | 3           | 100%    | 4            | 95%     | 7              | 97%     |
|                     |             |         |              |         |                |         |
| Means*              | 575         | 78%     | 649          | 74%     | 1,406          | 77%     |

*\*Means for all superior court judges, 2020 – 2025.*

Judge Carpeneti was affirmed in whole (100%) in six cases. She was partially affirmed in one civil case (80%).

S-19103, *Lawrence R. v. Andrea P.* (80%). This was a family law case in which Judge Carpeneti made rulings on custody, child support, and a claim for reimbursement of health expenses. One parent moved to relitigate the child support issues eighteen days after Judge

Carpeneti issued her orders. The judge denied the motion, finding it was vexatious and filed in bad faith to avoid compliance with her orders. Judge Carpeneti then awarded attorney's fees to the non-filer and sanctions against the filer. The supreme court upheld the custody decision, the child support orders, and the order relating to reimbursement of health care expenses. The supreme court reversed on the sanctions and attorney's fees issue, holding that the judge erred by imposing sanctions and awarding attorneys against the parent without issuing an order to show cause and holding a hearing.

**Judge Doty** had an overall affirmance rate of 76% in five appeals.

|                 | Crim   |         | Civil  |         | Overall |         |
|-----------------|--------|---------|--------|---------|---------|---------|
|                 | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Doty, Daniel E. | 3      | 60%     | 2      | 100%    | 5       | 76%     |
|                 |        |         |        |         |         |         |
| Means*          | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

Judge Doty was affirmed at 100% in one CINA case, one criminal case and one general civil case. He was reversed in one criminal case and partially reversed in another.

A-14298, *Johnson v. State* (0%). A defendant was convicted of third-degree weapons misconduct (felon in possession of concealable firearm) and appealed. Judge Doty had denied the defendant's motion to suppress statements and physical evidence arising from an extended traffic stop that resulted in the police finding the weapon. The Court of Appeals reversed after the state conceded error. The state conceded and the court explained that Alaska law does not allow the police to extend the duration of a traffic stop based on suspicion of personal drug use alone.

A-14197, *Fitch v. State* (80%). A defendant convicted of attempted first-degree murder, DUI, and fourth degree-weapons misconduct appealed Judge Doty's denial of a motion for a new trial, denial of a request for a factual unanimity instruction with regard to a DUI charge, and imposition of an excessive sentence. The defendant also challenged two probation conditions in the judgment. The Court of Appeals upheld all of Judge Doty's rulings except for one probation condition that required the defendant to take medication prescribed by a physician as directed. The Court found that the language in the probation condition was ambiguous and remanded for clarification.

**Judge Lybrand** had an overall affirmance rate of 100% in five appeals. Three were CINA cases and two were criminal cases.

|                       | Crim   |         | Civil  |         | Overall |         |
|-----------------------|--------|---------|--------|---------|---------|---------|
|                       | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Lybrand, Katherine H. | 2      | 100%    | 3      | 100%    | 5       | 100%    |
|                       |        |         |        |         |         |         |
| Means*                | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

## Second Judicial District

**Judge Roghair** had an overall affirmance rate of 63% in four appeals.

|                   | Crim   |         | Civil  |         | Overall |         |
|-------------------|--------|---------|--------|---------|---------|---------|
|                   | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Roghair, David L. | 1      | 100%    | 3      | 50%     | 4       | 63%     |
|                   |        |         |        |         |         |         |
| Means*            | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

Judge Roghair was affirmed in one civil case (100%), partially affirmed in another (50%) and reversed in another (0%). He was entirely affirmed (100%) in one criminal case.

S-18842, *Roseberry v. North Slope Borough School District* (0%). A former principal of a charter school was fired after making complaints about a superintendent. The principal sued in federal court raising federal civil rights claims and a state whistleblower claim. The federal court dismissed the claims and declined to exercise jurisdiction over the state claim. The principal then brought suit in state court, filing a state Whistleblower claim and claims for intentional interference with contractual relations, negligent supervision, and defamation. Judge Roghair dismissed the claims, finding that they were barred by issue and claim preclusion. On appeal, the Alaska Supreme Court reversed. It first held that the Whistleblower claim was not barred because definitions of “a matter of public concern” differed under the state Whistleblower Act and federal First Amendment law, so the claims were different. It next held, as a matter of first impression, that state claims that “could have been” filed in federal court, but were not, were not barred (as normally they would be)

because the federal court would have declined to exercise its supplemental jurisdiction over them, as it did with the Whistleblower claim.

S-18591, *Beckwith v. Eni Petroleum U.S., LLC* (50%). This was a complicated personal injury case. An employee worked on a man-made island drill site in the Beaufort Sea loading and unloading material brought by barge to the island. Sometimes the materials were unloaded from a hovercraft and sometimes from a tracked vehicle called a piston bully when the hovercraft was broken. The employee's leg was crushed in a forklift accident while preparing to load equipment from a sled to the piston bully. The employee sued, asserting claims under a longshoreman's workers compensation scheme (the LHWCA) and maritime tort law. The employers filed for summary judgment, asserting that the LHWCA and maritime tort law did not apply because the accident occurred while unloading a vehicle, not ship, and there was insufficient nexus with oil and gas activity to maritime commerce. After reviewing the applicable federal laws and U.S. Supreme Court precedent, the Alaska Supreme Court affirmed Judge Roghair's conclusion that the LHWCA did not apply but reversed his conclusion that maritime tort law did not apply.

### Third Judicial District

**Judge Hartz** had an overall affirmance rate of 100% in three appeals.

|              | Crim   |         | Civil  |         | Overall |         |
|--------------|--------|---------|--------|---------|---------|---------|
|              | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Hartz, Laura | 1      | 100%    | 2      | 100%    | 3       | 100%    |
|              |        |         |        |         |         |         |
| Means*       | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

**Judge Lamoureux** had an overall affirmance rate of 88% in 27 appeals.

|                   | Crim   |         | Civil  |         | Overall |         |
|-------------------|--------|---------|--------|---------|---------|---------|
|                   | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Lamoureux, Yvonne | 3      | 100%    | 24     | 86%     | 27      | 88%     |
|                   |        |         |        |         |         |         |
| Means*            | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

Judge Lamoureux was affirmed 100% in 20 civil cases and 100% in 3 criminal cases. She was reversed in two family law cases, and one general civil case (0%). She was partially affirmed (63%) in another family law case.

S-17401, *Mouritsen v. Mouritsen* (0%). Judge Lamoureux ruled that the Alaska court did not have continuing jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act over parents and children in a child custody case when both parents and the children had moved to South Carolina. One parent disputed this because they were a member of the armed services and were physically present in South Carolina but still claimed residency in Alaska and intended to return after their discharge. This was a matter of first impression in Alaska and courts in different states were split on the law on this issue. The Alaska Supreme Court reversed, holding that Alaska continued to have jurisdiction as long as one party maintained residency in the state.

S-17621, *Taubert (f/k/a Mouritsen) v. Mouritsen* (0%). A parent appealed a child support order. When calculating child support, Judge Lamoureux found that the parent was voluntarily and unreasonably underemployed and imputed income to that parent based on statistical evidence and potential job postings provided by the other parent. The Alaska Supreme Court reversed, holding that the superior court's determination of voluntary underemployment lacked specific evidence and was not reflective of economic reality. Although the job postings provided evidence of possible jobs available, it was not tied to whether the parent was qualified for the jobs, or whether the parent could obtain one of them.

S-17994, *Fairbanks v. Fox* (63%) A divorced couple disagreed on property division and child support. The Supreme Court affirmed Judge Lamoureux's child support award. But the Court found that Judge Lamoureux's findings were insufficient to support her decision regarding contribution of separate assets towards the construction of the marital home, that Judge Lamoureux should have considered whether to credit one party's contributions towards post-separation child health insurance costs, and it was unreasonable to consider one party's access to free health care in their favor when dividing the marital estate while also requiring them to purchase private health insurance. The court affirmed all other issues.

S-18753, *Matter of Tavis J.* (0%). This was a mental competency case. It was heard at various stages by Judge Lamoureux and Judge Gandbhir. A hospital petitioned for a patient's involuntary commitment. State law requires a patient be transported to an evaluation center within 72 hours for a mental health evaluation. But the patient was held for two weeks without being transported. The superior court ordered the patient's discharge, but the hospital did not discharge him and held him for an additional three days. The hospital then

filed another petition for an evaluation, which the court granted. The individual was detained at the hospital for another nine days before being transported to an evaluation facility. After evaluation, the evaluation facility petitioned for a 30-day involuntary commitment order, which the superior court granted. The individual appealed the court's orders authorizing the second evaluation, and the 30-day commitment order. The state conceded that it did not provide sufficient evidence to establish that involuntary commitment was the least restrictive alternative capable of meeting the individual's treatment and the court therefore vacated the 30-day commitment order. The court also vacated the second evaluation order because the delays and length of involuntary detention at the hospital without evaluation violated the individual's due process rights.

Some context for this case may be helpful. The state had been without sufficient capacity to evaluate and house individuals with significant mental health problems for decades. At the time this case arose, API was over capacity and the individual could not be transported there for evaluation. Hospitals with evaluation ability would not accept the individual. The court was faced with a choice between ordering the individual to be discharged (which it did initially) or allowing the continued detention of the patient involuntarily beyond the statutorily allowed time frame. Between 2023 and 2025 the Supreme Court issued a line of cases relating to involuntary commitment. The legislature eventually responded by increasing resources for API and other evaluation centers and by amending relevant statutes.

**Judge Lawson** had an overall affirmance rate of 100% in one appeal.

|               | Crim   |         | Civil  |         | Overall |         |
|---------------|--------|---------|--------|---------|---------|---------|
|               | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Lawson, Kelly | 0      | n/a     | 1      | 100%    | 1       | 100%    |
|               |        |         |        |         |         |         |
| Means*        | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

*\*Means for all superior court judges, 2020 – 2025.*

**Judge McKenna** had an overall affirmance rate of 86% in 11 appeals.

|                  | Crim   |         | Civil  |         | Overall |         |
|------------------|--------|---------|--------|---------|---------|---------|
|                  | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| McKenna, Jack R. | 7      | 95%     | 4      | 70%     | 11      | 86%     |
|                  |        |         |        |         |         |         |
| Means*           | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

Judge McKenna was affirmed 100% in 2 civil cases and 100% in six criminal cases. He was reversed in one Child in Need of Aid case and was partially reversed (80% affirmed) in a family law case. He was partially reversed (67% affirmed) in one criminal case.

S-18647, *Jonah B. v. Dep't of Family & Community Services, Office of Children's Services* (0%). A parent appealed the termination of his parental rights. Judge McKenna found that OCS had made reasonable efforts to reunify the family and the parent had failed to remedy the conduct that placed the child in need of aid. The Alaska Supreme Court reversed, stating it was a close case, and finding that OCS had made only a handful of attempts to contact the father during the three years he was incarcerated and had only provided him with a case plan three months before the termination trial.

S-18658, *Riggs v. Mason-Riggs* (80% affirmed). An individual appealed various aspects of the superior court's property division in a divorce. The Alaska Supreme Court affirmed most of Judge McKenna's decisions relating to property division and his ruling that the man violated a domestic relations standing order, but reversed Judge McKenna's valuation of the marital home finding Judge McKenna erred when he rejected the most current evidence of the home's value without giving an explanation on the record. The court remanded for valuation of the home as close to the time of trial as practicable.

A-14044, *Mikell v. State* (67% affirmed). A defendant appealed Judge McKenna's denial of his post-conviction relief petition. The issues in the appeal related to whether the Board of Parole acted within its authority; Judge McKenna had basically affirmed the board's decisions when he denied the petition for post-conviction relief. The Court of Appeals affirmed two of the board's decisions, but remanded the case so that the board could correct deficiencies in explaining why it required the defendant to wait ten years before reapplying for discretionary parole and so that the board could provide adequate corrective guidance.

**Judge Nesbett** had an overall affirmance rate of 75% in two appeals.

|                   | Crim   |         | Civil  |         | Overall |         |
|-------------------|--------|---------|--------|---------|---------|---------|
|                   | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Nesbett, David A. | 0      | n/a     | 2      | 75%     | 2       | 75%     |
|                   |        |         |        |         |         |         |
| Means*            | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

*\*Means for all superior court judges, 2020 – 2025.*

Judge Nesbett was entirely affirmed (100%) in one Child in Need of Aid case. He was partially affirmed (50%) in a family law case.

S-19082, *Wolfe v. Wolfe* (50%). A spouse appealed Judge Nesbett's property division and custody decisions in a divorce case. The Supreme Court affirmed Judge Nesbett's custody award but vacated and remanded the property division, finding that Judge Nesbett's treatment of a 401(k) was unclear and the findings were insufficient for appellate review, and that it was legal error not to make findings on the record regarding post-separation payments for home maintenance.

**Judge Rankin** had an overall affirmance rate of 100% in two appeals.

|                   | Crim   |         | Civil  |         | Overall |         |
|-------------------|--------|---------|--------|---------|---------|---------|
|                   | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Rankin, Christina | 0      | n/a     | 2      | 100%    | 2       | 100%    |
|                   |        |         |        |         |         |         |
| Means*            | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

*\*Means for all superior court judges, 2020 – 2025.*

**Judge Reigh** had an overall affirmance rate of 75% in nineteen appeals.

|                         | Crim   |         | Civil  |         | Overall |         |
|-------------------------|--------|---------|--------|---------|---------|---------|
|                         | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Reigh, Christina "Tina" | 15     | 68%     | 4      | 100%    | 19      | 75%     |
|                         |        |         |        |         |         |         |
| Means*                  | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

*\*Means for all superior court judges, 2020 – 2025.*

Judge Reigh was affirmed (100%) in four civil appeals (three CINA and one family law case). She was affirmed (100%) in nine criminal appeals. She was partially affirmed in two criminal cases and reversed in four criminal cases.

A-12369/A-13270, *Strong v. State* (0%). Two defendants were convicted of minor offenses for taking salmon in closed waters. The defendants admitted taking the salmon but asserted a necessity defense, claiming that their boat drifted into closed waters after they cut their boat engine to avoid a hydraulic fluid leak. The Court of Appeals held that Judge Reigh did not use the proper analysis to determine whether the necessity defense applied, and remanded for further consideration.

A-13548, *Nicketa v. State* (95% affirmed). A defendant appealed his conviction for sexual abuse of a minor and his sentence. The Court of Appeals affirmed Judge Reigh's evidentiary decisions, and her imposition of a 99-year sentence. The court remanded the case so the superior court could "completely redact" certain statements in a presentence report, which the state conceded was error.

A-13959, *Alvarado v. State* (29% affirmed). A defendant convicted of two counts of sexual abuse of a minor appealed his sentence, claiming it was excessive, and that six probation conditions were improper. The Court of Appeals affirmed the sentence, finding that the court was authorized to impose the sentence of 45 years to serve. The Court upheld one probation condition but reversed five of them. Imposing one of the conditions was legal error because the court did not set a maximum term for residential treatment. The other four did not have a direct relationship or sufficient nexus between the probation condition and the circumstances of the offense, and the state conceded error on those conditions.

A-13998, *Einhellig v. State* (0% affirmed). A defendant appealed his conviction for third-degree escape, arguing that the superior court violated his constitutional right to testify. The Court of Appeals reversed, finding that Judge Reigh erred when she did not inquire whether the defendant wished to testify after defense counsel stated that the defense did not wish to present evidence, and when she excused the jury to deliberate after the defendant stated that he wanted to testify after jury instructions were read. The state conceded error. The court determined that the error was not harmless and remanded the case for further proceedings.

A-14153, *Austerman v. State* (0%). A defendant appealed Judge Reigh's restitution order imposed as part of a guilty plea. In its request, the state had included amounts to compensate for several thefts of coins that were not included in the conduct covered by the plea agreement. Judge Reigh ordered restitution of the full amount the state requested. The

state conceded error. The Court of Appeals vacated the restitution order, finding that it included compensation for uncharged conduct, and remanded for further proceedings.

A-14085, *Olsen v. State* (0%). A defendant was convicted of failure to stop at the direction of a peace officer (felony eluding), DUI, and resisting arrest. He appealed only his conviction for felony eluding, arguing that Judge Reigh erred when she stated that the jury must convict on the felony eluding charge if it also found that the defendant engaged in DUI because it proved the fourth element of the eluding charge (that the defendant drove in a manner that created a substantial and unjustifiable risk of harm to a person or to property). The Court of Appeals reversed, stating that, although the defense had not objected to the jury instruction, the error was structural because the United States Constitution guarantees criminal defendants the right to have a jury decide every element of their offense beyond a reasonable doubt and the jury instruction was tantamount to directing the jury not to deliberate on the fourth element of the offense.

**Judge Wheelles** had an overall affirmance rate of 88% in eight appeals.

|              | Crim   |         | Civil  |         | Overall |         |
|--------------|--------|---------|--------|---------|---------|---------|
|              | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Wheeles, Ian | 0      | n/a     | 8      | 88%     | 8       | 88%     |
|              |        |         |        |         |         |         |
| Means*       | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

Judge Wheelles was affirmed (100%) in seven civil cases (three general civil cases, three family law cases, and one Child in Need of Aid case). He was reversed (0% affirmed) in one family law case.

S-18931, *Maynor v. Golden* (0%). A defendant appealed Judge Wheelles's denial of his motion to modify custody. The two parties had resided in Alaska until the Army transferred the father to Oklahoma. They married in Oklahoma and the Army again transferred the father to Louisiana, where their child was born. Shortly after, they filed a petition for dissolution in Alaska, both claiming residency. The superior court granted the dissolution and accepted the parties' custody agreement. One parent later moved back to Alaska and filed a petition to modify custody, which Judge Wheelles denied. The other parent filed a motion for relief from judgment, arguing that the original custody order was invalid for lack of jurisdiction, which Judge Wheelles also denied. Both parties appealed. The Alaska Supreme Court held that Judge Wheelles erred when he denied the motion for relief from the original custody order. Although both parents claimed residency, Alaska was never the "home state" of the

child under the Alaska's Uniform Child Custody Jurisdiction and Enforcement Act and the court did not otherwise have jurisdiction.

**Judge Woodman** had an overall affirmance rate of 66% in 47 appeals.

|                   | Crim   |         | Civil  |         | Overall |         |
|-------------------|--------|---------|--------|---------|---------|---------|
|                   | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Woodman, Jonathan | 20     | 73%     | 27     | 60%     | 47      | 66%     |
|                   |        |         |        |         |         |         |
| Means*            | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

A-13210, *Krug v. State* (0%). The issue in this appeal was a probation condition. The defendant was convicted of sexual abuse of a minor who was not his child. Judge Woodman required that the defendant's contact with children be supervised, and limited contact with his own children to supervised written communications, as requested by the state. The Court of Appeals reversed this decision, finding this condition was too restrictive given the U.S. Constitution's right to maintain familial relationships, and remanded for the court to consider supervised in-person, telephonic, and written contact with his children or provide further clarification.

S-17111, *Lewis v. Brim* (0%). The primary issue in this case was the continuing effectiveness of foreign (in another state) civil judgments registered in Alaska when the judgments were reversed by the other state's appellate court. Judge Woodman had allowed the parties to levy on and collect proceeds from the opposing party's PFD based on the Oregon judgments. Later, the Oregon court reversed the judgments. The opposing party brought this fact to light in a motion to reconsider, but Judge Woodman affirmed the validity of its early enforcement decisions and declined to vacate the judgment registrations in Alaska. The Alaska Supreme Court reversed, holding that the enforcement of the previous judgments was error after the other state's appellate court had vacated them.

A13069, *Christian v. State* (0%). Judge Woodman denied the defendant's application for post-conviction relief based on a double-jeopardy claim. Judge Woodman held that the defendant needed to file the double jeopardy claim on direct appeal before they could file a post-conviction relief action, and any untimeliness would be excused due to the nature of the claim. The Court of Appeals remanded, finding that Judge Woodman's legal interpretation was error because the defendant's untimeliness would not be excused under

the circumstances, and a direct appeal would be precluded, thereby opening the door for post-conviction relief.

A-13164, *Lampley v. State* (0%). Judge Woodman denied a defendant's application for post-conviction relief. The defendant appealed and the state conceded error. The Court of Appeals found the concession well-founded, observing that the superior court had used the wrong test ("no merit" rather than "no arguable merit"), and inappropriately resolved disputed factual issues against the defendant.

S-17365, *Galipeau v. Bixby* (0%). Judge Woodman awarded compensatory and punitive damages to landowners after their neighbors cut trees down on their own property in violation of land covenants. The Alaska Supreme Court reversed, finding that Judge Woodman awarded compensatory damages based on restoration costs rather than diminution of value. Punitive damages were also not available because they must be based on an independent tort, and not breach of contract, and a breach of land covenants is a contract claim and not a tort.

S-17573, *Aubert v. Wilson* (29%). Judge Woodman divided property in a divorce case after the divorce was granted and after one spouse died unexpectedly. The deceased spouse's estate sued. The Alaska Supreme Court held that Judge Woodman did not err in dividing the estate unequally in the surviving spouse's favor, but did err in classifying some property incorrectly.

A-13422, *Lashbrook v. State* (0%). Judge Woodman permitted the state to add another charge of fourth-degree assault at the end of a bench trial as a lesser-included offense for the charged third-degree assault. Judge Woodman convicted the defendant on the added charge and acquitted on the third-degree assault charge. On appeal, the state conceded that fourth degree assault is not a lesser-included offense of third-degree assault and could not be added at that stage of the proceedings. The Court of Appeals agreed and reversed the conviction. (The reversal did not affect the defendant's conviction on a different charge related to a different victim.)

S-17799, *Sockpick v. Magby* (0%). Two spouses entered into a property settlement agreement in a divorce case, which included a provision that purported to release one spouse from claims of battery, assault, or other domestic violence during the marriage. A few months later, one spouse sued the other to set aside the settlement agreement, claiming it was unenforceable. The divorce judge (not Judge Woodman) mostly upheld the property settlement agreement, except the judge held the release clause was invalid. That

language was contained in a footnote. One spouse then sued the other in a different case (assigned to Judge Woodman) for money damages for assaults that occurred during the marriage. Neither party brought forward the previous judge's decision invalidating the release, and Judge Woodman ruled that the assault claims were barred by the release clause in the settlement agreement. The Alaska Supreme Court held it was error to bar the claims based on the settlement agreement because the previous judge had invalidated the release clause.

A-13199, *Riley v. State* (67%). This case was mostly affirmed. The defendant prevailed on one argument. The defendant argued that the court erred when it amended jury instructions at the state's request after counsel made their closing arguments. The Court of Appeals found that the language of the new jury instruction was not error, but the defendant should have been able to rely on the agreed jury instructions when preparing his closing argument. Allowing the change violated Alaska Rule of Criminal Procedure 30.(a), which requires jury instructions to be submitted after the close of evidence and before closing arguments, unless there is a compelling reason to depart from the procedure. The court reversed one of the defendant's convictions. It affirmed two other issues, leaving two other convictions intact.

A-13573, *Thomas v. State* (0%). A defendant filed a petition for post-conviction relief. Judge Woodman dismissed the petition. The defendant appealed. The Court of Appeals held that the defendant's PCR attorney had provided an insufficient "certificate of no arguable merit" because the attorney had analyzed whether the defendant's arguments were likely to succeed, rather than whether they were frivolous. The PCR attorney also failed to provide affidavits from the defendant's trial attorney or previous appellate attorney. The superior court was also required to independently assess whether the defendant had any arguable claims. The court therefore held that Judge Woodman erred in accepting the certificate and dismissing the petition. The Court of Appeals reinstated the petition and remanded for further proceedings.

S-17791, *Evertson v. Sibley* (50%). A mother, son, and daughter conveyed real property amongst themselves with competing deeds. The daughter used her purported interest in the property to acquire two bank loans and defaulted on one. The bank moved to foreclose. The son claimed to own the property and sued the bank, alleging the daughter's deed was void for fraud and the bank had constructive notice. Judge Woodman found that the bank did not have notice of the son's alleged interest and granted the bank summary judgment, and dismissed the fraud claim. The son appealed. The Alaska Supreme Court affirmed Judge

Woodman's grant of summary judgment for the bank, agreeing that the bank was a bona fide lender and did not have notice of the son's interest or potential fraud. The court remanded for a determination of whether the daughter acquired her deed as a result of fraud, however, which would render her deed, and the bank's mortgage interest void, even if it did not have notice.

S-18449, *Joe G. v. Dep't of Health and Social Services, Office of Children's Services* (0%). In this child-in-need-of aid case, a grandparent of a child in OCS custody moved to intervene to gain access to information about the child's needs and treatment, and to allow access to protect the child's interests. Judge Woodman denied the motion, relying on a previous Alaska Supreme Court opinion that allowed intervention when the party had unique information to provide the court, and determining that the grandparent did not have unique information. The Alaska Supreme Court reversed, holding that Judge Woodman should not have focused on that narrow issue, but should have applied the broader factors in Civil Rule 24 to determine whether the grandparent could intervene. The court remanded for further proceedings.

S-17788, *Christy v. Conrad* (0%). A set of grandparents sought visitation from adoptive parents (the other set of grandparents). Judge Woodman granted visitation, finding that the grandparents had a positive relationship with the children and the adoptive parents' cutting off visitation was spiteful. The Supreme Court reversed, holding that the adoptive parents' interests prevailed because there was no evidence that a lack of visitation with the grandparents would be harmful to the children, as was required pursuant to law. Absent such evidence, it was error to allow visitation that a fit parent did not wish to allow.

S-18479/S-18480, *Jimmy E. v. Dep't of Health and Social Services, Office of Children's Services* (50%) Judge Woodman terminated the parental rights of a mother of four children for abandonment and substance abuse. The mother appealed, arguing that superior court erred when it found the two younger children were not Indian Children as defined by federal Indian Child Welfare Act (ICWA), and that OCS had made reasonable efforts at reunification with all the children. The Supreme Court, as a matter of first impression, analyzed what actions would trigger OCS's and the court's duty to further investigate whether the children were Indian Children. It found that the father's repeated assertions that the children had Native heritage and that they were a CIRI descendent gave OCS and the court "reason to know" and triggered a duty to investigate further. The superior court therefore erred in relying on the father's assertion that he was not a member of a tribe and that the children were eligible for enrollment but were not enrolled. The Supreme Court remanded the termination

of the younger two children for further proceedings. It upheld the termination of parental rights to the older two children (who had a different father) due to evidence of abandonment and substance abuse, and evidence that OCS made reasonable efforts to enable the children's safe return to the home.

S-18149, *Green v. Dinh* (0%). Parents shared physical custody of their children until concerns arose that the father abused one of the children. OCS successfully petitioned for temporary custody of the children and placed the children with their mother. The superior court dismissed the father's DVPO petition after it determined that the father failed to allege any acts of domestic violence against himself and that other allegations had been raised in a previous case and were precluded from consideration. The Alaska Supreme Court reversed, finding that the father's petition did allege a crime of domestic violence, coercion, when the father alleged the mother threatened to harm the children unless the father helped her get a green card. The supreme court remanded so the superior court could fully analyze what claims had been decided and which issues had been fully litigated in the prior litigation so it could determine whether any claims or issues were precluded in the current case.

S-18080, *Green v. Dinh and State of Alaska, Department of Health & Social Services, Office of Children's Services* (0%). This case was related to the above case. Because OCS had temporary custody of the children, Judge Woodman granted OCS's petition to intervene in the DVPO case. After OCS intervened, Judge Woodman dismissed the father's petitions reasoning that the children's legal interests were "represented by OCS." The Supreme Court reversed, finding that there was no reason that a non-custodial parent could not file and maintain petitions for protective orders on behalf of their children.

S-18404, *Yana C. v. Andrew C.* (0%). A mother appealed Judge Woodman's custody determination. After an evidentiary hearing, Judge Woodman provisionally admitted the mother's exhibits which included text messages, school records, insurance information, and transcripts of recorded conversations. The court invited the parties to file written closing arguments and gave the father two days to oppose the admission of the exhibits. The father filed written objections. The mother responded in writing five days later and received an automated confirmation, but the response was not logged into the trial court record. Five months later, Judge Woodman issued his ruling and observed that the mother had not addressed the father's objections, he would therefore not admit the exhibits, and disregarded them in the analysis. The Supreme Court found that the court had erred when it found that the mother had not responded. It remanded the case to the superior court for

a substantive determination of the admissibility of the exhibits, and its custody determination, based on the factual error.

S-18446, *Benjamin S. v. Stephanie K.* A father appealed a dispute about the apportionment of a child's Social Security disability payments between two parents that arose during a custody and child support dispute. Judge Woodman had ordered one parent, who was designated to receive the benefits on the child's behalf, to pay the other parent partial benefits for the time that they had physical custody. Judge Woodman also awarded the moving parent attorney's fees. The Alaska Supreme Court reversed, holding that the superior court lacked subject matter jurisdiction to decide the allocation of social security benefits because federal law preempted state law in the area of Social Security benefits, and the court remanded with directions to dismiss the case.

#### Fourth Judicial District

**Judge Peters** had an overall affirmance rate of 82% in 42 appeals.

|                   | Crim   |         | Civil  |         | Overall |         |
|-------------------|--------|---------|--------|---------|---------|---------|
|                   | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Peters, Nathaniel | 38     | 83%     | 4      | 75%     | 42      | 82%     |
|                   |        |         |        |         |         |         |
| Means*            | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

\*Means for all superior court judges, 2020 – 2025.

Judge Peters was affirmed at 100% in three civil cases. He was reversed in one civil case (0%). He was affirmed at 100% in 29 criminal cases. He was reversed (0%) in five criminal cases and partially reversed (95%, 95%, 67%, and 95%) in four others.

A-12878, *Johnson v. State* (95%). A defendant appealed numerous issues after his conviction for first-degree assault. The court of appeals affirmed Judge Peters on all issues, except it found Judge Peters erred when he failed to correct a factual error in the presentence report, even though he did not rely on the error when sentencing the defendant.

A-13146, *State v. Azarella* (0%). A defendant was charged with four counts of felony assaults. After presenting no evidence at a preliminary hearing the state dismissed two counts and reduced the other two to misdemeanors. The defendant then filed notice of a civil compromise, which allows victims and defendants to agree to dismiss charges in some circumstances if the court agrees, and bars further prosecution. The next day the state

indicted the defendant on four felony counts of assault. The defendant moved to dismiss the indictment, claiming that double jeopardy attached when he filed the notice of civil compromise. Judge Peters agreed and dismissed the indictment. The Court of Appeals reversed, finding that double jeopardy did not attach at the filing of the notice of civil compromise, but only at the acceptance of it by the court. The court remanded the case for reinstatement of the indictment.

A-13170, *Steven v. State* (Withdrawn; previously marked 0%. It is not included in the above averages.) The defendant's conviction was reversed due to Judge Peter's evidentiary ruling when he declined to admit the remainder of a defendant's telephone conversation with the complainant (recorded due to a Glass warrant), holding it was inadmissible hearsay. The state had introduced part, but not all of, the recording, which was misleading. The defense moved to admit the remainder of the conversation pursuant to the "rule of completeness." Judge Peters denied the request, based on law that the Court of Appeals overturned in this case. In such cases, staff does not include the case because the judge acted according to law as stated at the time they ruled.

A-14108, *Clark v. State* (95%). In this case the defendant appealed several issues. The Court of Appeals affirmed on all, except it agreed that the written judgment should be corrected to conform to the superior court's oral pronouncement of the defendant's sentence by striking two words from a probation condition. The court remanded for correction of the written judgment.

A-13592, *Redfox v. State* (67%). The defendant appealed several issues. The Court of Appeals first found that the superior court did not abuse its discretion by not allowing the defendant's witness to testify by telephone, because the case turned on a determination by the jury of the credibility of the witnesses and there was no evidence that the State's objection to telephonic testimony was retaliatory. The Court of Appeals next held that the superior court did not abuse its discretion by not providing public funds to pay for the defendant's witness travel expenses when the defendant did not make the request until after the first day of trial, and when the defendant was representing himself and not through public counsel. Last, the Court of Appeals reversed Judge Peters's finding that the defendant had been provided with recordings that he had requested but claimed that he never received. The testimony at trial showed that the audio discs he had been provided were blank and they could not have been manipulated by the defendant. The state conceded error on this issue. The Court of Appeals found no evidence that the defendant had received the recordings. The Court of Appeals remanded the case to the superior court

so it could determine whether the failure to provide the recordings was prejudicial to the defendant and to fashion an appropriate remedy; it affirmed in all other respects.

S-18672, *In the Matter of Protective Proceedings of Sasha J.* (0%). In 2012, the superior court (not Judge Peters) appointed a grandmother as guardian of her seventeen-year-old granddaughter, who had significant medical challenges, and developmental and cognitive delays. A guardian ad litem acted on behalf of the granddaughter. The GAL agreed that the granddaughter needed a guardian and recommended placement with the grandmother. The court ordered the guardianship. In 2014, the court terminated the guardianship after the grandmother failed to file annual reports. The granddaughter then was cared for on an informal basis by other family. In 2022, the Office of Adult Protective Services moved to appoint the Office of Public Advocacy as a temporary guardian and conservator because there was evidence that family was not meeting Sasha's medical needs. Judge Peters held a hearing and appointed the OPA as her temporary guardian. At a subsequent status hearing, Sasha requested a jury trial on her competency. Adult Protective Services argued that Sasha's incapacity had been decided at the initial 2012 hearing and appointment of the grandmother as guardian. Judge Peters agreed and denied the motion for a jury trial on Sasha's capacity. The Supreme Court reversed, holding that it was error to apply issue preclusion to Sasha's incapacity when the issue had not been fully litigated in 2012 and the issues were not identical, and capacity can fluctuate over time. The Supreme Court remanded the case for further proceedings.

A-14129, *Echuck v. State* (0%). A defendant convicted of sexual abuse of a minor appealed the imposition of a probation condition that authorized warrantless searches of his personal computer, cell phone, and personal property. The defendant argued that the probation condition did not have sufficient connection to his offense and was not the least restrictive means for protecting the public and promoting his rehabilitation when the offense did not involve his use of a computer or cell phone to seek out unknown victims (the victim was his stepdaughter). The state argued that the warrantless searches were necessary to ensure that the defendant did not contact any minors. The Court of Appeals found that Judge Peters did not make the required case-specific finding of a direct relationship between the nature of the offense and the searches for electronic communications with minors. It remanded for further consideration of the probation condition. It also directed the court to clarify the scope of another probation condition which restricted all contact with minors, including written contact, because it was unclear from the judgment.

A-14183, *John v. State* (0% affirmed). A defendant pleaded guilty to one count of third-degree sexual assault and agreed to a sentence of five years, with three suspended, and a 5-year term of probation, with conditions to be determined by the court. Judge Peters imposed a number of conditions. The defendant appealed only one condition that required the defendant to submit to warrantless searches of his person, personal property, residence, vehicle, and personal electronic devices for evidence of prohibited contact with the victim. The defendant objected to the condition on the basis there was no evidence that he would not comply with a no-contact order contained in another probation condition and the warrantless search condition was intended to support the no-contact condition. As in *Echuck v. State*, discussed above, the Court of Appeals held that the superior court did not make case-specific findings as to whether there was a direct relationship between the condition and the nature of the defendant's offense. The Court of Appeals remanded the case for further consideration.

A-14257, *Hill v. State* (0% affirmed). A defendant pleaded guilty to one count of attempted second-degree sexual assault in exchange for a sentence of a maximum active time to serve of 12 years with other terms open to the court. Judge Peters sentenced the defendant to 20 years with 8 years suspended (12 years active time) and a 10-year term of probation. The defendant appealed, arguing the court erroneously believed that he was subject to a mandatory minimum probation term of ten years when by law he was subject to a five-year mandatory probation term. The state conceded that the record was unclear and agreed that the case should be remanded. The Court of Appeals agreed and remanded the case for further consideration. The Court of Appeals also directed the superior court to correct the presentence report due to a factual error.

A-14297, *Flynn v. State* (95% affirmed). A defendant pleaded guilty to one count of attempted sexual abuse of a minor. On appeal, the defendant challenged a probation condition that required him to authorize the exchange of information from his treatment providers to the Department of Corrections, arguing that the condition violated his privacy. The Court of Appeals affirmed the imposition of the probation condition as reasonably related to the defendant's rehabilitation and protection of the public, and because it was narrowly tailored to avoid unnecessary interference with the defendant's right to privacy. The defendant also requested that the court's written judgment be corrected to conform with the superior court's oral pronouncement of his sentence. The court remanded for that one minor correction.

A-14240, *Angellan v. State* (0% affirmed). A defendant was convicted of second-degree sexual abuse of a minor. The defendant argued that the superior court had a mistaken understanding of the "good time" statute when sentencing him, which affected its imposition of sentence. The state conceded that the record showed that the superior court

had a mistaken belief that the defendant was eligible for good time credit on the sexual abuse of a minor conviction and the mistake may have impacted the court's assessment of the defendant's time to serve. The Court of Appeals found the concession was well-founded and remanded for resentencing.

**Judge Schwalm** had an overall affirmance rate of 100% in four appeals.

|               | Crim   |         | Civil  |         | Overall |         |
|---------------|--------|---------|--------|---------|---------|---------|
|               | Number | % Aff'd | Number | % Aff'd | Number  | % Aff'd |
| Schwalm, Kirk | 1      | 100%    | 3      | 100%    | 4       | 100%    |
|               |        |         |        |         |         |         |
| Means*        | 575    | 78%     | 649    | 74%     | 1,406   | 77%     |

*\*Means for all superior court judges, 2020 – 2025.*

**Judge Welch** had no cases reviewed and decided by an appellate court during the evaluation period.

## District Court

The mean criminal affirmance rate for all district court judges from 2022 – 2025 was 71%. Only criminal cases are analyzed for district court judges, because very few district court civil cases are appealed. District court affirmance rates have ranged from a high of 83% in the 1998 – 2001 retention period to a low of 70% in the 2020 – 2023 retention period.

| 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%  |
| 2022-2025                 | 71%  |

*Note: Includes 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.**

*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. One of the judges, Judge Chris Darnall, had no cases reviewed. To provide more context, the judges are discussed individually below.

**Judge Darnall** had no cases reviewed and decided by an appellate court during the evaluation period.

**Judge Fallon** had a 0% affirmance rate in one criminal case.

A-14182 (0% affirmed). An individual was convicted, following a jury trial, of fourth degree assault for discharging pepper spray at another person who was on the sidewalk in front of the defendant's home. The defendant appealed and the state conceded error, agreeing that the jury should have been instructed that it is unlawful to obstruct the sidewalk. The Court of Appeals reviewed the trial transcript and found the state's concession was well-founded. (This was a two-paragraph Summary Decision.)

**Judge Traini** had a 100% affirmance rate in two criminal cases.

**Judge Seekins** had a 67% affirmance rate in six criminal cases. He was affirmed at 100% in four cases. He was reversed (0%) in two cases.

A-13589, *Solomon v. State* (0% affirmed). This was a superior court case on which Judge Seekins sat pro tem. A defendant was convicted of two counts of first-degree sexual assault. The defendant appealed, arguing the evidence was insufficient to support his conviction on one of the counts. The Court of Appeals reversed, finding there was no evidence that the victim did not consent and lack of consent was a required element. The Court of Appeals instead reinstated a conviction for second-degree sexual assault that had "merged" with the higher charge. Although the evidence did not show that the victim did not consent, the evidence showed that the victim was incapacitated at the time of the assault (which the defendant did not dispute). The court remanded for entry of the conviction for second-degree assault, and because the presumptive terms of incarceration were different, the court remanded for resentencing.

A-14101, *Tinnin v. State* (0%). A defendant was convicted of two counts of violating a protective order after he encountered the DVPO petitioner on a public trail. The Court of Appeals reversed, finding that the protective order did not prohibit all contact, and the DVPO specifically noted that the parties used the same public trail and might come in contact. The DVPO prohibited the defendant only from “stalking” the petitioner.

## Methods

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,<sup>1</sup> 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,”<sup>2</sup> and overall (combined) affirmance rates. Staff also calculates civil, criminal,

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<sup>1</sup> 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.

<sup>2</sup> “Criminal” includes criminal, post-conviction relief, and juvenile delinquency cases. All other cases are classified as “civil.” Because the Supreme Court reviews administrative appeals

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.

For the first time, in 2026, “Excellent” “Good” and “Acceptable” designations were assigned to affirmance rates to give voters better idea of how a superior court judge’s affirmance rate compared to superior court judges overall. Staff analyzed the historical distribution of affirmance rates and determined that the mean affirmance rate for all superior court judges was 77.1% between 2005 and 2025. After reviewing standard deviations and testing several different break points determined by professional experience, staff determined that “Excellent” affirmance rates were over 85%, “Good” affirmance rates were between 70%-84%, and “Acceptable” affirmance rates were between 60%-69%. No judge in 2026 had less than a 60% affirmance rate.

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 outline 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.

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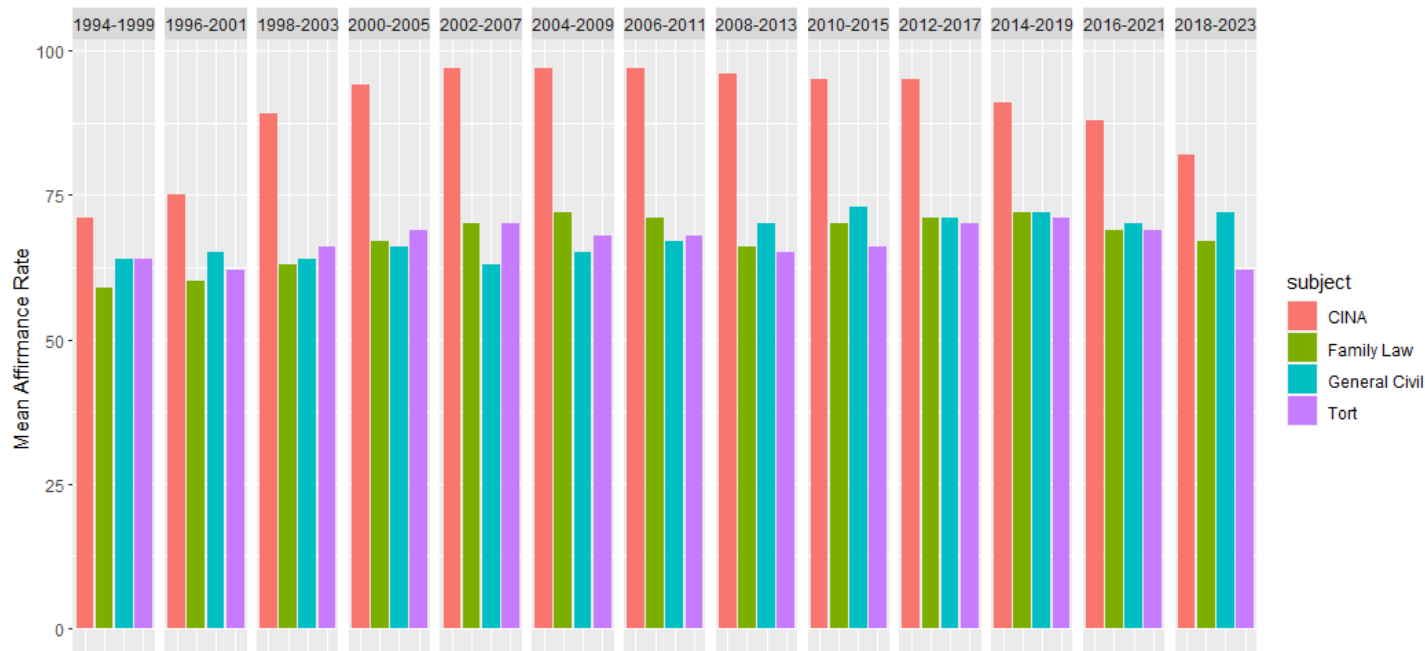
independently of the superior court’s rulings, administrative appeals are not analyzed as part of the judge’s civil affirmance rate, although they are included in the database.

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.<sup>3</sup> 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.

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<sup>3</sup> 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 their term.



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.<sup>4</sup> 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

<sup>4</sup> The Alaska Workers’ Compensation Appeals Commission hears appeals from Alaska Workers’ Compensation Board decision 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.

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.

Last, 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.