

# LEGAL SERVICES

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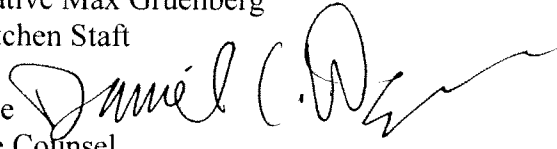
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 31, 2011

**SUBJECT:** State reimbursement of legal costs for defending against ethics complaints. (HB 14; Work Order No. 27-LS0124\A)

**TO:** Representative Max Gruenberg  
Attn: Gretchen Staft

**FROM:** Dan Wayne   
Legislative Counsel

You have asked for a further explanation of the term "apportionment" as used on page 4, lines 12 - 13 of HB 14, and the term "necessarily incurred," as used on page 4, line 31.

1. "Apportionment" would allow for partial reimbursement of legal expenses where a single ethics complaint alleges more than one ethics violation, if an accused person is exonerated of fewer than all of the violations alleged. 9 AAC 52.040 allows apportionment as well. 9 AAC 52.040(d)(2)(B) says that legal expenses paid may "be apportioned by alleged violation if a complaint alleges more than one violation, but only if the public officer provides clear documentation that the expenses paid were limited to the alleged violation for which the public officer is exonerated."

2. The term "necessarily incurred" is relied on by Alaska courts when awarding attorney fees under Rule 82 of the Alaska Rules of Civil Procedure. Rule 82(b)(2) requires that, in cases in which the prevailing party does not win a money judgment, the court shall award the prevailing party a percentage of that party's "reasonable actual attorney's fees which were necessarily incurred." The court does not pay the awarded fees; it orders them paid by the party who opposed the prevailing party. The percentage is 30 percent if the case goes to trial and 20 percent if it's resolved without a trial, although under Rule 82(b)(3) that amount can be increased or decreased based on fairness to the parties, the complexity of the litigation, the length of trial, vexatious or bad faith conduct, the relationship between the amount of work performed and the significance of the matters at stake, the extent to which the fees incurred by the prevailing party suggest they were influenced by considerations apart from the case (such as a desire to discourage claims by others), and the reasonableness of the hourly rate, number of hours expended, and number of attorneys used.

If I may be of further assistance, please advise.

DCW:plm  
11-045.plm