

MEMORANDUM

State of Alaska Department of Law

TO: Pat Pitney
OMB Director

DATE: September 29, 2017

Thru: Jahna Lindemuth
Attorney General

TEL. NO.: 269-5229

AGO NO.

FROM: Steve DeVries
Civil Division Director

SUBJECT: Civil Division General Fund
Budget Planning FY19

This memorandum addresses the Civil Division's (division) FY19 unrestricted general fund (UGF) budget. In particular, it addresses budget cuts the division has made from FY14 through FY18, and identifies work performed by the division using UGF funds for agencies that do not pay for Law's work with Inter-agency (IA) funding.

Identifying UGF-funded work for reduction is challenging. For the last several years the Deputy Attorney General has asked agency clients to identify work performed by the division that could be reduced or eliminated. No agency stated they intend to reduce work performed by the division on their behalf.

This poll was repeated again this year with the same result. This means the division's workload remains relatively unchanged, except for child in need of aid (CINA) cases which have increased 48 percent since FY14, while its staffing levels and funding have been substantially reduced. This creates some tension within the division because we are operating with fewer resources while being asked to provide the same level of services.

Budget Reductions from FY14 through FY18

The Civil Division's UGF budget has been reduced 32 percent from FY14 through FY18. This compares with an overall Department of Law UGF budget reduction of 20.6 percent, a Criminal Division UGF reduction of 10.3 percent, and an Administrative Services Division UGF reduction of 11.8 percent over the same timeframe:

UGF BUDGET COMPARISON
(in thousands)

Division	FY14 ¹	FY18 ²	% Change FY14 to FY18
Department Total	63,376.5	50,328.5	(20.6%)
Civil	30,024.9	20,460.8	(32.0%)
Criminal	30,501.4	27,353.8	(10.3%)
Administrative Services	2,850.2	2,513.9	(11.8%)

Each of these three divisions (primarily the Civil Division) has other funds available for some operations in addition to UGF sources. These alternative funding sources are primarily IA, and to a lesser extent federal funds or other program receipts. When considering all funds instead of just UGF, budget reductions from FY14 to FY18 are as follows:

ALL FUNDS BUDGET COMPARISON
(in thousands)

Division	FY14	FY18	% Change FY14 to FY18
Department Total	96,922.6	86,291.9	(11.0%)
Civil	56,982.3	49,996.7	(12.3%)
Criminal	35,170.2	31,958.2	(9.1%)
Administrative Services	4,770.1	4,337.0	(9.1%)

The permissible use of IA funds is restricted, and cannot be used for purposes beyond the scope of each Reimbursable Services Agreement (RSA). In other words, IA funds cannot be used for Law's other UGF functions. Similar use restrictions apply to all other non-UGF funding sources. This limitation is important. While IA and other non-UGF funds are restricted, Law's UGF budget is flexible; it allows the division to move resources where they are needed for the variety of UGF work the division performs. Because litigation needs are unpredictable, being able to move funding resources to areas where needs arise is a critically important tool for the division to be able to protect children, defend the state, protect its sovereignty and resources, and collect revenues when they are due.

¹ All FY14 data is drawn from the FY14 Management Plan.

² All FY18 data is drawn from the FY18 Management Plan.

For FY16 and FY17, the percentage of UGF work performed by each Civil Division section (component) breaks down as follows:

	UGF Hours* FY16	UGF % of Total Billable	% of Total Division UGF Hours	UGF Hours* FY17	UGF % of Total Billable	% of Total Division UGF Hours
Commercial, Fair Business Practices	9,782.7	42%	6%	7,780.90	37%	9%
Child Protection	53,534.00	99%	33%	52,349.10	100%	34%
Collections & Support	5,754.60	41%	4%	5,189.40	43%	3%
Environmental	7,423.30	56%	5%	6,333.40	57%	4%
Human Services	9,607.00	53%	6%	11,348.20	58%	7%
Legislation & Regulations	7,252.4	81%	4%	7,390.25	83%	5%
Labor & State Affairs	9,378.70	43%	6%	10,573.65	43%	7%
Legal Support Services	2,427.30	26%	1%	122.60	1%	0%
Natural Resources	28,880.60	75%	18%	26,087.55	72%	17%
Opinions, Appeals & Ethics	15,375.40	79%	9%	13,610.20	80%	9%
Regulatory Affairs & Public Advocacy	1,540.50	15%	1%	1,716.10	13%	1%
Special Litigation	4,145.40	62%	3%	3,849.20	73%	3%
Transportation	1,781.30	12%	1%	1,245.00	12%	1%
Torts & Workers' Compensation	5,068.1	19%	3%	5,516.20	20%	4%
Total	xx	xx	100%	xx	xx	100%

*UGF hours listed in this table excludes non-billable time for office absences (personal leave) or other non-billable administrative matters. Also excluded are billings supported by federal funds or Designated General Funds (DGF) sourced from industry surcharges.

These component UGF billing percentages show a consistent pattern. The bulk of the division's UGF budget is absorbed with work protecting children,³ vulnerable adults⁴ and consumers,⁵ collecting state revenues and statehood defense.⁶

³ The Child Protection component's primary function is representing OCS in child in need of aid (CINA) proceedings. In addition, the majority of appeals handled by the Opinions, Appeals and Ethics component defend CINA decisions on behalf of OCS before the Alaska Supreme Court.

Staffing Reductions FY14 through FY18.

In tandem with the Civil Division's 32 percent UGF budget cut since FY14, the division has reduced its staffing levels by approximately forty-nine PCNs.⁷ This includes twenty attorney and six associate attorney/paralegal PCNs. This equates to a 15.8 percent staff reduction for the division. This compares with an overall Department of Law staff reduction of 13.8 percent, a Criminal Division staff reduction of 13.5 percent, and an Administrative Services Division staff increase of 8.7 percent over the same timeframe. For simplicity, percentages given below reflect total staffing changes:

STAFFING COMPARISON (PCNs)

Division	FY14	FY18	% Change FY14 to FY18
Department Total	579	499	(13.8%)
Civil	311 (includes three PT)	262	(15.8%)
Criminal	245	212	(13.5%)
Administrative Services	23	25	8.7%

⁴ This work is performed by the Human Services component.

⁵ This work is housed in the Commercial & Fair Business Practices component. This component was merged with the Collections & Support component effective July 1, 2017 due to the elimination of all collections functions from the division effective June 30, 2017.

⁶ This work is performed by the Natural Resources component.

⁷ Five of these PCN reductions reflect *non-attorney* support staff positions transferred outside of the division in order to accommodate organizational changes within the department.

Civil Division Component Detail of UGF Work Performed

The following discussion addresses the UGF work performed by each Civil Division component (section), the agency for which the work is performed, and representative examples of cases, cost savings or revenues generated as a result of each section's UGF work.

Child Protection Section (CP)

The Child Protection Section represents the Office of Children's Services (OCS) within the Department of Health and Social Services in child in need of aid (CINA) cases throughout the state. The section also represents OCS in other administrative hearings where OCS alleges an incident of neglect or abuse has occurred, but where it does not rise to a level requiring OCS to assume protective custody. Virtually all of this work is funded by the Civil Division's UGF budget. **For FY17, this work absorbed 34 percent of the Civil Division's UGF budget.**

The CP Section has offices in Anchorage, Fairbanks, Juneau, Bethel, Nome, Kenai and Palmer which are necessary to handle numerous court appearances required in these cases.⁸ The CP Section currently consists of twenty-four AAGs who perform CINA casework, one AAG who represents OCS in other administrative hearings, fourteen paralegals and fifteen other support staff including current vacancies. Because of explosive CINA caseload growth, one additional attorney was recently transferred to the section in FY18. The CP section has been addressing increasing OCS caseloads statewide since 2011, except for FY16 which saw a modest statewide decrease in filings of 3.4 percent.

In FY17, CINA caseloads increased as follows:

Anchorage	6 percent increase
Fairbanks	28 percent increase
Bethel	32 percent increase
Juneau	19 percent increase
Kenai	9 percent increase
Nome/Kotzebue	1 percent decrease

⁸ Whenever OCS takes a child into emergency custody, a court hearing must be held within 48 hours. Other hearings are held to advise parents of their rights, assign counsel for indigent parents, review placement decisions, determine probable cause, adjudicate petitions for a determination that a child is in need of aid, adjudicate disposition of cases, and terminate parental rights. An AAG represents OCS at all of these hearings.

Palmer 25 percent decrease⁹

These FY17 caseload increases are not an anomaly. The state has been confronting an opioid epidemic for about five years which has resulted in a substantial increase in criminal activity and new child abuse case filings on a statewide basis. While there are regional differences, since FY14 new CINA filings have increased 48 percent on a statewide basis:

	FY 2014	FY 2015	FY 2016	FY 2017	Change since 2014
Anchorage	497	881	735	779	57%
Fairbanks	173	224	245	314	82%
Bethel	80	143	98	159	99%
Juneau	95	147	84	100	5%
Kenai	90	126	166	181	101%
Nome/Kotz	81	62	76	75	-7%
Palmer	182	278	256	192	5%
Statewide	1198	1861	1660	1770	48%

These new case filing statistics do not reflect clearance rates, i.e. the number of cases closed in each year compared to the number of cases opened in the same period. From FY15 to FY16, the case clearance rate was seventy-four percent. This rate improved to ninety-three percent in FY17. But this means twenty-six percent of the cases opened in FY16 and seven percent of the cases opened in FY 17 remained open after FY16 and FY17 ended. Each open case requires ongoing AAG labor commitments.

Caseloads handled by CP AAGs continue to grossly exceed the American Bar Association's recommended guidelines of no more than sixty cases per attorney. By office, caseloads per attorney for FY17 averaged:

- 135 in Anchorage
- 166 in Fairbanks
- 98.5 in Bethel
- 63 in Juneau
- 140 in Kenai
- 97.5 in Palmer
- 120 in Nome

⁹ This data represents caseload changes per regional office. For example, the Bethel office handles cases occurring in Bethel and surrounding areas. In FY17, 129 cases were opened in Bethel and thirty cases were opened from the surrounding areas.

Commercial & Fair Business Practices Section (CFB)

In FY17, the CFB section was staffed by fourteen lawyers, two litigation assistants, and five and 1/2 support staff. This section has a very diverse practice which includes representing nineteen different divisions within the Departments of Revenue, Natural Resources, Commerce, Education & Early Development, and Administration. In FY17, 37 percent of the section's time was billed to UGF matters.

The UGF work the section performs includes:

- **Consumer protection.** This is a statutory function of the Attorney General. AS 45.50.471 - .561. This UGF work is currently staffed by two AAGs (down from four in 2014) and one support staff (down from two in 2014).¹⁰ The unit investigates unfair and deceptive trade practices by businesses and pursues enforcement actions to stop such practices and obtain remedies for consumers. The unit receives about 400 consumer complaints per year, which are addressed by either an informal mediation process or by formal investigations and enforcement actions. The unit also participates in multistate investigations and handles the department's statutorily required registration of charitable organizations, paid solicitors, telemarketers, and sellers of business opportunities. AS 45.68.010. This registration process generates about \$180,000 in fees each fiscal year.

The Consumer Protection Unit generates significant revenue for the state (in the form of SDPR). From FY08 through FY17, the unit recovered over \$90 million in consumer and antitrust settlement payments for the state.¹¹ These funds derive from Alaska's participation in multistate consumer protection and antitrust enforcement matters (primarily against large pharmaceutical companies and telecommunications providers) and in matters initiated locally.

For example, the unit's recoveries in FY17 were \$2.7 million; in FY16 they were \$3.7 million; in FY 15 they were \$856,000; and in FY14, they were \$5.9 million.

¹⁰ A significant portion of this work is also funded by state designated program receipts (SDPR).

¹¹ Most of the large pharma cases contributing to this amount are resolved and few are forecast for future action. This means the large multi-million recoveries the Consumer Protection Unit realized previously are unlikely to continue.

In addition, the Consumer Protection Unit is working with outside counsel to investigate whether the manufacturers and distributors of opioids have violated Alaska Law.

- **Antitrust Law Enforcement.** The section is responsible for enforcing Alaska's antitrust laws, which is a statutory duty of the Attorney General under AS 45.50.562. This year the section exercised its authority to review mergers and acquisitions that threaten competition by vetting Yute Air's sale of assets to Ravn Air Group. The investigation revealed other air carriers have stepped into the Bethel market to fill the gap left by Yute and maintain competition for passenger and cargo air service in Western Alaska.

With the help of attorneys in the Special Litigation section, Alaska has been able to actively participate in two Multidistrict Litigation cases – *In re Suboxone Litigation*, and *In re Generic Drug Price Fixing Litigation*. The section continues to investigate public complaints of anticompetitive practices, advise state boards and commissions as market regulators, consult on state agencies' participation in multidistrict antitrust litigation, and review federal legislation affecting the state's regulation of its competitive markets.

- **Excise tax enforcement.** This UGF work is performed on behalf of the Department of Revenue. One attorney performs this work. The excise tax work includes providing advice and litigating enforcement matters for taxes due to the state on motor fuels, fisheries, alcoholic beverages, (and soon marijuana); vehicle rentals, and cruise ship passengers.

For example, in FY17, this UGF work defended a challenge to certain fish taxes. At issue is approximately \$18 million per year in tax revenues. The case is still pending.

- **Unclaimed Property.** The section also advises the Treasury Division of the Department of Revenue on issues related to recovery of unclaimed property and prosecutes claims against unclaimed property held by the state. Most unclaimed property is considered abandoned after three years after which it escheats to the state.
- **Violent Crimes Compensation Board.** This UGF work is performed on behalf of the Department of Administration. This board's purpose is to provide crime victims and their dependents compensation for costs incurred when appropriate. AS 18.67. A section attorney provides advice as needed on administrative proceedings when a victim requests compensation or appeals a denial of a compensation request.

- **Long Term Care Ombudsman.** This UGF work is performed on behalf of the Mental Health Trust Authority. The Long Term Care Ombudsman investigates complaints and pursues remedies for older Alaskans who reside in long term care facilities. AS 47.62.015. A section attorney provides this representation which is required by law. AS 47.62.050.
- **Tobacco MSA Arbitration.** This litigation is partially funded by Law's UGF. This arbitration arises under the Tobacco Master Settlement Agreement (MSA) and involves an annual determination of whether each state "diligently enforced" their settlement obligations requiring Non-Participating Manufacturers (NPMs) to place funds into escrow in each state where they do business. If states (including Alaska) prove they diligently enforced their NPM obligations, they are exempt from a downward adjustment to Participating Manufacturers' (PMs) annual payments to states under the MSA which amounts to millions of dollars every year for the state.

Over the last several years, the section has vigorously defended the state in the 2004 tax year MSA arbitration involving whether any part of Alaska's \$22 million 2004 allocation should be reduced. This was resolved in Alaska's favor in June 2017, but a substantial commitment of attorney resources was required to protect Alaska's financial interests. While some tobacco cessation funds covered part of the state's litigation expenses, this funding source was inadequate to cover full costs and the balance was covered by Law's UGF. The next enforcement year for review will be 2005 and will again involve substantial UGF resources to defend the state's financial interests.

- **Miscellaneous work for the Department of Commerce, Community and Economic Development (DCCED).** This UGF work includes providing legal advice on miscellaneous grant programs and monitoring legislation related to DCCED programs

In FY18, the Department's Collection and Support Section was merged into this section.

Collections and Support Section (CS)

Due to budget cuts and efficiency measures, the Collections and Support Section was merged into the Commercial and Fair Business Section effective July 1, 2017. Prior to that date, this section was comprised of two subunits: the Collections Unit and the Child Support Unit.

The Collections Unit was eliminated effective July 1, 2017 as part of the Governor's proposed (and enacted) FY18 budget. This Unit previously collected judgments and surcharges ordered in criminal and minor offense court cases and owed to the State of Alaska. The Collections Unit also collected restitution ordered in criminal and juvenile delinquency cases and distributed the restitution to victims, including state agencies.

The unit's restitution work was returned to the Alaska Court System effective July 1, 2017. The Unit's work collecting criminal fines and surcharges owed to the state was transferred to the Department of Administration, Shared Services Division, also on July 1, 2017. The Collection Unit's elimination resulted in the loss of six PCNs and a Civil Division UGF reduction of \$604,800.

The Child Support Unit provides advice and legal representation to the Child Support Services Division (CSSD) of the Department of Revenue to assist the agency in the performance of its functions and meeting federal requirements. The section's CSSD representation is primarily IA funded.

Environmental Section

The Environmental Section represents the Department of Environmental Conservation's (DEC) four substantive divisions (Air, Water, Environmental Health, and Spill Prevention and Response). It is staffed by seven AAGs (one position is vacant, two are part time, and another is shared with another section) and two paralegals. The section provides day-to-day agency advice, and represents the agency in litigation and appeals for recovery of DEC costs incurred for cleanup (or oversight of cleanup of contaminated sites or spill events), and other enforcement and compliance litigation. The section defends state agencies and officials when they are sued for the performance of their duties in conjunction with environmental matters. The section also assists in regulation and legislation preparation and review, and it provides advice and helps coordinate comments and litigation for multiple state agencies and the Governor's Office on federal rulemakings and national environmental issues.

In FY17, 57 percent of the section's time was billed to UGF matters. The bulk (65 percent) was for work performed by the section on the Flint Hills litigation. This action was initiated by the state against the Flint Hills refinery (and its former owner Williams Alaska Petroleum) for groundwater contamination at the North Pole refinery. The original trial date of March 2017 was vacated and a new trial date has not yet been scheduled. Other UGF time attributed to the section includes non-DEC work by our section member shared with the Commercial & Fair Business section, primarily tax work for the Department of Revenue and legislative matters for Department of Commerce, Community and Economic Development and Governor's Office.

Human Services Section (HS)

The Human Services Section represents the Department of Health and Social Services (DHSS) in all matters except child in need of aid (CINA) cases which are handled by the Child Protection Section. HS is staffed with eleven AAGs and four paralegals (two are shared with other sections). In FY17, 58 percent of the section's time was billed to UGF matters. The IA work funded by DHSS is primarily for Medicaid, API (partially funded by Law's UGF as well), the Pioneer Home, HIPAA, and Child Care Assistance.

The section's work funded by Law's UGF includes:

- Representing DHSS in managing public assistance programs, specifically in seeking to uphold decisions to reduce or terminate benefits. This work ultimately saves the state money; if suspensions or termination of benefits are affirmed, other state UGF funds are not expended on benefits.
- Representing DHSS (Adult Protective Services) to have guardians or conservators appointed for persons who do not have any safety net and are being exploited financially, or who cannot take care of themselves because of a lack of capacity (the elderly, the disabled, the mentally ill).
- The section also represents other DHSS divisions, such as the Pioneer Homes, Alaska Psychiatric Institute (API), Office of Children's Services (OCS), Division of Juvenile Justice (DJJ), and the Department of Corrections (DOC) in hearings to establish guardianships or conservatorships. This representation saves the state UGF expenditures because court appointed conservators or guardians help obtain housing (for example, moving a person from API into an assisted living home) or public benefits (such as Medicaid and Social Security) allowing daily costs of care and medical care to be shifted from the state to the federal government.
- Representing DHSS in advising and defending its foster home and assisted living home licensing agencies. These activities are essential to ensure the health, safety and welfare of vulnerable children and adults who are being cared for in these homes. The section's UGF work ensures these homes are operated in conformance with state regulations, and defends DHSS's decision to suspend or terminate a provider's license.
- Representing DHSS in civil litigation. Recent examples include successfully defending a class action challenging the current foster care rate systems and working with the Juneau DA's office in briefing issues related to transfer of a minor charged with a felony in another state under the Juvenile Justice Compact.
- Advising DHSS with Public Records Act compliance, including assisting in privilege review of material prior to disclosure. Because most work at DHSS is

confidential, these reviews are critical to ensure that there are no inadvertent disclosures of confidential information.

- Advising DHSS in developing, adopting, and interpreting regulations. Doing so upfront decreases downstream litigation expense.

Labor & State Affairs Section (LSA)

The Labor & State Affairs Section represents a large number of agencies in addition to the Governor and Lt. Governor's offices. The section consists of sixteen AAGs, one paralegal, and three support staff in Anchorage and Juneau. In FY17, approximately 43 percent of the LSA Section's work was billed to UGF.

The section's UGF work includes:

- **Division of Elections.** The section represents the Division in matters such as initiative applications, ballot challenges, candidate and voter eligibility, regulations drafting, legislative advice and testimony, and compliance with federal voting requirements.

For example, section attorneys represented the Division in a week-long trial and subsequent appeal in *Nageak v. Mallott*, in which an incumbent Alaska State House representative challenged the results of the primary election in House District 40. The Division prevailed in the Alaska Supreme Court, where the election results were upheld. Section attorneys also represented the Division in a lawsuit brought by the Alaska Democratic Party challenging portions of the State's candidate-eligibility statute on First Amendment grounds. And section attorneys are representing the Office of the Lieutenant Governor in the review of four ballot measure applications, including litigation over denied certification of a measure that would prevent anadromous fish habitat from being meaningfully used for development purposes.

- **Alaska State Commission on Human Rights.** The section provides day-to-day advice to the Commission, assists with regulatory drafting requests and inquiries, and represents ASCHR in appeals from its decisions.
- **Governor's Executive Office.** The section provides routine advice on the governor's constitutional and statutory powers, legislative rules and procedure, separation of powers issues, boards and commissions matters, and the governor's appointment powers.

For example, section attorneys were substantially involved in legal review and preparation for possible shutdown of state services resulting from the FY18 budget

impasse. Attorneys reviewed all state programs and provided legal analysis regarding the nature of particular government services and programs as well as the authority to continue particular services and programs in the absence of enacted budget. Section attorneys also participated in defending litigation that challenged the governor's authority to reduce the amount of the permanent fund by veto, and provided advice regarding legislative procedures surrounding special sessions and the scope of proposed legislation.

- **OMB, Division of Finance, State Bond Committee, Treasury Division.** The section provides ongoing legal support to these agencies in the areas of budget and public finance, including preparation of budgets and work with the legislature and the governor's office—particularly in the areas of appropriations, dedicated funds, the constitutional budget reserve, the Executive Budget Act, and financial reporting and state pension plan obligations under GASB. The section also advises the State Bond Committee, the Alaska Municipal Bond Bank Authority, and the Pension Obligation Bond Corporation.

For example, section attorneys advised the director of the Office of Management and Budget regarding legal questions concerning proposed appropriations and the scope of appropriations authorized under previously enacted budget bills. Additionally, section attorneys drafted and reviewed proposed legislation including permanent fund and other fiscal measures and advised the Commissioner of Revenue on financial issues such as bonding and proposed lending programs, investment authority, and fiduciary obligations.

- **Department of Administration.** Section attorneys address legislative and advice matters affecting the state's employee pay plans, geographic differentials, and legislative funding of monetary terms of state labor agreements.

The section advises and represents the Division of Personnel and Labor Relations, various departments, agencies, boards and commissions, and public corporations of the state in employment matters. This includes providing advice, representing client agencies in administrative and court proceedings—in both state and federal court, and assisting with regulation and legislation projects. Agency advice can cover a range of topics from on-going employee disciplinary matters, arbitrations, labor relations, collective bargaining agreements, pay plan and classification questions, compliance with statutory requirements (ADA, EEOC, family medical leave, whistleblower, and human rights laws), and wrongful termination.

Section attorneys provided advice regarding collective bargaining and health insurance issues presented by possible government shutdown. Additionally,

section attorneys were involved in drafting employee pay and benefit legislation and review of other proposed legislation on the subject.

The section also advises and represents Shared Services of Alaska (SSoS), which is responsible for administering over 300 leases, lease-financing, procurement of supplies and professional services, bid protests and breach of contract cases. The work can involve providing advice and representation in mediations, administrative hearings, and court proceedings for virtually all departments and agencies of the state. The work also involves providing advice and assistance to agencies in drafting and reviewing contract terms and conditions. For example, during the past year, the section advised and represented Shared Services of Alaska in a week-long administrative hearing in a procurement dispute over a software purchase.

- The section also represents the Department of Military and Veterans Affairs, Department of Public Safety, Department of Corrections, and Department of Administration in multiple protest appeals, contract disputes, and advised in acquisition planning. The section advised the Department of Health and Social Services in contract disputes and negotiating contract amendments related to two large IT contracts worth a combined total of over \$190 million, and assisted DHSS in reviewing records and responding to several sweeping public records requests related to those contracts.

Legal Support Services (Information & Project Support - IPS)

The IPS Section provides litigation and project support for the Civil Division and assists the Criminal Division with electronic discovery and in responding to Public Records Act requests. It also advises state agencies on numerous legal issues involving management, retention and disclosure of information and the use of electronic technology. The section consists of one AAG and six support staff. Specific UGF work includes:

- **Project support activities for LAW.**
 - Operating, customizing, and training all Civil Division employees on the division's matter-management, timekeeping, and accounting system.
 - Operating and training attorneys and paralegals on LAW's in-house electronic discovery and legal hold systems.
 - Identifying and helping attorneys and paralegals use hosted electronic discovery systems and other litigation-related software.
 - Overseeing LAW's responses to all Public Records Act requests for LAW's records and maintaining LAW's public records log.

- Managing LAW's contracts for online legal research services, such as Westlaw.
- Developing and maintaining LAW's Internet and intranet sites.
- Designing LAW's publications (e.g., annual report and consumer protection pamphlets).

For example, the section continues to provide litigation support in document-intensive cases, including the *Flint Hills* litigation, by identifying and liaising with electronic discovery vendors. The section also built LAW's electronic discovery webpage, which includes guidance materials on all phases of the discovery process.

- **Public Records Act (PRA).** The section advises and trains agencies on responding to public records requests, including communicating with requesters; complying with statutory and regulatory requirements; and searching for, reviewing, and producing records. The section represents agencies in litigation challenging their PRA responses and responds to and coordinates responses to public records requests for LAW's records.

For example, the section recently assisted the Department of Health and Social Services in responding to an administrative appeal of the denial of a request for records regarding a former McLaughlin Youth Center inmate.

- **Protected Information.** The section advises and trains agencies on what constitutes protected information under, for example, the executive communications, deliberative process, attorney-client, and attorney work-product privileges, and confidential information under, for example, the Alaska Uniform Trade Secrets Act, copyright laws, and the Alaska Constitution's right to privacy.
- **Records Retention Requirements.** The section advises agencies on their records retention responsibilities under the State Records Management Act, works with the Alaska State Archives on the development of statewide and agency-specific records retention schedules, and advises and trains agencies on implementing legal holds where litigation is anticipated or ongoing.
- **Information Technology.** The section advises the Office of Information Technology and the State Security Office on legal issues affecting state information systems: e.g., preserving emails subject to legal holds and other records retention requirements; collecting emails for discovery, public records requests, or investigations; securing protected emails; and limiting the personal use of state information systems.

- **Social Media and the Internet.** The section advises agencies on the use of social media and the Internet, including complying with terms of service, the First Amendment, and records retention requirements.
- **Open Meetings.** The section advises agencies on complying with the Open Meetings Act.

Legislation & Regulations Section (LR)

The LR Section includes three AAGs and three support staff. This section houses a statutorily mandated position - the regulations attorney. AS 44.62.125. It also houses an assistant regulations attorney and a third attorney who acts as the Civil Division's legislative liaison and assistant to the Attorney General in addition to assisting the section on complex or controversial regulations issues. In FY17, approximately 83 percent of the LR Section's work was billed to UGF matters.

The section's UGF work includes:

- **Regulations.** The two regulations attorneys review every regulation adopted by a state agency, board or commission with regulation adopting authority. This includes all regulations adopted under the APA or under other authority. All are reviewed to determine adherence to statutory standards and compliance with the Drafting Manual on Administrative Regulations, which is required by law. AS 44.62.060.

The section also provides an annual training on the regulations process for all state agencies and assistant attorneys generals. This training helps ensure agencies properly adopt regulations, and thereby avoid legal issues later on. Some, but not all of the section's regulations work is funded by IA.

- **Legislation.** The section oversees all legislative drafting requests from the Governor's Office. Other Civil Division section AAGs usually do the initial draft of the legislation, and the LR section supervisor revises, edits, and prepares the legislation for introduction to the legislature. If a bill is complex, on a tight timeline, or is otherwise unusual, the section supervisor may draft the bill for the Governor. Much of the work is highly technical, must follow legislative drafting and formatting protocol. Failing to do so will result in a bill not transmitting properly, which would result in a delayed introduction of a Governor's bill.

Section AAGs provide substantial support for the Governor's legislative office year round, but especially during the legislative session. The LR supervisor assigns every bill introduced to an AAG for monitoring in order to spot legal issues and to assist the Governor's Office or legislator's with questions about the bill. Identification of legal issues is a critical function in order to avoid legislation being passed that has legal problems. The section also advises the Governor's Office of any legal issues with proposed legislation. The section also drafts bills and amendments during the session, again as directed by the Governor and monitors bills for needed fiscal notes from Law.

The section monitors legislative hearings, especially those of Governor's bills and other bills the Governor's Office is interested in. The section provides advice on legislative procedure, and prepares proclamations for special sessions.

The section reviews each bill enacted before it is transmitted to the Governor; that review is provided to the Governor's Office. The section monitors all bill transmittals to the Governor for signature to help the Governor's legislative office. Once a bill is transmitted, the time for the Governor to act begins so bills must be tracked carefully.

- **Work with OMB.** The section works closely with OMB and the Governor's Office to prepare budgets for publication on December 15 each year and for introduction the first day of the legislative session. Section attorneys also assist with requests from OMB on budget issues (typically interpretation of budget bill language) throughout the year and with assistance from other section attorneys.

Natural Resources Section (NR)

The Natural Resources Section represents the Departments of Fish & Game, Natural Resources and Revenue. It also represents the Alaska Oil and Gas Conservation Commission. It is staffed by twenty-one AAGs (with three vacancies) and four paralegals (with one vacancy). In FY17, approximately 72 percent of the NR Section's work was billed to UGF. This represents approximately 17 percent of the Civil Division's UGF budget.

In FY17, the section's UGF work collected over \$29 million in taxes, fire cost recoveries, and attorney's fees. The section's UGF work also contributed to recovering

over \$234 million in additional tax and royalty payments for the state.¹² In FY16, the section's UGF work recovered over \$72 million in taxes due to the state. Not captured by this data is the section's UGF work defending refund demands made by taxpayers and royalty obligors holding state oil, gas and minerals leases. These refund demands amount to claims for tens or hundreds of millions of dollars every year.

The section's UGF work includes:

- **Department of Natural Resources.**¹³ The section represents several divisions within the department, including the Division of Oil and Gas, the Division of Mining, Land and Water, the Division of Forestry, the Division of Parks and Outdoor Recreation, and the Recorder's Office. This representation includes:
 - **Royalties.** The section advises DNR (primarily the Division of Oil and Gas) on royalty related matters, and represents each division in any litigation concerning royalties due the state on its oil, gas and minerals leases. This includes defending assessments made and defending against protests and refund requests regarding assessments for royalties due under leases or under numerous royalty settlement agreements covering most North Slope oil and gas leases. Royalty disputes arise on a regular basis. For example, section attorneys are currently defending DNR royalty audits worth over \$25.6 million.
 - **Fire suppression cost recovery.** The section advises and represents the Division of Forestry in its efforts to recover the state's forest fire suppression costs, and defends it against claims for damages incurred. The section is currently assisting Forestry with two forest fire cost recovery matters.

¹² This \$234 million in additional tax and royalty payments resulted from FERC tariff litigation work also performed by the RAPA Section discussed below. FERC pipeline tariff work was originally handled by the Natural Resources Section but was transferred to the RAPA Section in FY16.

¹³ DNR has been providing Law an RSA of \$290,000 for litigation support to defend DNR's permitting and planning processes, including title defense, regulation review, records requests, planning, land management, authorizations and land sales. The amount of this RSA is dwarfed by the work performed by NR staff annually which must be covered by the Civil Division's UGF budget.

- **Permitting.** Section attorneys provide day-to-day advice on all DNR permitting decisions made across several divisions, and represent DNR when those decisions are challenged. Permitting decisions defended include those pertaining to development of Alaska's oil and gas resources, mining decisions, water allocation claims, and timber permitting decisions. In FY17, the section participated in litigation that successfully defended the U.S. Forest Service's Big Thorne Timber Sale, which is very significant to the Southeast economy.
- **Commercial Fisheries Entry Commission ("CFEC"), and the Oil and Gas Royalty Board.** Section attorneys provide day-to-day advice to each of these entities and represent them in litigations when their decisions are challenged.
- **Land sales and leasing.** Section attorneys provide day-to-day advice to support DNR's land sales and leasing programs, including defending challenges to decisions to sell or lease state land. These programs provide opportunities to Alaskans to purchase or use state land and bring in revenue to the state.
- **Gasline.** Section attorneys provide ongoing advice promoting the administration's efforts to establish a gasline linking Alaska's stranded North Slope gas reserves to tidewater for marketing.
- **Department of Fish and Game.** The section represents the Alaska Board of Fish, the Alaska Board of Game, and the Divisions of Commercial Fisheries, Sport Fish, Habitat and Subsistence. Section attorneys attend all board meetings to advise on procedures, proposals, and legal issues as they arise. They ensure an adequate record for all board action exists, and represent the boards in litigation.

For example, the section routinely defends the department against perennial challenges to fish and game allocation decisions. Recent examples include the continued defense against challenges to community subsistence harvest hunts and limits on Tier II access to caribou in Game Unit 13, and defending against challenges to the validity of federal fishery management plans that allow the state to manage areas of fishing within the three-mile limit.

- **Department of Revenue.** Section attorneys provide advice and represent DOR by defending its tax assessments in the areas of corporate income tax,

oil and gas production taxes, and property taxes levied on oil and gas exploration, production and pipeline property.

Section attorneys are currently defending many DOR tax decisions implicating many millions of dollars. Section attorneys also recently participated in litigation concerning the FERC tariff rate for transportation of North Slope oil, and the favorable decision resulted in more than \$234 million in additional tax and royalty payments to the state.

- **Statehood Defense.** Section attorneys defend the state in a multitude of arenas falling under this category. Examples include participation in federal rulemakings or litigation defending the state's interests in areas including the Endangered Species Act,¹⁴ RS2477 access,¹⁵ Outer Continental Shelf leasing decisions, and other jurisdictional disputes with the federal government.

Recent examples include defending challenges to Congressional Review Act repeal of federal regulations purporting to limit the state's rights, ongoing litigation in the *Sturgeon* case heard by the U.S. Supreme Court, the state's successful defense against the federal government of title to the beds of the Stikine and Knik rivers, and litigation concerning critical habitat determinations made for polar bears and beluga whales, or decisions to list – or not list – species such as the bearded seal, ringed seal, Steller Sea lion and humpback whales.

Opinions, Appeals & Ethics Section (OAE)

The Opinions, Appeals & Ethics Section is staffed by thirteen attorneys (with two vacancies), one-half of a paralegal and one support staff. The section is generally responsible for handling many civil appeals for the state and its agencies in state and federal court, administering and enforcing the Executive Branch Ethics Act (which is a statutory duty of the Attorney General), drafting Attorney General Opinions, and

¹⁴ The Department of Fish and Game (DFG) provides Law an RSA for this work which does not always cover all ESA work performed or the cost of the attorney assigned to perform it. The balance is made up by Law's UGF. Law has sometimes been successful in having DGF fund this balance by adding to the RSA. It did so in FY16, but not in FY15.

¹⁵ DNR provides Law an RSA for RS2477 work. The RSA amount was exceeded in FY16 and FY17, with the balance made up with the Civil Division's UGF budget.

providing advice and representation for the state on Native law issues. In FY17, approximately 80 percent of the OAE Section's work was UGF.

The section's UGF work includes:

- **Appeals:** All of the section's attorneys handle appeals in state and federal courts for a variety of state agencies. The appeals include legal challenges to all manner of state actions, statutes, and regulations. For example, section attorneys recently defended the Governor's line-item veto of approximately half the money appropriated by the Legislature to pay the 2016 permanent fund dividend. And the section's attorneys defended the Division of Election in a challenge to its handling of the 2016 general election in certain villages. The section also represents DHSS in all children in child-in-need-of-aid appeals and all other appeals.

To promote effective representation of the State's interests, the section monitors appeals in civil matters involving the State, including appeals that other sections handle. That monitoring includes evaluating whether to file an appeal, drafting petitions and responses for interlocutory appeal, reviewing briefs before they are filed, and arranging moot courts to prepare advocates for oral argument.

- **Litigation:** The section's attorneys sometimes handle litigation at the superior court level, particularly when an appeal is likely. For example, section attorneys handled a superior court case on the issue of whether five North Slope Borough school construction bonds are eligible for state reimbursement under a school bond debt reimbursement program.
- **Opinions:** The section's attorneys draft and review attorney general's opinions, which provide written legal guidance, generally for state agencies. These opinions are published and address matters such as statutory interpretation, the effects of court decisions, and conflicts between federal and state laws.
- **Advice:** In addition to formal opinions, the section's attorneys provide less formal oral and written advice, often to the Governor's Office. The subjects may include, for example, the scope of the governor's authority, the legality of proposed actions, or the appointment or removal of board or commission members. The section's guidance helps the State avoid costly litigation and liability.

- **Native law:** Two section attorneys devote substantial time to legal issues involving Alaska Natives.
- **Ethics:** One attorney in the section serves as the State Ethics Attorney. Her duties include advising current and former state officials on their obligations under the Executive Branch Ethics Act, investigating ethics complaints, prosecuting ethics complaints before the Personnel Board, serving as the department's designated ethics supervisor, advising other agencies' designated ethics supervisors, making recommendations to the attorney general about gift reports from the governor and lieutenant governor, and coordinating quarterly ethics reports from all executive branch agencies to the Personnel Board.
- **Amicus:** The Attorney General receives frequent requests to write or join amicus briefs, most often in United States Supreme Court cases. Section attorneys evaluate those requests and make recommendations to the Attorney General. When the State writes amicus briefs—often at the request of the Alaska Supreme Court—the section's attorneys usually write them.

Regulatory Affairs & Public Advocacy Section (RAPA)

RAPA represents the Attorney General as public advocate before the Regulatory Commission of Alaska (RCA). The section also represents the state's interests in pipeline proceedings before the Federal Energy Regulatory Commission (FERC). The section is staffed by three attorneys, and five non-attorney professionals who serve as investigators and expert witnesses primarily in RCA proceedings. In FY17, approximately 13 percent of RAPA's work was UGF. The section's work before the RCA is not UGF funded.¹⁶ The section's work on the state's behalf before the FERC is UGF funded.

The state's interest in FERC pipeline tariff proceedings is twofold. First, because increases in pipeline tariffs, particularly on the TransAlaska Pipeline System (TAPS), have the effect of reducing state production taxes and royalties, RAPA's state representation before the FERC can have substantial financial impacts for the state. Second, high TAPS tariff rates create an economic barrier to North Slope exploration and development by smaller oil and gas production companies interested in the North Slope. High TAPS tariff rates increase these smaller companies' costs to ship oil to market,

¹⁶ RAPA's work before the RCA is funded by an industry surcharge. AS 42.05.254; AS 42.04.286. In the budget, this funding source is referred to as Designated General Funds (DGF).

making the North Slope a less attractive investment opportunity compared to other less expensive operating venues.

RAPA's FERC work has generated hundreds of millions for the state. For example, the state was recently successful in contesting the inclusion of approximately \$625 million in cost upgrades to TAPS from being factored into 2009-2010 pipeline tariff rates. This decision resulted in the state collecting over \$234 million of additional revenue from back production taxes and royalties due as a result of decreased tariff rates on TAPS. If upheld on appeal, this decision should also save TAPS shippers approximately \$2 billion over the projected remaining lifespan of TAPS in the form of reduced tariff rates, resulting in additional production tax and royalty revenue for the state.

Also pending before FERC are state protests over TAPS tariff rates for 2011-2015. If the state is successful in this litigation, it could result in the state collecting hundreds-of-millions more in back production taxes and royalties for this period as well.

Special Litigation Section (SL)

The Special Litigation Section was created to develop litigation expertise in the Civil Division and to deploy that expertise—in collaboration with subject matter sections—to handle high-profile, expedited, and/or complicated litigation. The section is staffed by four attorneys. In FY17, approximately 73 percent of SL's work was UGF.

The section's UGF work includes assignment of cases from other sections. Many of the cases assigned can be UGF funded. Recent examples of UGF funded work include:

- Participating in multi-state anti-trust enforcement actions against pharmaceutical companies.
- Representing the Governor in a challenge to his exercise of the veto to reduce the amount of the 2016 Permanent Fund Dividend.
- Representing the Division of Elections in an election contest following the 2016 primary election.
- Representing the Lieutenant Governor in a challenge to his denial of certification of a ballot measure, 17FSH2.
- Representing the Division of Retirement and Benefits in a diminishment case about dental vision and audio benefits for retirees that will have implications for the State's ability to manage retirement obligations.

- Representing the Division of Elections in a challenge to candidate party membership requirements.

Transportation and Torts/Workers Compensation Sections

These two sections are almost exclusively funded by IA and therefore no UGF related discussion is needed for these sections.¹⁷

¹⁷ The Torts/Workers Compensation Section UGF billings for FY16 and FY17 (approximately twenty percent of the section's billable time) are largely attributable to section attorneys and paralegals providing assistance to other sections performing UGF work. This UGF work included participation in CINA trial court proceedings and appeals (normally covered by the Child Protection and Opinions, Appeals & Ethics sections), guardianships or other adult protective proceedings (normally covered by the Human Services section). This intra-section assistance illustrates an important point about the Division's UGF budget made earlier in this memorandum: "Law's GF budget is flexible; it allows the division to move resources where they are needed for the variety of GF work the Civil Division performs."