

FY2022 Supplemental Operating Budget Amendment (HB 284 / SB 165)

JUDGMENTS AND SETTLEMENTS

DEPARTMENT OF LAW. (a) The sum of \$876,601 is appropriated from the general fund to the Department of Law, civil division, deputy attorney general's office, for the purpose of paying judgments and settlements against the state on or before June 30, 2022.

(b) The amount necessary, after application of the amount appropriated in (a) of this section, to pay judgments awarded against the state on or before June 30, 2022, is appropriated from the general fund to the Department of Law, civil division, deputy attorney general's office, for the purpose of paying judgments against the state for the fiscal year ending June 30, 2022.

EXPLANATION

Following are the amounts related to judgments and settlements of the state:

Arctic Village Council et al. v. Meyer et al.; State v. Arctic Village Council et al. - \$182,612.16

Blanford v. Dunleavy - \$495,000.00

Eric Forrer v. SOA - \$157,689.15

John Doe v. SOA - \$41,299.68

Supplemental HB284 / SB165 included the following for a grand total of \$1,109.501

DEPARTMENT OF LAW. (a) The sum of \$232,900 is appropriated from the general fund to the Department of Law, civil division, deputy attorney general's office, for the purpose of paying judgments and settlements against the state on or before June 30, 2022.

Following are the amounts related to judgments and settlements of the state:

SOA-DOE v. Recall Dunleavy - \$143,569.33

ACLU et al. v. Dunleavy - \$89,331.23

Department of Law – Civil Division
Judgments/Claims Settlements for Payment



This form will be used for the purpose of standardizing the submission of claims to the legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. This form and any attachments will be submitted to the Office of Management and Budget. After obtaining the required signatures, please submit this form to the department's Budget Manager, Administrative Services Division, P.O. Box 110300, Juneau, AK 99811, or call (907) 465-3674 with questions.

PART ONE

CASE NAME:	<i>Arctic Village Council et al v. Meyer et al.; State v. Arctic Village Council et al.</i>		
CASE NUMBER:	3AN-20-07858CI; S-17902		
JUDGE(S)/JUSTICES:	Crosby; Maasen		
JUDGMENT ENTERED:	11/2/2021		
THE CAUSE OF ACTION:	<input type="checkbox"/> Occurred <i>before</i> August 7, 1997 <input checked="" type="checkbox"/> Occurred <i>on or after</i> August 7, 1997		
PROLAW NUMBER:	2020103226		
AMOUNT TO BE PAID:	\$ 178,557.92		
INTEREST RATE:	3.25%	EFFECTIVE DATE:	11/2/2021
REQUESTED HOURLY RATE AND TOTAL COMPENSATION OF ATTORNEYS TO BE PAID:	\$ 250-450		
COURT APPROVED / ORDERED HOURLY RATE AND TOTAL COMPENSATION OF ATTORNEYS TO BE PAID:	\$ 178,557.92 This amount includes \$57,000 in attorneys fees for the appeal, \$121,116.75 in attorneys fees for superior court litigation and 441.17 for superior court costs. These amounts were stipulated to by the State after negotiation.		
SEND CHECK TO:	<input checked="" type="checkbox"/> SEND CHECK TO THIS ADDRESS: Stephen Koteff American Civil Liberties Union of Alaska 1057 W. Fireweed Lane, Ste. 207, Anchorage, AK 99503 <input type="checkbox"/> SEND CHECK TO DEPT CONTACT:		

PART TWO

This information needs to be provided on all judgment awards and/or settlements made against the State of Alaska.

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.

In this case plaintiffs successfully challenged the constitutionality of the State's statutory requirement that absentee voters have their ballots witnessed, given the circumstances of the COVID-19 pandemic. Injunctive relief was awarded against the State. The monetary award in this case is for the plaintiffs' reasonable attorneys fees and costs awarded pursuant to AS 09.60.010.

2. Describe issues of state policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.

This case involved the requirement that absentee ballots be witnessed, contained in AS 15.20.081 (d) and Article V of the Alaska Constitution.

3. Did the State prevail on any issues? If yes, describe.

Yes. The State successfully argued that the State should not be required to re-print or otherwise alter pre-printed absentee ballot envelopes.

4. Did we challenge plaintiff's request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

Yes, the State successfully negotiated for a small reduction in the fees requested for the superior court litigation.

5. What was the source of the State's liability in this case?

Alaska Statute 09.60.010 allows successful constitutional claimants to recover full attorneys fees and costs.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

None. This case was unique to the COVID-19 pandemic.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

None.

8. Any recommendations concerning cases of this type in the future?

In the event of a future election during an ongoing pandemic, the Alaska Division of Elections should consider whether the absentee ballot witnessing requirement found in AS 15.20.081(d) unduly burdens Alaska citizens' right to vote under the Alaska Constitution under the circumstances of the pandemic. If so, the Division should consider voluntarily submitting to a court order waiving the requirement.

9. Any recommendations for changes in statutes, regulations, or policy? Cite any applicable statutes or regulations.

None. This case was unique to the COVID-19 pandemic and these specific circumstances are unlikely to recur. This case did not challenge the absentee ballot witnessing requirement under typical circumstances, and its enforcement in future elections continues to be constitutional. This case was unique to the COVID-19 pandemic and these specific circumstances are unlikely to recur.

APPROVALS

Lead Attorney _____ **Date** _____

Name Lael Harrison
Title Senior Assistant Attorney General
Phone 907 465-3600

Section Chief _____ **Date** _____

Deputy AG or Delegate _____ **Date** _____

Required attachments may include

- Judgment or Order Awarding Fees/Costs
- Copy of the settlement outlining payment terms
- EIN/SSN information for payment
- W9 for Division of Finance, if requested

RESET FORM

EMAIL

In the Supreme Court of the State of Alaska

**State of Alaska, Office of the
Lieutenant Governor, Division of
Elections, and Director Gail
Fenumiai, in an official capacity,**
Petitioners,

v.

**Arctic Village Council, League of
Women Voters of Alaska, Elizabeth
L. Jones, and Barbara Clark,**
Respondents.

Trial Court Case No. **3AN-20-07858CI**

Supreme Court No. **S-17902**

Order

Motion for Reconsideration of
Attorneys' Fees

Date of Order: **10/22/2021**

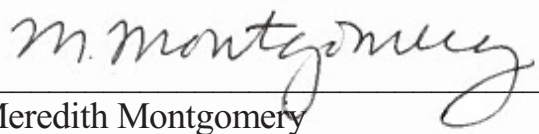
Before: Winfree, Chief Justice, Maassen, Carney, and Borghesan,
Justices, and Bolger, Senior Justice*

On consideration of the Motion for Reconsideration of this court's
9/17/2021 order regarding attorney's fees filed by the Respondents on 10/4/2021, and
the Petitioners' non-opposition filed on 10/8/2021,

IT IS ORDERED: The motion for reconsideration is **GRANTED**. Full
reasonable attorney's fees in the amount of \$57,600.00 are awarded to the Respondents.

Entered at the direction of the court.

Clerk of the Appellate Courts


Meredith Montgomery

* Sitting by assignment made under article IV, section 11 of the Alaska
Constitution and Alaska Administrative Rule 23(a).

State v. Arctic Village
Supreme Court No. S-17902
Order of 10/22/2021
Page 2

Distribution:

Email:
Fox, Laura F.
Harrison, Lael A.
Paton-Walsh, Margaret
Landreth, Natalie
Koteff, Stephen N.
Newman, Matthew Neil
Furlong, Wesley James
Decker, Joshua A.

Stephen Koteff, No. 9407070
ACLU of Alaska Foundation
1057 W. Fireweed Lane, Ste. 207
Anchorage, AK 99503
(907) 263-2007
skoteff@acluak.org

FILED in the TRIAL COURTS
State of Alaska Third District

NOV 01 2021

Clerk of the Trial Courts
By _____ Deputy

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

**Arctic Village Council, League of
Women Voters of Alaska, Elizabeth
L. Jones, and Barbara Clark,**

Plaintiffs,

v.

**Kevin Meyer, in his official capacity
as the Lieutenant Governor of the
State of Alaska; Gail Fenumiai, in her
official capacity as the Director of the
Alaska Division of Elections; and
Alaska Division of Elections,**

Defendants.

Case No. 3AN-20-07858CI

**Stipulation Regarding
Attorneys' Fees and Costs**

On October 5, 2020, the Court issued an Order granting Plaintiffs' Motion for Preliminary Injunction and Denying Defendants' Motion to Dismiss. Thereafter, on October 13, 2020, the Court issued the injunction, which was affirmed on appeal by the Alaska Supreme Court in *State v. Arctic Village Council*, No. 7556 (September 17, 2021). The parties agree, therefore, that Plaintiffs are prevailing parties in

Arctic Village Council v. Meyer
STIPULATION REGARDING ATTORNEYS' FEES AND COSTS
Case No. 3AN-20-07858CI

this case and are entitled to an award of costs and attorneys' fees pursuant to AS 09.60.010. Plaintiffs have provided the State with information about their actual and reasonable attorneys' fees and about the costs necessarily incurred and authorized under Rule 79(f), and the State accepts Plaintiffs' requests as reasonable and authorized by the law. Accordingly, the parties stipulate that the Court should enter the attached proposed judgment that awards Plaintiffs attorneys' fees in the amount of \$121,116.75 and costs totaling \$441.17.

RESPECTFULLY SUBMITTED this 1st day of November 2021.

FOR PLAINTIFFS ARCTIC VILLAGE
COUNCIL, LEAGUE OF WOMEN
VOTERS OF ALASKA, ELIZABETH
L. JONES, AND BARBARA CLARK

/s/ Wesley James Furlong

Wesley James Furlong
(AK Bar No. 1611108)

Matthew N. Newman
(AK Bar No. 1305023)

NATIVE AMERICAN RIGHTS FUND
745 West 4th Avenue, Suite 502
Anchorage, AK 99501

Tel. (907) 276-0680

wfurlong@narf.org

mnewman@narf.org

*Counsel for Plaintiff Arctic Village
Council*

FOR DEFENDANTS KEVIN
MEYER, GAIL FENUMIAI, AND
ALASKA DIVISION OF
ELECTIONS

/s/ Lael Harrison

Lael Harrison

ALASKA DEPARTMENT OF LAW
P.O. Box 110300

Juneau, AK 99811

Tel. (907) 465-3600

lael.harrison@alaska.gov

Margaret Paton-Walsh
ALASKA DEPARTMENT OF LAW
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501

Tel. (907) 269-5100

margaret.paton-walsh@alaska.gov

*Counsel for Defendants Kevin
Meyer, Gail Fenumiai, and Alaska
Division of Elections*

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: legal@acluak.org

/s/ Pooja Chaudhuri

Ezra D. Rosenberg

(*pro hac vice*)

Pooja Chaudhuri

(*pro hac vice*)

Natasha Chabria

(*pro hac vice*)

LAWYERS COMMITTEE FOR CIVIL
RIGHTS UNDER THE LAW

1500 K Street Northwest, Suite 900

Washington, DC 20005

Tel. (202) 662-8600

erosenberg@lawyerscommittee.com

pchaudhuri@lawyerscommittee.com

nchabria@lawyerscommittee.com

*Counsel for Plaintiffs Arctic Village
Council, League of Women Voters of
Alaska, Elizabeth L. Jones, and Barbara
Clark*

/s/ Stephen Koteff

Stephen Koteff

(AK Bar No. 9407070)

ACLU OF ALASKA FOUNDATION

1057 West Fireweed Lane, Suite 207

Anchorage, AK 99503

Tel. (907) 263-2007

skoteff@acluak.org

jdecker@acluak.org

*Counsel for Plaintiffs League of Women
Voters of Alaska, Elizabeth L. Jones,
and Barbara Clark*

Certificate of Service

I certify that on November 1, 2021, this Stipulation and Proposed Judgment were served by electronic mail on:

Lael Harrison (lael.harrison@alaska.gov)

Margaret Paton-Walsh (margaret.paton-walsh@alaska.gov)

/s/ Stephen Koteff

Stephen Koteff

ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: legal@acluak.org

11-2-21
a copy
of the following was mailed/faxed/hand delivered
to each of the following at their addresses of record
CCT N. Chabria, Administrative Assistant
CCT N. Fur long
CCT M. Newman
CCT J. Koteff
ACLU OF ALASKA FOUNDATION
1057 W. Fireweed Ln. Suite 207
Anchorage, Alaska 99503
TEL: 907.258.0044
FAX: 907.258.0288
EMAIL: legal@acluak.org
NOV 01 2021

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Arctic Village Council, League of
Women Voters of Alaska, Elizabeth
L. Jones, and Barbara Clark,

Case No. 3AN-20-07858CI

Plaintiffs,

v.

Kevin Meyer, in his official capacity
as the Lieutenant Governor of the
State of Alaska; Gail Fenumiai, in her
official capacity as the Director of the
Alaska Division of Elections; and
Alaska Division of Elections,

Defendants.

#15
[Proposed] Judgment
Awarding Attorneys' Fees
and Costs

It is ORDERED that judgment is entered as follows:

Plaintiffs shall recover and have judgment against the State of
Alaska as follows:


Attorney's fees \$121,116.75

Costs \$441.17

Total \$121,557.92

Post-judgment interest will accrue at the rate of 3.25%.

Dated at Anchorage, Alaska, this 2nd day of November 2021.


Dani Crosby
SUPERIOR COURT JUDGE

SETTLEMENT AGREEMENT

This Settlement Agreement and Release (“Agreement”) is entered into by and between: (1) Anthony L. Blanford and John K. Bellville (“Blanford,” “Bellville” and, collectively, “Plaintiffs”), individually and to the extent applicable, on behalf of their marital communities, heirs and/or assigns, and (2) the State of Alaska, Michael Dunleavy, and Tuckerman Babcock (“Defendants”).

I. PREAMBLE

- A. At all material times and until December 3, 2018, Blanford was employed as Chief of Psychiatry at the Alaska Psychiatric Institute (“API”), and Bellville was employed as a staff psychiatrist at API.
- B. On or about January 10, 2019, Plaintiffs initiated an action in the Superior Court for the State of Alaska, Third Judicial District at Anchorage titled *Anthony L. Blanford and John K. Bellville, v. Michael Dunleavy, Tuckerman Babcock, and the State of Alaska*, Case No. 3AN-19-04445 CI, making various claims against Defendants related to the termination of their employment, including claims under 42 U.S.C. § 1983. On or about February 6, 2019, the case was removed to the United States District Court for the District of Alaska at Anchorage and assigned the Case No. 3:19-cv-00036-JWS (“the Lawsuit”). On October 8, 2021, the district court granted summary judgment to Plaintiffs on their § 1983 claims. On or about November 5, 2021, Defendants Dunleavy and Babcock appealed the district court’s October 8 ruling, and a case was opened in the United States Court of Appeals for the Ninth Circuit and assigned the Case No. 21-35926 (“the Appeal”).
- C. Plaintiffs and Defendants have agreed to settle all claims which Plaintiffs have asserted, or could assert, against all Defendants on the terms and conditions stated below.

II. TERMS AND CONDITIONS

In consideration of the mutual promises set forth below, and for other good and valuable consideration, the parties agree that this Agreement supersedes, voids and replaces

any and all pre-existing agreements and understandings between the parties and that only the following terms and conditions shall apply:

1. **Complete Release of Liability.** Plaintiffs agree that, through their execution of this Agreement, and in consideration of the State of Alaska's agreement to the terms set out in paragraph 2 below, they fully release the State of Alaska, API, the Office of the Governor, Michael Dunleavy, Tuckerman Babcock, all employees of the Governor's office, and any officers, employees, and agents of the State of Alaska (collectively "the Released Parties") from any and all claims, causes of action, and demands for damages, expenses, costs, attorney's fees, and compensation, whether known or unknown, arising out of or relating in any way to the termination of their employment on December 3, 2018 or to their employment up to and including December 3, 2018. This release includes, but is not limited to, claims for breach of contract, defamation, wrongful termination, constructive discharge, retaliation, discrimination, violation of their rights under the Alaska Constitution or the United States Constitution, violation of any state or federal statutes, and breach of the covenant of good faith and fair dealing. Upon execution of this Agreement, and upon dismissal of the Appeal as provided in paragraph 2 and remand from the Ninth Circuit Court of Appeals, Plaintiffs authorize and direct their attorneys to dismiss the Lawsuit, with each party to bear his or its own attorneys' fees and costs.

2. **Compensation and Dismissal of Appeal.** Upon execution of this Agreement, Defendants agree to dismiss the Appeal. Upon the dismissal, as compensation for the economic and non-economic losses that he alleges or could have alleged in this litigation, inclusive of all interest, costs, and attorneys' fees, the State of Alaska agrees to

pay Blanford a lump sum of \$220,000.00, to be apportioned as follows: \$46,740 in lost wages, \$100,000 in noneconomic damages, and \$73,260 in attorneys' fees. As compensation for the economic and non-economic losses that he alleges or could have alleged in this litigation, inclusive of all interest, costs, and attorneys' fees, the State of Alaska agrees to pay Bellville a lump sum of \$275,000.00, to be apportioned as follows: \$83,425 in lost wages, \$100,000 in noneconomic damages, and \$91,575 in attorneys' fees. These payments will be made by check payable to the Plaintiffs and delivered to: Stephen Koteff, Legal Director, ACLU of Alaska Foundation, 1057 West Fireweed Lane, Suite 207, Anchorage, Alaska, 99503, as soon as reasonably practicable following the enactment into law of a legislative appropriation expressly for the purpose of satisfying this settlement agreement. Defendants represent that they will promptly seek appropriation of the aforementioned settlement amount by the current session of the Alaska Legislature after return to the Released Parties' counsel of an executed copy of this Settlement and Release. However, such appropriation is subject to legislative discretion and is not and cannot be guaranteed by the Released Parties.

3. Tax Consequences. Plaintiffs acknowledge that the Released Parties and their attorneys make no representations to them regarding the tax consequences of all or any portion of this Agreement. Accordingly, the State of Alaska will report the settlement amounts on IRS Forms 1099 as payment to Plaintiffs as set forth in paragraph 2 above. Plaintiffs acknowledge that they have had the opportunity to seek independent advice regarding the tax consequences of this Agreement and accept responsibility for satisfaction of their own tax obligations or liabilities that may result from this Agreement. Plaintiffs

agree that they will not assert a claim against the Released Parties for the payment or reimbursement of any tax consequences resulting from any payment made pursuant to this Agreement. The settlement amounts that are the subject of this Agreement will not be included in any calculations, now or in the future, toward eligibility for benefits under the Public Employees' Retirements System (PERS).

3. **Unknown Losses.** Plaintiffs acknowledge that injuries, losses, or damages that they do not know about now may be discovered later, and that injuries, losses, or damages that they know about now may later prove to be greater than they now believe them to be. Plaintiffs discharge the Released Parties from all liability for all injuries, losses, and damages, known now or that may be discovered later, arising from their employment with the State of Alaska. Plaintiffs assume all risk that their damages may be greater than they now know or anticipate.

4. **Future Employment Action.** Defendants agree that the State of Alaska may only take an employee's political views or affiliations into account in making any employment-related decision when the State determines through reasonable and bona fide efforts that the employee is properly categorized as a "policymaker" under existing case law, or it is a position for which political views or affiliations are an appropriate requirement for the effective performance of the job, or when otherwise permitted by law. This provision shall not be construed as an admission that the Governor or any agent of the State of Alaska took Blanford's or Bellville's political views or affiliations into account when making decisions related to their employment.

5. **No Admission of Liability.** Plaintiffs acknowledge that this settlement does not constitute an admission of liability by the Released Parties, and that the Released Parties expressly deny that they are liable to the Plaintiffs. Nothing in this Agreement should be deemed to be an admission of liability or responsibility on the part of the Released Parties.

6. **Binding Agreement.** Plaintiffs acknowledge that this Agreement is binding upon them, their heirs, executors, administrators, legal representatives, successors, and assigns.

7. **Further Suits or Claims.** Plaintiffs agree that they will not individually, or in concert with others, bring judicial, contractual, or administrative proceedings of any kind, in any forum, against the State of Alaska or any officers, employees, agents of the State for any cause of action related to their employment with the State of Alaska. Plaintiffs agree to indemnify, defend, and hold harmless the Released Parties from any such action that any individual or entity might bring on their behalf.

8. **Voluntary Execution**

- a. Plaintiffs declare that each of the terms of this Agreement have been carefully read and that its terms are fully understood and voluntarily accepted for the purpose of making a full and final compromise of any and all claims, disputed or otherwise, accrued or to accrue for and on account of any and all injuries, damages or claims of Plaintiffs against the Released Parties. Plaintiffs acknowledge that they have had an opportunity and sufficient time to confer with counsel and any other

advisors and experts as they have deemed appropriate, before executing this Agreement.

- b. Plaintiffs further agree that no promise inducement that is not expressed in this Agreement has been made by or to them to secure this settlement and release. Plaintiffs represent that the settlement that led to executing this release was not secured under duress or in haste at the instigation of the Released Parties and that Plaintiffs are not, in agreeing to this settlement and to this release, at a bargaining disadvantage because of the nature of any injury, loss or damage or for any other reason, and that the undersigned have been represented by an attorney throughout the course of negotiations that led to this settlement. Plaintiffs agree that this Agreement is voluntarily accepted and that this document is executed without reliance upon any statement or representation by any other party, its agents, or attorneys concerning the nature and extent of any injuries or damages, or other legal liability, financial responsibility, financial status, or assets of any party. Plaintiffs enter into this Agreement for the purpose of avoiding potential financial exposure, but acknowledge and agree that such circumstances do not constitute economic duress that would warrant an effort to set aside this agreement for duress, and waive any such argument or claim they may have.

- c. Accordingly, Plaintiffs voluntarily waive any and all rights to void this Agreement, or any of its provisions, due to economic or business compulsion. Plaintiffs represent that they have been advised of and have had the opportunity to review and consider the decisions of the Alaska Supreme Court applicable to the release of claims contained in this Agreement, including but not limited to, *Petroleum Sales, Ltd. v. Mapco Alaska, Inc.*, 687 P.2d 923 (Alaska 1984); *Young v. State of Alaska*, 455 P.2d 889 (Alaska 1969); *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978); and *Totem Marine Tug & Barge v. Alyeska Pipeline Serv. Co., et al.*, 584 P.2d 15 (Alaska 1978) and they waive the protection of those decisions.

9. **Entire Agreement & Unknown Facts/Mistake.** Plaintiffs agree that this Agreement shall constitute and contain the entire agreement and understanding concerning the claims identified herein and any other subject matters addressed herein between the parties. This Agreement supersedes all prior agreements and negotiations between the parties, if any, whether written or oral. This is an integrated document and may not be modified except in writing signed by the Plaintiffs and an authorized representative of the State of Alaska. Plaintiffs agree that there may be relevant facts not known to them or of which they have incomplete or mistaken knowledge. Plaintiffs expressly assume the risk of the facts being different and agree that this Agreement shall be in all respects effective and not subject to revocation or rescission by any such difference in facts.

10. **Choice of Law.** This Agreement shall be governed and interpreted by the laws of the State of Alaska.

11. **Severability.** If any provision of this Agreement (or application thereof) is concluded to be invalid by a court of law or other legal authority, the invalidity shall not affect the other provisions or applications of this Agreement which can be given effect without the invalid provision or application. To this end, the provisions of this Agreement are severable.

12. **Copies and Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one agreement. Parties also agree that scanned and/or facsimile signatures, or copies of signatures, shall have the same effect as an original.

In entering into this Agreement, I represent that I have read each page of this Settlement Agreement and Release, and I have had the opportunity to consult with and rely upon the advice of legal counsel of my own selection. I represent that the terms of this Agreement are fully understood and voluntarily accepted as evidenced by my signature below.

ACKNOWLEDGED AND AGREED TO:

DATED this ____ day of January, 2022.

Anthony L. Blanford

ACKNOWLEDGED AND AGREED TO:


DATED this ____ day of January, 2022.

John K. Bellville

ACKNOWLEDGED AND AGREED TO:

DATED this 1st day of February, 2022.

State of Alaska

By _____
Name: Treg R. Taylor
Its: Attorney General

In entering into this Agreement, I represent that I have read each page of this Settlement Agreement and Release, and I have had the opportunity to consult with and rely upon the advice of legal counsel of my own selection. I represent that the terms of this Agreement are fully understood and voluntarily accepted as evidenced by my signature below.

ACKNOWLEDGED AND AGREED TO:

DATED this 31 day of January, 2022.



Anthony L. Blanford

ACKNOWLEDGED AND AGREED TO:

DATED this ____ day of January, 2022.

John K. Bellville

ACKNOWLEDGED AND AGREED TO:

DATED this ____ day of January, 2022.

State of Alaska

By _____
Name: _____
Its: _____

In entering into this Agreement, I represent that I have read each page of this Settlement Agreement and Release, and I have had the opportunity to consult with and rely upon the advice of legal counsel of my own selection. I represent that the terms of this Agreement are fully understood and voluntarily accepted as evidenced by my signature below.

ACKNOWLEDGED AND AGREED TO:

DATED this ____ day of January, 2022.

Anthony L. Blanford

ACKNOWLEDGED AND AGREED TO:

DATED this 28 day of January, 2022.

John K. Bellville

ACKNOWLEDGED AND AGREED TO:

DATED this ____ day of January, 2022.

State of Alaska

By _____
Name: _____
Its: _____

STEPHEN KOTEFF, No. 9407070
ACLU OF ALASKA FOUNDATION
1057 W. FIREWEED LANE, STE. 207
ANCHORAGE, AK 99503
(907) 263-2007
skoteff@acluak.org

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

ANTHONY L. BLANFORD and)
JOHN K. BELLVILLE,)

Plaintiffs,)

v.)

MICHAEL J. DUNLEAVY, in his)
individual and official capacities;)
TUCKERMAN BABCOCK; and the)
STATE OF ALASKA,)

Defendants.)

Case No. 3:19-cv-00036-JWS

STIPULATION FOR DISMISSAL WITH PREJUDICE

The parties, through their undersigned counsel, hereby stipulate to dismissal of all claims that were or could have been asserted by any party to this action in accordance with Fed. R. Civ. P. 41(a)(1)(A)(ii), with prejudice, and with each party to be responsible for its own costs and attorneys' fees.

///

///

Blanford and Bellville v. Dunleavy, et al.

STIPULATION FOR DISMISSAL

Case No. 3:19-cv-00036-JWS

Page 1 of 2

ACLU OF ALASKA FOUNDATION
Attorneys for Plaintiffs

Dated: February 2, 2022

By s/ Stephen Koteff
Stephen Koteff, ABA No. 9407070

LANE POWELL LLC
Attorneys for Defendants

Dated: February 2, 2022

By s/ Brewster H. Jamieson
Brewster H. Jamieson, ABA No. 8411122
Michael B. Baylous, ABA No. 0905022

Department of Law – Civil Division
Judgments/Claims Settlements for Payment



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PART ONE

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SEND CHECK TO:	<input checked="" type="checkbox"/> SEND CHECK TO THIS ADDRESS: Stephen Koteff American Civil Liberties Union of Alaska 1057 W. Fireweed Lane, Ste. 207, Anchorage, AK 99503 <input type="checkbox"/> SEND CHECK TO DEPT CONTACT:		

PART TWO

This information needs to be provided on all judgment awards and/or settlements made against the State of Alaska.

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.

In this case plaintiffs successfully challenged the constitutionality of the State's statutory requirement that absentee voters have their ballots witnessed, given the circumstances of the COVID-19 pandemic. Injunctive relief was awarded against the State. The monetary award in this case is for the plaintiffs' reasonable attorneys fees and costs awarded pursuant to AS 09.60.010.

2. Describe issues of state policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.

This case involved the requirement that absentee ballots be witnessed, contained in AS 15.20.081 (d) and Article V of the Alaska Constitution.

3. Did the State prevail on any issues? If yes, describe.

Yes. The State successfully argued that the State should not be required to re-print or otherwise alter pre-printed absentee ballot envelopes.

4. Did we challenge plaintiff's request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

Yes, the State successfully negotiated for a small reduction in the fees requested for the superior court litigation.

5. What was the source of the State's liability in this case?

Alaska Statute 09.60.010 allows successful constitutional claimants to recover full attorneys fees and costs.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

None. This case was unique to the COVID-19 pandemic.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

None.

8. Any recommendations concerning cases of this type in the future?

In the event of a future election during an ongoing pandemic, the Alaska Division of Elections should consider whether the absentee ballot witnessing requirement found in AS 15.20.081(d) unduly burdens Alaska citizens' right to vote under the Alaska Constitution under the circumstances of the pandemic. If so, the Division should consider voluntarily submitting to a court order waiving the requirement.

9. Any recommendations for changes in statutes, regulations, or policy? Cite any applicable statutes or regulations.

None. This case was unique to the COVID-19 pandemic and these specific circumstances are unlikely to recur. This case did not challenge the absentee ballot witnessing requirement under typical circumstances, and its enforcement in future elections continues to be constitutional. This case was unique to the COVID-19 pandemic and these specific circumstances are unlikely to recur.

APPROVALS

Lead Attorney _____ **Date** _____

Name Lael Harrison
Title Senior Assistant Attorney General
Phone 907 465-3600

Section Chief _____ **Date** _____

Deputy AG or Delegate _____ **Date** _____

Required attachments may include

- Judgment or Order Awarding Fees/Costs
- Copy of the settlement outlining payment terms
- EIN/SSN information for payment
- W9 for Division of Finance, if requested

RESET FORM

EMAIL

Rose, Valerie B (LAW)

From: Mills, Cori M (LAW)
Sent: Thursday, February 3, 2022 1:08 PM
To: Rose, Valerie B (LAW)
Subject: Judgments and Settlements
Attachments: Blanford and Bellville Judgments and Settlements SIGNED.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Val, this was a strange one because the settlement wasn't filed with the court. We just dismissed our appeal. There might be a judgment in the future from the lower court, but I didn't think I should wait for that.

It also strange because it was completely handled by outside counsel and Treg and I were the only ones on the contract. So I just signed it under my signature line and left the others blank. Let me know if this works.

Cori Mills
Deputy Attorney General
Civil Division
Department of Law
123 4th Street, Suite 600
P.O. Box 110300
Juneau, AK 99811
(907) 465-2132

1
2 Law Office of Joseph W. Geldhof
3 2 Marine Way, Suite # 207
4 Juneau, Alaska 99801
5 Telephone: (907) 723-9901 [Mobile]
6 E mail: joeg@alaskan.com
7 Counsel for Eric Forrer

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SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

ERIC FORRER

Plaintiff,

vs.

Case No.: 1JU-18-00699 CI

STATE OF ALASKA and

LUCINDA MAHONEY,

Defendants.

FINAL JUDGMENT AFTER REMAND

In accordance with the Alaska Supreme Court *Opinion* dated September 4, 2020 and the Alaska Supreme Court *Order* dated February 2, 2021, and this court's *Order on Motion for Attorney's Fees and Costs on Remand* dated June 2, 2021,

JUDGMENT IS HEREBY ENTERED in favor of Eric Forrer for the reasons set forth in the Opinion rendered by the Alaska Supreme Court on September 4, 2020.

IT IS FURTHER ORDERED that Eric Forrer, as the prevailing party in this public interest case, is entitled to attorney's fees in the amount of \$151,693.00, effective as of this court's ruling on June 2, 2021.

Final Judgment on Remand
Forrer vs. State of Alaska
1JU-18-00699 CI

LODGED 7/26 BY ps
DATE INITIAL

D# 20

1
2 Costs in the amount of \$ 460³², as determined by the Clerk of the
3 Court according to the previously submitted according to the Bill of Costs &
4 Affidavit dated March 18, 2021, are also awarded to Forrer for a total judgment
5 in the amount of \$ 152,161.32.
6

7 DATED this 15th day of September, 2021 at Sitka, Alaska.
8

9
10 

11 Jude M. Pate,
12 Superior Court Judge
13
14
15



16 CERTIFICATION
17 Copies Distributed
18 Date 09/17/21
19 To plt
20 Def
21 By LAB
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Certification

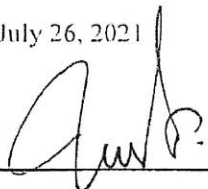
I certify that this document
was sent to the following by e-mail:

Mary Hunter Gramling, Assistant Attorney General
<mary.gramling@alaska.gov>

William E. Milks, Assistant Attorney General
<bill.milks@alaska.gov>

DATED: July 26, 2021

By: _____


Joseph W. Geldhof

2021 MAR 22 PM 4:03

CLERK TRIAL COURTS

BY DS
DEPUTY CLERK.

Law Office of Joseph W. Geldhof
2 Marine Way, Suite # 207
Juneau, Alaska 99801
Telephone: (907) 723-9901 [Mobile]
E mail: joeg@alaskan.com
Counsel for Eric Forrer

**SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU**

ERIC FORRER)

Plaintiff,)

vs.)

Case No.: 1JU-18-00699 CI

STATE OF ALASKA and)

LUCINDA MAHONEY,)

Defendants.)

BILL OF COSTS & AFFIDAVIT

[Alaska Civil Rule 79 (f)]

Joseph W. Geldhof, attorney for Eric Forrer, plaintiff in the above-captioned case, upon my oath, states the following are correct and true to the best of my knowledge:

1. By *Scheduling Order on Remand* dated February 25, 2021, the Trial Court directed Forrer to request attorney's fees and costs no later than March 22, 2021.

2. Plaintiff seeks to recover the costs listed below. These costs are allowable under Civil Rule 79(f) and were necessarily incurred in the action.

3. The amount listed for each item is the amount specified in the rule or the cost actually incurred.

A. Filing fee:

\$250.00

Date Incurred
(If Required by
Civil Rule 68)

B. Process Server Costs:

N/A

Cost Bill & Affidavit
Forrer v. SOA, et al
1JU-18-00699 Civil

Scanned to Judge Acute
On 3/14/21 By MEIDA

C. Publication Costs:	N/A	_____
D. Premiums for bonds, and other security:	N/A	_____
E. Depositions:	N/A	_____
F. Court reporter's fee:	N/A	_____
G. Court reporter's travel expenses	N/A	_____
H. Audio and audio-visual deposition costs:	N/A	_____
I. Transcription costs:	N/A	_____
J. Witness fees		
(i) Non-expert witnesses:	N/A	_____
List:		
(ii) Expert witnesses:	\$3,000.00 ¹	_____
List: Milton Barker		
Gregg Erickson		
Gordon Harrison		
K. Interpreter and translator fees:	N/A	_____
L. Total travel:	N/A	_____
(Attach itemized trip information. See form CIV-411.)		
M. Long distance telephone charges for telephonic participation at proceedings, depositions, the meeting of the parties, and witness interviews:	N/A	_____
N. Computerized legal research:	N/A	_____

¹ See, fees for witnesses in **FEES FOR PUBLIC INTEREST CONSULTANTS & ATTORNEYS AT MOOT COURT** portion of *Statement of Services*, dated March 18, 2021 (attached to *Motion for Attorney's Fees* that accompanies this cost bill.

O. Copying

(i) In-house copies (\$.15 per page)² \$ 39.75

(ii) Outside copy costs (actual cost) \$ 178.57³

(iii) Other. (Describe): N/A

P. Exhibit preparation: N/A

Q. Court-ordered transcripts: N/A

R. Other costs allowed by statute: N/A

4. The sum of the allowable costs
plaintiff requests are:

\$3,468.32

5. This concludes my statement made under oath.

DATED this 18th day of March, 2021 at Juneau, Alaska.

**LAW OFFICE OF
JOSEPH W. GELDHOF**

Joseph W. Geldhof

Alaska Bar # 8111097

CLERK'S RULING ON COST BILL

Costs are hereby taxed in favor of Plaintiff and against defendants in the amounts noted above.
Remarks: Per AdR 7, \$3,000.00 of the Expert Witness Fees sought under Section J(ii) of the proposed verified cost bill are to be excluded. The new allowable costs are adjusted to: \$468.32.

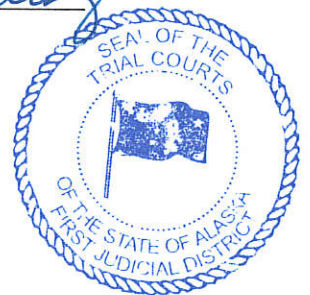
Date: 09/15/2021

Clerk of Court

I certify that on 9/17/2021
a copy of this ruling was sent to:

Pl + Def

By: CKB



² Estimate of pages (265 pages), made on office copier during trial court proceedings.

³ See, *Trial Court Copying Costs* summary, attached.

Forrer v. Lucinda Mahoney, et al

STA Bond Float
1-JU-18-00699 Civil

TRIAL COURT COPYING COSTS [Receipts in File]

06/26/18	Copying Costs for SOA's MTD	5.67
06/28/18	Copying/Scan Costs for SOA's MTD	9.52
06/28/18	Copying Costs of SOA materials [for Sonja]	40.01
07/05/18	Copying and Scan Costs [docs for SOA]	45.99
07/09/18	Copying/Scan to e-mail Response to SOA [per Off. Man.]	6.30
07/09/18	Copying/Scan Costs for doc to SOA [Paid 8/6/19]	11.55
07/19/18	Copying Costs for Amended Complaint to SOA	2.31
07/19/18	Copy/Scan Costs for Amended Complaint	5.25
07/23/18	Copying Costs re: Corrected Am. Com. to SOA	2.63
08/03/18	Copying/Scan Costs for doc. from SOA	3.15
08/10/18	Copying Costs of docs for SOA	5.00
08/14/18	Copying Costs for docs to SOA	5.29
01/17/19	Copying Costs of docs in Forrer v. SOA	1.90
02/21/19	Copying Costs re: judgment and appeal	<u>34.00</u>

TOTAL DISBURSEMENT COSTS ----- \$178.57

Sonja Kawasaki

TOTAL TIME BILLED -- 139.82 HOURS x \$300/HR. = \$ 41,946.00

Jack B. McGee

TOTAL TIME BILLED -- 31.0 HOURS x \$225/HR. = \$ 6,975.00

SUM OF ATTORNEY'S FEES ----- \$ 181,291.00

FEES FOR PUBLIC INTEREST CONSULTANTS/WITNESSES

Flat Rate Honorarium for Gordon Harrison [Alaska Constitution Scholar] \$ 1,000.00

Flat Rate Honorarium for Milt Barker [Fiscal Policy & Economic Advisor] \$ 1,000.00

Flat Rate Honorarium for Gregg Erickson [Economist] \$ 1,000.00

TOTAL TIME FOR CONSULTANTS/WITNESSES ----- \$ 3,000.00 ²

HONORARIUM FOR ADDITIONAL ATTORNEYS/COUNSEL

Flat Rate Honorarium for Attorney William Spear [prep for argument] \$ 500.00

Flat Rate Honorarium for Attorney Deborah Holbrook [prep for argument] 500.00

TOTAL TIME FOR CONSULTANTS/WITNESSES ----- **\$1,000.00**

FEES FOR GELDHOF, KAWASAKI & MCGEE ----- \$ 181,291.00

FLAT RATE FEE FOR OTHER COUNSEL ----- \$ 1,000.00

SUM OF FEES ----- \$ 182,291.00

PLEASE PAY THIS AMOUNT----- \$ 182,291.00

² Fees for expert consulting and witness work are not included in this billing statement. These costs were incorporated in the Cost Bill submitted to the Trial Court in this case.

Department of Law – Civil Division
Judgments/Claims Settlements for Payment



This form will be used for the purpose of standardizing the submission of claims to the legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. This form and any attachments will be submitted to the Office of Management and Budget. After obtaining the required signatures, please submit this form to the department's Budget Manager, Administrative Services Division, P.O. Box 110300, Juneau, AK 99811, or call (907) 465-3674 with questions.

PART ONE

CASE NAME:	<i>Arctic Village Council et al v. Meyer et al.; State v. Arctic Village Council et al.</i>		
CASE NUMBER:	3AN-20-07858CI; S-17902		
JUDGE(S)/JUSTICES:	Crosby; Maasen		
JUDGMENT ENTERED:	11/2/2021		
THE CAUSE OF ACTION:	<input type="checkbox"/> Occurred <i>before</i> August 7, 1997 <input checked="" type="checkbox"/> Occurred <i>on or after</i> August 7, 1997		
PROLAW NUMBER:	2020103226		
AMOUNT TO BE PAID:	\$ 178,557.92		
INTEREST RATE:	3.25%	EFFECTIVE DATE:	11/2/2021
REQUESTED HOURLY RATE AND TOTAL COMPENSATION OF ATTORNEYS TO BE PAID:	\$ 250-450		
COURT APPROVED / ORDERED HOURLY RATE AND TOTAL COMPENSATION OF ATTORNEYS TO BE PAID:	\$ 178,557.92 This amount includes \$57,000 in attorneys fees for the appeal, \$121,116.75 in attorneys fees for superior court litigation and 441.17 for superior court costs. These amounts were stipulated to by the State after negotiation.		
SEND CHECK TO:	<input checked="" type="checkbox"/> SEND CHECK TO THIS ADDRESS: Stephen Koteff American Civil Liberties Union of Alaska 1057 W. Fireweed Lane, Ste. 207, Anchorage, AK 99503 <input type="checkbox"/> SEND CHECK TO DEPT CONTACT:		

PART TWO

This information needs to be provided on all judgment awards and/or settlements made against the State of Alaska.

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.

In this case plaintiffs successfully challenged the constitutionality of the State's statutory requirement that absentee voters have their ballots witnessed, given the circumstances of the COVID-19 pandemic. Injunctive relief was awarded against the State. The monetary award in this case is for the plaintiffs' reasonable attorneys fees and costs awarded pursuant to AS 09.60.010.

2. Describe issues of state policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.

This case involved the requirement that absentee ballots be witnessed, contained in AS 15.20.081 (d) and Article V of the Alaska Constitution.

3. Did the State prevail on any issues? If yes, describe.

Yes. The State successfully argued that the State should not be required to re-print or otherwise alter pre-printed absentee ballot envelopes.

4. Did we challenge plaintiff's request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

Yes, the State successfully negotiated for a small reduction in the fees requested for the superior court litigation.

5. What was the source of the State's liability in this case?

Alaska Statute 09.60.010 allows successful constitutional claimants to recover full attorneys fees and costs.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

None. This case was unique to the COVID-19 pandemic.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

None.

8. Any recommendations concerning cases of this type in the future?

In the event of a future election during an ongoing pandemic, the Alaska Division of Elections should consider whether the absentee ballot witnessing requirement found in AS 15.20.081(d) unduly burdens Alaska citizens' right to vote under the Alaska Constitution under the circumstances of the pandemic. If so, the Division should consider voluntarily submitting to a court order waiving the requirement.

9. Any recommendations for changes in statutes, regulations, or policy? Cite any applicable statutes or regulations.

None. This case was unique to the COVID-19 pandemic and these specific circumstances are unlikely to recur. This case did not challenge the absentee ballot witnessing requirement under typical circumstances, and its enforcement in future elections continues to be constitutional. This case was unique to the COVID-19 pandemic and these specific circumstances are unlikely to recur.

APPROVALS

Lead Attorney _____ **Date** _____

Name Lael Harrison
Title Senior Assistant Attorney General
Phone 907 465-3600

Section Chief _____ **Date** _____

Deputy AG or Delegate _____ **Date** _____

Required attachments may include

- Judgment or Order Awarding Fees/Costs
- Copy of the settlement outlining payment terms
- EIN/SSN information for payment
- W9 for Division of Finance, if requested

RESET FORM

EMAIL

1 **II. Law**

2 Alaska Statute 09.60.010 permits a constitutional claimant to recover “full
3 reasonable attorney fees,”¹ but only for “that portion of the services” devoted to
4 constitutional issues on which the claimant prevailed.² In other words, a claimant is
5 entitled to recover attorney’s fees devoted in any reasonably connected way to the
6 constitutional claims on which it prevailed.³

7
8 A superior court’s assessment of an attorney’s fees award begins with the
9 prevailing party’s actual fees, but it does not end there.⁴ The court must exercise its
10 discretion to determine whether the fees claimed are objectively reasonable.⁵ There is
11 no exhaustive list of factors a court may or should consider in this process.⁶ Courts
12 generally approach the question by separately evaluating the reasonableness of the
13 hourly rate charged and the number of hours billed.⁷ The factors listed in Alaska Bar
14 Rule 35(a) may be used to assess the reasonableness of counsel’s requested hourly
15 rate.⁸ The factors listed in Alaska Civil Rule 82(b)(3) may be used in assessing
16 whether the number of hours claimed is reasonable.⁹

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¹ AS 09.60.010(c).

24 ² AS 09.60.010(d).

25 ³ *Meyer v. Stand for Salmon*, 450 P.3d 689, 691 (Alaska 2019).

⁴ *Valdez Fisheries Dev. Ass’n, Inc. v. Froines*, 217 P.3d 830, 834 (Alaska 2009).

⁵ *Id.* at 833.

⁶ *Id.*

⁷ *Id.*

⁸ *Froines*, 217 P.3d at 833 n. 17.

⁹ *Id.*

1 **III. Decision**

2 Forrer seeks an award of attorney's fees in the amount of \$182,291.00. This
3 amount consists of \$132,370 for services rendered by Joseph Geldhof (378.2 hours x
4 \$350/hour), \$41,946 for Sonja Kawasaki (139.82 hours x \$300/hour), \$6,975 for Jack
5 McGee (31 hours x \$225/hour) and \$1,000 in honorarium for additional counsel.
6

7 The State contends that the amount sought by Forrer is unreasonable and that
8 the court should instead award Forrer an amount not to exceed \$113,505. In
9 opposition, the State argues the following: Kawasaki's hourly rate should be reduced
10 to \$200; the hours expended on procedural matters in which Forrer did not prevail
11 should be excluded; a twenty percent (20%) across-the-board reduction should be
12 applied against the actual hours billed by both Geldhof and Kawasaki due to block
13 billing entries; and honorarium fees should be excluded from Forrer's award.¹⁰
14

15 **A. Kawasaki's hourly rate should be reduced to \$200.**

16
17 The State argues Kawasaki's hourly rate of \$300 is unreasonable based on the
18 extent of her legal experience. The State instead proposes that Kawasaki's hourly rate
19 should be \$200, as was determined by the Alaska Supreme Court on appeal. Forrer
20 argues that Kawasaki's value as an attorney warrants an hourly rate of \$300, and if not,
21 at least \$250 hourly.
22

23 Forrer submitted an affidavit from Kawasaki's supervisor, State Senator Bill
24 Wielechowski, detailing the quality and amount of years of Kawasaki's legal
25

¹⁰ Forrer stated that the \$3,000 he sought in fees for expert consulting were not included in his request for attorney's fees. Instead, he incorporated these costs into his Cost Bill submitted separately.

1 experience in support of a \$300 hourly rate. Citing Alaska Bar Rule 2(e)(2), Forrer
2 argues that the Alaska Bar Association considers law clerking for a judge as “active
3 practice of law,” which are years of experience that should be credited to Kawasaki.

4 Forrer’s argument is unpersuasive.

5
6 When determining the reasonableness of attorney’s fees, factors to be
7 considered under Alaska Bar Rule 35(a) are “the fees customarily charged in the
8 locality for similar legal services,” and “the experience... of the attorney...
9 performing the services.”¹¹ In determining an award of attorney’s fees on appeal, the
10 Alaska Supreme Court reduced the hourly rate for Kawasaki to \$200. Neither the
11 affidavit from State Senator Wielechowski’s nor Forrer’s motion articulated a
12 justifiable reason as to why Kawasaki’s hourly rate should be any higher in the
13 superior court proceedings—when Kawasaki had less experience—than in the
14 appellate court proceedings.
15

16
17 The Alaska Supreme Court found a \$200 hourly rate for Kawasaki to be both
18 reasonable and customary for an attorney with comparable experience in Juneau,
19 which this court finds both persuasive and authoritative. Therefore, Kawasaki’s
20 hourly rate will be reduced to \$200.
21
22
23
24
25

¹¹ Alaska Bar R. 35(a)(3), (7).

1 **B. Some of the hours expended on procedural matters were not made**
2 **in reasonable furtherance of the constitutional claim and,**
3 **therefore, should be excluded.**

4 The State contends that the hours Forrer's attorneys expended on arguments in
5 support of procedural matters should not be included in Forrer's award of attorney's
6 fees. Specifically, the State objects to including time spent communicating with the
7 media, dealing with clerical tasks, attempting to convert the State's motion to dismiss
8 to one for summary judgment, demanding a jury trial, and litigating a motion to
9 compel discovery. The State notes that, although Forrer prevailed on all his
10 constitutional claims, Forrer did not prevail on certain procedural matters.

11
12 Some aspects of the State's argument have merit.

13 Alaska Statute 09.60.010 permits a constitutional claimant to recover "full
14 reasonable attorney fees,"¹² which is to say that a claimant is entitled to recover
15 attorney's fees devoted in any reasonably connected way to the constitutional claims
16 on which it prevailed.¹³

17
18 Forrer's motion to convert the State's motion to dismiss to one for summary
19 judgment, was made in reasonable furtherance of the constitutional claims on which
20 Forrer ultimately prevailed. The motion was timely, in the sense that the question
21 raised needed to be resolved prior to addressing the State's motion to dismiss.
22 Although Forrer did not prevail in seeking to convert the State's motion to dismiss,
23 pursuit of this motion was not frivolous.
24
25

¹² AS 09.60.010(c).

¹³ *Meyer v. Stand for Salmon*, 450 P.3d 689, 691 (Alaska 2019).

1 In contrast, demand for a jury trial and motion to compel discovery were not
2 made in reasonable furtherance of the constitutional claims on which Forrer
3 ultimately prevailed. Specifically, the demand and motion were premature, in the
4 sense that the questions raised did not need to be resolved prior to addressing the
5 State's motion to dismiss.
6

7 Forrer challenged the constitutionality of statute in question on its face, and the
8 litigation was turned on the State motion to dismiss on the pleadings. A jury does not
9 decide a question of law on a motion to dismiss on the pleadings. Discovery is not
10 necessary to decide a question of law on a motion to dismiss on the pleadings. Under
11 these circumstances the demand for a jury trial and motion to compel were
12 premature, and litigation of these issues was not necessary to further Forrer's
13 constitutional claims at that juncture of the litigation.
14

15 Finally, Forrer makes no argument as to why he should be compensated for the
16 time his attorneys spent communicating with the media and dealing with clerical tasks.
17 Forrer notes his effort to exclude costs associated with clerical duties by noting "NO
18 CHARGE" in the relevant portions of the billing statement. Nonetheless, there were
19 portions of the billing statements that included clerical duties for which Forrer did not
20 include the notation of "NO CHARGE". Therefore, the court will not compensate
21 Forrer for the time his attorneys spent communicating with the media. The court will
22 also not compensate Forrer for the time his attorneys indicated they performed
23 clerical tasks, unless there was a note of "NO CHARGE" for those clerical tasks.
24
25

1 For the reasons explained above, in making an award of attorney's fees, the
2 court will exclude the hours Forrer's attorneys expended on the demand for a jury
3 trial, motion to compel discovery, communication with the media, and handling
4 clerical tasks. Because Forrer attorneys used block billing entries in many instances, a
5 precise determination of exclusion of hours is addressed in the section immediately
6 below regarding block billing.
7

8 **C. Some attorney services should not be compensated or should be**
9 **compensated at a reduced rate because block billing entries make**
10 **it difficult or impossible for the court to assess the reasonableness**
11 **of the hours expended and other services were not reasonably**
12 **incurred**

13 The State contends that the court should apply an across-the-board reduction
14 of twenty percent (20%) of the hours billed for Geldhof and Kawasaki due to their
15 block billing entries. The State presented case law and studies on how block billing
16 entries by attorneys could increase attorney fees by as much as thirty percent (30%).
17 The State argues that the use of block billing by Forrer's attorneys makes it impossible
18 for the State and the court to assess the reasonableness of the hours Forrer expended
19 on each item entry billed.

20 Some of the State's arguments have merit.

21 After a detailed review of the statements, the court finds that the use of block
22 billing by Forrer's attorneys often makes it difficult or impossible for the court to
23 assess the reasonableness of the hours expended. Therefore, where the block billing
24 indicates that a substantial portion or the entirety of the services provided were
25

1 devoted to pursuit of claims that were not made in reasonable furtherance of the
2 constitutional claims, the court excludes any award. Where the block billing indicates
3 that a relatively smaller fraction of the services provided were devoted to pursuit of
4 claims that were not made in reasonable furtherance of the constitutional claims, the
5 court reduces the hours by twenty percent.¹⁴
6

7 Specifically, the court finds that certain block billing indicates that substantial
8 portion or the entirety of the services provided were devoted to pursuit of claims that
9 were not made in reasonable furtherance of the constitutional claims for 3.0 hours of
10 Kawasaki's time¹⁵ and 20.3 hours of Geldhof's time.¹⁶ Therefore, the court reduces
11 Forrer's award for attorney's fees by 23.3 hours.
12

13 The court also finds that certain block billing indicates that a relatively smaller
14 fraction of the services provided were devoted to pursuit of claims that were not
15 made in reasonable furtherance of the constitutional claims for reduces for 46.7 hours
16 of Geldhof's time.¹⁷ Therefore, the court reduces Forrer's award on these hours by
17 twenty percent, a deduction of 9.34 hours.
18

19 Kawasaki's use of block billing for legal work performed over the course of
20 multiple days does not, in and of itself, make it impossible for the court to assess the
21
22
23
24

25 ¹⁴ The court also reduces the hours for services for communication with the media and performance of clerical tasks that are not accompanied by a note of "NO CHARGE".

¹⁵ Entries on July 20 & 21, and August 7 & 8, 2021.

¹⁶ Entries on May 15, July 17 & 21, and August 2, 7 & 21, 2018.

¹⁷ Entries on April 25, July 18, 22 & 23, August 3, 8, 14 & 23, and October 1, 2018.

1 reasonableness of the hours billed. Kawasaki's use of block billing was done to bill
2 hours for legal work that carried over into the next day.

3 Nevertheless, the court must exercise its discretion to determine whether the
4 amount of hours worked by Forrer's attorneys is objectively reasonable. The court
5 may use the factors listed in Alaska Civil Rule 82(b)(3) in assessing whether the
6 number of hours claimed is reasonable.
7

8 There are specific entries listed in the billing statements submitted by Forrer's
9 attorneys where the number of hours expended appear excessive or duplicative.
10 Specifically, there is an eight-day period where Kawasaki devoted 116.07 hours to
11 researching and drafting a response to the State's motion to dismiss.¹⁸ This equates
12 to 14.5 hours a day. It is not reasonable to assume that Kawasaki sustained
13 productive, efficient brief writing and research for this entire period of time.
14

15 Moreover, during the same eight-day period Geldhof devoted 46.7 hours to
16 researching and drafting a response to the State's motion to dismiss. Although the
17 issues in the case were complex, they were not so complex as to warrant the
18 combined effort of the two attorneys for 163.4 hours. Under these facts and
19 circumstances the court finds that a reasonable award is achieved by reducing the time
20 Kawasaki devoted to researching and drafting a response by twenty percent.
21
22 Therefore, the court reduces Forrer's award on Kawasaki's 116.07 hours by twenty
23 percent, a deduction of 23.21 hours.
24
25

¹⁸ October 1-8, 2018.

Forrer's attorneys included fees associated with honorarium attorneys in their billing of attorney's fees. The State contested the inclusion of these fees in Forrer's award of attorney's fees. Forrer subsequently withdrew the cost associated with honorarium attorneys. Accordingly, the fees attributable to Forrer's honorarium attorneys will be excluded from Forrer's award of attorney fees.

Based on the facts and circumstances in this case, the court finds a total amount of \$151,693 to be reasonable and necessarily incurred for an award of attorney's fees. The court finds the reasonable hourly rate for Kawasaki's services is \$200. The court reduces Geldhof's billed hours by 29.64 and reduces Kawasaki's billed hours by 26.21. The court disallows the honorarium initially sought by Forrer.

The award of \$151,693 consists of \$121,996 for services rendered by Geldhof (348.56 x \$350/hour), \$22,722 for Kawasaki (113.61 x \$200/hour), and \$6,975 for Jack McGee (31 hours x \$225/hour).

SO ORDERED this 2nd day of June, 2021.

By AS

Jude Pate
Superior Court Judge