



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

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February 16, 2022

Via Email

The Honorable Neal Foster
Alaska House of Representatives
State Capitol, Room 505
Juneau, AK 99801
Representative.Neal.Foster@akleg.gov

The Honorable Kelly Merrick
Alaska House of Representatives
State Capitol, Room 516
Juneau, AK 99801
Rep.Kelly.Merrick@akleg.gov

Re: *Settlement in Blanford/Bellville v. Dunleavy*

Dear Co-Chairs Foster and Merrick:

This letter is about the judgments and settlements section of the supplemental budget for Fiscal Year 2022. Specifically, this letter responds to questions that pertain to the settlement in *Blanford/Bellville v. Dunleavy*. In the spirit of candor and transparency, I respectfully write to allay any concerns raised by such questions, and to ensure the Finance Committee, as the appropriating committee of the Legislature, has the most accurate information available.

As a brief summary of events: the district court on October 8, 2021, granted partial summary judgment to the plaintiffs in this lawsuit on the issue of the individual defendants' immunity from suit under 42 USC § 1983. Before the remaining claims and issues were addressed, outside counsel for the State appealed the trial court's decision on qualified immunity to the Ninth Circuit Court of Appeals.

Before the appeal was considered by the Ninth Circuit, both sides negotiated a settlement in good faith. The State, Governor Michael Dunleavy, and former Chief of Staff Tuckerman Babcock agreed to dismiss their appeal and plaintiffs agreed to dismiss their lawsuit in exchange for a compromised settlement. The settlement documents were fully executed by February 1st, 2022, and both sides immediately filed their respective dismissals.

Because both sides, plaintiffs and respondents, filed their respective dismissals, there is no longer a case pending before the courts, and the settlement agreement expressly states that:

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 shall be deemed an admission of liability or responsibility on the part of the Released Parties.

The court's order on summary judgment is not a final judgment, and with the settlement, there is no final judgment entered against the State or individual defendants.

Additionally, the State's payment of outside counsel and payment of the settlement, including indemnifying the Governor and the former Chief of Staff, complies with longstanding Department of Law policy on these issues. For the Committee's reference, I have attached to this correspondence a memorandum from former Attorney General Bruce Botelho to certain partially exempt attorneys dated November 8, 2002 regarding "Department Policy on Defense and Indemnification of Partially Exempt and Exempt Employees." This memorandum describes the circumstances in which the State will indemnify partially exempt and exempt employees that may be sued in their personal capacities. The memorandum states:

In the event that you are sued for damages in a civil action arising out of your employment with the Department of Law, the state will provide representation and indemnity for compensatory damages if the events or conduct for which you are being sued occurred within the course and scope of your job, and your actions do not constitute willful misconduct or gross negligence (recklessness) in the performance of your duties.

The decision on whether an employee should receive a State-paid defense and be indemnified against personal liability rests with the Attorney General. Whether an employee sued as an individual under 42 USC § 1983 is entitled to State-paid representation and indemnification is an issue that comes up routinely in cases against publicly employed nurses, doctors, troopers, correctional officers, judges, commissioners, and others employed by the State. The current Attorney General, along with prior attorneys general, have routinely determined State employees should be provided State-paid indemnification and representation for even serious errors if those errors occurred in the scope of their employment and the employee did not engage in willful misconduct or gross negligence.

42 USC § 1983 was adopted 140 years ago. Federal, state, and municipal governments have defended and indemnified employees who were individually sued under that statute for many decades. Alaska's approach to this issue is similar to the approach taken by the federal government over different administrations, and other states, which have expressed concerns for the ramifications of not defending and indemnifying State employees from personal liability. For example, the Ninth Circuit has explained that amendments to federal law "demonstrate that Congress was concerned with federal employees being personally liable for actions taken within the scope of their employment. Those findings repeatedly refer to protecting the federal

workforce from personal liability.”¹ That concern is so great that the Ninth Circuit has also held that governments may indemnify individual employees sued under 42 USC § 1983 from personal liability even after a jury has made a final determination that the employee acted with malice and callous indifference.²

To respectfully reiterate, in the case of *Blanford/Bellville v. Dunleavy*, the individual defendants did not engage in willful misconduct or gross negligence. All parties to the case have filed for dismissal. The settlement is no different than a multitude of other settlements entered into by the State in lawsuits where individual officials have been named as defendants. The legislature is being asked to fund the amount in the settlement as required by the settlement terms.

. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

TREG R. TAYLOR
ATTORNEY GENERAL

By:



Cori M. Mills
Deputy Attorney General

Attachment

cc: Vasilios Gialopsos, Legislative Director, Governor’s Legislative Office
Neil Steininger, Director, Office of Management and Budget

¹ *Adams v. United States*, 420 F.3d 1049, 1054 (9th Cir. 2005) citing Federal Employees Liability Reform and Tort Compensation Act § 2, 102 stat. 4563, 4563-65 (codified at USC § 2671).

² *Cornwell v. City of Riverside*, 896 F.2d 398, 399 (9th Cir.), *cert denied*, 497 U.S. 1026 (1990).