

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

January 11, 2005
8:02 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Jim Elkins
Representative Carl Gatto
Representative Bob Lynn
Representative Jay Ramras
Representative Berta Gardner
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

OVERVIEW(S): DEPARTMENT OF ADMINISTRATION, PUBLIC DEFENDERS OFFICE; DEPARTMENT OF ADMINISTRATION, OFFICE OF PUBLIC ADVOCACY; OFFICE OF THE GOVERNOR, HUMAN RIGHTS COMMISSION

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

PAULA HALEY, Executive Director
Human Rights Commission
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Offered an overview regarding the Human Rights Commission.

BARBARA BRINK, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Presented an overview regarding the Public Defender Agency; answered a question during the overview regarding the Office of Public Advocacy.

LINDA WILSON, Deputy Director
Central Office
Public Defender Agency (PDA)
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Answered a question during the overview of the Public Defender Agency.

JOSHUA FINK, Public Advocate
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Offered an overview regarding the Office of Public Advocacy.

ACTION NARRATIVE

CHAIR SEATON called the meeting to order at [8:02:07 AM](#). Representatives Elkins, Gatto, Lynn, Ramras, and Seaton were present at the call to order. Representatives Gardner and Gruenberg arrived as the meeting was in progress. Chair Seaton explained that since the Committee on Committees had not yet met and the committees had not been adopted by the House, the meeting would not be an official one, but would be used as an overview and a work session. Chair Seaton introduced the representatives taking part as unofficial committee members.

OVERVIEW(S)

OFFICE OF THE GOVERNOR, HUMAN RIGHTS COMMISSION

[8:02:53 AM](#)

CHAIR SEATON announced that the first order of business was the overview from the Office of the Governor, Human Rights Commission.

[8:04:14 AM](#)

PAULA HALEY, Executive Director, Human Rights Commission, Office of the Governor, spoke about Alaska's history of

strong anti-discrimination, and the beginning of the Human Rights Commission. She noted that only Alabama, Mississippi, and Arkansas do not have agencies to process complaints of discrimination by their citizens. Ms. Haley listed types of discrimination that the state law protects against: race, religion, color, national origin, age, physical or mental disabilities, sex, marital status, changes in marital status, pregnancy, and parenthood. She noted that while discrimination is less of a problem today than it was 40 years ago, it is still present in the nation and in Alaska. Ms. Haley described the claim process and emphasized the impartial role of the commission.

[8:09:27 AM](#)

MS. HALEY, in response to a question from Chair Seaton, noted that approximately 30 percent of businesses asked are willing to consider some sort of mediation. Of that 30 percent, about 80 percent settle. If there is no mediation, or if the mediation process fails, then the case moves to an investigation. All complaints are confidential unless scheduled for public hearing, which only happens if the commission's case fails conciliation. Ms. Haley stated that if the complaining party believes that the staff was erroneous in its conclusion, that party can appeal the decision to the Alaska Superior Court.

[8:13:21 AM](#)

MS. HALEY offered examples of cases involving racial discrimination and sexual harassment in places of employment, racial discrimination in housing, and discrimination of developmentally disabled people who needed interpreters during medical appointments.

[8:19:43 AM](#)

MS. HALEY told the committee that the commission is asked by businesses and organizations to give presentations regarding how to prevent and eliminate discrimination; however, because of the commission's increasing workload, it has had to turn down invitations. Ms. Haley addressed the issue of the caseload backups and the changes that the commission has had to make. She noted that in August 1999, the commission eliminated its backlog, but due to a recent spiking of the commission's inventory and loss of 20 percent of its staff, it will likely take eight months to

meet the current caseloads. Ms. Haley said reductions since fiscal year 2003 (FY 03) have resulted in a 20 percent loss of staff, and additionally, reduced support from the Department of Law has resulted in increased work and cost to the commission.

[8:22:50 AM](#)

MS. HALEY addressed budget, goals, and performance measures. In response to a question from Chair Seaton, she noted that the mission of the agency is set forth in statute, while the measures essentially have to do with "what comes in," "how quickly we can get it out," and "what the product is."

[8:28:56 AM](#)

MS. HALEY, in response to a two-part question from Representative Gatto, mentioned the federal Fair Housing Act and noted that, regarding accessibility for people with disabilities, there are different requirements for old buildings and newly constructed buildings. Regarding parenthood, she said Alaska law does not address the "I don't want to rent to children" issue, while federal law does. Regarding the issue of pets, she said a "no pet" rule is universally allowed, with one exception, which is when a pet is used for technical assistance to the individual. In response to a follow-up question from Representative Gatto regarding a person's need for a small pet as a companion animal, she said the person would have to have a medical reason for needing that companion pet, which would be a rare situation.

[8:36:24 AM](#)

MS. HALEY, in response to questions from Representative Gruenberg, said that the commission keeps a monitoring file open after a case is closed, to keep tabs on it. In response to a follow-up request from Representative Gruenberg, she agreed to find out if it would potentially be a violation of the state Human Rights Act if people are not able to vote because they can't understand the English language.

[8:41:49 AM](#)

REPRESENTATIVE RAMRAS pointed to the 2003 annual report [included in the committee packet]. Regarding the successes of the commission, he asked how many times the commission has investigated and found that there was no discrimination.

[8:42:45 AM](#)

MS. HALEY directed attention to the last page of the report, which shows that 69 percent of the complaints brought to the commission have resulted in findings of "not substantial evidence."

[8:44:34 AM](#)

REPRESENTATIVE GRUENBERG asked Ms. Haley if the commission would be suggesting that the legislature take any legislative action through either additional funding or statutory changes.

[8:45:01 AM](#)

MS. HALEY offered her understanding that the budget that was submitted to the legislature through the Office of the Governor is designed to maintain the current level of services and, at this point, there are no plans to request that any legislation be introduced.

[8:47:07 AM](#)

MS. HALEY, in response to a question from Chair Seaton, said that it is very rare that investigations would require the use of subpoenas.

DEPARTMENT OF ADMINISTRATION, PUBLIC DEFENDERS OFFICE

CHAIR SEATON announced that the next order of business was the overview from the Department of Administration, Public Defenders Office.

[8:48:16 AM](#)

BARBARA BRINK, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), stated that the agency's mission is to provide constitutionally mandated legal representation to indigent Alaskans, when appointed by the court. Ms. Brink also gave a brief

history of the Public Defender Agency. She noted that the PDA was formed by the Alaska State Legislature in 1969. Originally located in the Office of the Governor, the agency now resides in DOA. Ms. Brink said the reason for the creation of the agency was due to the federal constitutional right of people to be represented by council in a federal case. She noted that, during the Gideon v. Wainwright case in 1963, the United States Supreme Court ruled that the states also have an obligation to provide council when they charge people with state crimes.

MS. BRINK reviewed "practicalities," including what areas the PDA covers, with its major offices in Juneau, Ketchikan, Sitka, Barrow, Kotzebue, Nome, Anchorage, Dillingham, Kenai, Kodiak, Palmer, Bethel, and Fairbanks, and with 45 magistrate courts. She noted that in the last fiscal year, the agency was appointed to over 21,000 new cases, in addition to its current cases. Presently, there are 73 attorneys, 13 investigators, and 33 support staff to cover the entire state.

The committee took a brief at ease at 8:51 a.m.

CHAIR SEATON called the meeting back to order at [8:52:46 AM](#).

[8:53:47 AM](#)

MS. BRINK clarified that the PDA doesn't choose which cases it accepts, but is appointed cases by the court. She noted that 80 percent of criminal cases in Alaska have public defense council, either through the PDA or through the Office of Public Advocacy (OPA), which is consistent with the rest of the nation. In a highly transient area or where the economy has been hard hit, the percentages often exceed 80 percent. Ms. Brink stated that if there is a legal conflict that prevents the PDA from representing a client, then it would withdraw and assign the case to OPA. She added, "Now, this isn't a free lawyer for our clients; there is a recoupment and repayment provision in the Alaska statutes, and it kind of depends on at what stage you settle your case - if you settle - or ... what type of crime you are accused of." She noted that if a person is acquitted, there is no requirement that he/she pay for council; however, if a person is convicted, he/she has to reimburse the state for the cost of the council. She noted

that that money doesn't come to the PDA, but goes into the general fund.

[8:56:05 AM](#)

MS. BRINK, in response to a question from Chair Seaton, offered an example of a conflict. She explained that every client is owed a duty of loyalty by his/her attorney. She noted that the PDA can't take both the person who's accused and the accuser as its clients.

[8:57:58 AM](#)

MS. BRINK listed the cases the PDA covers: misdemeanors, for which a person can be sentenced up to a year in jail, and felonies, for which a person can be sentenced up to 99 years - both of which are prosecuted by the Office of the District Attorney in the Department of Law; cases in which children are accused of delinquent behavior - which are prosecuted by the Department of Health & Social Service's Division of Juvenile Justice; cases in which parents have been accused by the state of neglect or abuse in the raising of their children - done through what is called a child in need of aid (CINA) proceeding, by the Department of Law's Office of the Attorney General, in the Division of Human Services; and cases involving mentally ill individuals involuntarily committed by the state - which are prosecuted by the Civil Division of the Office of the Attorney General, in the Human Services Section.

[8:58:51 AM](#)

MS. BRINK said the PDA also represents probation and parole clients. If a parole officer doesn't think that a person is following his/her parole, that officer will file a petition to revoke the parole, and the PDA will appear in front of the Alaska Board of Parole and represent that client. She said, "We represent these people from the very beginnings of their case, all the way through the very end, and even through appeal, so sometimes cases can last years."

[9:01:51 AM](#)

MS. BRINK, in response to questions from Representative Gatto, explained that because the PDA must take all cases that come in, if the staffing were to be drastically

reduced, the case loads would just pile up and many people would be inconvenienced. Furthermore, since every person is entitled to the same level of defense, it is not an option to try to lessen the workload by doing less work for each client. She displayed a chart to the committee that showed that in FY 88, the PDA represented approximately 12,500 new clients, while last year the agency represented over 21,000 new clients.

9:03:03 AM

MS. BRINK directed attention to a pie chart that was displayed for the committee to view, which showed what the PDA's caseload looks like: 57 percent of the cases are misdemeanors, 28 percent are felonies, 1 percent are appeals, and 11 percent are family-related. The workload, she explained, is distributed a little differently. Regarding resources: 30 percent are spent on misdemeanors, 33 percent are spent on felonies, and 23 percent are spent on CINA cases. The more serious the consequence, she explained, the more work and effort it takes.

9:05:48 AM

MS. BRINK, in response to a question from Representative Gruenberg, reported that the PDA has had to perform very few appeals that are non-meritorious and she is not certain that the agency has ever filed an Anders brief. She stated that less than 10 percent of the agency's cases go to trial. Ninety percent of the cases are either dismissed, negotiated, settled, or reduced. She said it's a rare trial where there is nothing to appeal. However, often the appeals are withdrawn.

9:08:28 AM

MS. BRINK, in response to a question from Representative Lynn, explained what an Anders brief is.

9:10:27 AM

LINDA WILSON, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration, in response to a question from Representative Gruenberg regarding CINA cases, said a person is entitled to council to pursue an appeal from a termination of parental rights. In response to a follow-up question from Representative

Gruenberg, she said, "We have never filed any Anders-type brief in a termination proceeding."

[9:11:59 AM](#)

MS. BRINK turned to the next chart regarding the workload exploding from 5,000 in 1960 to over 68,000 in 2003 in the Matanuska-Susitna (Mat-Su) Valley. She also offered a list of the PDA's accomplishments and the technological advances that have been made. She noted that all of the lawyers she gets out of law school now are technologically skilled, and she gave examples of technology being incorporated by the PDA to handle the increasing caseload.

[9:15:07 AM](#)

MS. BRINK listed some wellness courts and talked about the labor intensiveness of such cases. She said the payoff is that those are the clients who are having success. She noted that anything done in one part of the criminal justice system affects all other areas of that system. She offered examples. She revealed that the Joint Committee on Legislative Budget and Audit performed an audit of the PDA in 1988 and found that the agency had a 47 percent increase in its caseload with less than a 6 percent increase in resources.

[9:19:01 AM](#)

MS. BRINK said the agency's latest effort, which she said she predicts will be successful, is measuring case results for criminal clients by attempting to reduce days in jail for both pre-trial and convicted clients when it is not necessary for public safety. For criminal offenses revolving around alcohol abuse or addiction, the agency needs to deal with the addiction. She stated that the agency also wants to reduce the number of children in state custody and return them home without reducing their safety.

[9:21:03 AM](#)

REPRESENTATIVE GRUENBERG mentioned a [United States Supreme Court] case called Blakely v. Washington and asked Ms. Brink to address it.

[9:21:52 AM](#)

MS. BRINK, in response to a question from Representative Gruenberg, reminded the committee that the State of Alaska, like the State of Washington, has presumptive sentencing. That means that, based on the type of offense, [an attorney] can tell a client exactly what kind of a sentence he/she will be facing. In order to "go above the presumptive," there have to be certain aggravating factors that make the particular case worse than the general offense. Both Alaska and Washington had their judges decide whether those aggravating factors existed, and they only had to be proven by the state by clear and convincing evidence. The United States Supreme Court ruled that that is a fact-finding process that needs greater reliability and has to be done by the jury; therefore, Alaska and Washington's scheme was ruled as unconstitutional and has to be changed.

MS. BRINK said there will be legislation introduced this year that will address this issue. Additionally, all previous cases found to have aggravating factors are being questioned. She estimated that there are in excess of 300 of those cases currently. In response to a question from Chair Seaton, she said she thinks there may be more of those cases, because some people may be waiting to see how those initial cases turn out.

[9:24:06 AM](#)

MS. BRINK, in response to a follow-up question from Chair Seaton, reported that some judges actually believe that the entire sentencing scheme is unconstitutional and every sentence that was issued shouldn't stand anymore. She said, "There are many different opinions about what Blakely means and what Blakely says, and lots of different solutions." In response to a question from Representative Gruenberg, she confirmed that Judge Wolverton has "held that way" in Alaska.

[9:25:33 AM](#)

REPRESENTATIVE GARDNER asked if [the PDA] is under any obligation to notify anyone who has been sentenced under the conditions [that have since been ruled unconstitutional].

[9:25:48 AM](#)

MS. BRINK indicated that she thinks the agency does need to deal with that issue; however, it doesn't have the resources to go back through old files.

[9:28:14 AM](#)

MS. BRINK, in response to comments from Representative Ramras, said her dream is that some day the public defender will not be deliberately underfunded. If the problem is not addressed, lawyers will not be able to spend as much time with clients, which could result in verdicts which are not reliable.

[9:31:14 AM](#)

MS. BRINK, in response to a question from Chair Seaton, revealed that the Joint Committee on Legislative Budget and Audit's report estimated that there is a shortage of 41 attorneys. She said the national caseload standard says that no lawyer should represent more than 150 felony clients per year and 400 misdemeanor clients per year, and no lawyer should do more than 25 appellate briefs a year. Ms. Brink said, "We exceed all of those numbers." Another area she highlighted as deficient is support staff. She offered examples.

[9:32:37 AM](#)

MS. BRINK, in response to a question from Representative Lynn, said the level of experience between a public defender and a prosecutor varies widely. She offered examples. In response to a follow-up question from Representative Lynn, she said, "We deal with a variety of prosecutors, not just the [district attorney's] office."

[9:35:50 AM](#)

REPRESENTATIVE GARDNER noted that if the public defenders had all the staff that they needed, the social workers would need commensurate funding, because delays have been caused by social workers who couldn't get to [court hearings] because they are even more heavily booked.

[9:36:59 AM](#)

MS. BRINK, in response to a question from Representative Gatto, said every year up to 16 interns work for free

during the summer. She noted that during the school year the agency has had partnerships with the University of Alaska. She said the agency has also implemented use of Jesuit volunteers, particularly in the state's therapeutic courts.

DEPARTMENT OF ADMINISTRATION, OFFICE OF PUBLIC ADVOCACY

CHAIR SEATON announced that the last order of business was the overview from the Department of Administration, Office of Public Advocacy.

[9:38:52 AM](#)

JOSHUA FINK, Public Advocate, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration, listed the three core functions of OPA: advocating for abused and neglected children in CINA cases, by providing staff and contract guardian ad litem; providing guardian and conservator services to Alaskans mentally incapable of managing their own affairs; and doing conflict representation for the public defenders. He offered details.

MR. FINK emphasized that OPA is an appointment of last resort; the statute requires that the court first look to spouses, family members, and private organizations. He noted that OPA is guardian or conservator for approximately 900 adults. He revealed that 20 percent of the guardianships or "conservatorships" created by the probate court in Alaska are assigned to OPA. The average caseload for an OPA guardian is approximately 65 cases; the national standard is 45. There are 14 public guardians statewide. Mr. Fink said OPA is required by statute to review its cases every six months to see what cases might be able to be transferred to a private entity or a family member; however, he added that OPA doesn't have the staff to do that.

[9:45:26 AM](#)

MR. FINK stated that the public guardian division of OPA is mandated to provide information and referrals to the public regarding guardianship and conservators, to assist family members dealing with issues, such as having a family member with dementia. He noted that OPA is also obligated by statute to provide representation to the subjects of the

petitions for guardianships - "respondent representation" - and visitor services. He said, "We can't both be the individual's attorney and then, potentially, his guardian; that would be a conflict. So, in those cases we hire a private attorney; we contract that out." Mr. Fink noted that court visitors are also appointed in every case to gather information and provide an independent report on the need for the guardianship and recommendations. Since there is no staff to do that, OPA contracts that responsibility out.

[9:47:11 AM](#)

MR. FINK said OPA has many functions and some seem conflicting. Over 60 percent of its budget is contracted. He listed offices around the state and how they are staffed, and he mentioned places in the state that he will be studying. The biggest operation is Anchorage. Mr. Fink described his staff, which he emphasized has very little support staff and nobody to do the filing. He said he is actively looking at where he can find efficiencies and bring in new attorneys. By setting up OPA as separate sections and law firms, Mr. Fink explained that he has been able to keep many more cases in house where they are less expensive.

[9:52:26 AM](#)

MR. FINK said he and Ms. Brink work well together. He talked about preauthorization and audited fees. In the past, he explained, fee collection was inconsistent; some public guardians didn't think fees should be collected. Legislation was passed last year to regulate this. Mr. Fink reported that the collections have risen since then, but he emphasized that no one who can't afford to pay is made to do so.

[9:55:53 AM](#)

MR. FINK said a law past last year to regulate guardians and conservators, which will increase the public's and the court's trust. He said OPA is hoping to encourage the formation of some private organizations to provide the guardianship work and, thus, lessen OPA's workload. In response to a question from Chair Seaton, he clarified that although the law has been passed, the regulations are still in progress.

[9:56:44 AM](#)

MR. FINK talked about case management and the need for a new case management system, which he said will enable him to more accurately know what cases he has and "where they're at," so that he can monitor workloads and more fairly distribute the work. It will also help in determining costs for case types.

[9:58:16 AM](#)

MS. BRINK, in response to a question from Representative Ramras, said the pay range for attorneys and support staff varies greatly depending on the cost-of-living allowances in different offices. For example, a starting attorney in Anchorage will make \$50,000 a year. The same attorney in Barrow or Kotzebue will make \$68,000 a year. Ms. Brink said that is an Attorney II level and the highest range is an Attorney IV, which is reached within a couple years of the attorney's career. An Attorney IV in Anchorage makes approximately \$65,000. Support staff are at between ranges 14 to 16.

[9:59:19 AM](#)

MR. FINK proffered that most of his support staff makes between \$9 and \$14 an hour.

[10:00:18 AM](#)

MR. FINK, in response to a question from Chair Seaton, said his staff grew 34 percent last year with about 16 positions added. He said there is a definite savings where he has hired employees rather than contractors.

[10:00:43 AM](#)

CHAIR SEATON emphasized that it will be important for Mr. Fink to let the legislature know when employees added equal a cost savings.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [10:01:15 AM](#).