

**ALASKA STATE LEGISLATURE
JOINT MEETING
HOUSE JUDICIARY STANDING COMMITTEE
SENATE JUDICIARY STANDING COMMITTEE**

January 23, 2013

1:34 p.m.

MEMBERS PRESENT

HOUSE JUDICIARY

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Neal Foster
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

SENATE JUDICIARY

Senator John Coghill, Chair
Senator Fred Dyson
Senator Donald Olson
Senator Bill Wielechowski

MEMBERS ABSENT

HOUSE JUDICIARY

All Members Present

SENATE JUDICIARY

Senator Lesil McGuire, Vice Chair

COMMITTEE CALENDAR

OVERVIEW(S): ALASKA COURT SYSTEM

- HEARD

OVERVIEW(S): OFFICE OF PUBLIC ADVOCACY

- HEARD

OVERVIEW(S): PUBLIC DEFENDER AGENCY

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Presented the overview of the Alaska Court System (ACS).

RICHARD ALLEN, Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Presented the overview of the Office of Public Advocacy (OPA).

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

POSITION STATEMENT: Presented the overview of the Public Defender Agency (PDA).

ACTION NARRATIVE

[1:34:36 PM](#)

CHAIR WES KELLER called the joint meeting of the House Judiciary Standing Committee and Senate Judiciary Standing Committee to order at 1:34 p.m. Present at the call to order from the House Judiciary Standing Committee were Representatives Keller, Gruenberg, Foster, LeDoux, Lynn, Millett, and Pruitt. Present from the Senate Judiciary Standing Committee were Senators Coghill, Dyson, Olson, and Wielechowski.

Overview(s): Alaska Court System

1:35:51 PM

CHAIR COGHILL announced that the first order of business would be an overview of the Alaska Court System (ACS).

1:36:43 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), explained that in Alaska, the judicial branch - often seen as the face of state government because of its daily interaction with the public - represents 1.4-1.5 percent of the state's operating budget and has approximately 800 employees working in 43 different court locations. As a government entity, the ACS addresses its administrative matters - for example, human resources, information technology, facilities, fiscal operations, procurements, lease arrangements, [to name a few] - internally, via various sections and [specialized] staff. Differing from most other states, Alaska has what is referred to as a unified judiciary - meaning that all of the courts are administered centrally by one administrative office, currently located in Anchorage; the ACS's funding comes entirely from the legislature via appropriations from the general fund (GF); and the day-to-day operations are addressed by an administrative director hired by the Alaska Supreme Court. The ACS's organizational structure, as well as the powers and duties of the judiciary, is set out in the Alaska State Constitution, which also stipulates that judicial districts shall be established.

MS. MEADE referred to a handout in members' packets illustrating a map of the state's four judicial districts, and explained that each of these districts has one presiding judge appointed by the chief justice of the Alaska Supreme Court for a two-year term; that the First Judicial District "is mainly Southeast"; that the Second Judicial District "is the North Slope, including Barrow, Kotzebue, and Nome"; that the Third Judicial District "is Southcentral - that has our biggest and busiest state courts, Anchorage, Palmer, and Kenai, as well as others"; and that the Fourth Judicial District "is the Interior, kind of swathing southwest, including Fairbanks and the Bethel regions." There are also four levels of court: the Alaska Supreme Court, the Alaska Court of Appeals, the Alaska Superior Court, and Alaska's district courts, with the former two levels comprising the state's appellate courts, which review decisions of the trial courts, and the latter two levels comprising the state's trial courts, which initially hear and decide cases. The jurisdiction

and responsibilities of all of Alaska's courts are set out in both the Alaska State Constitution and Title 22.

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MS. MEADE explained that the Alaska Supreme Court has five justices; hears all cases "that are appealed to it" - in fiscal year 2012 (FY 12), for example, 427 cases were filed with the Alaska Supreme Court; and hears oral arguments about once a month in Anchorage, quarterly in Juneau and Fairbanks, and, as part of an educational outreach program begun in 2010, at other times in various high schools throughout the state. In accordance with the Alaska State Constitution, the five justices of the Alaska Supreme Court select one of their members to serve as chief justice for three years, and that person serves as the administrative head of the ACS. She mentioned that to fill an anticipated upcoming vacancy, the governor would be appointing a new justice to serve on the Alaska Supreme Court this upcoming Friday.

MS. MEADE explained that the Alaska Court of Appeals has three judges, and hears appeals arising from criminal matters and quasi-criminal matters, and from matters related to such. The Alaska Superior Court has 42 judges and 13 locations; is the trial court of general jurisdiction, meaning that it has original jurisdiction over both civil and criminal matters; and its judges sometimes travel to other locations on a temporary basis as case-needs arise. Nearly all Alaska Superior Court judges handle all case types, though the one notable exception is that in Anchorage, for administrative purposes and to increase efficiency, the judges have [divided the workload according to case type]: five judges address only felony criminal cases, and the other twelve judges address only civil matters - that is, the non-criminal cases. Alaska's district court has 23 judges covering 30 communities, and is the court of limited jurisdiction, meaning that those judges can hear certain types of cases as outlined in statute.

MS. MEADE referred to a handout in members packets titled, "FY 11 FILINGS STATEWIDE" containing three pie charts illustrating the percentages of the different types of cases filed in superior court, filed in district court, and filed in both courts combined. The biggest single type of case filed, at over 80,000 cases in district court, involved minor offenses - violations, infractions, and what she termed non-jail-able offenses - and the number of such cases, she relayed, is constantly growing. Improving the ACS's efficiency in

addressing such cases is therefore very important to the overall functioning of the ACS, and to that end, the ACS - in cooperation with the Department of Public Safety (DPS) and local law enforcement agencies around the state - has instituted a system of filing and processing the citations associated with such cases electronically. The Alaska Superior Court, in addition to addressing felony cases, also addresses cases involving domestic relations, including child custody and paternity determinations, and dissolutions and divorces; cases involving probate, including guardianships and conservatorships, and mental health and other commitments; and civil cases wherein the amount at issue is over \$100,000.

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MS. MEADE, in response to questions and comments, offered her understanding that over 90 percent of criminal cases do get "pled out"; that accepting such plea agreements has been a long-standing practice and is in some ways necessary to keep the criminal justice system working; and that the ACS is currently researching the issue of how best and most efficiently to use magistrates, judges, and masters. Returning to her overview of the ACS, Ms. Meade explained that at the district-court level, in addition to the aforementioned 23 judges, there are 44 magistrates; these magistrates - hired and fired as regular employees of the court - address many of the minor-offense cases that come before the court, and greatly aid in the ACS's efficiency. Some trends that the ACS is aware of are that the number of cases has been steadily growing at a rate of about 5 percent per year, with the [two] fastest-growing types of cases being those related to probate and those related to domestic violence (DV).

MS. MEADE, in response to further questions, relayed that the two new superior-court-judge positions added to the Third Judicial District for Anchorage have just recently been permanently filled, and, as a result, the ACS expects the caseload in Anchorage to become more manageable; agreed to research whether past changes to the statutes pertaining to estate planning have increased the ACS's caseload; and agreed to compile statistics about felony cases involving small amounts of controlled substances. Returning again to her overview of the ACS, Ms. Meade explained that the courts operate under the Alaska Rules of Court, and that the Alaska State Constitution gives the Alaska Supreme Court the ultimate authority to establish those rules, and the court does so via a committee process, with specific committees addressing the various types

of rules. The Alaska Rules of Court can also be changed by the legislature, both directly and indirectly, with direct court rule changes requiring an affirmative two-thirds vote of each body of the legislature. Ms. Meade went on to explain that legislation impacting other departments/agencies of the state, particularly those that together with the ACS comprise Alaska's justice system, also impact the ACS's workload, for example, when judges are called upon to interpret and apply statute, or when legislation increases other department/agency caseloads.

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MS. MEADE then relayed that the ACS generally takes no position on the merits of legislation and would only express support or opposition for a particular piece of legislation if it directly impacts the structure of the judicial branch. Instead, for most legislation, [the ACS] can provide information about the legislation's fiscal impact, any technical or implementation problems with the legislation, or possibly more efficient or less costly alternatives to achieving the legislation's objective. The key reasons the ACS rarely takes a position on legislation are: one, the ACS recognizes that it's the legislature's role, not the court's, to set public policy in Alaska - to consider the will of the people and adopt and revise statutes to reflect that will; two, the court may very well be called upon to interpret legislation or respond to future constitutional challenges to legislation, and the court's objectivity could be called into question if it had previously provided an official position on the legislation; and, three, individual judges often disagree on the merits of legislation, and thus there is no "judicial position" or ACS-recommended stance on the policy expressed in a particular piece of legislation, and it would be inappropriate and possibly misleading to testify otherwise.

MS. MEADE relayed that the justice agencies in Alaska work very well together, both formally and informally, to the benefit of the entire justice system; that the aforementioned ACS committees addressing the Alaska Rules of Court nearly all have representatives from the executive branch; and that the ACS is a member of both the Criminal Justice Working Group (CJWG) - addressing system-wide efficiencies and operational improvements - and the Multi-Agency Justice Integration Consortium (MAJIC) - addressing technology-related issues. In conclusion, she emphasized that it's important to bear in mind that legislative decisions impacting one agency in the justice system also impact all the others. In response to questions, she confirmed that

providing restitution to victims is given the highest priority by the ACS; pointed out that the ACS doesn't get to choose who it serves but must instead accept every case filing; and explained that every citizen has the right to file a case against whomever he/she wishes regardless of the particular merits to the case, and that the ACS does its best to assist those who seek to represent themselves, and to that end has established a self-help center for those seeking to represent themselves in family-law cases, for example.

Overview(s): Office of Public Advocacy

[2:18:17 PM](#)

CHAIR COGHILL announced that the next order of business would be an overview of the [Office of Public Advocacy (OPA)].

The committee took an at-ease from 2:19 p.m. to 2:21 p.m.

[2:21:43 PM](#)

RICHARD ALLEN, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), referring to a PowerPoint presentation, explained that the mission of the OPA is to provide legal advocacy and guardianship services to vulnerable Alaskans; specifically, the OPA provides: guardianship and conservatorship services to incapacitated individuals, guardian ad litem (GAL) services to abused/neglected children, representation to elderly victims of fraud and abuse, attorney services for parents in child in need of aid (CINA) cases, representation in cases received from the Public Defender Agency (PDA) due to a conflict of interest, respondent representation in guardianship proceedings, and court visitor services in guardianship and conservatorship proceedings. The OPA currently has offices in Anchorage, Juneau, Fairbanks, Palmer, and Bethel; has 14 distinct units; has 47 attorneys and 78 staff - including the public guardians; and, to provide services in areas of the state that currently don't have an OPA office, contracts with both private attorneys and private GALs.

MR. ALLEN, still referring to his PowerPoint presentation, indicated that the OPA's fiscal year 2012 (FY 12) public guardian receipts [totaled \$652,950, with] \$607,000 authorized for use, and that what he called the FY 13 management plan totaled \$24,862,900. Some of the OPA's recent accomplishments, he relayed, include: keeping private contractors' costs level,

thereby providing a bit of what he termed, "budgetary certainty," since - similar to the Alaska Court System (ACS), the PDA, [and the Department of Corrections (DOC)] - the OPA cannot turn down clients sent to it and so utilizes such contractors quite a bit; keeping more cases in-house; creating a new unit - [Anchorage Conflict Counsel] - without requesting any additional positions; challenging improper court appointments; and educating those in the judiciary branch of government regarding what constitutes a proper OPA appointment as outlined in the OPA's enabling statutes.

MR. ALLEN, in response to questions, explained that the OPA provides representation to indigent victims of elder fraud/abuse via its office of elder fraud and assistance, which was statutorily created [in 2006]; that should the OPA succeed in restoring stolen funds to a victim of elder fraud such that he/she is no longer indigent, the OPA does charge him/her fees for the services provided; and that when one of its clients is the victim of elder abuse stemming from provider fraud, the OPA works closely with the Department of Law (DOL) and the Department of Health and Social Services (DHSS) to address that type of criminal activity.

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MR. ALLEN, returning to his overview of the OPA, explained that to keep private contractor costs down as much as possible, the OPA has taken several steps to keep more cases in-house, which, again, provides for more budgetary certainty; that the aforementioned new unit has thus far, over the last 11 months, handled over 600 cases, with over 300 of those cases involving felony crimes; that prior to the establishment of that new unit, all 600 of those cases would have been assigned to private contractors; that this change alone resulted in the state saving hundreds of thousands of dollars; and that both the growth of the OPA's contractor costs and those costs themselves are currently being reduced. However, in terms of challenges, the OPA's caseload pertaining to public guardians continues to increase, and this isn't going to change given that Alaska's population is continuing to age; [due to a variety of factors,] the caseload in the OPA's Bethel Office is significantly higher per attorney/staff than in any of the OPA's other offices, and the number of its cases continues to rise; and the number of [what's being termed, "Flores" cases, from Flores v. Flores, 598 P.2d 893 (1979)], is also increasing due to a December 2011 Alaska Supreme Court ruling stipulating that the OPA shall

represent an indigent party in a child custody case if the other party is represented by a public agency.

MR. ALLEN referred to a chart on page 9 of his PowerPoint presentation illustrating that the number of OPA clients requiring a public guardian is continuing to increase, and relayed that current OPA efficiency initiatives include working with the Criminal Justice Working Group (CJWG) regarding "electronic discovery," adding staff in locations with increasing caseloads, [addressing statutory definitions pertaining to the OPA,] and implementing what he termed an "SEM data system" for public guardian trust activities. In conclusion, Mr. Allen indicated that another step to reduce the OPA's costs involves the creation/expansion of a public guardian volunteer program, similar to the OPA's existing court-appointed special advocate (CASA) program.

Overview(s): Public Defender Agency

[2:43:49 PM](#)

CHAIR COGHILL announced that the last order of business would be an overview of the Public Defender Agency (PDA).

[2:44:07 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), explained that the PDA, created in 1969, has a constitutional mandate to provide legal representation to indigent clients in certain types of cases - [criminal cases, juvenile delinquency cases, child in need of aid (CINA) cases, and involuntary commitment matters]; however, the PDA only takes those cases appointed to it by the court after the court makes a finding of indigency. Primarily, the PDA's functions are to review charges, review cases, communicate to clients their rights, and represent clients in all of Alaska's courts. The PDA is required to attempt to withdraw from cases that aren't clearly authorized, though, and so will move to do so in those rare situations wherein the court [incorrectly] appoints the PDA. In response to a question regarding conflict of interest, he mentioned that in situations in which the PDA is appointed to represent multiple co-defendants in a criminal case, as a matter of policy, the PDA would move to withdraw from all but one of the co-defendants, though it wouldn't do so in cases involving minor in possession crimes because most of the time, in such cases, there isn't really an actual conflict of interest. The Office

of Public Advocacy (OPA) handles all cases in which the PDA has a conflict of interest, and this occurs in about 12-12.5 percent of the cases that the PDA has been appointed to.

MR. STEINER, returning to his overview of the PDA, explained that the PDA has four internal divisions - the Criminal Division, the Civil Division, the Appellate Division, and the Administrative Section; maintains 13 offices - located in Anchorage, Fairbanks, Juneau, Palmer, Kenai, Ketchikan, Sitka, Bethel, Nome, Kotzebue, Dillingham, Kodiak, and Barrow; employs 173 attorneys, investigators, paralegals, and support staff; and has a fiscal year 2013 (FY 13) management plan budget of \$25.5 million, including what he termed a "caseload increment" of \$950,000. In response to questions, he relayed that the PDA's caseload is continuing to increase, and, as a consequence, so too is the weighted average caseload per attorney - currently up to about 147 cases - and that the PDA's efforts to address recruitment, training, and mentoring have positively impacted the PDA's turnover rate.

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MR. STEINER - again returning to his overview of the PDA, and referring to a PowerPoint presentation - relayed that the graph on page 19 represents the historical growth of the PDA's budget in terms of authorized funding, caseload increment funding, and supplemental funding; that for FY 13, no supplemental budget request would be forthcoming, due to an increase in the PDA's vacancy rate and what he termed "supplemental assistance" extended by the DOA; and that the graph on page 20 of his PowerPoint presentation illustrates the PDA's caseload growth since FY 09: total caseload increased 16 percent, misdemeanor caseload increased 7 percent, felony caseload increased 10 percent, and [what's been termed] "other" caseload increased 29 percent, with the latter type of caseload including cases involving petitions to revoke probation - cases which result in significant increases in the number of clients, the number of client contacts, and the time spent communicating with each client. He added that in an effort to reduce the number of what he termed, "conflicts," the PDA now archives its files off site with a third party, thereby limiting access to the PDA's closed files.

MR. STEINER referred to a graph on page 22 of his PowerPoint presentation measuring the PDA's performance during FY 10 through FY 12 with regard to contacting clients and opening appeal briefs, posited that prompt client contact results in

earlier disposal of cases as well as in more appropriate outcomes, and explained that the low figures regarding opening appeal briefs is a function of the PDA's enormous backlog of appellate matters. In conclusion, he indicated that the PDA has been working with the Criminal Justice Working Group (CJWG) regarding "electronic discovery," which will enable the PDA to process its cases sooner; that the PDA does redeploy its resources in order to address [excessive] caseloads; and that [among other things,] the PDA's cost-containment measures include in-house training, reviewing requests for travel and requests for expert witnesses, and archiving more of its files electronically.

[3:05:11 PM](#)

ADJOURNMENT

There being no further business before the committees, the joint meeting of the House Judiciary Standing Committee and the Senate Judiciary Standing Committee was adjourned at 3:05 p.m.