

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 16, 2015

1:01 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

CONFIRMATION HEARING(S):

Attorney General

Craig W. Richards - Anchorage

CONFIRMATION(S) ADVANCED

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

CRAIG RICHARDS, Attorney General Designee
Anchorage, Alaska

POSITION STATEMENT: As appointee to the position of Alaska Attorney General, discussed his qualifications and answered questions.

ACTION NARRATIVE

[1:01:38 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:01 p.m. Representatives Keller,

Lynn, Millett, Gruenberg, LeDoux, were present at the call to order. Representatives Foster and Claman arrived as the meeting was in progress.

[1:01:53 PM](#)

CHAIR LEDOUX announced that Representative Kurt Olsen is an alternate member of the House Judiciary Standing Committee.

[1:02:07 PM](#)

CHAIR LEDOUX brought before the committee the appointment of Craig W. Richards to the position of Attorney General. [Packets contain biographical information.]

CHAIR LEDOUX advised the committee it would be hearing the qualification of this gentleman today and recommending that his name be referred to the Joint House and Senate for consideration. Chair LeDoux reminded the committee that its job is only to review the history and qualifications Mr. Richards. She stated there will be no vote for or against his confirmation in this committee. Committee members should feel free to ask questions as they arrive, but to bear in mind that the committee is not voting on his qualifications, merely reviewing it, she highlighted.

CONFIRMATION HEARING(S):
ALASKA ATTORNEY GENERAL

[1:02:47 PM](#)^#

CRAIG RICHARDS, Attorney General Designee, said he is a lifelong Alaskan as in 1977 his family moved to Fairbanks, Alaska. He attended the University of Virginia and Washington and Lee University School of Law (W&L Law) and clerked for then Superior Court Judge Ralph Bisline, who is currently on the United States District Court for the District of Alaska. In 2002, he worked for Wohlforth, Vassar, Johnson & Brecht and became experienced as a finance and transactional attorney. During 2003-2014, worked for Walker & Richards, LLC, and during the course of that time attended Duke University where he received his Master of Business Administration (MBA) degree. He advised that during his employment he spent quite a bit of time on finance and oil & gas, particularly on quantitative modeling. "I'm not just an attorney, but I am a fairly competent quant on the oil & gas side as well." He advised that during the course of his practice his focus was primarily on four areas: municipal law,

public finance, Alaska oil & gas taxation, and gas pipeline development. He highlighted he expected that if Mr. Bill Walker won the election, that he would take over the law firm. In the event Mr. Walker lost, he would retire and Mr. Richards would take over the law firm. Subsequently, he pointed out that Governor Bill Walker asked him to be attorney general of which he decided was an opportunity to serve the people of Alaska, that it was a once in a life time opportunity, and he would be crazy not to take it.

[1:08:21 PM](#)

REPRESENTATIVE MILLETT asked under what circumstances the state should compel oil & gas lessees to produce their gas resources, and whether he would sue the producers to compel them to sell their products.

[1:08:53 PM](#)

MR. RICHARDS responded that approximately 100-years ago in America there was an open question about whether an oil company with an oil & gas lease from a landowner could act in its own self-interest, or whether it owed a duty of care to the landowner. In approximately 1920-1930, it was well established that oil companies do owe the landowner a duty of care, and in particular to fully develop the leasehold, to market a leasehold oil and gas off of the leasehold when there is reasonable expectation of profit. The primary reason that duty exists is to ensure that the landowner has the ability to fully utilize and take advantage of royalty income. When discussing the duty to develop or duty to market, which are slightly different obligations, there is a right of the landowner to have an expectation to receive his/her royalty income. Typically, in a duty to develop suit the ultimate remedy is secondarily the forcing of production, and primarily the right to payment on lost royalty. In the event the state was not receiving royalty due to the refusal to develop, it would be the prerogative of the Department of Natural Resources (DNR) to seek lost royalty. He does not have any expectation or intent right now from DNR to file such a suit, he posited.

[1:10:23 PM](#)

REPRESENTATIVE MILLETT surmised that Mr. Richards believes there is a duty to produce and they should produce the gas at whatever cost.

MR. RICHARDS responded that he does, as there is not only an implied covenant in the law in every state, but also where the deal of the lease form expressly states it.

REPRESENTATIVE MILLETT pointed to the remarks of Governor Walker wherein he was upset about HB 132, and implied he would sue the lessees in the North Slope for duty to produce if they did not produce gas for the gas pipeline.

MR. RICHARDS stated he did not hear Governor Walker's comments, but it is DNR's choice whether or not they feel the lessees are not living up to their expectations. He noted that DNR has the remedy available to file a suit for lost royalty.

[1:11:31 PM](#)

REPRESENTATIVE MILLETT asked if that would be a decision for DNR or would he take an active role in that decision.

MR. RICHARDS advised it would be a decision for DNR, as it would directly come through the standard plan of development process. He said he would take a role to the extent that DNR sought legal advice from the attorney general's office on how that process should occur, if it should occur.

[1:11:50 PM](#)

REPRESENTATIVE MILLETT offered a scenario of DNR indicating it believes there was an implied duty to produce off the leases, but they were not producing because they could not agree with their profit margins. Or, she further offered, the pipeline ownership wasn't in agreement with Mr. Richards, would he be compelled to give DNR advice that it should sue the lessees.

MR. RICHARDS answered that he would not be compelled to tell DNR they should sue the lessees as he would only give them advice as to what their legal options are.

[1:12:19 PM](#)

CHAIR LEDOUX quiered, under this analysis, when does the duty to produce come into play. She assumed it wouldn't come into play unless the producers were able to show that it could profitably produce.

[1:12:45 PM](#)

MR. RICHARDS answered that there are two parts to the question. The first is that it is not just a duty to produce as there are four implied covenants, duty to explore, duty to develop, duty to produce, and duty to market and each have its own unique circumstances under the body of common law and each arise at a slightly different time. He explained that with a duty to market and a duty to produce, the rule is that the landowner would only have a remedy against the oil & gas lessee if it could demonstrate that its failure to develop was despite a reasonable expectation of profit. He opined that the burden would shift to the landowner to demonstrate there was a failure to develop when there was an expectation of profit. He reiterated that it would not be up to the oil company to show there was an expectation of profit, but up to the landowner to show there was a failure to develop when there was a reasonable expectation of profit.

CHAIR LEDOUX asked what sort of a profit, as profit can be a person making a penny, or profit could be a \$1 billion, and whether case law describes what it means by profit.

[1:13:58 PM](#)

MR. RICHARDS explained that case law does describe what it means by profit, as it is pretty well settled when looking at lower-48 jurisdictions. He noted there has never been an Alaska case and Texas is very defined in the law on this. He offered that the standard when meeting the internal cost of capital of the reasonably prudent operator as two parts. One part being a recognition that it is not that a person makes a penny, it is that there would be a return on a positive present value basis where the person would meet its internal hurdle rates. The second part being that it is never measured from the basis of the individual oil company as the measurement is always based upon a reasonably prudent operator. He described it as the theoretical third party reasonable operator that does an oil & gas lease. He explained that this body of law is not looking to the individual circumstances of the oil company, its individual capitalization, its projects around the world, how it wants to act, but rather to create a third party standard like the reasonable standard in torts and negligence which says "how would a reasonably prudent operator act in that circumstance." He submitted that is the hypothetical duty of care owed to the landowner that is measured against.

[1:15:13 PM](#)

CHAIR LEDOUX questioned whether these duties to produce are totally common law and are not written into the leases at all.

MR. RICHARDS opined they are totally common law and his recollection is that the D01 lease form, in the remedy section, does reference the implied covenants.

[1:15:39 PM](#)

REPRESENTATIVE MILLETT surmised that his administration would like to build 100 percent, and own a gas pipeline. She asked whether there was a situation he could see getting into where the tariff could be so expensive that the profits would be marginal for a producer.

MR. RICHARDS opined that a pipeline is never going to be sued into existence, and he does not personally believe the duty to develop can be used to force a \$60 billion development project to occur. That being said, he further opined that the oil & gas lessors on the North Slope are sophisticated and know their leases, obligations, and rights. In the event the Alaska Liquefied Natural Gas Project (AKLNG) did not go forward and an independent pipeline became credible, they would understand that they would have a duty to sell product into that project if there was a reasonable expectation of profit. He remarked that if they did not have a reasonable expectation of profit they wouldn't have the duty to market.

[1:17:02 PM](#)

REPRESENTATIVE GRUENBERG quoted from his resume "Regularly built sophisticated valuation, Monte Carlo, and other decision models ..." and asked the definition of Monte Carlo.

MR. RICHARDS explained that Monte Carlo is a statistical means to measure outcomes and is called "probable-istic modeling." In decision modeling there can be "determine-istic or probable-istic analysis." Probable-istic, Monte Carlo, and Monte Carlo software, says it recognizes there are a range of possible outcomes so it will build the chance of all of these outcomes occurring based upon distribution. The software then runs 25,000 different flips of the coin on each chance to determine the most likely outcome given a number of different variables and possible outcomes.

REPRESENTATIVE GRUENBERG noted that it appears Mr. Richards had mainly a transactional or office practice rather than a courtroom and litigation practice.

MR. RICHARDS responded that Representative Gruenberg is correct up until 2009 when all of his transactional work and tax cases became litigation. At that time, he explained that his state oil & gas tax practice took on a different character. In particular, he noted, the Trans-Alaska Pipeline System (TAPS) evaluation dispute cases where he represented the City of Valdez in a number of trials and very complex litigation cases. He related that he found himself litigating extensively for more than half of his time in the last five year.

[1:19:31 PM](#)

REPRESENTATIVE GRUENBERG said he was trying to understand his experience as a nuts and bolts litigator. He asked whether Mr. Richards knew what it was like to go in front of a jury or an administrative agency, whether he has worked with the Rules of Evidence, and how to strategize a case to either prevent an appeal or build in an appeal.

MR. RICHARDS opined that he has an incredibly sound background in complex litigation as he has done some of the most complex litigation that has been handled in the State of Alaska during the last 5-6 years, full time, and at extremely high risks with many people against him and with him.

[1:20:51 PM](#)

REPRESENTATIVE MILLETT noted that the state asserted the North Slope Borough and the City of Valdez exceeded the amount they were allowed to collect for the tax cap on TAPS. She referred to a letter from the division to the state assessor on 8/24/2012 that the North Slope Borough may owe approximately \$49.7 million, and the City of Valdez may owe approximately \$56.7 million for a total of approximately \$106 million due to the state. She asked if his administration had started proceedings to collect the money from the local governments, whether he is committed to collecting the money, and what is the status of the disagreement.

[1:21:32 PM](#)

MR. RICHARDS replied that he and Governor Walker represented the City of Valdez in private practice. He has since delegated his

authority to that case to Martin Schultz, Chief Assistant Attorney General, Statewide Section Supervisor, Oil, Gas & Mining Section, in Anchorage. He explained that it was one of a number of cases he delegated before he took office after consulting with an outside legal attorney and the ethics attorney within the Department of Law (DOL). He said he was advised to delegate until a number of events happened, just as other attorneys general have delegated their prior cases involving litigation with the state from their private practice. He said the answer is that he is not up-to-date with the current status because he is not involved in the cases, but he surmised that they are still before the Alaska Superior Court with municipalities arguing that they do not owe the money and the state arguing that they do.

[1:22:36 PM](#)

CHAIR LEDOUX questioned what kind of Chinese wall he has built around Mr. Schultz.

MR. RICHARDS responded that the Department of Law is accustomed to this kind of Chinese wall in terms of different matters, and he does not know that anything special had to be done other than the fact that the decisions are delegated.

CHAIR LEDOUX asked if Mr. Schultz was going through a confirmation process.

MR. RICHARDS replied that he is not.

CHAIR LEDOUX quiered how many cases have been delegated to Mr. Schultz.

MR. RICHARDS noted that four cases were delegated. One of which was Governor Walker's Point Thompson litigation, which now has been dismissed. He offered that many of these cases have multiple facets to them but three cases are the subject matter, with 10-12 cases, possibly more. There is a property tax case for the City of Valdez, TAPS valuation litigation, and the Tax Cap case which is a derivative of the TAPS valuation litigation.

[1:23:58 PM](#)

CHAIR LEDOUX referred to his comment that "nothing special" has been done because the walls have been put up with other attorneys general. She asked the process of building a Chinese wall to ascertain there is absolutely nothing going from Mr.

Schultz to Mr. Richards, and from Mr. Richards to Mr. Schultz with respect to these cases.

MR. RICHARDS opined that he was not sure there is any more of a process than putting formal delegations in place. He explained that delegations in this area of law are any kind of delegation at the state level and there is a process used which makes the delegation public. He advised he is not familiar with the process other than it goes up on a web site in order to be publically available. Once that occurs, the delegated attorney is then responsible for building a wall and determining what communications will flow outside of his group. He highlighted that it is common within the Department of Law (DOL) that different attorneys work on matters for two different state agencies with DOL representing both state agencies, with slightly different interests.

CHAIR LEDOUX surmised that generally speaking there are not two agencies suing each other in court.

MR. RICHARDS responded that it does happen and in that situation a Chinese wall is built within DOL.

[1:25:35 PM](#)

REPRESENTATIVE MILLETT asked how involved Mr. Richards is in the AKLNG negotiations project, and further asked if he signed a confidentiality agreement.

MR. RICHARDS answered that he has been moderately involved in the sense of attending one meeting telephonically. He said he has not signed a confidentiality agreement so his attendance was totally based on publically available information.

REPRESENTATIVE MILLETT noted that in January Mr. Richards advised the Alaska Journal of Commerce that he plans to institute a state policy potentially in conflict with the legislative direction given to state entities related to confidentiality. She asked his thoughts whether a policy handed down by the attorney general is good public business, open, and transparent. She further asked whether this is bypassing the public process part of a legislators work in crafting a policy that will help statute.

MR. RICHARDS replied that he certainly would not do anything contrary to enacted state law, and at the request of Governor Walker he has had 4-5 conversations with people at AKLNG, and

the Alaska Gasline Development Corporation (AGDC). The idea is to create processes whereby information that is public can flow up to the public in order that Alaskans can get a better sense of what is going on within the project, he remarked. He stated he certainly does not believe that he has done anything that is contrary to law enacted by the legislature.

[1:27:07 PM](#)

REPRESENTATIVE MILLETT questioned if he would be signing a confidentiality agreement for the AKLNG project.

MR. RICHARDS advised it is not his current intention to do so.

[1:27:15 PM](#)

REPRESENTATIVE CLAMAN pointed to the four cases Mr. Richards removed himself as attorney general and quiered if there are any other cases upon which he declared a conflict.

MR. RICHARDS related that those are the only cases.

[1:27:53 PM](#)

REPRESENTATIVE KELLER asked Mr. Richards to reiterate the four cases.

MR. RICHARDS advised that the four cases are: the TAPS valuation cases which is the long going dispute of the ad valorem taxable value of TAPS; a series of ongoing cases for 15-years between the City of Valdez and DNR as to whether or not some of the marine property servicing the Valdez Marine Terminal should be subject to an ad valorem tax; Point Thompson; and the TAPS Cap case which was derivative of the TAPS valuation litigation, but it is a separate case and separate docket.

[1:28:59 PM](#)

CHAIR LEDOUX asked whether he views the role of attorney general as working for the people of the State of Alaska or for Governor Walker, or both. She proffered that she is an advocate of an elected attorney general and the governor having his own counsel.

MR. RICHARDS replied that as the attorney general he represents the governor's office and the various state agencies, but the attorney general's obligation is clearly to be the people's

attorney. The attorney general manages those [duties] by providing as good a legal counsel as possible to all of the various state agencies, including the governor's office. Ultimately, he explained, it is an independent office and reiterated that his primary obligation is to the people. To the extent there is a conflict, it is always the duty of the Alaska Attorney General to act on behalf of the people before the governor or any state agency.

CHAIR LEDOUX questioned how that works with, not only the governor's office, but with the state agencies as far as confidentiality of the attorney client relationship. She noted he would be working for the agency, governor, and the people.

MR. RICHARDS related that it does work as Alaska is not unique in that most, if not all, attorneys general throughout the country operate under the exact same framework. He acquiesced that some do not actually represent the governor's office as there is independent counsel, but many do. Ultimately, he related, he does not see an issue with confidentiality in that when a commissioner and attorney general disagree the confidences would not be disclosed and the attorney general would do what public interest requires.

[1:31:15 PM](#)

REPRESENTATIVE CLAMAN offered a scenario of the Department of Transportation (DOT) having one view, and Mr. Richards concluded that DOT was wrong, would he take the position as its attorney in court to properly educate DOT regarding the law that should be applied to its department.

MR. RICHARDS said "that's correct," and related there have been more than one fairly public disputes in Alaska when a commissioner disagreed with an attorney general. He noted that the attorney general had to make it clear that it is ultimately the attorney general's office, in certain circumstances, that makes determinations as to Alaska law and the public's interest.

REPRESENTATIVE CLAMAN surmised that Mr. Richards had practiced law with the governor for a number of years and quiered if there were occasions when he and the governor did not see eye-to-eye. He asked whether Mr. Richards was comfortable advocating his perspective in convincing the then practicing attorney Bill Walker of the correctness of his standpoint.

MR. RICHARDS related "it fair to say that happened a number of times."

[1:32:48 PM](#)

REPRESENTATIVE MILLETT referred to Ketchikan Gateway Borough v. State of Alaska, Superior Court 1KE-14-16 Civil of which the governor's campaign supported, and she then referred to Alaska v. Native Village of Veneti Tribal Government (96-1577) 101 F.3d 1286, reversed, of which had received a stay. She asked his position on both cases.

MR. RICHARDS offered that with ongoing litigation he will explain the status, but he cannot discuss procedures regarding the strategy of litigation. He pointed to the Ketchikan Gateway Borough case and advised that the superior court judge ruled in part for the Ketchikan Gateway Borough ruling that the local required contribution did violate the dedicated funds clause. Ultimately, he remarked, the ruling read that the state did not have the obligation to make up the local required contribution for the local communities. He offered that the judge originally held that was the law and would not grant the stay. The case went up to the [Alaska] Supreme Court where ultimately the state did receive a stay. Currently, from the enforcement perspective, things are on hold until the Alaska Supreme Court has an opportunity to address the state's position. He advised that the state is moving forward with the same position as in prior litigation, although, the state could always change its position. With regard to the Native Village of Veneti Tribal Government case, he related that he requested a stay of six months to have an opportunity to study the issue and there is no change in position one way or the other.

[1:34:42 PM](#)

REPRESENTATIVE KELLER said there are challenges with the federal government relating to The Arctic National Wildlife Refuge (ANWR or Arctic Refuge) and asked Mr. Richards to describe the people's attorney standing up for Alaskan rights for reliance and access under the Alaska National Interest Lands Conservation Act (ANILCA).

MR. RICHARDS responded that he views the particular circumstances of the Alaska Attorney General as a very important role as the people's attorney which is standing up for state sovereignty and the state's rights under a number of different packages. He referred to the Statehood Compact, ANILCA, Alaska

Native Claims Settlement Act (ANCSA), to ensure that Alaskan rights are respected by the federal government. As to ANWR, he noted, his office has continued a number of cases some of which run back through several attorneys general. His office is moving forward with ANWR on the challenge that the state has a right to file an on-drilling exploration plan as well as a challenge to some of the borders of ANWR, he explained. He offered that the most timely issue is less a litigation issue than a policy issue, of which is President Barak Obama's new position with the United States Secretary of the Interior, Sally Jewell, that ANWR should be treated as wilderness notwithstanding an Act of Congress.

[1:36:30 PM](#)

MR. RICHARDS responded in the affirmative to Chair LeDoux that the Ketchikan Gateway Borough did cross-appeal.

CHAIR LEDOUX asked the state's position on the cross-appeal.

MR. RICHARDS replied that the state will be opposing the cross-appeal. He explained that the Ketchikan Gateway Borough is cross-appealing the two claims it lost on, that the local required contribution violates the veto clause and the appropriation clause. He noted that it believes the state should be required to make up the funds if the local contribution is struck down. He noted the appeal points his office is drafting are consistent with defending the state's position in the Alaska Superior Court.

CHAIR LEDOUX surmised that the points are consistent with defending the state's position in the Alaska Superior Court litigation, but not necessarily consistent with Governor Walker's position during his campaign.

MR. RICHARDS stated he recalls reading an article where Governor Walker said that he was sympathetic to the Ketchikan Gateway Borough's lawsuit, of which is the sum total of knowledge he has about the governor's position, and he has not discussed it with him.

[1:38:07 PM](#)

REPRESENTATIVE CLAMAN asked where the governor was sympathetic with the position of the Ketchikan Gateway Borough, and whether it differed from the state's position in any of the three areas at issue in the lawsuit. He asserted that the state may be

changing its position as to one or more of the appeal points when moving forward as the briefing is not complete.

MR. RICHARDS reiterated that he generally does not know the governor's personal position other than in one of the debates he said he was sympathetic. As to whether or not the state could change its position, there is no present attempt to, and that ultimately how to proceed in litigations is his decision, he posited.

[1:39:23 PM](#)

CHAIR LEDOUX stated that the strategy in how to proceed in litigation might be the decision of Mr. Richards, but the policy matter would be the governor's decision.

MR. RICHARDS respectfully disagreed with Chair LeDoux as it is the attorney general's decision in how to proceed in any litigation both in terms of filing dispositions and strategy.

[1:39:55 PM](#)

REPRESENTATIVE KELLER referred to the federally recognized tribe, Tlingit & Haida Indian Tribes of Alaska decision, and opined that the decision is not consistent with the Alaska State Constitution, and questioned how Mr. Richards would proceed on that issue.

MR. RICHARDS asked for more clarity as to the decision.

REPRESENTATIVE KELLER advised the decision authorized tribal marriage of same sex couples and he questioned whether it is the role of the attorney general to challenge the decision.

MR RICHARDS said they are a separate sovereign and have the power under recognized case law to adopt, as between their own members, their own body of law. The question is whether or not the state would recognize [same sex marriage]. He offered that the decision will be decided in a dispositive manner under Hanby v. State of Alaska, 479 P.2d 486, 498 (Alaska 1970), which will be decided by the Supreme Court this term as to whether there is a constitutional right to gay marriage at the federal level.

[1:41:25 PM](#)

REPRESENTATIVE MILLETT asked Mr. Richards to describe his role in changing laws specific to the National Guard.

MR. RICHARDS advised that as attorney general he will not take the lead on reforming the National Guard. He opined that his role is to assist the National Guard with its requests such as enacting a military justice code, or any other legal changes, or legal advice. Second, he noted, there will be a report from Trisha Collins, Special Investigator, who will make recommendations, if any, as to prosecutions that should occur. He explained that the primary role of the attorney general's office will be to review her recommendations and make a decision as to how to move forward.

[1:42:43 PM](#)

REPRESENTATIVE CLAMAN referred to the distinction between position and policy, and offered that the attorney makes the strategy call in court. For example, he opined, although there is a right to a jury trial in a civil matter, the lawyer can choose to disagree with his/her client and ask for a court trial. He pointed to an example of school funding and said the Ketchikan Gateway Borough suit raised a question of statutory interpretation as it could come to a policy question which is uniquely a question for the governor's office or executive branch to take a position. He opined that when looking at the details of those relationships there are circumstances under which the executive branch may advise the attorney general regarding the position it wants to take on the state's behalf. He offered that the attorney general's advice may be that there is a legal basis to take either position "A," or "B." In his scenario, he pointed out that the attorney general may choose position B, but if the governor chooses position A, would the attorney general be expected to officially support position A. He opined that in this scenario the client makes the choice.

MR. RICHARDS responded that he agrees and disagrees with the statements of Representative Claman in that as attorney general who is an attorney within the Alaska Department of Law, it has agency clients or the governor's office. As an attorney for that client, the attorney takes direction, enables the client's decision making, and provides legal advice, as does a private attorney. Although, he related, there is a slight distinction in that the attorney general's primary representation is to the public interest and not to any one individual governmental client. He related that the attorney general's office follows direction from this client until there is a situation where the attorney believes the client is taking a position that is not consistent with public interest. In which case, he noted, the

duty shifts to the attorney general's office being obligated to take positions in the public interest. He offered to forward a 1995 Attorney General Opinion, written by Bruce Botelho that lays out the historical artifice of the office, the laws of the State of Alaska, and why there is a nuance difference.

[1:46:04 PM](#)

REPRESENTATIVE CLAMAN offered a circumstance whereby the attorney general advises the governor there is a sound basis to support both arguments in the public's interest, and asked whether there is a point in which Mr. Richards will say he needs to follow the governor's direction.

MR. RICHARDS explained that the only reason the governor's direction would not be followed, or any other agency client, is if the position is not in the interest of the public. In that hypothetical circumstance, he reiterated, the attorney will always follow the direction of the client unless the attorney general believes the direction of the client is not in the interest of the public.

[1:47:21 PM](#)

CHAIR LEDOUX requested a copy of Mr. Botelho's 1995 Attorney General Opinion. She surmised that as an appointed official the attorney general decides what is best for the public even though two reasonable people could come to a conclusion. She offered that most of the people in the legislature are trying to follow public interest. She further offered that it is confusing when Mr. Richards says that he decides public interest. In most cases, a client says they want to do "A," and the attorney advises the client that they have a 30-50 percent of prevailing on "A," and the client decides to take their chances. She used the example of the Ketchikan Gateway Borough suit on which some people thought there was not much chance it would prevail, and it did prevail on the superior court level. She said she was confused that Mr. Richards is the final arbitrator of public interest.

[1:49:28 PM](#)

MR. RICHARDS answered that it is the nature of the Alaska Attorney General's Office and throughout the country as it is an independent office. Ultimately, he explained, as an independent office holder the attorney general does make those final

decisions in certain specific areas, primarily in terms of bringing the disposition and handling of litigation.

[1:49:53 PM](#)

CHAIR LEDOUX related that the handling of litigation is a strategic call and not necessarily a policy call as to whether the litigation is filed in the first place. She reiterated that whether the lawsuit is filed is a policy call, and once decided to do the litigation it is up to the attorney general to decide how to win.

MR. RICHARDS respectfully characterized it differently in that it is clear and express under Alaska law that the filing, disposition, and handling of all litigation is an independent matter for the attorney general.

[1:50:47 PM](#)

MR. RICHARDS responded to Representative Claman that the Hanby case is an Alaska case before the 9th Circuit Court of Appeals that is on stay. The United States Supreme Court has taken Certiorari (Cert) in several other state cases with virtually identical constitutional provisions.

REPRESENTATIVE CLAMAN surmised that the prior administration in the Hanby case took the position before the Federal District Court and the 9th Circuit Court of Appeals of advocating that the Alaska State Constitutional provision, approved by the voters, was constitutional and should be enforced, and argued against the plaintiffs. He asked whether this administration will make any submission to the United States Supreme Court on whatever the case is before the United States Supreme Court on same sex marriage. He further asked whether this administration has made any decision regarding its position in the Hanby case coming out of Alaska, on which it has been involved.

MR. RICHARDS reiterated that there has been no decision other than to seek a stay. He noted that the Alaska State Constitution is clear, so barring a decision by the United States Supreme Court that the United States Constitution trumps the Alaska State Constitution, it is his duty to defend the Alaska State Constitution. He offered that possibly in June the decision will be forthcoming.

[1:52:52 PM](#)

REPRESENTATIVE MILLETT noted that Mr. Richards has been critical of the action of the legislature regarding HB 4, and SB 21, even after the referendum on SB 21. She asked whether that would influence the way he handles DOL, and whether there is forthcoming legislation that will change any of those two bills.

MR. RICHARDS expressed that his duty as attorney general is to fully and faithfully execute the laws of the State of Alaska that are passed by this body, or voter initiative. He stated that whether or not he disagrees with policy matters associated with bills in the past it does not change his obligation. He offered that he would not sponsor legislation as it would be up an administrative agency, and he is not working on anything that would affect HB 4 or SB 21, and no one has asked him to.

[1:54:01 PM](#)

REPRESENTATIVE MILLETT asked for verification that his personal opinions about HB 4, and SB 21, will not influence him in any manner.

MR. RICHARDS stated "I don't believe so."

[1:54:14 PM](#)

CHAIR LEDOUX questioned how his personal opinions could not influence the way he handles litigation if he is the final arbiter of public interest.

MR. RICHARDS used the example of tariffs provisions around HB 4, and offered that his personal view and testimony, at the time, was that he thought there was a better way to structure some of the tariff filings. House Bill 4, passed and therefore it is the law of the land and he will do whatever the law of the land says.

[1:55:04 PM](#)

REPRESENTATIVE CLAMAN asked if he testified regarding HB 4, as Craig Richards, citizen, or Craig Richards, representative of a particular client.

MR. RICHARDS related that he was there on behalf of a particular client.

REPRESENTATIVE CLAMAN questioned whether the position of the City of Valdez was his personal view, or was he strictly working in his role as counsel for the City of Valdez.

MR. RICHARDS offered that it was in his capacity as counsel for the City of Valdez.

[1:55:53 PM](#)

REPRESENTATIVE GRUENBERG quiered how he has handled cases where he disagreed with his client on either substance or procedure.

MR. RICHARDS stated that obviously he cannot speak about specific circumstances, but any practicing attorney has had that happen. He noted that his private practice approach has been to work with the client, explain the disagreement as to policy or strategy, and offer the client his/her full and best opinion. He added that when the distinction was made on matters involving strategy it was ultimately the client's decision.

REPRESENTATIVE GRUENBERG asked if his philosophy was "you are the client, suffer the consequences of their own decision."

MR. RICHARDS related that in private practice the client has the right to make their own decisions about their case. He said he has found that when the client is fully informed and he has explained the consequences, that they would come to a middle ground in the approach to take.

[1:58:11 PM](#)

REPRESENTATIVE GRUENBERG said it may be more difficult when the attorney general has 60 legislators, an unknown amount of people in the executive branch, and 700,000 citizens to figure out what everyone wants.

[1:58:27 PM](#)

CHAIR LEDOUX closed public testimony after ascertaining no one further wished to testify.

[1:58:56 PM](#)

REPRESENTATIVE KELLER moved to forward the name of Craig W. Richards to the joint session of the House and Senate for confirmation. However, the vote in the House Judiciary Standing Committee is no indication how a legislator may vote on the

House floor. There being no objection, the confirmation of Craig W. Richards is advanced from the House Judiciary Standing Committee.

[1:59:33 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:59 p.m.