

HB

218

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

February 14, 1979

Date: _____

Mr. Speaker:

The Committee on JUDICIARY has had HB 218

"An Act making a supplemental appropriation to the Alaska Court system; eff. date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

**MEMBERS SIGNING
DO PASS**

**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

H. Malone

Bill [unclear]
[unclear]
[unclear]
[unclear]
[unclear]
[unclear]

Charles [unclear]
 CHAIRMAN

218

February 13, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

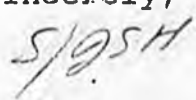
Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill making a supplemental appropriation to the Alaska Court System.

This bill is submitted at the request of the court system, and is for the contractual payment of private attorneys appointed to represent indigents in criminal cases where the public defender's office had a conflict of interest.

The amount of supplemental funding requested by the court system is based on projections using FY 79 expenditure data through December 31, 1978, which was the latest available data at the time the request was written. A review of FY 79 expenditures through January by the Division of Budget and Management reveals a drop in the monthly rate of payments to appointed counsel. A review of more recent FY 79 expenditures may indicate that the earlier projection of a need for this amount can be adjusted downward. I would recommend that the legislature postpone action on this bill until later in the session when the most recent FY 79 expenditure data is available.

Sincerely,



Jay S. Hammond
Governor



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148-218

Alaska Court System

State of Alaska

303 K STREET
ANCHORAGE, ALASKA 99501

RICHARD P. BARRIER
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

(907) 274-8611

January 29, 1979

Ron Lind, Director
Division of Budget & Management
Office of the Governor
Pouch AM
Juneau, AK 99811

Dear Ron:

As I have mentioned to you in previous discussions and by letter in December, The Alaska Court System must request introduction of a supplemental budget appropriation for contractual payment of attorneys in criminal conflict of interest indigency cases. The projected year-end deficit based on expenses through December and the amount we request be included in the supplemental is \$581,000.

We have met with the Governor and his staff concerning this supplemental request and to discuss possible alternatives for future years to avoid similar fiscal problems. We are now cooperating with the Governor's Office in planning for an independent legal office to handle these conflicts of interest cases and possibly other types of appointments including guardians ad litem. We are currently preparing an analysis of the numbers of cases and cost per case in various types of conflict of interest cases to assist in determining the proper size and funding of an independent agency for that function.

The requested \$581,000 supplemental is a result of projected expenditures of \$1,103,000 against an appropriation of \$520,000 for attorney appointments in criminal cases. Attached to this letter is a brief recap of the historical expenses incurred by the Court System in this budget category during years FY 76 through the current date. You will note that these costs have been rising rapidly each year but that the current year projection is approximately 100 percent

higher than the expenditures for FY 78. We have found that the expenditures through December 31, 1978 represent at most one-third of the total expenses for the year. This is a result of a lapse of approximately two months in submission of bills by attorneys following most of the work done in their cases. In each of the previous years the first six months expenses have represented approximate a quarter or less of the total expenses for the year. Were this trend to continue in FY 79, the amount requested for supplemental would need to be increased greatly. However, since the first six months of FY 79 did include several expensive cases, and since it is assumed that the second half of the year will not have as many extraordinarily large cases, the projection is reduced somewhat over the historical past.

The Alaska Court System has very little control over the amounts billed by attorneys in these appointments. These appointments originate with the filing of a request by the Public Defender to be removed from a case due to a conflict within his office concerning the representation of an indigent defendant. This results primarily from situations where there are multiple defendants in a case or a witness in one case might be a defendant in another case in which the defendant is represented by the Public Defender. Since the Canons of Ethics do not allow a law firm to represent more than one side of any case, it is often necessary for private counsel to be appointed. When an attorney finishes his case, bills are submitted to the judge for review and approval and payment by the court at \$40 per hour.

If you have any questions concerning this request for a supplemental, please let me know as soon as possible. Thank you for your assistance.

Sincerely,

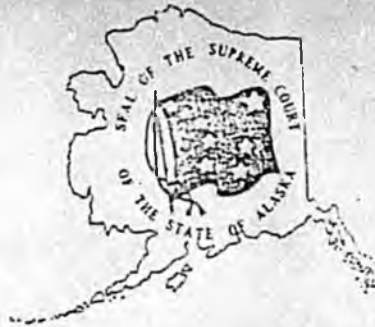


Richard P. Barrier
Deputy Administrative Director

Attachments

Historical Expenses Pattern - Attorney Payments
In Conflict-of-Interest Cases

District or Service Area	FY 76		FY 77		FY 78		FY 79	
	<u>12/31/75</u>	<u>Entire Year</u>	<u>12/31/76</u>	<u>Entire Year</u>	<u>12/31/77</u>	<u>Entire Year</u>	<u>12/31/78</u>	<u>Entire Yr. Pro- jected</u>
First	11.1	31.9	2.1	59.3	7.7	69.6	50.5	150.0
Second	.2	3.4	1.2	2.6	1.3	2.8	6.7	14.0
Third	53.5	178.7	63.0	188.5	58.6	279.8	274.4	650.0
Fourth	13.2	66.7	38.9	131.1	23.2	111.5	80.9	240.0
Bethel			6.9	18.3	13.1	44.8	13.1	45.0
Barrow					.5	5.6	.4	4.0
TOTAL	78.0	280.7	112.1	399.8	104.4	514.1	426.0	1103.0



Alaska Court System

State of Alaska

SUSAN BURKE
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501

(907) 274-8611

February 1, 1979

Mike Harper
Office of the Governor
Pouch A
Juneau, Alaska 99811

Dear Mike:

This is a short summary of the history and current problems associated with the compensation of private counsel in Public Defender conflict cases. I have listed the questions we need to discuss on Monday at the end of this letter.

In 1974 the Legislature amended the Public Defender Act to transfer to the Court System the responsibility for appointment and compensation of private counsel appointed to represent indigent defendants whom the Public Defender cannot represent because of conflict of interest. Before this transfer, the Public Defender compensated substitute counsel at the rate of \$42.00 per hour which was then the minimum hourly fee set by the Bar Association. When the Court System took over the responsibility, the fee schedule was set at \$35.00 per hour. This remained the rate of compensation until July 1, 1978 when the rate was raised to \$40.00.

For Fiscal Year 1975, the Court System received the amount that had been requested by the Public Defender Agency for these expenses. The budget and expenditure history for Fiscal Year 1975 and subsequent years is as follows:

EXPENDITURE

Fiscal Year 1975	133,800
Fiscal Year 1976	280,700
Fiscal Year 1977	399,800
Fiscal Year 1978	514,100

Letter to Mike Harper
Page 2
February 1, 1979

For the current fiscal year, the Court System received budget authorization for \$ 522,000. To date, actual expenditures have been \$ 426,000, and projected expenditures through June 30, 1979, are \$ 1,103,000.

It is difficult to determine precisely why this increase has occurred. To some extent it may be related to the increase in the number of criminal cases being tried following the implementation in late 1976 of the plea bargaining ban. Not only does this mean that more time must be spent by counsel at the trial level, but more cases have been and continue to go through the appellate process as well. Additionally, even in the cases where the defendant eventually pleads guilty, the plea typically is entered after more investigation and preliminary motions than before the ban. In short, the system has become more adversarial and less negotiation oriented and this translates into more attorney time.

The current \$40.00 per hour compensation authorized by the supreme court is less than half the hourly rate charged by most attorneys in the state for their services. Increasingly, attorneys experienced in criminal practice are reluctant to take appointments at this rate, particularly in cases that may require fairly substantial amounts of time. Some in fact have removed their names from the appointment list.

We believe that the state can no longer afford to provide defense services in conflict cases through the appointment of private counsel. Because of the constitutional requirement of effective assistance of counsel and because of ethical standards requiring "zealous representation," it is unlikely that the amount of time spent on the defense of these cases can be significantly reduced. Further, it is impossible for the court to monitor the activities of the attorneys appointed and such monitoring would be inappropriate on the part of the judiciary which may not interfere with the independent professional judgment of an attorney representing a litigant before the courts. Thus there is currently no effective control on costs so long as the services are being provided through individual appointments of private attorneys.

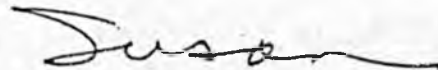
The history of the establishment and operation of the Public Defender Agency in Alaska demonstrates that defense services in criminal cases can be provided by salaried attorneys at a substantially lower cost than by individual private counsel appointments. We believe that this is equally true in the area of defense services in conflict cases.

Because of ethical considerations, an office providing defense services in conflict cases must be separate from the Public Defender Agency. Some primary questions that must be resolved include:

- (1) What is the appropriate agency in which to locate the office: i.e., Governor's Office, Lieutenant Governor's Office etc.?
- (2) Should the administrative structure mirror that of the Public Defender Agency or would a different creature such as an independent corporation or board be preferable and cost effective?
- (3) Is legislation required or can the office be established by Executive Order?
- (4) What should be the scope of responsibilities for the office? Should the office also handle guardian ad litem work, function as state guardian, etc.?
- (5) What are the personnel, space and equipment needs for the office?

I hope this is sufficient background for our meeting on Monday.

Sincerely,



Susan Burke
Deputy Administrative Director

SB/pmr

Historical Expenses Pattern - Attorney Payments
In Conflict-of-Interest Cases

District or Service Area	FY 76		FY 77		FY 78		FY 79		1-31-79
	<u>12/31/75</u>	<u>Entire Year</u>	<u>12/31/76</u>	<u>Entire Year</u>	<u>12/31/77</u>	<u>Entire Year</u>	<u>12/31/78</u>	<u>Entire Yr. Pro- jected</u>	
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Bethel			6.9	18.3	13.1	44.8	13.1	45.0	18.3
Barrow					.5	5.6	.4	4.0	2.7
TOTAL	78.0	280.7	112.1	399.8	104.4	514.1	426.0	1103.0	457.0

Trial Courts

11/3 218

	1	2	3	4	5
	# Cases Fy 75	# Cases 76	# Cases 77	# Cases 78	6 mo * 79
1st District	14	43	39	42	45 57
2nd "	10	7	2	7	5 5
3rd "	18	16	17	20	137 166
4th " " <small>Referred + Barrow</small>	32 94	79 202	140 357	125 394	58 82 245
Total Dist.	133.8	280.7	401.0	482.2	726.0
	1,423.4	1,071	1,119	1,305	1,739
Conflicts # of Cases	94	262	357	394	245
Net Cost	1,423	1,071	1,119	1,305	1,739

* amount to approx. 4 months of 1/1/75

3-22-79
HB 218

Susan Burke

Gov's Office contract
with private law firms

get Susan's questions answered
on her Feb. 1 letter to Mike Harper

Att. Legal Services? Criminal cases? ^{legally??}

information @ # of cases

ask PD # cases that
are a conflict

info @ racial confictions w/
representation by private attorneys