

CRIME



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

To: Charlie Parr, Chairman, and Members of the House  
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Crimes

The attached materials providing crime and disposition statistics were collected by the now defunct Research Division of the Legislative Affairs Agency. These materials are derived from two sources. The crime statistics were taken from Crime in Alaska - 1978, Criminal Justice Planning Agency, Office of the Governor. Part I crimes denote serious felony offenses; Part II crimes denote less serious felony and misdemeanor offenses. The data on disposition and sentences was taken from the plea bargaining study conducted by the Judicial Council. This data spans an earlier time period than the crime and arrests statistics. The statistics on probation and parole violations were furnished to Legislative Affairs by the Division of Corrections. These statistics are inadequate for determining rates of probation or parole violations. Information on this issue will be provided in the Probation and Parole Report assigned to Ms. Plotnick.

PART I  
CRIMES REPORTED  
1973 - 1978

TABLE 1

YEAR	POPULATION	TOTAL OFFENSES	VIOLENT CRIMES	PROPERTY CRIMES	CRIMINAL HOMICIDE	FORCIBLE RAPE	AGGRAVATED ASSAULT	ROBBERY	BURGLARY	LARCENY/THEFT	MOTOR VEHICLE THEFT
1973	330,000	16,213	1,269	15,044	33	147	868	221	3,852	9,456	1,736
Rate Per 100,000		4,943.3	384.5	4,558.8	10.0	44.5	263.0	67.0	1,167.3	2,865.5	526.1
1974	337,000	17,658	1,527	16,131	46	166	1,017	298	3,932	10,016	2,183
Rate Per 100,000		5,239.8	453.2	4,786.6	13.7	49.3	301.8	88.4	1,166.8	2,972.1	647.8
1975	404,000	21,655	1,859	19,796	39	177	1,176	467	4,266	12,179	3,351
Rate Per 100,000		5,413.7	464.6	4,949.1	9.7	44.2	294.0	116.7	1,066.5	3,044.8	837.8
1976	417,000	23,385	1,983	21,402	41	192	1,264	486	4,538	13,817	3,047
Rate Per 100,000		5,567.9	472.1	5,095.8	9.8	45.7	300.9	115.7	1,080.5	3,289.8	725.5
1977	425,000	25,025	1,949	23,076	47	255	1,232	415	5,634	14,072	3,370
Rate Per 100,000		5,819.7	453.2	5,366.5	10.9	59.3	286.5	96.5	1,310.2	3,272.6	783.7
1978	420,000	24,001	1,729	22,272	54	254	1,042	379	5,330	14,212	2,730
Rate Per 100,000		5,714.5	411.7	5,302.8	12.9	60.5	248.1	90.2	1,269.0	3,383.8	650.0

Advance copy from Crime in Alaska, 1978, Criminal Justice Planning Agency

PART II CRIMES

As in 1976, the Alaska State Troopers and Juneau Police Department collected and submitted data about reported Part II crimes. The State Troopers jurisdiction covers a wide cross-section of the state's population and therefore is indicative of the statewide relationship between Part I and Part II crimes.

Table 45 presents an analysis of the Part I and Part II crimes reported to the State Troopers during 1975-1977. During 1977, Part I crimes accounted for fifty-five percent and Part II crimes for forty-five percent. The Part I crimes are accounting for an increasing portion of the offenses reported.

Those offenses which account for the majority of the Part II crimes are Driving While Intoxicated (12%), Vandalism (9%), Other Offenses (7%), Other Assaults (5%), Narcotic Drug Violations (2%), Carrying or Possession of Weapons (2%), and Embezzlement or Fraud (2%). The remainder represent one percent or less.

Those offenses which showed an increase over their contribution in 1976 are Driving While Intoxicated (+1%) and Vandalism (+1%). Narcotic Drug Violations and Other Offenses showed decreases of one and two percent, respectively. All other offenses stayed at the same rate of contribution.

ALASKA STATE TROOPERS  
Reported Part I and Part II Offenses  
1975-1977

TABLE 45

Offense	1975		1976		1977	
	Offenses	Percent	Offenses	Percent	Offenses	Percent
Total Part I Offenses	6,266	47%	7,087	54%	7,480	55%
Part II Offenses						
Negligent Homicide	99	1%	97	1%	67	1%
Other Assaults	658	5%	686	5%	668	5%
Forgery & Counterfeiting	62	1%	63	•	142	1%
Embezzlement & Fraud	242	2%	249	2%	225	2%
Stolen Property	50	•	49	•	64	•
Weapons	226	2%	245	2%	216	2%
Prostitution & Vice	33	•	11	•	8	•
Sex Offenses	145	1%	125	1%	132	1%
Offenses Against Family	67	•	43	•	37	•
Narcotic Drug	618	5%	344	3%	322	2%
Liquor Laws	172	1%	142	1%	138	1%
Drunkenness	11	•	•	•	•	•
Disorderly Conduct	126	1%	144	1%	106	1%
Vagrancy	1	•	•	•	2	•
Gambling	20	•	6	•	3	•
Driving While Intoxicated	1,563	12%	1,403	11%	1,629	12%
Vandalism	961	7%	1,101	8%	1,196	9%
Arson	72	1%	69	1%	81	1%
Other Offenses	1,883	14%	1,184	9%	1,021	7%
Total Part II Offenses	7,029	53%	5,968	46%	6,077	45%
Total Part I & II Offenses	13,295	100%	13,055	100%	13,557	100%

• Less than 1%

Table 46 presents the distribution of the offenses reported to the Juneau Police Department. Part I crimes accounted for twenty-two percent and Part II crimes for seventy-eight percent of the total offenses reported during 1977. This distribution is radically different from 1976's but identical to 1975's.

During 1977, those offenses which accounted for the largest proportions were Disorderly Conduct (29%), Other Offenses (12%), Vandalism (9%), Liquor Law Violations (9%), Other Assaults (8%), Driving While Intoxicated (5%) and Narcotic Drug Violations (2%).

Those offenses which showed increases were Disorderly Conduct (+12%), Other Assaults (+6%), and Other Offenses (+2%). Narcotic Drug Violations (-2%), Vandalism (-2%), Liquor Law Violations (-1%) and Driving While Intoxicated (-1%) showed decreases.

JUNEAU POLICE DEPARTMENT  
REPORTED PART I & PART II OFFENSES  
1975 - 1977

TABLE 46

OFFENSE	1975		1976		1977	
	Offenses	Percent	Offenses	Percent	Offenses	Percent
Total Part I Offenses	908	22%	892	33%	673	22%
Total Part II Offenses						
Negligent Homicide	0		0		0	
Other Assaults	144	3%	60	2%	264	8%
Forgery & Counterfeiting	26	1%	11	*	19	1%
Embezzlement & Fraud	45	2%	17	1%	50	1%
Stolen Property	11	*	9	*	8	*
Weapons	1	*	14	1%	25	1%
Prostitution & Vice	5	*	6	*		
Sex Offenses	9	*	12	*	16	1%
Off. A/Family	15	*	22	1%	8	*
Narcotic Drug	181	6%	107	4%	52	2%
Liquor Laws	275	7%	277	10%	253	9%
Drunkenness	509	13%	82	3%	1	*
Disorderly Conduct	1,018	25%	450	17%	815	29%
Vagrancy			1			
Gambling	1	*				
Driving while Intoxicated	206	5%	161	6%	153	5%
Vandalism	359	9%	301	11%	260	9%
Arson	2	*	6	*	3	*
Other Offenses	412	10%	257	10%	343	12%
Total Part II Offenses	3,223	78%	1,797	67%	2,260	78%
Total Part I & Part II Offenses	4,131	100%	2,689	100%	2,883	100%

\* LESS THAN 1%

STATE OF ALASKA  
 Clearance Rates  
 Part I Offenses  
 1977

TABLE 47

	Actual Offenses <sup>1</sup>	Offenses Cleared <sup>2</sup>	Percent Cleared
Murder - Non-negligent Manslaughter	43	31	72%
Forcible Rape	211	66	31
Rape by force	155	47	30
Attempts to commit forcible rape	56	19	34
Robbery	294	83	28
Firearm	20	53	24
Knife or cutting instrument	41	10	24
Other dangerous weapon	17	3	18
Strong-arm (hands, fist, feet, etc.)	116	17	15
Aggravated Assault	1,147	741	65
Firearm	399	239	60
Knife or cutting instrument	227	143	63
Other dangerous weapon	192	120	63
Hands, fist, feet, etc. - Aggravated Injury	329	229	70
Burglary	5,400	892	17
Forcible entry	3,128	571	18
Unlawful entry - no force	1,948	300	15
Attempted forcible entry	324	21	6
Larceny - Theft	11,665	3,000	26
Motor Vehicle Theft	3,058	361	12
Autos	1,469	166	11
Trucks and buses	755	107	14
Other vehicles	834	88	11
TOTAL PART I OFFENSES	21,918	5,174	24%

\* Reported offenses less unfounded complaints

\*\* Cleared by Accident or exceptional means

STATE OF ALASKA  
1977 ARRESTS  
BY OFFENSE AND AGE

TABLE 64

OFFENSE	Under 18	18to24	25 & Over	Row Total
Count -				
Row % -				
Column % -	1	13	20	34
MURDER	3%	38%	59%	100%
NEGLIGENT MANSLAUGHTER	2	6	6	14
	14%	43%	43%	100%
FORCIBLE RAPE	3	3	33	61
	5%	41%	54%	100%
ROBBERY	35	64	24	123
	28%	52%	20%	100%
AGGRAVATED ASSAULT	49	150	259	458
	11%	33%	56%	100%
BURGLARY	714	329	86	1,129
	63%	29%	8%	100%
LARCENY- THEFT	1,618	742	642	3,002
	54%	25%	21%	100%
MOTOR VEHICLE THEFT	223	125	50	398
	56%	31%	13%	100%
OTHER ASSAULTS	104	376	567	1,047
	10%	36%	54%	100%
ARSON	27	6	10	43
	63%	14%	23%	100%
FORGERY & COUNTERFEIT	23	28	30	81
	28%	35%	37%	100%
FRAUD	13	69	104	182
	7%	36%	57%	100%
EMBEZZLEMENT	14	26	19	59
	24%	44%	32%	100%
STOLEN PROPERTY	49	55	30	134
	37%	41%	22%	100%
VANDALISM	256	132	116	506
	51%	26%	23%	100%
WEAPONS	66	157	176	399
	17%	39%	44%	100%

\* LESS THAN 1%

OFFENSE	Under 18	18to24	25 & Over	Row Total
PROSTITUTION	9	105	61	175
	5%	60%	35%	100%
SEX OFFENSES	26	51	108	185
	14%	28%	58%	100%
DRUG ABUSE	394	262	141	797
	49%	33%	18%	100%
GAMBLING OFFENSES	7	7	79	86
	8%	8%	92%	100%
AGAINST FAMILY	1	126	334	461
	*	27%	73%	100%
DRIVING UNDER INFLUENCE	74	1,000	2,430	3,504
	2%	29%	69%	100%
LIQUOR LAWS	915	474	429	1,818
	50%	26%	24%	100%
DRUNKENNESS	3	47	137	187
	2%	25%	73%	100%
DISORDERLY CONDUCT	120	688	778	1,586
	8%	43%	49%	100%
VAGRANCY	1	16	79	96
	1%	16%	79%	100%
ALL OTHER OFFENSES	424	1,472	1,545	3,441
	12%	43%	45%	100%
SUSPICION	5	1		6
	83%	17%		100%
CURFEW AND LOITERING	566			566
	100%			100%
RUNAWAYS	294			294
	100%			100%
Part I Count-	2,643	1,448	1,114	5,205
Row % -	51%	28%	21%	100%
Column % -	44%	22%	14%	25%
Part II Count-	3,388	5,087	7,115	15,590
Row % -	22%	33%	45%	100%
Column % -	56%	78%	86%	75%
TOTAL Count-	6,031	6,535	8,229	20,795
Row % -	29%	31%	40%	100%

PART I

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9

DISPOSITION OF ARRESTED FELONY CASES  
ANCHORAGE, FAIRBANKS, AND JUNEAU 1975-76\*

	<u>NUMBER OF CASES</u>	<u>CASES THAT DID NOT GO TO COURT</u>	<u>CASES DISMISSED BY COURT</u>	<u>CASES WITH GUILTY PLEA</u>	<u>CASES TRIED</u>
Class I Murder & Kidnapping	19	0	5 26.3%	4 21.1%	10 52.6%
Class II Other Violent Felonies	497	57 11.5%	221 44.4%	155 31.2%	64 12.9%
Class III Burglary, Larceny & Receiving	598	73 12.2%	237 39.6%	259 43.3%	29 4.9%
Class IV Fraud, Forgery, & Embezzlement	252	17 6.7%	157 62.3%	66 26.2%	12 4.8%
Class V Drug Felonies	360	64 17.8%	179 49.7%	83 23.1%	34 9.4%
Class VI "Morals" Felonies	45	9 20%	19 42.2%	17 37.8%	0
TOTAL	1771	220 12.4%	818 46.2%	584 33%	149 8.4%

\* Data from the plea bargaining study by the Judicial Council

Prepared by:

Legislative Affairs Agency  
Research Division  
March 5, 1979

Table VI-1. Percentage of All Cases Resulting in Conviction and Active Sentence of Thirty Days or More, by Offense Class, Time Period, and Year

(Percentage Base in Parentheses)

<u>Felony Offense Class</u>	<u>Period 1</u>	<u>Period 2</u>	<u>Period 3</u>	<u>Period 4</u>	<u>Year 1 (1974-75)</u>	<u>Year 2 (1975-76)</u>
<u>Class 1</u> (Murder and kidnapping)	60.0% (10)	42.9% (14)	58.3% (12)	42.9% (7)	50.0% (24)	52.6% (19)
<u>Class 2</u> (Violent felonies other than murder and kidnapping)	21.9 (233)	22.0 (314)	24.2 (240)	20.6 (257)	21.9 (547)	22.3 (497)
<u>Class 3</u> (Burglary, larceny, receiving)	11.7 (273)	14.2 (261)	15.7 (325)	20.9 (273)	12.9 (534)	18.1 <sup>1</sup> (598)
<u>Class 4</u> (Fraud, forgery, embezzlement, felony bad checks)	17.4 (155)	16.1 (143)	9.2 (152)	22.0 (100)	16.8 (298)	14.3 (252)
<u>Class 5</u> (Drug felonies)	13.9 (144)	15.4 (208)	20.6 (194)	12.0 (166)	14.8 (352)	16.7 (360)
<u>Class 6</u> (“Morals” felonies)	18.9 (37)	13.0 (23)	20.8 (24)	19.0 (21)	16.7 (60)	20.0 (45)
<u>All Felonies</u>	16.8 (852)	17.7 (963)	18.5 (947)	19.3 (824)	17.2 (1815)	18.9 (1771)

1. Year 1 - Year 2 difference significant at .05 or less.

Table VII-1. Mean Active Sentences, in Months, for Offense Classes and Frequently Occurring Specific Offenses, by City and Policy Year

<u>Offense Class</u> <sup>2</sup>	All Cities					
	1974-75	1975-76				
Class 1 Murder and kidnapping	171.2	238.8				
Class 2 Other violent felonies	24.8	22.7				
Class 3 Burglary, larceny, receiving	6.8	4.3				
Class 4 Forgery, fraud, embezzlement	9.5	6.2				
Class 5 Drug felonies	8.0	25.4				
Class 6 "Morals" felonies	25.5	16.6				
<hr/>						
	Anchorage		Fairbanks		Juneau	
	1974-75	1975-76	1974-75	1975-76	1974-75	1975-76
<u>Class 1</u>	93.4	258.4	262.0	211.2	----	---- <sup>1</sup>
<hr/>						
<u>Class 2</u>	13.9	24.6	38.9	22.1	24.0	0.6
Rape <sup>3</sup>	69.0	115.5	120.0	72.0	----	----
Robbery	32.3	25.8	108.0	35.6	----	----
Attempted robbery	4.8	33.5	----	----	----	----
Use of firearms in robbery, etc.	----	----	82.3	64.3	----	----
Assault with dangerous weapon	16.8	11.7	16.0	20.3	4.3	1.3
Misd. assault and battery	0.9	1.1	1.1	1.4	1.5	1.2
Misd. careless use of firearm	0.2	0.2	----	----	----	----
<hr/>						
<u>Class 3</u>	5.0	4.0	11.3	5.0	1.5	2.2 <sup>2</sup>
Burglary in dwelling-occupied	22.0	7.5	1.0	1.5	----	--
Burglary not in dwelling	2.5	6.1	4.4	12.1	6.5	5.2
Larceny over \$100	5.0	3.7	37.2	10.0	----	----
Buying, receiving, concealing stolen property	4.0	2.7	13.5	5.7	----	----
Misd. unauthorized entry	0.6	1.7	0.1	1.8	0.4	0.4
Misd. larceny	0.9	0.6	0.5	0.3	----	----
Misd. buying, receiving, concealing stolen property	----	----	0.0	0.7	----	----

1. Dash indicates sample very small or no cases.
2. Indicates class of felony initially charged. Offense of which defendant convicted may be misdemeanor or lesser felony, but is usually of same type as original.
3. Specific offenses named are those of which defendant was actually convicted.

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Table VII-1. (Continued)

	Anchorage		Fairbanks		Juneau	
	1974-75	1975-76	1974-75	1975-76	1974-75	1975-76
<u>Class 4</u>	10.2	7.8	8.5	3.1	8.7	7.3
Forgery of debt	18.0	11.3	15.9	12.0	----	----
Bad check over \$50	1.7	3.0	----	----	----	----
Embezzlement by employee over \$100	3.4	12.0	----	----	----	----
Fraudulent use of credit card	----	----	0.0	0.0	----	----
Obtaining property by false pretenses	40.0	1.5	0.0	0.1	----	----
<u>Class 5</u>	11.0	10.0	0.9	47.1	9.6	5.5
Possession of narcotic	0.0	21.0	0.5	33.9	----	----
Sale of narcotic	18.5	9.6	3.0	71.6	----	----
Possession of HDS drug for sale	5.5	13.7	----	----	----	----
Sale of HDS drug	14.6	9.6	0.7	0.0	----	----
Misd. simple possession of HDS (excluding marijuana)	0.5	0.0	----	----	----	----
<u>Class 6</u>	22.1	6.0	34.7	36.0	3.0	0.1

(Sample sizes for specific Class 6 offenses too small for comparison of means.)

TO : Sharman Haley  
Legislative Affairs Agency

DATE: February 22, 1979

FILE NO

TELEPHONE NO

FROM: Dr. Richard Mohr *RM*  
Research Coordinator  
Division of Corrections

SUBJECT: Parole Statistics

The frequencies which you requested are noted in the table below. I am sorry that there is nothing in our records which identifies the specific nature of offenses leading to violations. If you wish further amplification, please call me at 465-3377.

		<u>1977</u>	<u>1978</u>
PROBATION	New charges	65	58
	Technical Violations	41	46
PAROLE	New Charges	13	15
	Technical Violations	16	14

RM:cmf

cc: Walt Jones



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House  
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Integrated and Nonintegrated Bar Associations

#### I. INTRODUCTION

Mechanisms for regulating the legal profession vary from state to state. Thirty states, including the State of Alaska, and the District of Columbia have established integrated bar associations to fulfill certain of these regulatory responsibilities. In order to practice law in an integrated bar state, one must be a member of the bar association. This mandatory membership requirement vests an integrated bar association with certain admission, licensing, and disciplinary functions. The 20 remaining states have nonintegrated bar associations. In these states membership in the state bar association is voluntary and such associations serve primarily as social clubs. In nonintegrated states, the regulation of the legal profession is generally the responsibility of the supreme court. The court typically establishes a board or commission for this purpose. In a few nonintegrated states, the attorney general's office is responsible for the disciplinary function.

## II. THE ALASKA BAR ASSOCIATION

The integrated status of the Alaska Bar Association was established in 1955 through the legislative enactment of the Alaska Integrated Bar Act.<sup>1</sup> Prior to the integration of the Alaska Bar Association, the judiciary was vested with the disciplinary function, while the attorney general was responsible for the admissions function. The Alaska Integrated Bar Act was introduced by Representative Kalamarides as a result of numerous complaints arising out of the then-existing disciplinary and admission practices. In 1955 the territorial legislature, concluding that such matters could be better handled by the lawyers themselves, established the integrated bar in Alaska.

Pursuant to Alaska statute, the Alaska Bar Association is governed by a nine-member Board of Governors. The Board of Governors serve without salary and are elected by the membership at large. As statute requires the Board of Governors to be elected from the membership, there are no lay persons on the board. Rules concerning admission, discipline, and definition of the practice of law must be embodied in the Alaska Bar Rules.<sup>2</sup> Although the Board of Governors is empowered to approve and recommend Alaska Bar Rules, the Alaska Supreme Court is vested with the authority to promulgate those rules. The Board of Governors may adopt bylaws and regulations consistent with the Alaska Bar Rules; however, such bylaws and regulations are specifically exempt from the requirements of the Administrative Procedure Act.

<sup>1</sup>See AS 08.08.010, et seq.

<sup>2</sup>To date no rule has been developed which would define the practice of law.

The scheme for adopting Bar Rules and bylaws and regulations consistent with those Bar Rules reflects the roles of the Alaska Bar Association and the Supreme Court in regulating the legal profession. In essence, the Supreme Court has the ultimate rule-making authority in admissions, licensing, and discipline. The Board of Governors conducts adjudicatory hearings, but is primarily relegated to recommending appropriate action to the Supreme Court.

III. SHOULD THE INTEGRATED STATUS OF THE ALASKA BAR ASSOCIATION BE CONTINUED

During the 1980 legislative session, the House Judiciary Committee is scheduled to conduct a sunset review of the Alaska Bar Association. Pursuant to the sunset statute, this committee is required to submit to the Speaker of the House a report specifying its findings and recommendations as to the continuance or termination of the Association. This report must be submitted no later than the 60th day of the legislative session. As a result of these responsibilities, preliminary consideration should be given to the advantages and disadvantages of both integrated and nonintegrated bar systems.

A. Cost Factor

The primary disadvantage of the nonintegrated bar system is that it requires the establishment of a state bureaucracy to provide for the admission, licensing and disciplining of those authorized to practice law in the state. Any increased taxpayer costs resulting from such a move must be carefully analyzed.

Other professions regulated by state agencies are subject to nominal annual licensing fees. For example, a physician is subject to a \$50 fee, while lawyers, \$180. The extent to which these nominal

fees defray the costs of regulating the profession is significant. If taxpayers support most of the costs of regulating all professions but for the legal profession, what justifies this differentiation. Furthermore, should it be determined that it is more expensive to regulate lawyers than doctors, the burden on the taxpayer can be reduced by increasing the license fees for lawyers.

Costs resulting from the admission function of the Alaska Bar Association are absorbed by current application fees. Individuals seeking admission to the bar are required to pay \$5 for the application form and a \$250 examination fee. Should application fees be structured to absorb admission costs, no additional financial burden falls on the taxpayer.

Furthermore, it should be noted that the Alaska Bar Association is not completely independent of state financial resources. For many years the Alaska Bar Association was furnished with free office space, use of equipment and supplies provided by the court system. Several years ago, when the Bar Association was required to vacate those offices, moving expenses were provided by the court system. Currently office space for the Bar Association is being subsidized by the Department of Law at the rate of \$10,000 per annum, raising a question of conflict of interest.<sup>3</sup>

Additionally, for the past several years state funds have been provided to defray the association's expenses for disciplinary proceedings. In 1978 the Bar Association received \$58,600 from the state; in 1979, \$36,700, and the Allocation for 1980 is \$51,000.<sup>4</sup> This state

<sup>3</sup>This information was disclosed by Richard Barrier, Manager, Fiscal Operations and Deputy Administrator, Alaska Court System.

<sup>4</sup>The reason disbursements in 1979 were lower than the previous year, and also lower than the 1980 allocation, was because the court system overpaid the Bar Association by some \$11,000 in 1978. It should be noted that the court system has never audited the Bar Association relative to these expenses.

funding comprises approximately one-half of the association's expenses for disciplinary proceedings.<sup>5</sup>

Obviously, a more detailed cost assessment is needed to determine the weight of this objection to the nonintegrated bar system. However, it appears that the existing state financial support combined with fixing appropriate license and admissions fees may eliminate this tax burden objection.

B. Legislative Authority

The Alaska Supreme Court contends that it has the inherent power to admit, discipline, and disbar Alaskan lawyers. The source of this power is never defined beyond the recitation that it is an exercise of the Supreme Court's inherent power and jurisdiction over attorneys as officers of the court. Under this theory it seems that the Alaska Supreme Court has permitted the delegation of certain of these responsibilities to the Alaska Bar Association. Shortly after the enactment of the Alaska Integrated Bar Act, the Supreme Court held that the act did not detract from its inherent powers to govern the practice of law in Alaska, but the act, on the contrary, merely adds helpful machinery. In upholding the validity of the act, the court noted various provisions deferring to its inherent authority. For example, it cited: that decisions of the Board of Governors are merely recommendatory; that the review of such decisions before the Supreme Court are not limited in scope; and that only final orders of the Supreme Court work disbarment or reinstatement.

In a subsequent decision, the Alaska Supreme Court held that one section of the act, which attempted to mandate that the Supreme Court give full accord to a recommendation of the Board of Governors, was an unconstitutional invasion of its inherent powers.

<sup>5</sup>Initial billings submitted to the court system to obtain these state funds contained the names of those individuals subject to ongoing disciplinary proceedings in violation of the confidentiality required by Bar Rule 31.

Although the Alaska legislature is empowered under the Alaska Constitution to prescribe the jurisdiction of the courts and to change the Rules of Court, such arguments most likely would not be persuasive in view of the Supreme Court's adamant posture on this issue. The Supreme Court has stated that the power of the courts to discipline attorneys has long been recognized and cannot be defeated by the legislative branch of government.

The Supreme Court's position has prompted the Alaska Bar Association to contend that it is not a state agency. This contention has been raised in two different lawsuits filed against the association. One suit alleges that the Bar Association conducted a meeting in violation of the public meeting law. The lower court found for the Bar Association and currently the matter is before the Alaska Supreme Court. The other suit arose out of an investigation by the Ombudsman pertaining to the adequacy of resolving citizen complaints against lawyers and the propriety of salary and fringe benefits for the Bar Counsel. The Bar Association's refusal to submit to the official jurisdiction of the Ombudsman has resulted in litigation presently pending before the Superior Court in Anchorage.

The Supreme Court's exclusive jurisdiction over Alaskan attorneys impacts the policy considerations before this committee. If the committee determines to sunset or de-integrate the Alaska Bar Association, without establishing any statutory mechanisms for admitting, licensing and disciplining attorneys, the Supreme Court would continue to bear the responsibilities for this regulation. Termination of the Alaska Bar Association would not de-regulate attorneys. On the other hand, should the committee determine to sunset or

de-integrate the Alaska Bar Association and establish statutory mechanisms for regulating attorneys, deference must be made to the Supreme Court's authority. Even should these statutory mechanisms not invade the Supreme Court's jurisdiction, nothing but good faith would require the Supreme Court to abide by them. It was in just such a context that 20 years ago the Supreme Court upheld the validity of the Integrated Bar Act and still abides by much of that act today.



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House  
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Drug Laws

Current drug laws in Alaska are antiquated. The Uniform Controlled Substances Act, based on the federal controlled substances act of 1970, has been adopted in some form by 44 states.

At the close of the 1977 regular legislative session, the Governor introduced a bill which would have revised Alaska's drug laws. Upon introduction the Governor thought that the bill had the support of all segments of the law enforcement community. Subsequently, it was found that this consensus did not exist. Not wishing to tear the Administration and the Legislature apart in the middle of an election year, the Governor withdrew the bill at the commencement of the 1978 session.

Two bills revising Alaska's drug laws were introduced in the 1979 legislative session. One, HB 479, was introduced by Representative Parr and is currently in the House Health, Education, and Social Services Committee. The other, CS for SB 65, was introduced by Senator Dankworth and is currently in the Senate Judiciary Committee.

Recently the Governor has announced that he intends to introduce a drug bill during the 1980 session.

Undoubtedly, all of these drug bills will be given a judiciary referral. Copies of HB 479 and CS for SB 65 are enclosed for review and consideration.

## Insert P D Report

Currently the court system had no idea what the rate of recoupment is for these billings. The court system does not maintain accounts of totals owed or totals recovered. This discovery, which resulted from ~~my~~ the investigation conducted for this report, has prompted the court system into considering ~~maintaining such an account.~~  
the establishment of such accounts.



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

To: Charlie Parr, Chairman, and Members of the House  
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Alaska Public Defender Agency

#### I. INTRODUCTION

The Alaska Public Defender Agency (PD) was established by the Alaska Legislature in 1969<sup>1</sup> to serve the needs of indigent defendants. The agency is administered by the public defender who is appointed by the governor from two or more persons nominated by the judicial council. This appointment is subject to confirmation by majority of the members of the legislature in joint session. The PD serves a term of four years and may be retained for another term; however the retention must be confirmed by the legislature. Currently the PD position is filled by Mr. Brian Shortell.

The PD operates six offices in the state and, additionally, contracts<sup>2</sup> with one private law firm and one local Alaska Legal Services Corporation office to provide legal representation to indigent defendants.

<sup>1</sup>See AS 18.85.010 - AS 18.85.170.

<sup>2</sup>The PD is empowered to contract for legal services pursuant to AS 18.85.130(b).

Although generally the court appoints the PD to represent indigent defendants, under certain circumstances the court may appoint a private attorney to serve as a substitute defender.<sup>3</sup> The bulk of these appointments arise when the PD has a conflict of interest and such legal representation would constitute a professional ethical violation. Consideration of this issue is addressed in a separate report. However it should be noted that the financial eligibility requirements are essentially the same regardless of whether a private attorney or the PD is appointed to represent the defendant.

## II. SERVICES PROVIDED BY PD

The scope of legal services provided by the PD is generally defined in Alaska statutes. Pursuant to AS 18.85.100, an indigent is entitled to legal representation in the following circumstances: if he or she is being detained by a law enforcement officer in connection with a serious crime; if he or she is formally charged with, or being detained under a conviction of, a serious crime; if he or she is on probation or parole; if he or she is a juvenile charged with a delinquent act or a status offense; or if he or she is the subject of an involuntary mental health commitment. "Serious crime" is defined as a criminal matter in which a person is entitled to legal representation under the U.S. constitution or the Alaska constitution.<sup>4</sup> This right to counsel has been interpreted by the U.S. Supreme Court and the Alaska Supreme Court as including any offense for which the defendant may be incarcerated, lose a valuable license, or suffer a heavy fine. As a result of this broad constitutional right to

<sup>3</sup>See AS 18.85.130(a).

<sup>4</sup>See AS 18.85.170(5)(A).

counsel, the PD is responsible for providing legal representation to defendants charged with both state felonies and state and city misdemeanors.

In addition to those types of cases immediately evident on the face of the statutory provisions, it should be noted that the PD is responsible for providing legal representation in the following matters: contempt proceedings in which the defendant may be subject to a criminal penalty, for example, a parent taking illegal custody of a child; post-conviction relief proceedings including, for example habeas corpus petitions, petitions to modify sentences, appeals, prisoner complaints, parole board proceedings, classification hearings, expungement proceedings, and probation revocation hearings.

The average caseload handled by an assistant PD is 246 cases. The average caseload of an assistant PD by judicial district is as follows: first judicial district, 202; second judicial district, 222; third judicial district, 255; fourth judicial district, 304.

These averages, if anything, are low. Since they are based on new cases filed in fiscal year 1979, they do not reflect cases carried over from the preceding year. Furthermore, although I did not include Mr. Shortell as a service delivery attorney, I did count both Kodiak and Nome, the contract offices, as having two attorneys when, in fact, those offices have one to two attorneys available for PD services.

Additional caseload characteristics for the PD are attached at the conclusion of this report.

### III. PD FINANCIAL ELIGIBILITY REQUIREMENTS

The financial eligibility requirements for PD legal representation is embodied generally in Alaska statutes. In accordance with AS 18.85.100(b) attorney services and court costs are to be provided at public expense "...to the extent that the person, at the time the court determines indigency, is unable to provide for payment without undue hardship." To the extent that a person is able to provide for legal representation or other costs, the court may order him or her to pay for such items. Such payments shall be paid into the state general fund.<sup>5</sup> As a condition of receiving PD services, a person must affirm his indigency under oath to the court and execute a waiver authorizing release to the court of income information pertaining to any income source the person has had during the immediately preceding three years.<sup>6</sup>

Any person who has received PD assistance shall pay the state for the assistance if he or she was not entitled to it at the time indigency was determined. The attorney general may bring an action on behalf of the state to recover payment from such person.<sup>7</sup>

Thus, the courts are responsible for making determinations of indigency. Such determinations must be made in light of the statutory definition of indigency. An indigent is defined as a person who,

"...at the time his need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or his dependents of food, clothing or shelter and who has not disposed of any assets since the commission of the

<sup>5</sup>See AS 18.85.100(c).

<sup>6</sup>See AS 18.85.100(d).

<sup>7</sup>See AS 18.85.150.

offense with the intent or for the purpose of making himself eligible for assistance..."<sup>8</sup>

In practice, for most parts of Alaska, indigency determinations are made by the district court judges. When a defendant requests counsel at public expense, he or she is provided with a form "affidavit of indigency"<sup>9</sup> to complete and return to the court. Subsequently, a hearing is held before the district court judge at which time the defendant is examined more particularly as to his or her alleged indigency status. At the conclusion of the hearing the judge will appoint the PD if he believes that representation at public expense is proper. Furthermore, the district court judge may appoint the PD, but order the defendant to pay a portion of the costs of legal representation. It should be noted that the judges apparently reach these decisions without the assistance of any "in-house" guidelines or criteria.

In Anchorage, the mechanism for determining indigency status differs in several regards from the above general practice. First, the magistrates are responsible for making recommendations to the court on all indigency determinations of those defendants who are in state custody. Such recommendations are made on a specified court system form<sup>10</sup> and filed in the defendant's case file. Second, when the court is faced with a borderline indigency situation, it may request the pre-trial services caseworker to recommend appropriate action to the court. The pre-trial services caseworker makes such recommendations without any

<sup>8</sup>See AS 18.85.170(4).

<sup>9</sup>This form, entitled Affidavit of Financial Inability to Employ Counsel, is attached at the conclusion of this report.

<sup>10</sup>A copy of this form, entitled Request for Appointed Counsel, is attached at the conclusion of this report. It should be noted that this is the only form used by the magistrates.

"in-house" guidelines or criteria. The caseworker utilizes two court system forms to make these recommendations.<sup>11</sup> Factors considered by the caseworker include: spouse's income, number of dependent children, outstanding debts and the nature of those debts, assets, and ability to obtain a loan. For example, enlisted military personnel may present a sufficiently low enough income to qualify, but would be rejected since they have a regular income and are generally good credit risks. Although the caseworker never requests tax returns to confirm wages, the caseworker does validate the income and debt allegations by phoning the Wages and Hours Division and creditors. If the individual or spouse is unemployed, the caseworker requires the individual to present his or her, or the spouse's, unemployment records.

If the caseworker finds that the individual has sufficient income or assets to bear a portion of the expenses of legal representation, the caseworker recommends to the court that the individual pay a certain amount, up to \$750 for a misdemeanor, or up to \$1850 for a felony. The rationale for these maximum amounts is that that is what a private attorney would charge.<sup>12</sup> At the conclusion of a case in which the defendant was ordered to pay a portion of the legal representation expenses, the PD is required to submit a time sheet. The individual is then billed at the rate of \$30.00 per hour of PD services.

<sup>11</sup>Copies of these forms, entitled Request for Appointed Counsel and Financial Statement, are attached at the conclusion of this report.

<sup>12</sup>Undoubtedly, private attorneys would dispute those estimations.

According to the PD, defendants are required to pay a portion of the expenses in approximately 50 percent of all PD cases. The court system estimates that in nine months, from October 1978 through June 1979, approximately \$51,417.59 was recovered from such defendants. The bulk of this recovery, some \$45,399.39, was obtained in the Third Judicial District.

Currently the court system has no idea what the rate of recoupment is for these billings. The court system does not maintain accounts of totals owed or totals recovered. This discovery prompted the court system into considering the establishment of such accounts.

#### IV. CLIENT GRIEVANCE PROCEDURE

A PD client basically has two recourses for lodging complaints against the agency. One, the client may initiate with the Alaska Bar Association a grievance action against a particular attorney employed by the PD.<sup>13</sup> Upon receipt of a complaint, the Alaska Bar Association usually writes the PD for an explanation. Ultimately the Alaska Bar Association is empowered to reprimand or dis-bar the attorney involved. Two, the client may file a complaint with the Office of the Ombudsman. Generally the ombudsman is empowered to investigate complaints, report his findings to the agency involved, and publish his opinion and recommendations.<sup>14</sup> It should be noted that one public defender indicated that complaints lodged with the ombudsman were ineffectual.

<sup>13</sup>The grievance procedure of the Alaska Bar Association will be addressed in a separate report in conjunction with the Committee's sunset review of that association.

<sup>14</sup>See AS 24.55.010, et seq.

V. PD BUDGET

The primary source of funding for the PD is derived from a legislative appropriation out of the general funds each year. Total expenditures by the PD in fiscal year 1978 were \$2,107,400; authorized expenditures for fiscal year 1979 were \$2,101,700. The fiscal 1978 PD budget by judicial districts, together with individual offices and professional staff positions was:

<u>DISTRICT</u>	<u>PROFESSIONAL STAFF</u>	<u>BUDGET</u>
<u>First Judicial District</u>		\$ 297,200.00
Ketchikan Office	2 Attorneys	
Juneau Office	2 Attorneys	
<u>Second Judicial District</u>		108,100.00
Nome - Larsen, Timbers & VanWinkle (on contract)	1 to 2 Attorneys 1 to 2 Attorneys	
<u>Third Judicial District</u>		1,024,200.00
Anchorage Office	13 Attorneys	
Kenai Office	1 Attorney 1 Paralegal	
Kodiak - Alaska Legal Services Corporation, Kodiak Office (on contract)	1 to 2 Attorneys	61,607.95
<u>Fourth Judicial District</u>		591,200.00
Bethel Office	1 Attorney 1 Paralegal	
Fairbanks Office	5 Attorneys	

(Each PD office has village responsibilities, as well as those arising out of the community in which the office is located.)

Currently the PD contends that it is under-budgeted by some four attorney positions. National guidelines defining appropriate caseloads for public defenders have been established by the National Conference on Criminal Justice under the Law Enforcement Assistance Administration. Every assistant public defender in Alaska carries a caseload in excess of those guidelines. Between fiscal years 1978 and 1979, the PD's caseload increased by some 646 cases. Due to particularly heavy individual attorney caseloads in the Fourth Judicial District, the PD sought additional funds from the legislature last regular session so that another attorney might be added to the Fairbanks office. The PD was unsuccessful in this effort. As a result of this funding deficiency, PD services in the bush are adversely impacted to a greater extent than urban service.

FY 78

ALASKA PUBLIC DEFENDER AGENCY  
 FY 78 NEW CASE FILES  
 JULY 1, 1977 - JUNE 30, 1978

	Parole Board	Misdemeanor-City	Misdemeanor-State	Felony	Juvenile	Sanity	Appeal	Total
Ketchikan	22	--	145	60	72	21	6	326
Juneau	<u>13</u>	<u>--</u>	<u>239</u>	<u>95</u>	<u>38</u>	<u>3</u>	<u>12</u>	<u>400</u>
Total 1st District	35	--	384	155	110	24	18	726
Nome	<u>2</u>	<u>--</u>	<u>199</u>	<u>73</u>	<u>38</u>	<u>--</u>	<u>8</u>	<u>320</u>
Total 2nd District	2	--	199	73	38	--	8	320
Anchorage	--	943	700	532	138	160	72	2545
Kenai	--	--	252	82	25	--	7	366
Kodiak	<u>11</u>	<u>74</u>	<u>294</u>	<u>101</u>	<u>31</u>	<u>--</u>	<u>5</u>	<u>516</u>
Total 3rd District	11	1017	1246	715	194	160	84	3427
Fairbanks	29	--	746	235	210	36	17	1273
Bethel	<u>55</u>	<u>--</u>	<u>337</u>	<u>81</u>	<u>30</u>	<u>--</u>	<u>--</u>	<u>503</u>
Total 4th District	84	--	1083	316	240	36	17	1776
Total Cases for FY 78	132	1017	2912	1259	582	220	127	6249

FY 79

ALASKA PUBLIC DEFENDER AGENCY  
NEW CASES FILED

7/1/78 through 6/30/79

	Felony	Misdemeanor		Juvenile	Sanity	Appeal/ Other	TOTAL
		City	State				
Ketchikan	101	--	171	100	7	4	383
Juneau	54	--	324	32	1	13	424
Total 1st. Dist.	155	--	495	132	8	17	807
Nome	64	--	309	66	--	4	443
Total 2nd Dist.	64	--	309	66	--	4	443
Kenai	91	--	292	19	--	12	414
Kodiak	146	123	228	14	1	31	543
Anchorage	530	1283	692	120	157	82	2864
Total 3rd Dist.	767	1406	1212	153	158	125	3821
Bethel	66	--	274	43	--	36	419
Fairbanks	201	--	914	181	29	80	1405
Total 4th Dist.	267	--	1188	224	29	116	1824
TOTAL NEW CASES	1253	1406	3204	575	195	262	6895



(Continued from page 1)

III. SUPPORT OBLIGATIONS

1. Your age \_\_\_\_\_ 2. Marital status \_\_\_\_\_  
3. Who do you support? \_\_\_\_\_

NAME	RELATIONSHIP	AGE

IV. PRESENT FINANCIAL OBLIGATIONS

IF BEHIND, HOW MUCH

- |                                 |                                       |       |
|---------------------------------|---------------------------------------|-------|
| 1. Food                         | _____ / <input type="checkbox"/> None | _____ |
| 2. Rent                         | _____ / <input type="checkbox"/> None | _____ |
| 3. Utilities                    | _____ / <input type="checkbox"/> None | _____ |
| 4. Car payments                 | _____ / <input type="checkbox"/> None | _____ |
| 5. Furniture & TV payments      | _____ / <input type="checkbox"/> None | _____ |
| 6. Child support or alimony     | _____ / <input type="checkbox"/> None | _____ |
| 7. Past court fines             | _____ / <input type="checkbox"/> None | _____ |
| 8. Other loans or time payments | _____ / <input type="checkbox"/> None | _____ |

V. ADDITIONAL INFORMATION

1. What is your present bail status? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
2. What efforts have you made to hire a lawyer? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
3. Have you tried to borrow money to hire a lawyer? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
4. What help do you expect from relatives or friends? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Where do you get the money to support yourself and family? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Continued on page 3)

(Continued from page 2)

STATEMENT OF FINANCIAL RESPONSIBILITY

I understand that to the extent I am able to pay for an attorney, the other necessary services and facilities of representation, and court costs, the court may order me to pay for these items. Further, I understand that I must pay the State of Alaska for any assistance given to me by the Alaska Public Defender Agency if it is determined I was not entitled to the assistance.

GENERAL WAIVER

I hereby authorize anyone, including my past employers, to release to the Alaska Court System, all information concerning any income source I have had for a period of three years immediately preceding my first court appearance in the case which the Public Defender Agency is representing me. I understand that this information may be made available to the Attorney General upon request after the conclusion of my case, except as it may tend to incriminate me.

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT )

I declare, under oath, that (this affidavit has been read to me)  
( I have read this affidavit)

and that the statements contained therein are true. I further certify that I have read or have had read to me the Statement of Financial Responsibility and the General Waiver authorizing release of income information.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, in Juneau Alaska.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Mailing Address  
\_\_\_\_\_  
Residence Address  
\_\_\_\_\_  
City/State/Zip Code  
\_\_\_\_\_  
Telephone Number

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Clerk of Court/Deputy Clerk/  
Notary Public  
My Commission Expires \_\_\_\_\_



**IV. FINANCIAL STATEMENT**

**A. Income information (after taxes, but before other deductions):**

Your total net income during the past 12 months \_\_\_\_\_  
 Your spouse's total net income during the past 12 months \_\_\_\_\_

Your total NET monthly income from:	Spouse's NET monthly income from:
Wages _____	Wages _____
Welfare _____	Welfare _____
Unemployment _____	Unemployment _____
Other (specify) _____	Other(specify) _____
Other (specify) _____	Other(specify) _____

Indicate Specific details here \_\_\_\_\_

**B. Assets (All property, paid for or not, including such things as land cars, campers, airplanes, snowmobiles, tools, guns, valuable collections jewelry, furs, etc. Also include cash on hand, savings or checking accounts, life insurance policies, annuities, stocks, bonds, or other liquid securities. Indicate where cash, cash accounts, and securities are located and worth of each.**

Description and locations of asset(s)	Equity
(1) _____	_____
(2) _____	_____
(3) _____	_____
(4) _____	_____
(5) _____	_____
(6) _____	_____

None \_\_\_\_\_

Are you dependent upon any of the above to guarantee your survival or employment? (Yes No) If yes, indicate which assets (besides cash) and the reason. \_\_\_\_\_

**C. Debts (Indicate the names of all persons and establishments you are indebted to, what you are indebted for, i.e. land, rent, personal loan, food, car, etc. The total amount you now owe, and the amount and terms of payment. List ALL monthly expenses.)**

Creditor	Reason	Present Balance	Monthly Expense
(1) _____	_____	_____	_____
(2) _____	_____	_____	_____
(3) _____	_____	_____	_____
(4) _____	_____	_____	_____
(5) _____	_____	_____	_____
(6) _____	_____	_____	_____
(7) _____	_____	_____	_____

None \_\_\_\_\_

Are you behind in any of your payments? (Yes No) If yes, indicate which ones and how much behind. (1) \$ \_\_\_\_\_ . ( )\$ \_\_\_\_\_  
 ( )\$ \_\_\_\_\_ , ( )\$ \_\_\_\_\_ ( )\$ \_\_\_\_\_

**D. Summary of financial statement:**

(1) Total family income for the past 12 months	_____
(2) Total assets (equity)	_____
Cash	_____
(3) Total debts	_____
(4) Total family income each month	_____
(5) Total family expenses each month	_____
Amount behind	_____
(6) Total discretionary income each month	_____

✓ Bonnie, Ready for  
xeroxing, but need  
to type last page  
again.

✓ Staple reports to  
attachment + place in  
Legal Representation for  
Indigenk file.

Thanks.  
Pax



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House  
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Court Appointed Attorneys for Indigents in the Alaska  
Court System.

#### I. INTRODUCTION

Under certain circumstances, legal representation is provided for indigents by court appointed counsel. State courts are required to furnish such representation for indigent defendants in criminal proceedings when for good cause the public defender cannot represent the defendant.<sup>1</sup> In addition, the courts are authorized to appoint counsel to represent a child's interests in a divorce proceeding when custody, visitation or support are at issue.<sup>2</sup> Finally, pursuant to a recent supreme court case, an indigent party in a divorce action is entitled to court appointed counsel if child custody is at issue and his or her spouse is represented by Alaska Legal Services Corporation<sup>3</sup>

<sup>1</sup>See AS 18.85.130.

<sup>2</sup>See AS 09.65.130.

<sup>3</sup>See Flores v. Flores, Alaska Supreme Court, opinion number 1675, July 13, 1979.

## II. COURT APPOINTED COUNSEL IN CRIMINAL ACTIONS

An indigent defendant is entitled to a court appointed attorney when the public defender for good cause cannot provide legal representation. The bulk of these appointments arise when the public defender has a conflict of interest precluding such representation. The majority of the public defender conflicts occur in multiple defendant cases. In a criminal proceeding against two or more indigent defendants, the public defender for conflict of interest reasons may represent only one of the defendants. Another frequently occurring public defender conflict involves the representation of informers. If the public defender is representing a client against whom an informer has provided state's evidence, the public defender is precluded from representing the informer should he or she be subsequently charged with a criminal offense.

Pursuant to statute, court appointed counsel are entitled to reasonable compensation according to a schedule of fees promulgated by the supreme court and reimbursement for expenses necessarily incurred.<sup>4</sup> Since 1974 the responsibility of providing payments for these services has lodged with the Alaska court system.

In fiscal year 1979 the court system was faced with a \$566,000 deficit due to unanticipated bills submitted by court appointed attorneys. Two factors contributed to this deficit. First, the court system did not maintain an account of the appointments as they were made. Second, insufficient monitoring mechanisms led to incurring one billing for over \$100,000 and another at \$60,000. To cover this deficit, the court system sought a supplemental appropriation, but was

<sup>4</sup>See AS 18.85.130.

able to obtain only 75% of the deficit or \$406,000 from the 1979 legislature.

This funding situation has triggered a number of responses. First, the Alaska Supreme Court amended Administrative Rule 15 which provides for the compensation of court appointed attorneys. Although the new rule does not alter the rate of compensation, \$40.00 per hour, it does establish maximum limitations. For example, the maximum attorney fee award for cases disposed of by trial is \$500 for misdemeanors and \$2500 for felonies. Additionally, extraordinary expenses will be reimbursed only with the prior approval of the trial judge, presiding judge, or administrative director of the court system.<sup>5</sup>

Although it is estimated that the level of compensation established by the new rule will meet 80% of the awards sought under the prior rule, the private bar has objected strongly to the new fee schedule. The Alaska Bar Association contends that the legal profession should not be singled out to bear the financial burden of implementing the constitutional right to counsel. To overcome the resistance by private attorneys to accept such appointments, two judicial districts have had to establish mandatory lists of all attorneys in the district from which appointment selections are now made. Previously selections were made from volunteer lists. The use of these mandatory lists raises competency of counsel problems for those attorneys who have never handled a criminal case. The case law in this area indicates that the courts have the authority to establish mandatory appointment systems since those attorneys who believe that they would be incompetent have the option to hire another attorney to stand in their place.

<sup>5</sup>A copy of this amended Administrative Rule is attached at the conclusion of this report.

To resolve these problems a special committee was established comprised of representatives from the executive and judicial branches of government as well as representatives from the Board of Governors of the Alaska Bar Association. As a result of this committee's findings and recommendations, the Alaska court system has solicited contract offers<sup>6</sup> from each attorney in the state to provide these legal services. The immediate goal of this solicitation is to obtain contracts within the court system's budgetary constraints which would provide these legal services on a state-wide basis for a period of four months. It is contemplated that payments under these contracts would be made in one of two ways. One, the contractor would be provided a lump sum amount for all such appointments occurring within a certain designated geographical area. Two, the contractor would be paid on a per case basis with set fees for each misdemeanor, felony and appeal appointment occurring within a designated geographical area. In addition, provision is made to permit the reimbursement of specified out-of-pocket expenses. Maximum limitations for these expenses are fixed at \$50.00 for each misdemeanor and \$100.00 for each felony. In order to obtain reimbursement in excess of these limitations, the contractor must seek prior approval from the trial judge, presiding judge, or from the administrative director. As the deadline for submitting offers under this solicitation was September 4, 1979, the court system is in the midst of reviewing all of the offers and no contracts had been let at the time of writing this report.

<sup>6</sup>Another solution to this problem, considered by the special committee, was the establishment of a Conflicts Office in the Office of the Governor. In essence, the Conflicts Office would have constituted an alternative public defender agency. As this solution was apparently rejected by the special committee, it is not addressed in this report.

In fiscal year 1979, the court system expended \$1,025,000 to \$1,050,000 for the services of court appointed attorneys in criminal cases. The fiscal 1980 allocation for these services is \$593,100. Although the implementation of the new fee schedule together with the possibility of securing contractual services may permit the court system to operate within its budgetary allocation, it is conceivable that additional funding will be required. If such is the case, any experiment with contractual services will provide valuable data as to the financial efficiency of this solution to the criminal appointment problem.

### III. COURT APPOINTED ATTORNEYS IN DIVORCE ACTIONS

As noted in the introduction to this report, indigents are occasionally provided with counsel at public expense in divorce proceedings. Pursuant to statute, guardian ad litem are generally appointed to represent the child's interest if custody, visitation or support are at issue. Furthermore, in July 1979, the Alaska Supreme Court held that an indigent party to a divorce action in which child custody is at issue is entitled to a court appointed attorney if Alaska Legal Services Corporation is conflicted.

Attorneys appointed in these proceedings are compensated at \$40.00 an hour. There are no maximum limitations on these fee awards. In fiscal year 1979 the court system was allocated \$192,500 for guardian ad litem appointments, but disbursed \$294,200 for these appointments. The court system was able to make up the difference, some \$100,000, by savings accumulated under other items. The fiscal 1980 allocation for guardian ad litem expenses is \$199,700.

As a result of both the increasing costs of guardian ad litem appointments and the unanticipated expenses created by the recent supreme court ruling, problems similar to those encountered in the criminal appointments may arise with respect to these civil appointments. If such problems occur, solutions similar to those implemented for the criminal appointments may have to be established for these appointments as well.

Amending Administrative Rule  
15 Relating to Compensation  
of Court Appointed Counsel in  
Criminal Cases.

IT IS ORDERED:

1. Paragraph (f) of Rule 15, Rules Governing the Administration of All Courts is amended to read:

(f) Attorneys shall be compensated at the rate of \$40.00 per hour; provided that total compensation for any case shall not exceed the following schedule:

- (1) Misdemeanor disposed of following a plea of guilty or nolo contendere, or by dismissal....\$ 250
- (2) Misdemeanor disposed of following trial.....\$ 500
- (3) Felony disposed of following a plea of guilty or nolo contendere, or by dismissal....\$1,250
- (4) Felony disposed of following trial.....\$2,500
- (5) Probation or parole revocation proceeding or a proceeding under Criminal Rule 35(b)
  - (i) Misdemeanor.....\$ 350
  - (ii) Felony.....\$1,000
- (6) Appeal, including combined sentence and merit appeals:
  - (i) From the district court.....\$ 500
  - (ii) From the superior court.....\$1,500
- (7) Sentence appeal:
  - (i) From the district court.....\$ 250
  - (ii) From the superior court.....\$ 750
- (8) Petition for review, including any additional or successive petitions in the same case:
  - (i) From the district court.....\$ 350
  - (ii) From the superior court.....\$1,000

Multiple counts or charges in an indictment or information are to be considered as a single case for purposes of compensation under this rule, but in the discretion of the presiding judge, they may be treated as separate cases if separate trials have been ordered under Criminal Rule 14. Additional compensation for proceedings not specifically listed in this schedule may not be awarded except under (h) of this rule.

2. Paragraph (g) of Rule 15, Rules Governing the Administration of All Courts, is amended to read:

(g) Extraordinary expenses will be reimbursed only if prior authority has been obtained from the assigned trial judge, from the presiding judge, or from the Administrative Director. The assigned trial judge may authorize extraordinary expenses up to a total amount not to exceed \$1,500.00, and the presiding judge may authorize an amount not to exceed an additional \$1,500.00. Extraordinary expenses exceeding \$1,500.00 may be authorized only in extremely complex cases by

the Administrative Director upon the recommendation of the presiding judge. In this paragraph, "extraordinary expenses" are limited to expenses for

- (1) investigation;
- (2) expert witnesses; and
- (3) necessary travel and per diem by the defendant, appointed counsel, and witnesses. Travel and per diem may not exceed the rate authorized for state employees.

3. Rule 15, Rules Governing the Administration of All Courts is amended by adding new paragraphs to read:

(h) If necessary to prevent manifest injustice, the Administrative Director may authorize payment of compensation or expenses in excess of the amounts allowed under this rule.

(i) If the Administrative Director determines that the best interest of the Court System would be served, he may enter into agreements to provide representation for indigent defendants in criminal cases. The provisions of an agreement entered into under this paragraph supersede the other provisions of this rule.

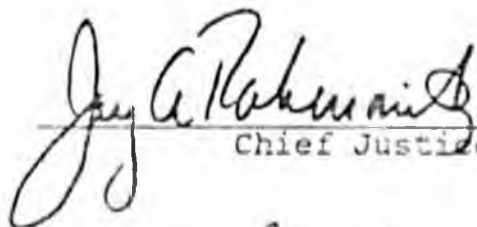
4. The limitations adopted in Paragraphs 1 and 2 of this order apply to all services performed on or after the effective date of the order, including services performed under appointments made before the effective date; provided, however, that the limitations specified shall apply only to services performed after this date.

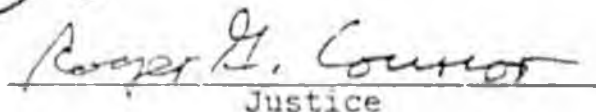
DATED: June 29, 1979

EFFECTIVE DATE: July 1, 1979

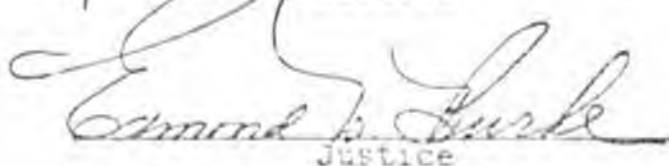
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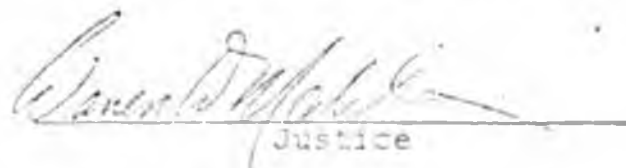
SC Justices  
Sup/Ct Judges  
Dist/Ct Judges  
Magistrates  
Mag/Supr  
Clks/Ct  
Law Librarian  
Probate Masters  
Adm Dir  
All Members ABA  
Gov  
Dep/Law  
Legs Affrs  
Dep/Pub Safety  
Ak. Legal Serv.  
Com. & Reg. Affrs  
State Library  
Superior Ct. Law Clerks

  
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Chief Justice

  
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Justice

\* Justice Brochever would prefer entering into agreements to provide representation for indigent defendants in criminal cases.