

LEGAL
REP FOR
INDIGENT



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: 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.¹ 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.² 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 an issue and his or her spouse is represented by Alaska Legal Services Corporation³

¹See AS 18.85.130.

²See AS 09.65.130.

³See Flores v. Flores, Alaska Supreme Court, opinion number 1875, 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.⁴ Since 1974 the responsibility of providing payments for these services has lodged with the Alaska court system.

Accounting
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

⁴See 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.⁵

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 these attorneys who believe that they would be incompetent have the option to hire another attorney to stand in their place.

⁵A 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 offers⁶ 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.

⁶Another 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.

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 376

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 \$1,000.00, and the presiding judge may authorize an amount not to exceed an additional \$2,500.00. Extraordinary expenses exceeding \$2,500.00 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.

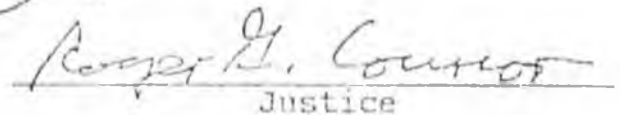
DATED: June 29, 1979

EFFECTIVE DATE: July 1, 1979

Distribution:

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Chief Justice


Justice


Justice


Justice


Justice

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



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Subject: Alaska Public Defender Agency

I. INTRODUCTION

The Alaska Public Defender Agency (PD) was established by the Alaska Legislature in 1969¹ 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, contracts² with one private law firm and one local Alaska Legal Services Corporation office to provide legal representation to indigent defendants.

¹See AS 18.85.010 - AS 18.85.170.

²The 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.³ 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.⁴ 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

³See AS 18.85.130(a).

⁴See 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 understated} 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.⁵ 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.⁶

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.⁷

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

⁵See AS 18.85.100(c).

⁶See AS 18.85.100(d).

⁷See AS 18.85.150.

offense with the intent or for the purpose of making himself eligible for assistance..."⁸

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 first provided with a form "affidavit of indigency"⁹ 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 form¹⁰ 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

⁸See AS 18.85.170(4).

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

¹⁰A 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.¹¹ 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.¹² 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.

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

¹²Undoubtedly, 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.

Accounting

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.¹³ 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.¹⁴ It should be noted that one public defender indicated that complaints lodged with the ombudsman were ineffectual.

¹³The 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.

¹⁴See 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	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	_____



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To: Charlie Parr, Chairman, and Members of the House
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From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Legal Representation of Indigent Defendants in the
Federal Court System.

I. INTRODUCTION

Pursuant to the Sixth Amendment of the United States Constitution, indigent defendants charged with violations of federal law are entitled to legal representation at public expense. This right to counsel must be furnished to indigents charged with a felony, misdemeanor, juvenile delinquency, or violation of probation. In addition indigents are entitled to counsel when they are subject to revocation of parole, in custody as a material witness, or seeking collateral relief. Furthermore, in some circumstances, indigents are entitled to counsel while under arrest. This legal representation includes attorney services, as well as investigative, expert, and other services necessary for an adequate defense.

To insure adequate representation of indigent defendants in these matters, each district court is required to establish a plan for furnishing such representation.¹ This plan must be approved by

¹See 18 USC 3006A which provides the statutory scheme for determining indigency status and appointing counsel to provide legal representation.

the judicial council of the circuit. A district court in which at least two hundred persons annually require the appointment of counsel may establish a defender organization to provide this representation. In Alaska there is no federal defender organization. Instead, each private attorney admitted to practice in federal district court is put on a list and appointments are made at random. Certain attorneys who have expressed an interest in providing these services are noted and selected more frequently.

II. DETERMINATIONS OF INDIGENCY AND APPOINTMENT OF COUNSEL

Primarily federal magistrates determine whether a defendant is indigent and entitled to legal representation at public expense. The alleged indigent is required to complete a financial affidavit² and subsequently is subject to examination by the magistrate at an indigency hearing.

If the magistrate is satisfied that the defendant is financially unable to obtain counsel, the magistrate shall appoint counsel to represent the defendant at every stage of the proceedings through appeal. It should be noted that the magistrate is required to appoint separate counsels for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown. Furthermore, if, at any stage of the proceedings including appeal, the magistrate or court finds that a person is financially unable to pay counsel whom he or she has retained, it may appoint counsel to represent the defendant.

²A copy of this form is attached at the conclusion of this report.

III. PAYMENT FOR REPRESENTATION

Attorneys appointed to represent such defendants are compensated at the rate of \$30 per hour for time expended in court and \$20 per hour for time expended out of court. Additionally, attorneys are reimbursed for expenses reasonably incurred. These rates of compensation are not without limitation. The maximum legal fees permitted are as follows: \$1000 for felonies; \$400 for misdemeanors; \$1000 for Appellate Court representation; and \$250 for post-trial motions, probation or parole revocation proceedings, or legal services provided to a material witness in custody. Payment in excess of these maximums may be provided for extended or complex representation. However, such additional payments must be certified as necessary to provide fair compensation by the trial court and approved by the chief judge of the circuit.

Expenses to obtain investigative, expert, or other services necessary for adequate defense are closely monitored by the federal court and are subject to maximum reimbursement limits. Without prior court approval, the reimbursements for these services may not exceed \$150 and expenses reasonably incurred. Additional funds for these services may be provided only with the prior approval of the federal court. To obtain such approval, the attorney is required to file an ex parte application with the court. Upon a hearing on the application, the court is required to find that the services are necessary and that the defendant is financially unable to obtain them. If the court determines that additional costs are appropriate, reimbursement may be had up to \$300, exclusive of reimbursement for expenses reasonably incurred. Furthermore, payment in excess of that maximum may be

provided upon certification by the trial court that such additional payment is necessary for fair compensation. Any such payment in excess of the maximum, must also be approved by the chief judge of the circuit.

Furthermore, whenever the federal court finds that funds are available for payment from or on behalf of a person furnished representation, it may direct that such funds be paid to the appointed attorney or deposited in the U.S. Treasury.

In conclusion, it should be noted that this payment system is embodied in the federal law. Attorneys throughout the United States are compensated at the same level, regardless of the costs of doing business in particular states or locales.

FINANCIAL AFFIDAVIT

CJA 23

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES
IN THE CASE OF

MAGISTRATE DISTRICT APPEALS COURT or OTHER PANEL (Specify below)

FOR

AT

LOCATION NUMBER

PERSON REPRESENTED (Show your full name)

- 1 Defendant—Adult
- 2 Defendant—Juvenile
- 3 Appellant
- 4 Probation Violator
- 5 Parole Violator
- 6 Habeas Petitioner
- 7 2255 Petitioner
- 8 Material Witness
- 9 Other (Specify) _____

DOCKET NUMBERS

Magistrate

District Court

Court of Appeals

CHARGE/OFFENSE (describe if applicable & check box -)

- Felony
- Misdemeanor

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

EMPLOYMENT	Are you now employed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Am Self Employed	
	Name and address of employer: _____	
	IF YES, how much do you earn per month? \$ _____	IF NO, give month and year of last employment How much did you earn per month \$ _____
ASSETS	If married is your Spouse employed? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	IF YES, how much does your Spouse earn per month \$ _____	If a minor under age 21, what is your Parents or Guardian's approximate monthly income \$ _____
	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input type="checkbox"/> No	
OTHER INCOME	RECEIVED	SOURCES
IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES		_____
CASH	Have you any cash on hand or money in savings or checking account? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, state total amount \$ _____	
PROPERTY	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
IF YES, GIVE VALUE AND DESCRIBE IT		DESCRIPTION
_____		_____
_____		_____
_____		_____

OBLIGATIONS & DEBTS	DEPENDENTS	MARRITAL STATUS	Total No. of Dependents	List persons you actually support and your relationship to them
	<input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR DIVORCED	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
DEBTS & MONTHLY BILLS	Creditors	Total Debt	Monthly Payt.	
APARTMENT OR HOME:		\$	\$	
_____		\$	\$	
_____		\$	\$	
_____		\$	\$	

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED)

I certify the above to be correct.

WARNING: A FALSE OR DISHONEST ANSWER TO A QUESTION IN THIS AFFIDAVIT MAY BE PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH



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 Legal Services Corporation

I. INTRODUCTION

Alaska Legal Services Corporation (ALSC) is a private, non-profit corporation formed under Alaska law in 1966 to provide legal services to the poor. The major portion of ALSC funding is provided by the Legal Services Corporation, which was established by Congress in 1974. The Legal Services Corporation - which is now the largest private, nonprofit, grant-making institution in the country - obtains its funds through congressional appropriations.

In 1980 ALSC intends to operate 11 service delivery offices located throughout the state. For the past several years ALSC operated 13 such offices, but recently the Board of Directors has determined to close two of these offices on account of limited budgetary resources. Furthermore, as a result of heavy caseloads and current staff vacancies, four offices, Anchorage, Fairbanks, Nome and Sitka, were closed to routine intake at the time of writing this report. Those offices are available for emergency cases, such as evictions and welfare terminations.

II. SERVICES PROVIDED BY ALSC

The scope of legal services provided by ALSC is defined by the Legal Services Corporation Act (Public Law 93-355 as amended by Public Law 95-222) and federal regulations adopted pursuant to that Act. ALSC is limited to providing legal assistance in noncriminal proceedings or matters.¹ However, this "civil" jurisdiction is not without limitation. For example, no funds made available by the Legal Services Corporation may be used to provide legal representation in abortion or school desegregation litigation. Furthermore, ALSC is restricted from taking fee-generating cases. Most fee-generating cases are tort actions in which a private attorney would expect to take his legal fees out of the award granted to his client. The purpose of this limitation is to assure that ALSC attorneys do not compete with private attorneys. However, exceptions are provided for this fee-generating restriction. For example, ALSC attorneys may take such a case if it is rejected by two private attorneys. Obviously, ALSC attorneys in the Bush are involved in this type of litigation to a greater extent than those ALSC attorneys in the urban areas.

In addition to those basic limitations on services enumerated above, both the Legal Services Corporation Act and the regulations promulgated thereunder, require ALSC to establish priorities in the allocation of its resources. The process whereby these priorities are established must involve client participation. In practice, client groups may decide that a particular legal issue should take precedent to the exclusion of other legal services. For example, in some states legal services programs do

¹It should be noted that ALSC attorneys are subject to the same professional responsibilities as other members of the bar. As such, they may be appointed by the court to represent indigent defendants in criminal matters or to serve as guardian ad litem in matters affecting children. ALSC attorneys who are appointed in such matters must turn over all funds derived from such activities to ALSC.

not handle any divorces since the clients have prioritized other legal issues.

In Alaska this prioritization process occurs separately with each legal services office. Some ALSC offices do not handle any uncontested divorces, name changes, and bankruptcies as a result of this prioritization process.

III. ALSC CASELOAD CHARACTERISTICS

Caseload per licensed attorney = 208

Domestic relations cases as per cent of total caseload = 17.4%

State administrative proceedings as per cent of total caseload = 14.2%

Allotments as per cent of total caseload = 30.1%

Housing cases as per cent of total caseload = 5.4%

Wills and probate cases as per cent of total caseload = 9%

Alaska native clients as per cent of total clients = 77.6%

IV. ALSC FINANCIAL ELIGIBILITY REQUIREMENTS

The Legal Services Corporation Act mandates that the corporation establish maximum income levels taking into account family size and cost-of-living variations for individuals eligible for legal assistance. Furthermore, the Corporation must establish guidelines to insure that eligibility of clients will be determined by local legal services programs, such as ALSC, on the basis of factors that include:

1. the liquid assets and income level of the client;
2. the fixed debts, medical expenses, and other factors which affect the client's ability to pay;
3. the cost of living in the locality; and
4. such other factors as relate to financial inability to

afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation.

Pursuant to this criteria embodied in the federal law, the basic income guidelines currently utilized by ALSC are:

<u>Size of Family</u>	<u>Maximum Income for Preceding 12 Months</u>
1	\$4925
2	\$6513
3	\$8100
4	\$9688
5	\$11,275
6	\$12,863

(For larger families, add \$1588 for each additional member.)

It is evident from these basic financial eligibility guidelines that the purpose of legal services programs is to provide legal assistance to those least able to afford a lawyer.

On May 15, 1979, the Legal Services Corporation promulgated revised maximum income guidelines. Those new guidelines for the State of Alaska are:

<u>Size of Family</u>	<u>Maximum Income for Preceding 12 Months</u>
1	\$5338
2	\$7050
3	\$8763
4	\$10,475
5	\$12,188
6	\$13,900

(For larger families, add \$1,713 for each additional family member.)

Although these new guidelines have not yet been adopted by the ALSC Board of Directors, they may be within the coming year. Local legal services programs, such as ALSC, are given the latitude to adopt revised income guidelines in keeping with their own resource limitations, but in no case may provide services to those with incomes above 125% of the Official Poverty Threshold as defined by the Office of Management and Budget.

It is important to note that these income maximums are only one factor, albeit the most crucial, to be considered in determining financial eligibility for services. In addition to income, other relevant factors include: liquid assets, debts, the costs of obtaining private counsel, and consequences to the individual should such services be denied. Furthermore, the type of legal representation sought by an applicant is a factor for consideration. For example, a person whose income slightly exceeds the maximum income requirements may qualify for services if his or her case would impact poor people in general.

For the most part, ALSC attorneys do not verify the income statements made by those seeking their services. On rare occasions, ALSC attorneys will, for example, request the applicant to furnish income tax returns. The rationale for this position is twofold: one, that it would be a waste of limited resources and two, that it might jeopardize the trust relationship that must be established in all attorney-client situations. This position is compatible with the federal regulations on this point, which require a simple procedure to obtain information establishing eligibility² and mandate verification only if

²See the "intake" form used by ALSC which is attached at the end of this report.

there is substantial reason to doubt the accuracy of the applicant's information.

V. CLIENT GRIEVANCE PROCEDURE

Federal regulations require that local legal services programs establish internal mechanisms whereby clients might file complaints about the manner or quality of legal assistance that has been rendered, as well as, the denial of legal assistance. Client complaints against ALSC are first reviewed by the Executive Director of ALSC. If the complaint is not resolved at that level, the matter is submitted to the Board of Directors of ALSC. Should the Board of Directors fail to resolve the matter, it may be appealed to the Legal Services Corporation.

A similar procedure is followed should an individual other than a client assert that legal assistance by ALSC is violative of federal law or regulation. Complaints of this nature generally arise when the opposing counsel in a particular case believes that ALSC legal representation is improper. Federal case law on this issue dictates that the complaining individual must resort to the internal review procedures. The courts have consistently refused to accept jurisdiction over such matters. The Legal Services Corporation is authorized to de-fund local legal services programs that provide legal assistance in violation of federal law or regulation.

It should be noted that complaints from any individual of an ethical nature must be filed with the Alaska Bar Association. This type of complaint will not be reviewed internally by ALSC.

VI. ALSC BUDGET

ALSC has various funding sources. Its primary funding source is a grant from the Legal Services Corporation. For fiscal year 1980, beginning January 1, 1980, this grant, designated "hard" funds, totals \$1,611,187.00. Additional funding sources are of a "soft" fund nature and primarily are derived from VISTA and CETA programs. The fiscal 1980 local ALSC office budgets, together with, professional staff positions and village responsibilities are:

<u>Office</u>	<u>Hard Funding</u>	<u>Professional Staff Positions</u>	<u>Number of Villages</u>
Anchorage	\$288,000	5 Attorneys 2 VISTA Attorneys 1 Paralegal	45
Barrow	\$112,325	2 Attorneys 5 Paralegals, 4 of whom are located in the villages	7
Bethel	\$97,145	3 Attorneys 2 VISTA Attorneys	56
Dillingham	\$88,985	2 Attorneys 1 VISTA Attorney 1 Paralegal	25
Fairbanks	\$148,780	3 Attorneys 2 VISTA Attorneys 1 Paralegal	38
Galena	-0-	This office was closed effective August, 1979	
Juneau	\$90,044	2 Attorneys 1 VISTA Attorney	8
Ketchikan	\$68,955	1 Attorney 2 VISTA Attorneys (Effective August 1, 1980- 2 Attorneys, 1 VISTA Attorney)	7
Kodiak ³	\$43,750	4 Attorneys	28

³The Kodiak office is unique in that it contracts with the Public Defender Agency to provide criminal defense services for the Kodiak area. Monies received from this contract constitute approximately 1/2 of the entire Kodiak office budget.

<u>Office</u>	<u>Hard Funding</u>	<u>Professional Staff Positions</u>	<u>Number of Villages</u>
Kotzebue	\$99,050	2 Attorneys 1 VISTA Attorney 4 Paralegals, 3 of whom are located in the villages	11
Nome	\$57,892	1 Attorney 2 VISTA Attorneys	18
Sitka	-0-	This office will be closed effective January 1, 1980	4
Unalaska	\$6,839	1 Paralegal	

The state-wide ALSC office is located in Anchorage, Alaska, and is funded at \$310,115.00 for fiscal year 1980. The professional staff of the state-wide office consists of Mr. Gordon Jackson, Executive Director of ALSC, and 4 attorneys. These attorneys do not handle routine cases, but rather, serve as back-up to those attorneys in the field.

In the last year, ALSC has faced a budgetary crisis. In fiscal year 1979 ALSC had a budget deficit of approximately \$189,000.00. In general, this budgetary crisis is the result of two factors. First, the Legal Services Corporation has not significantly increased the ALSC budget over the past several years.⁴ The present priority of the Legal Services Corporation is to expand civil legal assistance to unserved areas. Alaska does not qualify under this priority scheme, since it has a state-wide program and many other states do not. Second, "soft" funding arrangements heavily relied on by ALSC in the past are rapidly disappearing.

The \$189,000 deficit in 1979 primarily resulted from reliance on "soft" funds. When CETA funds dried up, 8 attorney salaries were

⁴ For example, the 1978 Legal Services Corporation grant to ALSC was \$1,047,516.

continued with "hard" funding. Additionally, because of lengthy congressional review of the VISTA program, ALSC is currently using "hard" funding to meet those salaries. Another factor contributing to this deficit is that the Barrow office was opened several years ago on one-time state monies and continued on "hard" funding.

The Legal Services Corporation has agreed to advance ALSC funds to cover this deficit provided that certain conditions are met. First, ALSC must retire this debt over the next three years and second, ALSC must provide for two attorneys funded with "hard" money in each of its offices. Chiefly for these reasons, ALSC has determined to close two of its offices, Sitka and Galena. Clients from these areas will be able to obtain legal assistance from the Fairbanks and Juneau or Ketchikan ALSC office staff.

PLEASE ANSWER THE FOLLOWING QUESTIONS AND RETURN THIS FORM TO THE LEGAL SERVICES OFFICE. THIS INFORMATION IS NEEDED BEFORE WE CAN HANDLE YOUR CASE.

NAME: _____

ADDRESS: _____

SPOUSE: _____

NATIONALITY: Spanish Origin () Caucasian () Black ()
Native American () Japanese () Chinese ()

Other - Please state: _____

DATE OF BIRTH: _____ PHONE: _____

EMPLOYER: _____ WORK PHONE: _____

PLEASE CHECK WHETHER YOU ARE: Married () Single ()
Separated () Divorced ()
Widowed ()

Have you ever been to a law office before or seen a lawyer: Yes () No ()

Have you ever been to Alaska Legal Services Corporation before? _____

If so, when? _____

Please list the number of children you support: _____

Please list the number of other family members you support: _____

How much income do you have a month: _____

Please check where your income comes from and the amount from each source:

Full time employment	\$ _____	A.F.D.C.	\$ _____
Part time employment	\$ _____	Child support/	_____
Spouse's employment	\$ _____	Alimony	\$ _____
Social Security	\$ _____	Pension/other	\$ _____

How much income have you had for the past 12 month? _____

Please describe your legal problem:

I certify that the information that I have given Alaska Legal Services Corporation in regard to my financial ability to hire a lawyer is true and correct to the best of my knowledge and recollection.

(Sign here)

FOR OFFICE USE ONLY: DATE: _____ ATTY: _____ FILE NO: _____ OPPOSING PARTY: _____
