

SCOMM

122:45

REPORT TO COMMITTEE ON PRIVATIZATION**Collection of Fees for Court Appointed Attorney Services****1. Problem Statement:**

*Parts of
the Court
System* ← A standardized procedure for the collection of statutorily mandated fees for court appointed legal representation services for the indigent is not followed throughout the court system. The collection process varies among agencies. A large part of the fees for court appointed representation are incurred by attorneys under contract with the Office of Public Advocacy. Their attorneys often serve in the Probate Court, in the area of guardianships and conservatorship proceedings. Fee caps for such services are set to varying degrees for the representation provided with the predictable result that such services are often prolonged until the fee cap is reached.

Court appointments for attorney representation for indigents are often made with very cursory investigation into the actual indigency of the respondent with no re-evaluation of the indigency finding after appointment. This lack of re-evaluation results in publicly funded legal representation being provided for people who can afford to pay for such services.

The present system of collection for mandated fee and cost recoveries is totally dependent on the reporting by the agencies involved. It is solely the responsibility of the agency itself to refer its uncollectible accounts to the Attorney General's office for collection of its receivables.

2. LEGISLATION NECESSARY TO EFFECT SAVINGS:

Legislation needs to be enacted to:

1. Insure a true finding of indigency before court appointed attorneys are assigned to represent anyone.
 - a. Require re-evaluation and confirmation of the indigency finding by a formal review and investigation process.
 - b. Require court appointed attorneys to submit the billing for their services to the client or his conservator who then processes it for payment either by the client or by the state.
2. Establish standards for the termination of the court appointed attorney's role when such representation has served its stated purpose.
3. Standardize the collection of fees process throughout the court system by contracting out the collection process to private service providers:
 - a. Provide a mechanism where the service provider can initiate court action to collect -- this may require the removal of the current requirement that corporations, however small, cannot represent themselves without hiring an attorney. This would provide a means for contracting at a more reasonable bid figure if attorney fees were

not part of the picture and would enable such collection services to provide more insurance safeguards.

b. Include all collection of fees, regardless of agency, in a standard collection process.

3. Change the budget process to show fees collected by the court system and to what extent they impact the net cost of operation.

4. Establish criteria for private fee collection agencies to include penalties for malfeasance and failure to perform.

Submitted by:

"B" Jarvi

There is a statute that states that corporations cannot represent themselves in a court action except as otherwise excluded. This should be changed to be specific about the exclusions. A suggestion would be to amend it to exclude all corporations operating under the service provisions of Alaska Statutes 13.26. There should also be a definition for other small corporations who can get a waiver to have a duly authorized corporate officer to represent the corporation pro se. Small corporation needs to be defined.

RB

To: Court Committee
From: Colleen Van Hatten

9. Probation Department

Problem Statement: This department is responsible for public safety concerning people on probation from the courts. Their job consists appearing in court several times a day, meeting monthly with clients to ensure they are following court orders, paying restitution, working, going to counseling or treatment as ordered, and basically being law abiding citizens. Each probation officer has close to 100 people under their supervision, some which are in bush communities. They also are required to do pre-sentence reports on each person under their supervision.

Recommendations:

1. **Private restitution.** This is commonly overlooked in this department due to the mass amount of other obligations they must meet. Possibly a percentage of the restitution allocated to victims could be used to pay for this service.
2. **Computer system which includes video capabilities** so probation officers could appear in court via video camera instead of several trips to the court house daily. It could also be utilized for their mandatory monthly meetings with bush community probationers instead of paying transportation costs for probation officers to travel to the many remote areas. Database access to the court system and law department so they can determine if any police activities or new charges have occurred prior to their meeting. This would also give the police departments up to date information on probation conditions etc. The computer system should also have scanning capabilities in order for each department to retrieve tickets, police reports and case files.
3. **Implement the use of the ankle bracelet system.**
4. **Mandatory sentencing-** the legislature should look at mandatory sentencing again and consider removing this requirement. It has caused over-crowding in the jails and is allowing some of the more serious criminals to be released early to make room so the correctional facilities are in compliance. Several states have already removed mandatory sentencing.

**Alaska Court System
Subcommittee Report**

DRAFT REPORT

I. Branch of Government

Alaska Court System

11. BRU and Component Names as Listed in State Budget

Component	FY2000 Budget
Appellate Courts(767)	3,980.4
Trial Courts (768)	38,840.1
Administration and Support (769)	<u>6,285.2</u>

Total Operating Budget 48,726.4

III. ALL FUND SOURCES

FUNDING SOURCES:

General Fund (1004)	48,726.4
General Fund / Mental Health (1037)	79.3
Federal Receipts - Grants (1002)	<u>300.0</u>

Total Funding Sources 49,105.7

IV. ALL REVENUE DERIVED

Revenues:

Filing Fees (64050)	1,600.6
Fines and Forfeitures (65004)	3,749.3
Cost recovery (65020)*	47.2
Service Fees (64030)**	21.1
Interest Earned on Bank Accounts(65770)	374.6
Miscellaneous (64060)***	303.5
Restricted Revenues (Grant Funds)	<u>300.0</u>

Total Projected Revenues 6,396.3

* Cost recovery includes revenues from recovery of Public Defender and Public Advocacy cost.

** Service fees are revenues derived from processing traffic and minor offense citations for local governments.

***Miscellaneous revenues are from notary services, transcription services, and other miscellaneous activities.

V. CONSTITUTIONAL PROVISIONS GOVERNING COURT SYSTEM OPERATIONS.

Article IV of the Constitution of the State of Alaska.

VI. COURT SYSTEM MISSION STATEMENT

The mission of the Alaska Court System is to provide an accessible and impartial forum for the just resolution of all cases that come before it, and to decide such cases in accordance with the law, expeditiously and with integrity.

VII. NUMBER OF EMPLOYEES

648	permanent full-time
48	permanent part-time
21	non-permanent
717	Total

VIII. COURT SYSTEM TECHNOLOGY

Case management system

The case management system technology is based on a distributed network of Pentium class computers running SCO UNIX operating system and supporting FALCO terminals (a brand of terminal no longer manufactured). The computers are located in the 28th largest court locations and 24 are connected via the state's wide area network (WAN). Four locations are not connected to the WAN because the state has not tied those locations into the WAN. The courts in those locations are connected via dial-up modems. Another 15 court locations are running standalone Pentium PC's using Windows95 as the operating system and dial-up communications to tie to the rest of the court locations.

The court locations running under UNIX have a case management application (RUG) that is an in-house designed and written program from the late 1980's. It is not a true relational database and suffers from the resultant shortcomings. It was made Y2K compliant as of July 1, 1999. The court locations running of PC's have a very limited in-house developed case management application that is designed for low volume magistrate courts, and it also is Y2K compliant.

Courtroom Recording Systems.

The court is currently in the process of upgrading the courtroom recording systems. The legacy system is an analog tape recorder and sound reinforcement system built by GYYR, a company no longer in existence. Parts are no longer available and must be manufactured or retrofitted by the court's technical staff. The court is currently deploying a new digital recording and sound amplification system in the 15 largest courts

-- 88 courtrooms/hearing rooms. The digital recording systems are supported by local area networks (LAN) that tie the computer-based recording in the courtrooms/hearing rooms and the individual workstations in each location together. In addition to the digital recording systems, the court is replacing the sound reinforcement systems with newer miner/amplifier technology to improve telephonic communications.

Hearing Assistance Devices

Each of the courtrooms is equipped with infrared hearing assistance devices (similar to those utilized in theaters) to provide better service to the court's hearing-impaired users. The hearing devices consist of a transmitter that connects to the sound reinforcement system and individual headsets worn by court customers during court hearings.

Video Conferencing

The court utilizes video conferencing capabilities to conduct arraignments and other allowed hearings between jail facilities and the arraignment courtrooms in three locations.

Micrographics

The court utilized microfilm cameras and reader/printers to archive and access closed court case files. The reader/printer devices are over 12 years old and in need of replacement. The machines use thermal paper to reproduce microfilmed images and the manufacturer of the paper will cease production January 1, 2000 making them read only capable. The court is evaluating the most cost-effective alternatives to these machines.

Telephones

The court system relies heavily on telephonic communication to conduct court business with litigants and other court customers throughout the state. The court has upgraded telephones with known Y2K compliance issues and is attempting to find the funding to continue the upgrade of telephone systems in all court locations to digital switches.

IX. COURT SYSTEM CONTRACTS:

See attached for now -- I will enter this data for the next draft.

X. PRIVATIZED SERVICES

Security - perimeter security in Anchorage and Fairbanks, the only two courts with these services.

Janitorial

Snow Removal (a reciprocal use agreement has been recently entered with the Anchorage court will the Anchorage Parking Authority will remove snow in exchange for the use of the lot for fee parking during non-work hours.)

Transcripts

Interpreters for the deaf (federal law requires the state to pay for these services)

Language Interpreters
 Building design and construction
 Building maintenance (limited provided by the lessor in leased facilities, by the state in all state owned buildings)
 Mediators for pilot mediation programs -- federal grant programs.
 Ongoing assessment at privatizing micrographics and printing.

XI. RECOMMENDATIONS OF THE SUBCOMMITTEE:

The Subcommittee identified the following ten areas for review and recommendation.

1) Budget and Operational Recommendations:

Problem Statement: Of the three branches of government, the Alaska Court System has the least exposure and the least accountability to the people of the state. The Court System budget does not reveal much about its operational activities nor the effectiveness with which they are carried out. Part of the problem is that 80% of their budget is lumped into a single component. As such, there is only one node of information to look at for a great variety of activities that are the guts of the court system. Although the Court System provides some detailed breakdown to the Alaska Legislature, they should also provide the public with fuller disclosure and analysis of their budget, preferably via their website.

RECOMMENDATIONS:

1. The court System need to disclose more information how its budget expenditures relate to activities it performs to fulfill its mission, goals and objective.

2. The Legislature, the Judicial Council and the Alaska Bar Association should undertake a review of Performance Measurement Indicators in other court systems and recommend a set of them that facilitates public evaluation of our court system.

3. The Court System should make a record of lease vs. purchase on all equipment, in particular electronic and technological modes. This would allow most technological equipment to be updated on a 3, 4, or 5-year period. *The record should specify upgrades*

4. The Court System should refrain from hiring additional personnel, except as approved by the legislature. *to maintain its current level of service*

5. The fees collected have not been increased *since* March 1991. Recording and Usage fees should be reviewed each year, however should not be increased more than the *amount* of the CPI increase for any given year. *they*

6. The Legislature should periodically review all fines and assessments for inflation considerations.

7. The Court System, upon installation of new computer system modalities, should implement use of credit card transactions in all courts, and related entities for all types of service. This should be reviewed as to installation and maintenance by the private sector. This should reduce man hours, transaction time and cost, and increase cash investment return sufficient to offset cost of the program.

8. The Legislature should review Judicial Retirement System^{SD} as to implement a new tier, currently those benefits exceed 25% of Salary in relationship to other employees of about 8%.

9. The Appellate and Superior Courts need to reduce the backlog of cases in a more timely manner to meet national standards and provide better services to the public. This can be accomplished while still maintaining ~~prudence and~~ quality.

integrity and

2) Alternative Dispute Resolution:

started has not actively
Problem Statement: The Alaska Legislature has ~~strongly~~ supported the use of Alternative Dispute Resolution mechanisms such as mediation and arbitration. However, the use of these alternatives have not been widely accepted or utilized by the ~~Judicial Officers~~ due to the lack of established minimum qualifications for mediators and arbitrators.

RECOMMENDATIONS:

1. The Alaska Legislature and the ~~Court System Administration~~ should support and encourage court-connected / mandated mediation and the utilization of private ~~mediation and arbitration programs.~~ *ADR*

certification of
2. The Alaska Legislature should appoint a task force to establish minimum qualifications for mediators and arbitrators, *in ct. connected disputes*

4H

3) Fee Collection:

is no
Problem Statement: There is ~~not~~ a standardized procedure for the collection of statutorily mandated fees for court appointed legal representation for the indigent. The problem is ~~further~~ compounded by the fact that more than one agency is charged with the appointment and collection responsibility, each in its own area of service. Therefore, the collection process varies among agencies. A large part of the fees for court appointed representation⁹⁶ incurred by attorneys under contract with the Office of Public Advocacy. Their attorneys often serve in the Probate Court as well as for criminal defense and Guardian Ad Litem services. While they are appointed only ~~the~~ appointed to represent the respondents during specific litigation, if the fee cap for their services has not been met, they often continue in a case for years. The fees then are paid by the State agency regardless of the ability of the individual to pay for services.

See a Hackman

Outdated as amended 11-8-99

Tabled #3

Court appointments for attorney representation for indigents are often made with little investigation into the actual indigence of the individual (this is primarily true in the probate courts).

In many cases, there is no re-evaluation of the indigence finding with the result that once a court appointed attorney is assigned, he continues to serve at state expense regardless of the actual ability of the individual to pay for legal services. This is especially true in cases where an emergency or temporary appointment is made for the purposes of legal representation in guardianship and/or conservatorship cases. Subsequent investigation during a temporary appointment often reveals assets unknown to the court or the parties at the time of the original attorney appointment, however the ability of the individual to pay is never reassessed after location of available resources for the individual to pay for his own legal fees.

The present system of collection for mandated fee and cost recoveries is totally dependent on the reporting by several agencies, not just the court system. It is solely the responsibility of the agency in question to refer its uncollectible accounts to the Attorney General's office for collection of its receivables.

All fee collections and recoveries are deposited into the General Fund without being differentiated. This does not provide adequate information to determine the actual cost of recovered fees per agency to make a determination on actual cost to run individual programs or, in this case, the net cost for the Court System.

RECOMMENDATIONS:

1. Each State Agency responsible for collection of fees or reimbursement should make a report to the legislature regarding the amount of fines and fees collected and those outstanding.

2. The Legislature should consider the privatization of the collection of all court assessed fees throughout all State Agencies.

3. The court should implement a program (or re-evaluate the current system) to insure a true finding of indigence prior to the court appointment. In the cases of the probate court mental incapacity cases, the finding of indigence should occur prior to the court or other State Agencies making payment to the appointed attorney.

a. This should include a provision for the re-evaluation and confirmation of the indigence finding by a periodic review of the individuals' finances.

b. In the cases of guardianship / conservatorship probate cases, the attorney should be required to submit the billing for their services to the conservator or the individual when a the individual is found not to be indigent.

4. The court should establish standards for the termination of the court appointed attorney's role when such representation has served it's stated purpose.

Noted

5. ~~Standardize the collection of fees process throughout the court system by contracting out the collection process to private service providers:~~

Deleted

a. ~~Provide a mechanism where the service provider can initiate court action to collect — this may require the removal of the current requirement that corporations, however small, cannot represent themselves without hiring an attorney. This would provide a means for contracting at a more reasonable bid figure if attorney fees were not part of the picture and would enable such collection services to provide more insurance safeguards.~~

Deleted

b. ~~Include all collection of fees, regardless of agency, in a standard collection process.~~

Deleted

6. ~~Change the current process to reflect fees collected by the court system and to what extent they impact the cost of operation.~~

Deleted

7. ~~Establish criteria for private fee collection agencies to include penalties for malfeasance and failure to perform.~~

4. Statutes:

Adopted

Problem Statement: While there appears to be an attempt to communicate between the Court System and the Legislature, the court system is very limited in the scope of that communication. The communication with the court system personnel is haphazard in this regard. While the court system has the mechanisms in place to assist with bringing legislative attention to problem statutes, its focus is primarily looking at bills which are being introduced. While this is a worthwhile endeavor, it does not correct existing problematic areas.

problematic including but not limited to statutes which are

1. The court system should provide some mechanism whereby all judicial officers can by anonymous form, list all statutes which they believe are 1) Conflicting 2) Whose intent it is impossible to achieve 3) Statutes which are too expensive to implement as written. 4) Statutes which are outmoded.

2. The court system should prepare a written report for the public and legislature on existing statutes which meet the above criteria. All anonymous forms should be made available for inspection by the public for a period of at least one year.

5. Pro Se

~~As Submitted:~~

Assure equal representation and or protect pro-se people from being seam overpowered in arbitration

Attempt to get more clerks who specialize in handling Pro-se clients.

Allow Pro Se a level of pre-filing, free legal advice to see if they have a case. This should also extend to help in filing paper work, and steps in the judicial process.

All the rights and privileges of being pro-se should extend to small firms, or this should apply to small firms.

Remove the current legislation which prohibits corporations from representing themselves.

As Proposed:

new 1st sentence
(cf. Records show)
Problem Statement: ~~There is~~ a marked increase in the number of individuals representing themselves in litigation. Due to lack of knowledge of the system, these litigants often experience an unresponsive, lengthy process. The current system discourages Pro Se representation.

Recommendations:

- continue to explore the development of a*
1. The court system ~~implement the grant proposal for a trial~~ Pro Se litigant center (currently proposed for Anchorage).
 - delete* 2. The court system ~~maintain statistical data regarding this program and make that information available to the public and the Legislature regarding the cost to continue; the success of the program as measured by user survey and court system personnel.~~
 - Table* 2. The Court Administrator continue to ensure equal access for Pro Se litigants to the court system and alternative resolution process.
 4. Change the statute that prohibits corporations (even small non-profits) from representing themselves. **ANYONE HAVE THIS INFO TO ADD?**

3.

See attached
6. Computer System

Problem Statement: The court system appropriated \$400,000 for a case management system, however the decision was made to utilize approx. \$200,00 in making the system Y2K compliant and replace servers. This has been accomplished.

The computer system remains outdated, with hardware and software that is no longer in existence and parts which are difficult if not impossible to replace. The current system continues to operate as separate systems and is not a true data base. The current State while network will not handle the data for an integrated court computer system. Cost of a fully integrated system, including infrastructure, hardware, digital recording ability, etc. is between 2.5 - 3.0 million dollars. With this funding the system should be operational within a six month period for all major courts and within a two year period for all outlying courts.

The benefits of an upgraded, fully integrated system: Less man hours spent handling court files which can be made available to court personnel online. A general reduction in man hours. While this will not reduce the current level of personnel, it should prevent the increase of personnel in the future due to increased efficiency.

To maintain the system once upgrades are completed would be approximately 5% of it's value annually.

RECOMMENDATIONS:

1. Fund the new system.
2. The Court System should appropriate funds annually to maintain and update the system.
3. Privatize the Information Systems. - Ct. system should publish RFI from private sector to solicit alternate proposals to satisfy their computer needs

"IF THE PUBLIC DOESN'T UNDERSTAND THE PUBLIC PROCESS, THEN WE'RE IN REAL TROUBLE"

7. Court Standing Committees

PROBLEM STATEMENT: There are too many of them and the time spent by the judicial officers and other Administrators from other state agencies is very costly.

Recommendations:

1. Limit the number of committees that State paid employees can sit on. The committees should be predominately filled by the private sector.
2. Consolidate committees.
3. Track expenditures for committee work.
4. Eliminate travel and per diem and utilize telecommunications for committee meetings.

8. Child Custody Investigator

Problem Statement: The Child Custody Investigator is a court employee whose role it was to provide services for indigent families. This position was taken by the court system and made into a role that provided services for all families (predominately in the Fairbanks courts). It has taken a Superior Court order for the Fairbanks system to return to the appointment of this paid employee in indigent cases only. The court system strongly supports retaining this employee position due to what is believed a "lack of expertise" in the private sector. Yet, the court system, by it's own lack of utilization of available expertise has retarded the growth of available, trained individuals in the private sector.

RECOMMENDATIONS:

1. Privatize this position and appoint approved child custody investigators by either contract award or based on the rotation method used for court appointed attorneys.
2. Establish a fee for court appointed child custody investigators which can be paid by the court for indigent (this should mimic that used by court appointed attorneys).

9. Victim Restitution:

AS SUBMITTED:

Restitution is usually made a condition of probation but the only attempt at collection a Probation Officer makes is to ask them to file for their permanent dividends and have them sign the checks over. The Probation Officer can't check the status of the dividend applications so the victim must wait until checks are mailed out to see if they collected any restitution.

Most probation officers handle close to 100 cases. In speaking with them, the areas of improvement that would make their jobs go smoother, and the system work the way it is suppose to is as follows:

1. New computer system complete with video (to extend out to the remote areas), scanning capabilities, a database compatible with the court system and public safety to access files instead of going to each department to see the files. The courtrooms to be video equipped so the probation officers could attend court via video instead of making several trips a day to the courthouse.
2. Implementing the use of ankle bracelets.
3. Mandatory sentencing has overcrowded the jails and is overworking Probation's. Criminals are being released early on probation to make room for the mandatory sentence inmates. Maybe look at the benefits of getting rid of it. Several states have ruled out mandatory sentencing.

In 1994, the Judicial Council did an in-depth report on the importance of a new updated computer system for the court system. It would be in the best interest of the legislature to look at this report as I believe it would save the taxpayers millions of dollars in the long run. Less employees, no double record keeping, more accurate records, state agencies involved in public protection would have the same information. Records would be available 24 hours a day instead of one agency waiting until the following morning or after the weekend tolerate information on a person.

10. Legislative Audit Digest #02-4577-99**AS SUBMITTED**

Statement: The Legislative Budget and Audit Division is an arm of the legislature that has recently reviewed the courts functions in the area of Adult Guardianship and Conservatorships. The Court System should follow it's findings in this area.

1. The governor should introduce legislation and draft regulations that will enhance oversight of private professional guardians.
2. The administrative director of the Alaska Court System should implement a procedure to track professional guardians that exhibit a pattern of asset mismanagement or other misconduct.
3. The legislature should consider amending the confidentiality provisions to allow for public oversight of the guardianship process.
4. The commissioner of the Department of Administration should address the animosity that exists among Fairbanks participants in the guardianship system.

5. The legislature should consider transferring the management of the court visitor function to the court system.

6. Management of the court visitor function should explore the potential of the National Guardianship Monitoring Program for volunteer court visitors and volunteer court auditors.

INFO SVCS.

TECHNOLOGY -

13 employees

Amc E

2

FBX

3 trial / cook

= \$?



Private Sector doesn't understand our business
Court system are unique
None in U.S. are privatized



10/31/99

COURTS

MR.

BOUCH-

Computer

STEVE

CASE MGMT. SYSTEM = CIPS ? Y2K compliant

replaced servers - Pentiums II & III

new ops system - SCO UNIX

43 locations

15 stand alones of nodes

Still non connected inter-districts
not relational data based for search

State WAN can't handle court load -

CMS = 2500-3500 per user any 3000 x 600 users.

TERMINALS -
SOFTWARE -
CONNECTIVITY -

OPEN
ARCHITECTURE
SYSTEMS

DIGITAL RECORDING
REPLACES SOME OLD
MACHINES - SO 300 USERS

- makes world wide Mkt for
VENDORS -

1.8 mm
book

2.4

2000
300

60000

Court System Subcommittee
Commission on Privatization and Delivery of Government Services
Minutes
September 29, 1999 Meeting

Roll Call:

Harris

Jarvi

Rogers

Rollins

Tamagni

Vanlatten

Willford

Wooliver

The sub-committee members began with looking at issues that were presented at the prior meeting due to the absence of all Anchorage members the prior week.

Chuck reviewed the Pro Se litigants issues: Doug reported that there is currently a \$100,000 grant for the Anchorage area for a ProSe litigant center. Apparently this is a grant that has been recently received. The issue of the variety of forms used by the different judicial districts was again discussed. Doug expressed the opinion that the courts forms are currently pro se friendly, however there was not wide acceptance of the opinion. There is a forms committee which is addressing the issues of making the court forms uniform throughout the State. The issue of an integrated computer network was mentioned as a means of assisting in this area. Chuck gave as example his research on the Federal pro se clerk and how that process works.

Shirly gave a report on her prior research into the collections process with 4 Assistant AG's doing collections. It appears that if someone show up at the court house attempting to pay a delinquent fine, they are referred to the Dept. of Law in Anchorage and are not allowed to pay the fine. This is an area where a mechanism can be set up for the collection of these fees. It was determined that a referral will be made to the Law Sub-committee to follow through on this area. Doug provided information as to why the division of collections required so many employees re: it is the centralized collection agency for all State agencies.

"B" reported on her investigations into the collection of fees for court appointed attorneys. This reverted back to the collections unit of the Dept. of Law. Doug provided a hand out on the regulations governing this collection process. The research revealed that the court system does have mechanisms in place, however the Office of Public Advocacy does not. The OPA falls under the Dept. of Admin. and a referral will be made to this subcommittee to follow through on research on this income stream.

Doug reported that the computer system upgrades are all ready moving along.

The computer system was discussed at length. The need to upgrade and for the court system to appropriate funds on an annual basis to continue these upgrades. Roger suggested that we have the computer expert from the court system speak with the sub-committee. Doug agreed to make the arrangements.

"B" reported on the collection of court appointed attorney fees. Once again the discussion lead to Dept. of Law and collections for court appointed attorneys, however the Office of Public Advocacy court appointed attorneys do not appear to have a collection mechanism in the probate sector. This will be referred to the Dept. of Admin. for follow up.

Don introduced the subject matter of committees within the court system. Doug agreed to provide a hand out on all the current standing committees. Don agreed to follow up on research in this area.

Al requested a copy of the court system budget and will provide a break-down for the full sub-committee. Al introduced the area of purchasing/ discounts and how bills are paid by the court system. He requested information of how fees are collected and what fees are collectable. Al will follow up on this area. Doug will attempt to get the procurement officer for a sub-committee meeting.

The meeting was adjourned at 1:15pm.



Suggested Outline for Subcommittee Reports

I. Agency & Department Name

II. BRU and Component Names as listed in state budget

III Total Budget, all funds

- Identify fund sources

IV. Total Revenue derived

- Net cost/income to state

V. Identify Constitutional and Statutory Provisions Governing Agency Operation

VI. Agency Mission, Goals and Objectives

- Do reality check

VII. Number of Employees

- Identify Specialized Expertise Needed for Mission

VIII. Describe Technology Used to Perform Mission

- Identify Specialized Equipment Needed for Mission

IX. List Existing Agency Contracts including amount, contractor, purpose, term, and procurement method

X. Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability

XI. Make Recommendations per Section 5 in SB 33, including suggestions for new legislation.

XII. Explain rationale for each recommendation, the number of votes for and against it.

XIII. List problems or barriers to implementing proposed privatization.

September 22, 1999

Privatization Commission
Court Subcommittee Minutes
Drafted by Marco Pignalberi

1. Shirley Willford reported on **COLLECTION OF FINES**. In Fairbanks, the court collects fines directly paid to them, but, all other others go to a collections office in the Dept. of Law. This office has nine people including 4 ass't attorney generals. About 25% of the court imposed fines go to the Dept. of Law.

We'd like to get more information on the back log of fines not paid. Need info for each judicial district. By what measure can we tell if Dept of Law is doing a good job collecting fines. Do they keep an 'aged accounts' listing like a business does for unpaid bills. Why can't we privatize these collection tasks.

According to a court employee in Fbx, they do not make their own **DEPOSITS**. They must send everything to Anchorage and Anchorage makes the deposits. This seems like a waste of interest income. Contact in Anchorage is Susan Wenton 269-6600.

All employees, everywhere in the court system, complain about their **OUTMODED COMPUTER SYSTEM**. It wastes time and causes them to incur extra costs for phone and repairs. Their not connected to other districts. We want to hear from the Court's computer operations chief.

The committee would like the Dept. of Law and/or Court system to report on these issues.

2. Joyce Harris reported on issues relating to **COURT APPOINTED LAWYERS**. It seems that the court appoint attorneys for people without verifying their financial need. Then, the attorneys bill the state directly without ever trying to recover costs from their clients. The state pays without checking on the ability of the client to pay their own fees. This situation seems to be worse in Fairbanks than in Anchorage. There is no standardization of policy on court appointed attorneys among all the judicial districts. Why not?
3. Chuck Rollins selected the issue of **PRO SE** litigants, (self -representation). We want to make it easier for people to represent themselves. We need an explanation of how the system works now, i.e., what hoops does a person have to jump through to represent him/herself in court. Then, what does the court system suggest to make it easier. We want to make small businesses eligible for **PRO SE**, too.
4. Colleen Van Hatten is investigating policies and practices of **RESTITUTION PAYMENTS** to victims. Restitution is often a court imposed condition of probation. But, Probation Officers, who handle 100 or more probationers, can't keep up and

usually ignore restitution issues: What are the policies in place for the Probation Officers relating to restitution payments. Why can't we privatize the restitution collections? Corrections Committee is not dealing with this, so Marco is asking the Department to send someone to our next meeting to discuss it.)

This investigation gave rise to a new issue: Troopers have a backlog of unserved warrants, especially those relating to collection of state debts and restitution. (Marco will refer this to Public Safety Committee, Debra Luper)

5. Joyce Harris and B Jarvi agreed to co-chair the subcommittee for the remainder of the work to be done. We extend our thanks to Ken Peavyhouse for getting us this far in fine fashion.

END OF NOTES

Oct 6, 99

COURTS

Ronda McCloud

Credit Card fees are absorbed by state.

All fines are collected & deposited in local bank

Shirley - Court needs more funds -

PROBATION MISDEMEANORS/FELONIES

JURY TRVL - \$900 K +

458-8860 Joyce for all draft repts.

* h.m. Next Mtg - Computer

* Court fines collected by Law Dept - They get a cert - can't for program receipts.

Dept. of Admin. collects

Need PMT's - FULL DAY TRIALS

Q 9:30 - 1:30

6mo.
RULE

—over

✓ ATTORNEYS ASK FOR EXTENSIONS -
COURT GRANTS THEM TOO EASILY -

✓ COURT TAKES TOO MUCH TIME TO ISSUE OPINIONS

Report on Time It's Committee.

Subject: COP Courts Questions

Date: Tue, 21 Sep 1999 15:15:22 -0800

From: Representative John Cowdery <Representative_John_Cowdery@legis.state.ak.us>

Organization: Alaska State Legislature

To: dwooliver@courts.state.ak.us

CC: chuck@mosquionet.com, Annette_Deal@legis.state.ak.us

Chuck Rollins of the Court subcommittee asked if I would forward these questions to you for clarification. You may respond to him via email or provide to me, and I will make sure he gets your answers. Thank you.

1. Impact of Alcohol and drugs on the state, if they have separate for each substance that would be best but general information would be ok
2. Has the number of felonies V.S. misdemeanor increase, what is the cost difference between the two for the state
3. What has been the Juvenile substance abuse rate for the past 15
4. What is the number of child abuse cases that are proved to be valid out of all cases
5. What is the economic background of those investigated by DFYS?
6. What is the ethnic background of those investigated by DFYS
7. What type of psychiatric medication are children in the foster care given? And what percentage?

Subject: Privatization information request

Date: Sat, 18 Sep 1999 02:15:11 -0800

From: Charles Rollins Jr <chuck@mosquiconet.com>

Organization: Flashpoint

To: Representative_John_Cowdery@legis.state.ak.us

Hi

I am on the court privatization subcommittee, and I can't find an email for Ken Peavyhouse the chair. Would it be possible to get this forward to the right person?

I am wondering if you know if it would be possible to get the following information for my research in privatization of the courts

Impact of Alcohol and drugs on the state, if they have separate categories for each substance that would be best but general information would be ok

Has the number of felonies V.S. misdemeanor increase, what is the cost difference between the two for the state

What has been the Juvenile substance abuse rate for the past 15

What is the number of child abuse cases that are proved to be valid out of all cases

What is the economic background of those investigated by DFYS?

what is the ethnic background of those investigated by DFYS

What type of psychiatric medication are children in the foster care given? And what percentage?

That's about it, it might seem like quite a list of information to request but I need to use them for missing pieces of my research. I could do without it, but the more I get, the more my research will make sense to the committee

Thank You
Charles Rollins Jr
Box 55616
North Pole Alaska 99705
(907) 488-9030

September 22, 1999

Privatization Commission
Court Subcommittee Minutes
Drafted by Marco Pignalberi

1. Shirley Willford reported on **COLLECTION OF FINES**. In Fairbanks, the court collects fines directly paid to them, but, all other others go to a collections office in the Dept. of Law. This office has nine people including 4 ass't attorney generals. About 25% of the court imposed fines go to the Dept. of Law.

We'd like to get more information on the back log of fines not paid. Need info for each judicial district. By what measure can we tell if Dept of Law is doing a good job collecting fines. Do they keep an 'aged accounts' listing like a business does for unpaid bills. Why can't we privatize these collection tasks.

According to a court employee in Fbx, they do not make their own **DEPOSITS**. They must send everything to Anchorage and Anchorage makes the deposits. This seems like a waste of interest income. Contact in Anchorage is Susan Wenton 269-6600.

All employees, everywhere in the court system, complain about their **OUTMODED COMPUTER SYSTEM**. It wastes time and causes them to incur extra costs for phone and repairs. Their not connected to other districts. We want to hear from the Court's computer operations chief.

The committee would like the Dept. of Law and/or Court system to report on these issues.

2. Joyce Harris reported on issues relating to **COURT APPOINTED LAWYERS**. It seems that the court appoint attorneys for people without verifying their financial need. Then, the attorneys bill the state directly without ever trying to recover costs from their clients. The state pays without checking on the ability of the client to pay their own fees. This situation seems to be worse in Fairbanks than in Anchorage. There is no standardization of policy on court appointed attorneys among all the judicial districts. Why not?
3. Chuck Rollins selected the issue of **PRO SE** litigants, (self -representation). We want to make it easier for people to represent themselves. We need an explanation of how the system works now, i.e., what hoops does a person have to jump through to represent him/herself in court. Then, what does the court system suggest to make it easier. We want to make small businesses eligible for **PRO SE**, too.
4. Colleen Van Hatten is investigating policies and practices of **RESTITUTION PAYMENTS** to victims. Restitution is often a court imposed condition of probation. But, Probation Officers, who handle 100 or more probationers, can't keep up and

usually ignore restitution issues. What are the policies in place for the Probation Officers relating to restitution payments. Why can't we privatize the restitution collections? Corrections Committee is not dealing with this, so Marco is asking the Department to send someone to our next meeting to discuss it.)

This investigation gave rise to a new issue: Troopers have a backlog of unserved warrants, especially those relating to collection of state debts and restitution. (Marco will refer this to Public Safety Committee, Debra Luper)

5. Joyce Harris and B Jarvi agreed to co-chair the subcommittee for the remainder of the work to be done. We extend our thanks to Ken Peavyhouse for getting us this far in fine fashion.

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Professional Guardian Services Corporation

Corporate Office:
P. O. Box 770409
Eagle River, Alaska 99577
Phone (907) 688-5530
Fax (907) 688-5520



Northern Region Office:
753 Eighth Avenue
Fairbanks, Alaska 99701
Phone (907) 458-8850
Fax (907) 458-8860

Sept. 20, 1999

Subcommittee on Privatization
Court System
Attn: Marco

VIA FAX (907) 269-⁰¹²³~~0125~~

I have chosen to address the collection of fees that should be paid by respondents when a court appointed attorney has been assigned to their case by the Office of Public Advocacy and/or the court itself.

Statutes require that respondents pay these attorneys a specific sum for the representation. This can cause a loss of considerable sums of money if those fees are not collected.

The problem is further compounded when attorneys are appointed for respondents who have sums in excess of the guidelines set for indigency. It is often easier for attorneys who are assigned by the court to represent people who can afford to pay them, to simply bill the state through the Office of Public Advocacy than to pursue collection of the money from individuals and/or their conservators.

There is also the problem of attorneys who represent the same person in different types of cases. For instance, in Fairbanks it is not at all unusual to have the one attorney under contract with the Office of Public Advocacy to serve as court appointed attorney at a guardianship hearing and of course bill the state for his fees which he can run up to the maximum of \$1,500. to also represent the same client as a public defender in a civil or criminal action, again billing the Office of Public Advocacy. At least a portion of these fees are mandated to be collected from the client; as far as I know, nothing is in place to collect them or account for them.

I will have a more definitive report on the date assigned - another week away. Just wanted to give you a heads up on what my subject matter will be about when I submit my report to you. I am scheduling (or trying to) meetings with the court administrator and with John Frannich of the Office of Public Advocacy.

"B" Jarvi
Fairbanks

Article by Janet McCabe, Co-Chair, Partners for Downtown Progress

Jail Alternatives Give People in Trouble with the Law a Chance to Change.

This summer a number of judges, attorneys, and people associated with non-profit and governmental organizations have been exploring ways to reduce crime through alternatives to jail. The emphasis has been on models of rehabilitative justice that have proven successful in other states. Coming up are three important seminars sponsored by the Alaska Bar Association with the support of the Anchorage Bar Association and Partners for Downtown Progress.

- On September 13 from 12:15 PM to 4:15 PM in Courtroom 202 of the Nesbett Courthouse, video tapes about the new anti-alcohol drug, Naltrexone, will be shown, and a panel of medical experts and lawyers will explain the use of Naltrexone in probation and rehabilitation programs. It is commonly estimated that 80 to 90 percent of criminal defendants have substance abuse problems, primarily alcoholism. Therefore, the potential of Naltrexone, which reduces the urge to drink, is very significant. This program is open to the public and free.
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These seminars represent a change from the judicial approach that has become dominant in this country. Over the past 25 years the emphasis has been on tough punishment, on sending more people to jail. By now one out of every 150 U.S. citizens is in jail. Funding for in-jail rehabilitation, education and work experience has been largely eliminated, and jails are now mostly "no-frills" human warehouses. The push for jail has meant incarceration of a higher proportion of non-violent offenders than before. "Crimes that in other countries would usually lead to community service, fines, or drug treatment - or would not be considered crimes at all - in the United States now lead to a prison term, by far the most expensive form of punishment"¹.

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But the trend is turning. People are coming to realize that jail is hugely expensive both in terms of individual lives and public money. In Alaska it costs about \$35,000 to jail one person for a year. In total, it costs the state \$130 million annually to house people in jails. From the perspective of protecting the public, jail is a short-term solution. Most criminals are eventually released. Lifers are only a minor fraction of Alaska's jail population. With little rehabilitation and much punishment by inactivity or isolation, jail often intensifies a person's inability to cope outside of jail and increases the store of anger that may have led to trouble in the first place. Two-thirds of the people released from jail return within three years.

The jail alternative programs being considered in Anchorage would be built on elements that have been successful elsewhere. Community courts, drug courts, or other specialty courts, all assist individuals who want to change by combining the incentive of avoiding jail with practical, individualized assistance in fulfilling the terms of court orders and rejoining the community. Typically, such programs involve "check-up" visits with the same judge who monitors compliance with his order, recognizes and praises success, and swiftly punishes non-compliance. Typically, also, these programs require strong partnerships between the courts, treatment providers, and organizations that assist the defendant on a one-to-one basis with transitional employment and housing, medical services, and other essentials, such as keeping court ordered appointment dates.

In Anchorage, the Partners for Downtown Progress (PDP) supports the development of jail alternative programs. This support is warranted by positive results in other communities. In the short run such programs require more court resources, but they reduce recidivism and jail costs, and they offer the court the benefits of collaboration with others to achieve a positive outcome. PDP would work with individuals who are referred by the courts, assisting each person in developing and following an individually tailored plan to utilize existing services to fit his or her needs. PDP is especially interested in participating in the development of a specialty court for alcoholic misdemeanants and criminals, and in facilitating the utilization of Naltrexone, the drug that reduces craving for alcohol.

Junet McCabe is on the board of the Anchorage Downtown Partnership (ADP) and chairs Partners for Downtown Progress, which was created by ADP to focus on human and social needs in Anchorage's Downtown Business Improvement District.

COUNT
CREDITS



Wisdom in Sentencing

with

Judge Dennis A. Challeen

Pioneer in
Sentencing to Community Service

Presented
in
cooperation
with
Partners
for
Downtown
Progress
and the
Anchorage
Bar
Association.

Monday, September 27, 1999
8:30 AM - 12:00 NOON
Hotel Captain Cook
Anchorage, Alaska

*Presented in cooperation with
Partners for Downtown Progress
and*



Anchorage
Bar Association, Inc.

3.5 CLE CREDITS

CLE

COURSE INFORMATION

Judge Dennis Challeen, a District Court Judge from Winona, Minnesota, has been on the bench for 35 years, and is the author of The NORP Think Factor.

NORP is the acronym for "Normal, Ordinary, Responsible People." Judge Challeen explains that judges, prosecutors, and defenders are all NORPs, and as a result, they mistakenly apply NORP solutions to a defendant population who are clearly **not** NORPs.

Judge Challeen offers some creative alternatives to our present system:

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FACULTY



Judge
Dennis A. Challeen

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REGISTRATION FORM

Wisdom in Sentencing (#99-59)

September 27, 1999 ♦ Hotel Captain Cook ♦ 3.5 CLE CREDITS

Name: _____

Firm: _____

Address: _____

City/State: _____ Zip Code: _____

Phone: _____ Fax: _____

E-Mail Address: _____

AK Bar Member? ☐ No ☐ Yes Member #: _____

Registration: \$45 per person

☐ Check enclosed. ☐ Please Invoice Me

☐ Charge my ☐ Visa ☐ Mastercard Account #: _____

Exp. Date: _____ Signature: _____

Video Replay Information: \$45

(includes course materials)

- ☐ Dillingham, 11/5, 10:00 AM, Jury Room
- ☐ Fairbanks, 10/29, 9:00 AM, Cook Schuhmann et al.
- ☐ Juneau, 10/29, 9:00 AM, Dillon & Findley
- ☐ Kenai, 11/5, 1:00 PM, Kenai Courthouse
- ☐ Ketchikan, 11/20, 9:30 AM, Faulkner Banfield
- ☐ Kodiak, 11/20, 10:00 AM, Jamin, Ebell et al.
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Fax: 907-272-2932
E-mail: info@alaskabar.org
Website: www.alaskabar.org

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info@alaskabar.org
to sign up.

COURTS
CORRECT
NEWS

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COURT
COLLECTIONS



Wisdom in Sentencing

with

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**Pioneer in
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Firm: _____

Address: _____

City/State: _____ Zip Code: _____

Phone: _____ Fax: _____

E-Mail Address: _____

AK Bar Member? ☐ No ☐ Yes Member #: _____

Registration: \$45 per person

☐ Check enclosed. ☐ Please Invoice Me
☐ Charge my ☐ Visa ☐ Mastercard Account #: _____

Exp. Date: _____ Signature: _____

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(includes course materials)

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- ☐ Kodiak, 11/20, 10:00 AM, Jamin, Ebell et al.
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CORRECT
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COURT
COLLECTIONS



Wisdom in Sentencing with

Judge Dennis A. Challeen

**Pioneer in
Sentencing to Community Service**

**Presented
in
cooperation
with
Partners
for
Downtown
Progress
and the
Anchorage
Bar
Association.**

**Monday, September 27, 1999
8:30 AM - 12:00 NOON
Hotel Captain Cook
Anchorage, Alaska**

***Presented in cooperation with
Partners for Downtown Progress
and***



**Anchorage
Bar Association, Inc.**

3.5 CLE CREDITS

CLE

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REGISTRATION FORM

Wisdom in Sentencing (#99-59)

September 27, 1999 ♦ Hotel Captain Cook ♦ 3.5 CLE CREDITS

Name: _____

Firm: _____

Address: _____

City/State: _____ Zip Code: _____

Phone: _____ Fax: _____

E-Mail Address: _____

AK Bar Member? ☐ No ☐ Yes ☒ Member #: _____

Registration: \$45 per person

☐ Check enclosed. ☐ Please Invoice Me
☐ Charge my ☐ Visa ☐ Mastercard Account #: _____

Exp. Date: _____ Signature: _____

Video Replay Information: \$45

(includes course materials)

- ☐ Dillingham, 11/5, 10:00 AM, Jury Room
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- ☐ Kodiak, 11/20, 10:00 AM, Jamin, Ebell et al.
- ☐ Nome, 12/3, 9:00 AM, Larson, Timbers & Thomas
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MAIL

Mail your registration
to the Alaska Bar.
(see address above)



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Send an e-mail to
info@alaskabar.org
to sign up.

COURT
CORRECT
HEB

Article by Janet McCabe, Co-Chair, Partners for Downtown Progress

Jail Alternatives Give People in Trouble with the Law a Chance to Change.

This summer a number of judges, attorneys, and people associated with non-profit and governmental organizations have been exploring ways to reduce crime through alternatives to jail. The emphasis has been on models of rehabilitative justice that have proven successful in other states. Coming up are three important seminars sponsored by the Alaska Bar Association with the support of the Anchorage Bar Association and Partners for Downtown Progress.

- On September 13 from 12:15 PM to 4:15 PM in Courtroom 202 of the Nesbett Courthouse, video tapes about the new anti-alcohol drug, Naltrexone, will be shown, and a panel of medical experts and lawyers will explain the use of Naltrexone in probation and rehabilitation programs. It is commonly estimated that 80 to 90 percent of criminal defendants have substance abuse problems, primarily alcoholism. Therefore, the potential of Naltrexone, which reduces the urge to drink, is very significant. This program is open to the public and free.
- On September 20, from 12:15 PM to 1:15 PM in Courtroom 202 of the Nesbett Courthouse, there will be a session on alternatives to jail for mentally disabled misdemeanants. This program will review a successful "specialty court" designed to divert mentally disabled low-risk misdemeanor offenders from jail into community-based behavioral health treatment. The program is open to the public and free.
- On September 27 from 8:30 AM to noon in the Captain Cook, Judge Dennis A. Challeen, a nationally recognized expert in the field of criminal sentencing, will speak about systems that enable criminals to change themselves into responsible members of society. Judge Challeen is credited with pioneering sentencing to community service, now a common practice for persons who are not dangers to the public. The half-day seminar is open to the public and costs \$45. For registration call the Alaska Bar Association at 272-7469.

These seminars represent a change from the judicial approach that has become dominant in this country. Over the past 25 years the emphasis has been on tough punishment, on sending more people to jail. By now one out of every 150 U.S. citizens is in jail. Funding for in-jail rehabilitation, education and work experience has been largely eliminated, and jails are now mostly "no-frills" human warehouses. The push for jail has meant incarceration of a higher proportion of non-violent offenders than before. "Crimes that in other countries would usually lead to community service, fines, or drug treatment - or would not be considered crimes at all - in the United States now lead to a prison term, by far the most expensive form of punishment"¹.

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But the trend is turning. People are coming to realize that jail is hugely expensive both in terms of individual lives and public money. In Alaska it costs about \$35,000 to jail one person for a year. In total, it costs the state \$130 million annually to house people in jails. From the perspective of protecting the public, jail is a short-term solution. Most criminals are eventually released. Lifers are only a minor fraction of Alaska's jail population. With little rehabilitation and much punishment by inactivity or isolation, jail often intensifies a person's inability to cope outside of jail and increases the store of anger that may have led to trouble in the first place. Two-thirds of the people released from jail return within three years.

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CORRECTIONS



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(see address above)



E-MAIL

Send an e-mail to
info@alaskabar.org
to sign up.

Court System Subcommittee
Commission on Privatization and Delivery of Government Services
Agenda
September 15, 1999
12:00 PM
Chairman: Ken Peavyhouse

Agenda AS OF: September 14, 1999, 12:00 PM

1) ROLL CALL OF TELECONFERENCE SITES

- a) Juneau _____
- b) Fairbanks _____
- c) Kenai _____
- d) Other _____

2) ROLL CALL OF MEMBERS

- a) Around the Horn

3) REVIEW MINUTES OF PREVIOUS MEETING

4) OLD BUSINESS

a) Dispute Resolution:

- i) Kris Conquergood, Executive Director, The Dispute Resolution Center
- ii) Dan Chai, Alaska Dispute Settlement Association

b) Resume Court Visit (need to schedule)

c) Focus Area

- i) ADR
- ii) Pro SE Representation
- iii) Records Management
- iv) Restitution Payment Process
- v)

5) NEW BUSINESS

6) NEXT MEETING DATE AND TIME – September 22, 12:00

7) ADJOURNMENT

9-15-99

457-8702

458-8860 FX Joyce

Dan Chay - Ek Dip. Sett Assoc.
Horig. Med. Svcs. (Kenar)

Joyce Harvi -
Shirley Willford
Raulini
B Jorin
Coleman - absent

P. Safety
Dick
Barrett

FINE COLLECTION } WILLFORD
VICTIM RESTITUTION } B. JARVI, WILLFORD
CHILD CUSTODY INVEST. }
PRO SE } Rollins, GIBSON
ADR } Rogers, Pignatelli
FAMILY LAW - DEFS ISSUES } JOYCE HARRIS
PROBATION ISSUES } ~~WILLFORD~~, VAN HATTEN
COMPUTERIZATION/RECORDS MGMT, ED LEON

RESOL. CTR. - CHRIS CONQUERGOOD

- ? # of mediators @ 150 cases per year (directed from court)
- ? referrals from state agencies - courts?
- ? enforcement
- ? who pays
- ? trng - certification

9th circuit draft ADR RULES

"we don't even know your program exists."

"we need a focal point"

"Encourage development of Community Mediation Ctr."

WHAT WOULD YOU LIKE TO SEE THE STATE
DO TO ^{IMPROVE} ~~INCREASE~~ THE USE OF MEDIATION.

PROBLEM STATE - ~~Dispute Settlement~~ by the Court System is lengthy, costly,
too legalistic, more than fair - and people.

the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Stated in *First Nat'l Bank v. Zawodny*, 602 P.2d 1254 (Alaska 1979).

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

NOTES TO DECISIONS

Cited in *City of Valdez v. 18.99 Acres*, 686 P.2d 682 (Alaska 1984).

Article 1. Uniform Arbitration Act.

Section

10. Arbitration agreements valid; application of article
20. Proceedings to compel or stay arbitration
30. Appointment of arbitrators by court
40. Majority action by arbitrators
50. Hearing
60. Representation by attorney
70. Witnesses, subpoenas, depositions
80. Award
90. Modification of award by arbitrators

Section

100. Fees and expenses of arbitration
110. Confirmation of an award
120. Vacating an award
130. Modification or correction of award by court
140. Judgment or decree on award
150. Applications to court
160. Appeals
170. Court, jurisdiction
180. Short title

Cross references. — For court rule provision on arbitration and award as an affirmative defense, see Ch. R. 8(c).

NOTES TO DECISIONS

Public policy in Alaska favors arbitration as a means of resolving disputes without court interference. *Artic Contractors v. State*, 564 P.2d 30 (Alaska 1977), aff'd on other grounds, 573 P.2d 1385 (Alaska 1978).

Alaska's strong public policy in favor of arbitration demonstrated by the adoption of this article. Mod-

ern Constr., Inc. v. Barco, Inc., 556 P.2d 528 (Alaska 1976).

Freedom to contract for arbitration terms. — In the absence of statutory restrictions, parties are free to contract for the terms of arbitration they desire. *Board of Educ. v. Ewig*, 609 P.2d 10 (Alaska 1980).

Internal references. — 5 Am. Jur. 2d, *Arbitration and Award*, § 1 et seq.

Alaska, Arbitration, § 1 et seq.

Resolving real estate disputes through arbitration. 5 Am. Jur. Trials, pp. 621-678.

Effect of state statutory provisions for arbitration on disputes, as against the objection of delega-

tion of legislative power without setting up adequate standards to guide the administrative agency, 9 ALR2d 871.

Quotient arbitration award or appraisal, 20 ALR2d 958.

Matters arbitrable under arbitration provisions of collective labor contract, 24 ALR2d 752.

Equity jurisdiction to determine valuation, where arbitration or appraisal has failed, under long-term lease providing for appraisal of premises and fixing rental value at stated intervals, 26 ALR2d 744.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award, 27 ALR2d 1160.

Arbitration provisions of employment contract providing for severance or dismissal pay, 40 ALR2d 1052.

Contract providing that it is governed by or subject to rules or regulations of a particular trade, business, or association as incorporating agreement to arbitrate, 41 ALR2d 872.

Validity and effect of arbitration agreement provisions that, upon the party's failure to appoint arbitrator, controversy may be determined by arbitrator appointed by other party, 47 ALR2d 1346.

Arbitrator's consultation with outsider or outsiders as misconduct justifying vacation of award, 47 ALR2d 1362.

Effect of vacancy through resignation, withdrawal, or death of one of multiple arbitrators on authority of remaining arbitrators to render award, 49 ALR2d 900.

Constitutionality of arbitration statutes, 55 ALR2d 432.

Death of party to arbitration agreement before award as revocation or termination of submission, 63 ALR2d 754.

Arbitration of disputes within close corporation, 64 ALR2d 643.

Construction and application of provisions of general arbitration statutes excluding from their operation contracts for labor or personal services, 64 ALR2d 1336.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators, 65 ALR2d 755.

Power of president of corporation to commence or to carry on arbitration proceedings, 65 ALR2d 1321.

Power of arbitrators to award injunction, 70 ALR2d 1055.

Dissolved corporation's power to participate in arbitration proceedings, 71 ALR2d 1121.

Agreement to arbitrate future controversies as binding on infants, 78 ALR2d 1292.

Covenant in lease to arbitrate, or to submit to appraisal, as running with the leasehold so as to bind assignee, 81 ALR2d 804.

Necessity that arbitrators, in making awards, make specific or detailed findings of fact or conclusions of law, 82 ALR2d 969.

Time for impeaching arbitration award, 85 ALR2d 779.

Appealability of order or decree compelling or refusing to compel arbitration, 94 ALR2d 1071; 6 ALR4th 652.

Discovery in aid of arbitration proceedings, 98 ALR2d 1247.

Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration, 5 ALR3d 1008.

Confirming or setting aside award: appealability of judgment confirming or setting aside arbitration award, 7 ALR3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 ALR3d 854.

Validity and effect, and remedy in respect, of con-

tractual stipulation to submit disputes to arbitration in another jurisdiction, 12 ALR3d 892.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters, 18 ALR3d 1264.

Municipal corporation's power to submit to arbitration, 20 ALR3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof, 24 ALR3d 1325.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and arbitrators appointed to determine amount of loss, 25 ALR3d 680.

Delay in asserting contractual right to arbitration as precluding enforcement thereof, 25 ALR3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator, 26 ALR3d 604.

Breach or repudiation of collective labor contract as subject to, or as affecting right to enforce, arbitration provision in contract, 29 ALR3d 688.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein, 32 ALR3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability, 33 ALR3d 1242.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted, 36 ALR3d 939.

Setting aside arbitration award on ground of interest or bias of arbitrators, 56 ALR3d 697.

Construction and effect of contractual or statutory provisions fixing time within which arbitration must be made, 56 ALR3d 815.

Liability of parties to arbitration for costs, fees, and expenses, 57 ALR3d 633.

Privileged nature of communications made in course of grievance or arbitration procedure provided for by collective bargaining agreement, 60 ALR3d 1041.

State court's power to consolidate arbitration proceedings, 64 ALR3d 528.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien, 73 ALR3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration, 73 ALR3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as ground for relief from award, 75 ALR3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award, 80 ALR3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity, 83 ALR3d 996.

Arbitrator's power to award punitive damages, 83 ALR3d 1037.

Arbitration of medical malpractice claims, 84 ALR3d 375.

Statute of limitations as bar to arbitration under agreement, 94 ALR3d 533.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 ALR3d 1145.

Defendant's participation in action as waiver of right to arbitration of dispute involved therein, 95 ALR3d 767.

Appealability of state court's order or decree com-

pling or refusing to compel arbitration, 6 ALR4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 11 ALR4th 774.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

Liability of organization sponsoring or administering arbitration to parties involved in proceeding, 41 ALR4th 1013.

Attorney's submission of dispute to arbitration, or amendment of arbitration agreement, without client's knowledge or consent, 48 ALR4th 127.

Sec. 09.43.010. Arbitration agreements valid; application of article. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable, and irrevocable, except upon grounds that exist at law or in equity for the revocation of a contract. However, AS 09.43.010 — 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute. (§ 1 ch 232 SLA 1968; am § 3 ch 113 SLA 1972)

Cross references. — For arbitration agreements under Public Employment Relations Act, see AS 23.40.200(f).

Legislative history reports. — For report on ch. 232, SLA 1968 (HB 212 am FCC), see 1968 House Journal, p. 861.

NOTES TO DECISIONS

Section applicable to option to arbitrate. — An option to arbitrate in a written contract is a provision in a written contract to submit a controversy to arbitration and is thus literally within the meaning of this section which states that such a provision is valid. *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, 656 P.2d 1184 (Alaska 1983).

Ambiguous awards. — An award should be remanded to the arbitrator when it is ambiguous or indefinite; however, where the true intent of an arbitrator is apparent, an allegedly ambiguous award should not be resubmitted to the arbitrator for clarification. *International Bhd. of Elec. Workers, Local 1547 v. City of Ketchikan*, 805 P.2d 340 (Alaska 1991).

No application to labor dispute. — Plaintiff's direct challenge to the arbitrator's decision concerning an alleged violation of a contract between his employer and labor organization is not governed by the 90-day limitations period of AS 09.43.120. Instead, the applicable statute of limitations is six months

under federal law for hybrid U.S.C. § 301 claims. *Patterson v. State, Dep't of Agric.*, 880 P.2d 1038 (Alaska 1994), cert. denied, U.S. , 115 S. Ct. 936, 130 L. Ed. 2d 881 (1995).

Absolute immunity for quasi-judicial actions. — The plaintiffs' claims of misconduct and impartiality against the arbitrator who heard the labor dispute were properly denied on the grounds of arbitral immunity. Arbitral immunity gives arbitrators absolute immunity from liability for damages arising out of quasi-judicial actions taken by them. *Feichtinger v. Conant*, 893 P.2d 1266 (Alaska 1995).

Cited in *Harold's Trucking v. Kelsey*, 584 P.2d 1128 (Alaska 1978); *Alaska State Hous. Auth. v. Riley Pless, Inc.*, 586 P.2d 1244 (Alaska 1978); *City of Fairbanks v. Rice*, 628 P.2d 565 (Alaska 1981); *Menden v. University of Alaska*, 633 P.2d 1374 (Alaska 1981); *Organ v. Conner*, 792 F. Supp. 693 (D. Alaska 1992).

Sec. 09.43.020. Proceedings to compel or stay arbitration. (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Arbitrability to be determined prior to rendition of award. — This section provides for court determination of the issue of arbitrability prior to rendition of an award and before the parties have subjected themselves to the effort and expense of arguing the merits of the dispute to the panel. *University of Alaska v. Modern Constr., Inc.*, 522 P.2d 1132 (Alaska 1974).

Waiver or estoppel where court review sought after award. — See *University of Alaska v. Modern Constr., Inc.*, 522 P.2d 1132 (Alaska 1974).

Applied in *Anchorage Daily News, Inc. v. Anchorage Times Publishing Co.*, 631 P.2d 500 (Alaska 1981).

Cited in *Loyal Order of Moose, Lodge 1392 v. International Fid. Ins. Co.*, 797 P.2d 622 (Alaska 1990).

Sec. 09.43.030. Appointment of arbitrators by court. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.040. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 — 09.43.180. (§ 1 ch 232 SLA 1968)

Sec. 09.43.050. Hearing. Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Quoted in *Integrated Resources Equity Corp. v. Fairbanks N. Star Borough*, 799 P.2d 295 (Alaska 1990).

Sec. 09.43.060. Representation by attorney. A party has the right to be represented by an attorney at a proceeding or hearing under AS 09.43.010 — 09.43.180. A waiver of the right before the proceeding or hearing is ineffective. (§ 1 ch 232 SLA 1968)

Revisor's notes. — In 1994, "AS 09.43.010 — 09.43.180" was substituted for "this chapter" to reflect the 1972 enactment of AS 09.43.190 — 09.43.220.

Sec. 09.43.070. Witnesses, subpoenas, depositions. (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court. (§ 1 ch 232 SLA 1968)

Cross references. — For court rule governing subpoenas, see Civ. R. 45; for court rule governing witness fees, see Admin. R. 7.

Sec. 09.43.080. Award. (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

The law favors arbitration with a minimum of court interference. *University of Alaska v. Modern Constr., Inc.*, 522 P.2d 1132 (Alaska 1974); *Board of Educ. v. Ewig*, 609 P.2d 10 (Alaska 1980).

Presumption of validity. — Whenever possible an arbitration award rendered in the form required by this section is presumptively valid and shall be upheld without inquiry into the merit of the dispute. *University of Alaska v. Modern Constr., Inc.*, 522 P.2d 1132 (Alaska 1974).

Subsection (a) sets out the minimum requirements as to the form of an award. *University of*

Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974).

Written findings and conclusions not required. — The language in subsection (a) does not require the arbitrators to submit written findings of fact or conclusions of law. *University of Alaska v. Modern Constr., Inc.*, 522 P.2d 1132 (Alaska 1974).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, 609 P.2d 10 (Alaska 1980).

Sec. 09.43.090. Modification of award by arbitrators. On application to the arbitrators by a party or, if an application to the court by a party is pending under AS 09.43.110 — 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 — 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Superior court authorized to order clarification. — This section clearly authorizes the superior court to return an award to the arbitrators for clarification.

University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974).

Sec. 09.43.100. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Public policy against awards. — Ordinarily attorney's fees are not awarded where matters are submitted to arbitration. This is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial

step in the arbitration process. *Harold's Trucking v. Kelsey*, 584 P.2d 1128 (Alaska 1978).

Award of attorney's fees held proper. — See *Harold's Trucking v. Kelsey*, 584 P.2d 1128 (Alaska 1978).

Sec. 09.43.110. Confirmation of an award. Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

The law favors arbitration with the minimum of court interference. *Municipality of Anchorage v. Frank Coluccio Constr. Co.*, 826 P.2d 316 (Alaska 1992).

Construing arbitrator's comments. — To the extent that there is ambiguity in whether the arbitrators' comments are "dicta" or "holdings," they should

be analyzed in the context of the parties' contractual agreement to arbitrate. *Municipality of Anchorage v. Frank Coluccio Constr. Co.*, 826 P.2d 316 (Alaska 1992).

Applied in Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs., 656 P.2d 1184 (Alaska 1983).

Sec. 09.43.120. Vacating an award. (a) On application of a party, the court shall vacate an award if

- (1) the award was procured by fraud or other undue means;
- (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
- (3) the arbitrators exceeded their powers;
- (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or
- (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud, or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or

their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.130 define the superior court's power to review and either vacate or modify an arbitration award. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978).

Limitation on judicial review. — An arbitrator's misconstruction of a contract is not open to judicial review, except on questions of arbitrability. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978); AHTNA, Inc. v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

Presumption of arbitrability. — In light of Alaska's strong public policy favoring arbitration, courts should apply a presumption in favor of arbitrability. If the arbitrator's determination of arbitrability is a reasonably possible one that can seriously be made in the context in which the contract was made, then the court should affirm the finding. AHTNA, Inc. v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

No review for gross errors. — The "fraud or other undue means" standard of this section does not authorize review for gross errors. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978).

There is a substantial difference between procurement of an award by fraud or other undue means and an award in which the arbitrators have allegedly made large mistakes. The former instances connote affirmative wrongdoing by a party to the arbitration and often by an arbitrator; gross error carries no such connotation. Moreover, fraud or undue means in the procurement of an award does not require a review on the merits of the controversy; a review for gross errors is a review on the merits. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978).

Under Alaska law it is clear that when arbitration proceeds under the terms of Alaska's Uniform Arbitration Act, the arbitrator's findings of fact are unreviewable, even in the case of gross error. Judicial review under this section is limited to issues of arbitrability. AHTNA, Inc. v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978).

This article evinces a strong public policy in favor of arbitration. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974).

Limitations on powers of arbitrators. — The power of arbitrators are confined to those conferred upon them by the arbitration agreement, subject, of course, to further limitations imposed by the law of the jurisdiction. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974).

Dispute arising out of the contract. — Where the reimbursement rationale rested on the arbitrator's interpretation of various agreement provisions and the parties' contractual obligations during the life

of the joint venture, it resolved a dispute that arose out of the contract and constituted a proper basis for the award. AHTNA, Inc. v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

A particular claim may be arbitrable although it is not so designated by "clear and unequivocal" contract language. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974).

Expired contract dispute arbitrable. — Disputes over obligations arguably arising from an expired contract are arbitrable. AHTNA, Inc. v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

Ambiguous contract terms may be construed in favor of arbitrability where such construction is not obviously contrary to the parties' intent, especially where the party contesting arbitrability drafted the contract. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974).

Claim not arbitrable. — Where the parties have clearly agreed to arbitrate only those "disputes arising in connection with this contract" a particular claim is not arbitrable if it is nowhere mentioned in the contract. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974).

Statute of limitations for labor dispute. — Plaintiff's direct challenge to the arbitrator's decision concerning an alleged violation of a contract between his employer and labor organization is not governed by the 90-day limitations period of this section. Instead, the applicable statute of limitations is six months under federal law for hybrid U.S.C. § 301 claims. Patterson v. State, Dep't of Agric., 880 P.2d 1038 (Alaska 1994), cert. denied, U.S. , 115 S. Ct. 936, 130 L. Ed. 2d 881 (1995).

Monetary damages award appealable. — The question of whether the arbitrator exceeded his power in ordering monetary damages can be appealed. Board of Educ. v. Ewig, 609 P.2d 10 (Alaska 1980).

Question on review. — When an award is attacked under this article on the grounds that the arbitrators exceeded their powers through erroneous interpretation of the contract, the reviewing court should determine whether the construction of the contract made by the arbitrators is a reasonably possible one that can seriously be made in the context in which the contract was made. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974); Anchorage Medical & Surgical Clinic v. James, 555 P.2d 1320 (Alaska 1976), overruled on other grounds, Ahtna v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

Stated affirmatively, if all fair and reasonable minds would agree that the construction of the contract made by the arbitrators was not possible under a fair interpretation of the contract, then the court would be bound to vacate or refuse to confirm the award. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974); Anchorage Medical & Surgical Clinic v. James, 555 P.2d 1320 (Alaska 1976), overruled on other grounds, Ahtna v. Ebasco Con-

structors, Inc., 894 P.2d 657 (Alaska 1995).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. Anchorage Medical & Surgical Clinic v. James, 555 P.2d 1320 (Alaska 1976), overruled on other grounds, Ahtna v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

Review of contract construction. — Findings of fact are unreviewable and the arbitrators' construction of a contract will be reviewed to determine whether it is a reasonably possible one that can seriously be made in the context in which the contract was made. Breeze v. Sims, 778 P.2d 215 (Alaska 1989).

Basis for decision unreviewable. — The arbitrator's reasons for the award will not be scrutinized by the court, even if the basis is one other than that provided by the parties, so long as the arbitrator has resolved an arbitrable dispute. AHTNA, Inc. v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

Arbitrators generally need not follow applicable law when deciding issues. — The general rule in both statutory and common-law arbitration is that arbitrators need not follow otherwise applicable law when deciding issues properly before them, unless they are commanded to do so by the terms of the arbitration agreement. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974); Anchorage Medical & Surgical Clinic v. James, 555 P.2d 1320

(Alaska 1976), overruled on other grounds, Ahtna v. Ebasco Constructors, Inc., 894 P.2d 657 (Alaska 1995).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. Board of Educ. v. Ewig, 609 P.2d 10 (Alaska 1980).

Arbitrators held not to have exceeded their powers by awarding compensation based upon the claims of a party's subcontractors, who were not parties to the contract. University of Alaska v. Modern Constr., Inc., 522 P.2d 1132 (Alaska 1974).

Arbitration panel did not exceed its powers in finding that clients were obligated to pay their attorney's fees pursuant to an oral contract between the parties. Breeze v. Sims, 778 P.2d 215 (Alaska 1989).

Right to object to the alleged bias of an arbitrator was waived where the objecting party did not raise the matter at the arbitration hearing. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978).

Applied in Masden v. University of Alaska, 633 P.2d 1374 (Alaska 1981).

Quoted in Integrated Resources Equity Corp. v. Fairbanks N. Star Borough, 799 P.2d 295 (Alaska 1990).

Cited in Kodiak Oilfield Haulers, Inc. v. Local 879, Hotel Union, 641 P.2d 11 (Alaska 1982); **Kollodge v. State,** 757 P.2d 1028 (Alaska 1988).

Collateral references. — What constitutes corruption, fraud, or undue means in obtaining arbitra-

tion award justifying avoidance of award under state law, 22 ALR4th 386.

Sec. 09.43.130. Modification or correction of award by court. (a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.130 define the superior court's power to review and either vacate or modify an arbitration award. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978).

Limitation on judicial review. — An arbitrator's misconstruction of a contract is not open to judicial review, except on questions of arbitrability. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American

Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. Alaska State Hous. Auth. v. Riley Pleas, Inc., 586 P.2d 1244 (Alaska 1978).

Error calling for modification or correction must be manifestly clear. — Given the presumption that arbitration awards rendered in proper form are valid and the "evident mistake" prerequisite language of subsection (a), it follows that the error which calls for modification or correction of an arbitration award must be manifestly clear. Anchorage Medical & Surgical Clinic v. James, 555 P.2d 1320 (Alaska 1976).

overruled on other grounds, *Ahtna v. Ebasco Constructors, Inc.*, 894 P.2d 657 (Alaska 1995).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant

weight. *Anchorage Medical & Surgical Clinic v. James*, 555 P.2d 1320 (Alaska 1976), overruled on other grounds, *Ahtna v. Ebasco Constructors, Inc.*, 894 P.2d 657 (Alaska 1995).

Sec. 09.43.140. Judgment or decree on award. Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Award of attorney's fees held proper. — See *Anchorage Medical & Surgical Clinic v. James*, 555 P.2d 1320 (Alaska 1976), overruled on other grounds, *Ahtna v. Ebasco Constructors, Inc.*, 894 P.2d 657 (Alaska 1995).

The law favors arbitration with the minimum of court interference. *Municipality of Anchorage v. Frank Coluccio Constr. Co.*, 826 P.2d 316 (Alaska 1992).

Construing arbitrator's comments. — To the extent that there is ambiguity in whether the arbitrators' comments are "dicta" or "holdings," they should be analyzed in the context of the parties' contractual agreement to arbitrate. *Municipality of Anchorage v. Frank Coluccio Constr. Co.*, 826 P.2d 316 (Alaska 1992).

Cited in *Harold's Trucking v. Kelsey*, 584 P.2d 1125 (Alaska 1978).

Sec. 09.43.150. Applications to court. An application to the court under AS 09.43.010 — 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. (§ 1 ch 232 SLA 1968)

Cross references. — For court rules on service of a summons and motions, see Civ. R. 4, 5, and 77(a).

Sec. 09.43.160. Appeals. (a) An appeal may be taken from

- (1) an order denying an application to compel arbitration made under AS 09.43.020;
- (2) an order granting an application to stay arbitration made under AS 09.43.020(b);
- (3) an order confirming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the court with jurisdiction in this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on an award under the agreement. (§ 1 ch 232 SLA 1968; am § 4 ch 38 SLA 1987; am § 4 ch 38 SLA 1987)

NOTES TO DECISIONS

Cited in *Hydaburg Coop. Ass'n v. Hydaburg Fish-co*, 896 P.2d 751 (Alaska 1992).

Sec. 09.43.180. Short title. AS 09.43.010 — 09.43.180 may be cited as the Uniform Arbitration Act. (§ 1 ch 232 SLA 1968; am § 1 ch 94 SLA 1972)

SUGGESTED OUTLINE FOR SUBCOMMITTEE REPORTS

I. Agency & Department Name

II. BRU and Component Names as listed in state budget

III Total Budget, all funds

- identify fund sources

IV. Total Revenue derived

- net cost/income to state

V. Identify Constitutional and Statutory Provisions Governing Agency Operation.

VI. Agency Mission, Goals and Objectives

- do reality check

VII. Number of Employees

- Identify Specialized Expertise Needed for Mission

VIII. Describe Technology Used to Perform Mission

- Identify Specialized Equipment Needed for Mission

IX. List Existing Agency Contracts including amount, contractor, purpose, term, and procurement method.

X. Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability.

XI. Make Recommendations per Section 5 in SB 33, including suggestions for new legislation.

XII. Explain rationale for each recommendation, the number of votes for and against it.

XIII. List problems or barriers to implementing proposed privatization.

TRANSACTION REPORT

P. 01

AUG-25-1999 WED 11:43 AM

BROADCAST

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
AUG-25	11:33 AM	919074652864	3' 01"	8	SEND	OK	123	
	11:36 AM	919072833075	4' 08"	8	SEND	OK	123	
	11:41 AM	919074563346	2' 12"	8	SEND	OK	123	
TOTAL :						9M 21S	PAGES: 24	

Memorandum

Alaska Court System

204 Mission Road, Kodiak, AK 99615-9987

Tel: (907) 486-1621

Fax: (907) 486-1660

**TO: Kathi Yeotis, Director
Court Custody Investigator's Office**

FROM: Donald D. Hopwood, Superior Court Judge, Kodiak

DATE: November 16, 1998

RE: Child Custody Investigation Services in Kodiak

This memorandum responds to your request of October 29, 1998 for additional information about child custody cases in Kodiak that might be referred to the court custody investigator. Please also refer to my earlier memorandum to Wendy Lyford, Third District ACA, regarding your budget request for travel to Kodiak.

Attached are two letters from Kodiak attorneys who represent low income parents in child custody cases. I asked local attorneys to send me their views about the investigator's travel for inclusion in this memorandum.

Memorandum

Alaska Court System

204 Mission Road, Kodiak, AK 99615-9987

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Fax: (907) 486-1660

TO: Kathi Yeotis, Director
Court Custody Investigator's Office

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DATE: November 16, 1998

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Attached are two letters from Kodiak attorneys who represent low income parents in child custody cases. I asked local attorneys to send me their views about the investigator's travel for inclusion in this memorandum.

I estimate the number of cases referred each year to be 8-12. That number could increase once people know that the custody investigator is available in Kodiak.

The income range of the parents generally would be \$0 to about \$25,000 each (possibly more, depending upon the amount of debt and expenses). This is slightly higher than the income eligibility set out in Standing Order 3AN-AO-96-03 because the cost of living in Kodiak is substantially higher than in Anchorage. Also, the combined income cap in the standing order often is not realistic because the parents are maintaining two households, not one, in these cases.

I would consider ordering the parents to pay something toward the cost of the custody investigation. This likely would be on a sliding scale basis, which should be for the assigned judge to determine. Judges routinely use their discretion and judgment to determine how much in costs and attorney's fees parties pay in civil cases, administrative appeals, appeals to the superior court from the district court, and some criminal cases. I see no reason that we cannot do so for custody investigator expenses. What we do not need is a mandated fee schedule.

Memo, K. Yeotis
page 2

You asked about the effects of delay by having only 2-3 custody investigator trips to Kodiak each year, and how services can be better provided. The delay is unacceptable and the services are inadequate.

The delay is not acceptable because 1) children are at stake. Delay in these cases leaves them and the parents with uncertainty, which leads to stress, and continued disputes and turmoil; and 2) administrative goals for concluding cases within certain time frames will be frustrated.

Funding should permit a custody investigator to visit Kodiak 5 or 6 times per year if there are cases to investigate. John Hanscom's detailed expense accountings of his trips over the years should provide a reliable per day or per trip cost. In the overall scheme of things, the cost of these trips in a year is not that much. I might note that some additional economy in rental car expense might be available by using a DOT vehicle or possibly arranging for use of the adult or juvenile probation officers' vehicles here for home visits.

The several thousand dollars for 5-6 trips is an essential expenditure. We are talking about the custody of children when the parents can not sort it out and often do not have the money to even hire an attorney. The judges must have the investigator's timely observations and recommendations to decide legal and practical issues about raising children. We see cases where unrepresented parents, after filing a dissolution or divorce on their own, just quietly go away and do their own private custody arrangements because the system does not work for them.

Custody investigator travel funding raises some fundamental issues about access to justice that the court system has difficulty resolving on a day-to-day basis. I have to wonder why we must scrape and scratch for a few thousand dollars for this purpose but tens of thousands of dollars appeared for accoustic tiles on the ceilings of the new Anchorage courthouse, when the funding is available for extensive remodeling of administrative offices in the Snowden building and the Boney courthouse, when the personnel office nearly doubles in staffing, and when the parking lot around the admin building is paved in a year that there was "no money" for child custody investigators to come to some rural court sites.

The current discussion of access to the courts still is given only lip service when decisions are made about running the trial courts. In this case, we must ask why people in the rural areas must pay for services that people in Anchorage get for no cost. Access is difficult enough for divorcing parents who are indigent or nearly so without erecting the barriers of delay and money. Unfortunately,

Memo, K. Yeotis
page 3

many funding decisions in the past have not recognized this. It is time that funding priorities change to favor delivery of trial court services. Paying for the custody investigators to travel to Kodiak and other courts is one item that should be funded each year.

Finally, two groups in the child custody system are exceptions to the problems, and they should be commended highly. The first are the investigators who have worked Kodiak cases over the years, all of whom are dedicated, who work smart, who make it work under the most difficult of circumstances, and who even have advanced their personal funds for travel expenses to Kodiak. The second group are the private attorneys who do their level best to provide representation for people who have nowhere to turn, who take case after case for no or low pay, and who slog through pro bono service in its truest form. Not funding travel expenses inappropriately shifts the cost and difficulties of custody investigations to these people.

D

Memorandum

Alaska Court System

204 Mission Road, Kodiak, AK 99615-7312

Tel: (907) 486-1623

Fax: (907) 486-1660

TO: Wendy Lyford, Area Court Administrator
FROM: Donald D. Hopwood, Superior Court Judge, Kodiak
DATE: August 11, 1998
RE: Kodiak Travel Budget Request By Court Custody Investigator

Katherine Yeotis has informed me that the court custody investigator's office recently requested travel funds for fiscal year 2000 to travel to Kodiak. I fully support that request, and ask that it be given some priority.

The custody investigator's office conducts custody investigations upon appointment by the Superior Court when parties in custody disputes do not have the funds to pay for a private investigator. We have an estimated four to ten of these cases each year, and the need for an investigation is high. Because of Kodiak's location, the custody investigator does not have the funds or travel authorization to come to Kodiak, and the parties and their children must travel to Anchorage for personal interviews. Unfortunately, these people are often unable to do that because they are indigent and simply do not have the funds for airline tickets and possible lodging in Anchorage.

Over the past three years Kodiak has experienced fewer people willing and able to do custody investigations even on a full fee basis. No one is available to do them on a reduced or nominal fee basis. This results in some custody investigations being substantially delayed, or accomplished by inadequate means.

I will attempt to encourage the Kodiak bar to use the court custody investigator when their clients can pay and share the expense of travel. We did this until about two years ago when staffing limitations in the investigator's office prevented them from travelling to Kodiak, even when the expenses were paid by the parties. If we resume this practice, then we can make even better use of the custody investigator at less expense to the court system because, hopefully, some of the expenses will be paid by litigants who can afford to pay pro rata share. I think this will result in the best of all worlds; nonetheless, often it will require that some of the travel expenses be paid by the court system. Accordingly, I recommend highly that the travel budget request be approved.

Page 2
Ltr - Wendy Lyford
August 11, 1998

Thank you for your consideration of our needs in Kodiak in domestic relations cases.

A handwritten signature, possibly "W. Lyford", is written above the distribution list.

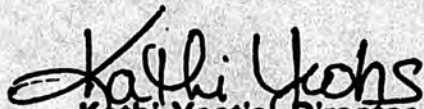
Copy to:
Katherine Yeotis, Director, Custody Investigator's Office
Magistrate Anna Moran
Clerk of Court Lori Wade

MEMORANDUM

July 14, 1998

TO: All Third Judicial District Family Court Judges and Masters

FROM:


Kathi Yeotis, Director
Custody Investigator's Office

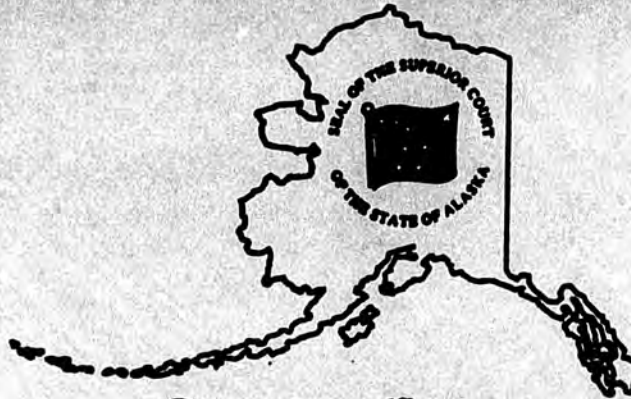
**REGARDING: New Report Format
Expedited Custody Investigations**

The Custody Investigator's Office recently completed a one day workshop on report writing. We are attempting to develop a standard format for custody investigation reports that will, hopefully, provide information in a clearer and more concise format. Most reports written beginning in mid-July will be in the new format. We plan to use this format over the next six months, at which time we will make necessary adjustments. Since our purpose is to provide information that assists the Court in making a custody/visitation determination, I would appreciate feedback on the new format, both positive and negative. Alternative suggestions are welcome.

We are also experiencing an increase in emergency domestic violence referrals and expedited custody investigations. While we will make every effort to complete these within the directed time frame, we have limited time set aside to perform these emergency investigations. It would be helpful to us, if you would have your office contact us before setting a Court date, sometimes as little as one additional week will enable us to do a thorough job. Also, if the matter is expedited, it needs to be noted on the Order For Custody/Visitation Investigation and the parties should be directed to contact us within two working days, rather than the ten days permitted in the standard language of the Order. This change just needs to be penciled in.

As always, please feel free to contact me if there are any concerns regarding this Office.

**cc: Hon. Elaine Andrews, Presiding Judge
Wendy Lyford, ACA**



Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT

FILED/RECEIVED
IN THE CHAMBERS OF
JUDGE DONALD D. HOPWOOD
Superior Court, State of Alaska
Third Judicial District at Kodiak

Time 4 PM
Date 3/24/99
Initials JS

CUSTODY INVESTIGATOR'S OFFICE
(907) 284-0428
FAX (907) 284-0522

303 K Street, Room 275
Anchorage, Alaska 99501-2083

CUSTODY INVESTIGATORS
Katherine Yeola, Director
John Hanescom
Bobbi Gibern
Susan Arth
Lea Hamilton

March 22, 1999

Mr. [REDACTED]
[REDACTED]
[REDACTED]

Mr. [REDACTED]
[REDACTED]
[REDACTED]

Mr. [REDACTED]
[REDACTED]
[REDACTED]

Ms. [REDACTED]
[REDACTED]
[REDACTED]

Mr. [REDACTED]
[REDACTED]
[REDACTED]

Ms. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
3KO 97-502 CI

[REDACTED]
3KO 97-404 CI

[REDACTED]
3KO 98-260 CI

Dear Counsel, Mr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED]

The purpose of this letter is to advise you that I will be unable to come to Kodiak in April as planned. Ms. [REDACTED] never provided her portion of the funds for the trip. The addition of Mr. [REDACTED] to the list made it possible for the trip to occur without Ms. [REDACTED]'s participation; however, the Chya/Holcomb (another case scheduled to be addressed) matter settled at the last minute which again left us short of funds to complete the travel. The delay in notification of settlement in this matter led to the loss of an airfare that would have allowed the travel to occur. (On 3/19 the fare was \$109, on 3/22 it was \$224.)

Without including Ms. [REDACTED], the total cost of the trip is about \$740, for the three remaining Kodiak parties. It is anticipated that three days would be needed in Kodiak as there are nine interviews that need to occur. This cost per person would be \$246. Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] have sent checks for \$194, based on earlier estimates. The additional funds (\$47 per party) must be received in this office before any travel will be scheduled. Please advise me as to how you wish to proceed with this matter. If Ms. [REDACTED] wishes to participate, she must provide the entire \$247 amount. If I have not heard otherwise by April 2, 1999, I will return the checks to the parties who issued them.

I apologize for any inconvenience this may cause; however if the total funds are not advanced, we can not travel. If you have any questions, feel free to contact me.

Sincerely,



Katherine Yeotis
Custody Investigator

cc: Court files 3KO-97-502 Civil
3KO-97-404 Civil
3KO-98-360 Civil

Hon. Fred. Torrisi

Hon. Donald Hopwood

COURT SYSTEM Subcommittee
Contact Information Sheet

Name: *Charles Rollins Jr*

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Alaska Court System
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99501

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Home Phone: *907-457-1500* ✓

Fax: *WORK: 907-458-8860* ✓
Home: 907-458-8525

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Address: *Home:*
936 NORTHERN LIGHTS DR.
FAIRBANKS, AK 99712

Post-It™ brand fax transmittal memo 7671		# of pages <i>4</i>
To <i>ANNETTE</i>	From <i>FBX 210</i>	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

COURT SYSTEM Subcommittee
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Email: aac@mosquitonet.com ✓

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North Pole, AK 99705

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Contact Information Sheet

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Home Phone: 456-8702 ✓

Fax: 457-8702 (call ahead) ✓

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Email: harris@mosquitonet.com ✓

Address:
PO Box 71925
Fairbanks, AK 99707

COURT SYSTEM Subcommittee
Contact Information Sheet

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Home Phone: 349-9104 ✓

Fax: 522-5405 ✓

Company: retired state medical examiner

Email: 0 ✓

Address: 921 Old Klotz Rd
ANC 99875

COURT SYSTEM Subcommittee
Contact Information Sheet

Name: Ken Pearyhouse ✓

Work Phone: 333-4881 ✓

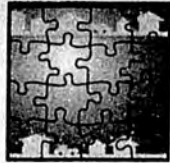
Home Phone: " ✓

Fax:

Company: Retired ✓

Email: prhouse@Alaska.net ✓

Address: 1913 Beaver Place
Anchorage, AK 99504



the
RESOLUTION CENTER
Finding peaceful solutions for family & community problems

WHO WE ARE:

Anchorage's only non-profit, community based dispute resolution resource offering no-cost or low-cost mediation services.

We have a cadre of highly trained and professional volunteer mediators. Our goal is to give individuals the support and skills to help themselves.

*A Special Thank You to
The Anchorage Municipality
and
Department of Family and
Youth Services for
Their On-Going Support.*

the
RESOLUTION CENTER

505 W. Northern Lights Blvd., Suite 210
Anchorage, Alaska 99503
(907) 274-1542 / Fax: (907) 274-0332



the
RESOLUTION CENTER
Finding peaceful solutions for family & community problems



Mediation
"... people solving their own problems"

Community and Family Services

"...increase the sense of justice in the community"

Victim Offender Mediation

Trained mediators bring the victim and offender together to discuss the crime and decide how to repair the harm caused by the crime. Offenders are held accountable, come to understand the harm they have caused and make restitution. Victims gain closure and agreement on restitution. Victim - offender mediation is safe, confidential, and it works. Ninety percent of youth offenders who participate in The Resolution Center sponsored mediations do not re-offend.

Parent-Teen Conflict

Sometimes all a family needs is someone who can help them talk and more importantly listen to each other. Confidential parent-teen mediation helps families work things out and agree on house rules. Teens are heard. Parents are heard. Everyone works together to resolve the problems.

Neighborhood Disputes

Disputes between friends and neighbors are never comfortable. Sometimes problems like barking dogs, public access across private property, and other neighborhood conflicts can make life at home miserable. A trained community mediator can help the parties resolve their problems in creative and effective ways.

Communication & Conflict Resolution Training

Learn to effectively manage conflict. Develop collaborative problem solving skills. The Resolution Center offers a variety of training sessions for groups and organizations. Our staff will work with you to design a course to meet your specific needs.

OUR MISSION

Conflict is an unavoidable part of our lives, but need not be destructive. The Resolution Center helps Alaskans peacefully resolve their differences using mediation. The Resolution Center's mediations end disputes, heal relationships and teach constructive conflict resolution skills.

Mediation

"Voluntary & Confidential"

Membership

"Make A Difference"

The Resolution Center provides these services through the generous support of community members like you. We need your help to make a difference in the lives of victims, youth offenders, families and community. Please make a donation and become a member of The Resolution Center today!

Volunteer

Join our staff of dedicated volunteer mediators. If you have mediation skills/experience and a strong desire to contribute to the community call our office for a volunteer application.

If you are a teen looking for a challenge, volunteer to be a mediator. You will work as a team with an adult mediator and gain valuable work and college experience, learn communication skills and contribute to your community.

De-Escalating A Conflict: Hints

- Speak softer
- Speak slower
- Look the person in the eye
- Relax and take a deep breath
- Use "I" statements
- Uncross legs and arms
- Take another deep breath
- Acknowledge another's position: "I can appreciate your situation..."
- Listen

PARENT - TEEN MEDIATION



What is Parent-Teen Mediation?

...a process in which a neutral third party helps parents and teens in conflict arrive at a mutually acceptable solution to their problem. In the process, agreement and disagreement are carefully explored, information is shared, options are developed and the interests of both parents and teens are clarified. The decision-making power and responsibility remain with the family and the goal is an equitable agreement based on consensus that both can live with. Mediation is always voluntary and confidential.

PARENT-TEEN CONFLICT

Sometimes all a family needs is someone who can help them talk and more importantly, listen, to each other. Confidential parent-teen mediation helps families work things out and agree on house rules. Teens are heard. Parents are heard. The mediators help the family to understand each other and find common ground. Everyone works together to resolve the problems.



MEDIATION BENEFITS:

- ◆ Family members begin to listen to each other
- ◆ Focus is on the problem - not a person
- ◆ Mutually acceptable agreements are worked out.
- ◆ Provides a method for follow-up

HELP *The Resolution Center* MAKE A DIFFERENCE

Families and the community need your help. *The Resolution Center* is only able to provide these services through the generosity of others. We need your help to make a difference to families and the community.

A SPECIAL THANK YOU
TO
THE ANCHORAGE MUNICIPALITY
AND
DEPARTMENT OF FAMILY AND
YOUTH SERVICES
FOR THEIR ON-GOING SUPPORT



***What is
The Resolution Center
????***

It is a place where parents and teens in conflict can get help in solving their problems.

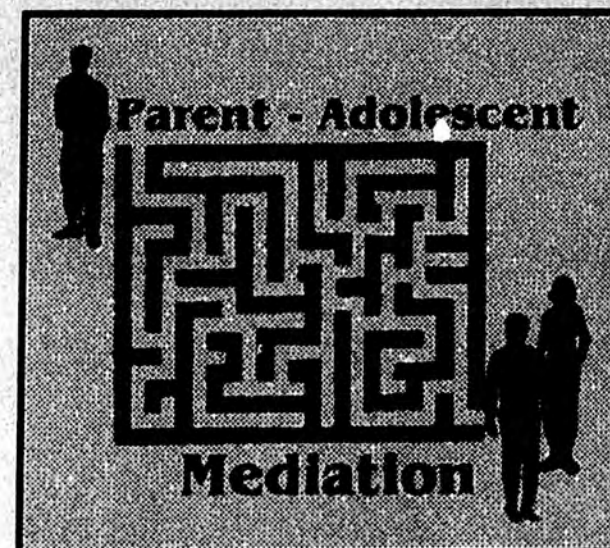
As Anchorage's only non-profit, community based dispute resolution resource, *The Resolution Center* offers no-cost or low-cost mediation services. We have a cadre of highly trained and professional volunteer mediators. Our philosophy is to provide parents and teens with the support and skills to help themselves.

Our Mission

Conflict is an unavoidable part of our lives that can tear the fabric of our families and communities. *The Resolution Center* believes conflict presents both a challenge and an opportunity to heal and restore relationships. We promote peaceful conflict resolution that empowers the parties, generates open and honest communication, results in mutually agreeable solutions, and encourages respect for others. *The Resolution Center* is founded on principles of restorative justice and collaboration.

**The Resolution Center
505 W. Northern Lights Blvd. Suite 210
Anchorage, AK 99503
(907) 274-1542
(907) 274-0332 fax**

***THE
RESOLUTION
CENTER***



***Finding peaceful solutions to family and
community problems***

The Resolution Center

Mission

Conflict is an unavoidable part of our lives that can tear the fabric of our families and communities. *The Resolution Center* believes conflict presents both a challenge and an opportunity to heal and restore relationships. We promote peaceful conflict resolution that empowers the parties, generates open and honest communication, results in mutually agreeable solutions, and encourages respect for others. *The Resolution Center* is founded on principles of restorative justice and collaboration.

THE RESOLUTION CENTER **First Annual Membership Drive**

Name _____

Address _____

Phone _____ (home) _____ (work)

Send to: *The Resolution Center*
505 West Northern Lights Blvd., Suite 210
Anchorage, AK 99503

Thank You!

THE RESOLUTION CENTER

First Annual Membership Drive

Help The Resolution Center expand our services! We want people who need help to get it. Right now there are neighborhoods that are being torn apart by warring neighbors who are locked in ugly, unproductive disputes. We want to reach out help them develop peaceful solutions.

Your membership donation will allow The Resolution Center to develop and fund a new neighbor to neighbor mediation program. Become a member of *The Resolution Center*; make a difference in your community. Your donation will support our programs, and we'll keep you informed through our quarterly newsletter.

We have several giving levels:

<i>Advocate</i>	\$10.00
<i>Facilitator</i>	\$15.00
<i>Collaborator</i>	\$25.00
<i>Mediator</i>	\$50.00
<i>Peacemaker</i>	\$75.00
<i>Diplomat</i>	\$100.00+

Make a difference today.....

Families in Anchorage need your help. Our community needs your help.
Foster peaceful solutions to harmful disputes by becoming a member of

The Resolution Center

Yes, I believe peaceful solutions are possible. Here is my membership donation:

\$10.00____ **\$15.00**____ **\$25.00**____ **\$50**____ **\$75.00**____ **\$100.00+**____

*You may list my name as a member of The Resolution Center.*_____

I am interested in volunteer opportunities. Please contact me at _____.

Donations are tax deductible.

THANK YOU!

Harvard Law School / November 12-13, 1993

JUDGE'S DESKBOOK ON COURT ADR

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ADR PROCESSES**ADR Terms and Concepts****ADJUDICATORY AND CONSENSUAL PROCESSES.**

Some dispute resolution processes are *adjudicative*, involving a third-party decision-maker who renders a decision based on adversarial presentations. Others are *consensual processes*, in which the parties are the decision-makers. In the ADR landscape, arbitration is the classic adjudicatory process; mediation and negotiation are the primary consensual processes. The following chart highlights the key distinctions between *adjudicatory* and *consensual* approaches to problem-solving.⁴

Adjudicatory Processes**3rd party decision-maker****Formal****Dominated by attorneys****No ex parte meetings****Objective focus on facts and rights****Looks to past****Application of external norms
and standards****Results in winner and loser****Consensual Processes****Parties are decision-makers****Informal****Key role for clients****Possibility of ex parte meetings****Subjective focus on needs and interests****Looks to future****Exploration of parties' norms and standards,
as well as external norms and standards****Results in accommodative resolution**

⁴ Adapted from unpublished teaching materials of Frank E.A. Sander, a professor at Harvard Law School, and Margaret L. Shaw, a mediator, trainer and Senior Consultant to the CPR Judicial Project.

ADR PROCESSES**ADR Terms and Concepts****RIGHTS-BASED AND INTEREST-BASED PROCESSES.**

ADR processes can contain both *interest-based* and *rights-based* elements, depending on the structure of the process (e.g., a summary jury trial involves both outcome prediction and facilitated negotiation) or the style of the neutral (e.g., some mediators predict legal outcome as well as facilitate negotiations).

Interest-based dispute resolution processes expand the legal discussion to look at underlying interests, deal with emotions, and seek inventive solutions. The focus of these processes is on clarifying the parties' real motivations or underlying interests in the dispute. Mediation is a process that traditionally focuses mainly on underlying interests. *Rights-based* processes narrow issues, streamline legal arguments, and predict or render judicial outcomes based on assessments of fact and law. Arbitration is a *rights-based* process.

Key differences between *interest-based* and *rights-based* processes are highlighted below:⁵

Interest-Based Processes

Enhance communication

Deal with emotions

Clarify interests

Expand issues

Invent options

Search for joint gains

Rights-Based Processes

Focus legal issues

Deal with legal arguments

Clarify facts and data

Narrow issues

Streamline arguments

Evaluate likely outcomes

⁵ Adapted from unpublished teaching materials of Frank E.A. Sander, a professor at Harvard Law School, and Margaret Shaw, a mediator, trainer, and Senior Consultant to the CPR Judicial Project.

1. MEDIATION

- 1.01 DEFINITION**
- 1.02 THE PROCESS**
- 1.03 NEUTRALS**
- 1.04 CLIENT ROLES**
- 1.05 SELECTING CASES FOR MEDIATION**
- 1.06 TIMING**
- 1.07 BENEFITS AND CONCERNS**

1.01 DEFINITION

Mediation is a flexible, nonbinding dispute resolution process in which an impartial neutral third party — the mediator — facilitates negotiations among the parties to help them reach settlement. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by going beyond the legal issues in controversy.

Mediation is considered by many the settlement process of first-choice, because of its wide applicability and relatively low cost to litigants and the court. The mediator, trained in communication and negotiation techniques, and knowledgeable about federal litigation, assists the negotiations in the following ways:

- Works to improve communication across party lines;
- Helps each party clarify its understanding of its underlying interests and concerns, as well as those of its opponents;
- Probes the strengths and weaknesses of each party's legal positions;
- Explores the consequences of not settling;
- Generates options for mutually agreeable resolution to the dispute.

The mediation process can take various forms, depending on the nature of the dispute, the approach of the mediator, the timing of the intervention, and the goals of the court. All or part of a dispute may be mediated. Federal court mediation may occur under the auspices of a court-wide program or pursuant to individual judge initiative. Referrals may be based on party consent or mandated by the court.

ADR PROCESSES**Mediation****1.02 THE PROCESS**

A typical mediation progresses through the following stages:

- **Preparing for Mediation.** To educate the mediator about the dispute, some courts require counsel to submit key documents and short written statements shortly before the first mediation session. These materials, which describe the substance of the suit, do not become part of the court file and are returned to the parties at the conclusion of the process.
- **Locale.** Court-based mediation is generally conducted either at the courthouse or at the offices of the attorney-mediator. Some suggest that a courthouse location is preferable, space permitting, because the setting invests the process with a seriousness and dignity that is often helpful to the negotiations.
- **Initial Joint Session.** A typical mediation consists of a series of joint and separate sessions between the mediator and the parties. At the initial joint session, the mediator usually explains the mediation process, hears short presentations from each side, and asks open-ended questions to clarify positions and interests.
- **Initial Separate Sessions (or Caucuses).** The mediator often then meets privately with each party and counsel to explore in a confidential setting each party's underlying interests and concerns, both legal and non-legal, and to help them weigh the import of multiple interests and determine their priorities.
- **Subsequent Separate and Joint Sessions.** The parties are helped to develop options and alternative proposals that will result in a mutually acceptable resolution. At this stage, the mediator may help the parties generate ideas, evaluate alternatives realistically, and consider the consequences of not settling.
- **Completing the process.** Courts differ as to who will draft the agreement in cases where the parties reach settlement. Usually the mediator will record an outline of the terms, and one of the attorneys will be given responsibility for preparing a final draft. If complete settlement is not possible, the mediator will seek partial agreements and/or help the parties consider other dispute resolution options.

How long a mediation lasts varies with the complexity of the dispute. Recent data from the Southern District of New York indicate that mediation of a standard civil case takes on average nine-to-eighteen hours and involves several sessions. Some court mediation guidelines set a deadline for completing the process, e.g., 30-90 days after the referral. Other courts do not, leaving this issue to the assigned judge and/or the mediator.

ADR PROCESSES**Mediation****1.03 THE NEUTRALS**

Mediators in federal court programs are usually lawyers (although sometimes experts from other disciplines are asked to serve), who are invited by the court to serve as mediators because of their experience in federal court litigation, their standing in the local legal community, and/or their process skills.

In the better programs, the participating neutrals attend two-to-four day mediation training programs sponsored by the courts. Most serve on a volunteer basis, although some courts offer modest compensation from public funds or require parties to pay the neutral's fee. In a few districts, fees are set by the court; in others market rates prevail. In many courts, pro bono service by mediators and sliding scale fees are in place for low-income litigants.

In some courts, magistrate judges or district judges serve as mediators. Occasionally, two or more mediators are used.

1.04 CLIENT ROLES

To promote greater involvement by clients in resolving the dispute, a number of court-based mediation programs encourage or require the attendance of the client or a settlement-empowered representative at the mediation sessions. In cases involving insurance carriers, the court may also require attendance by an insurance representative with full authority to settle. Similarly, in cases involving a governmental unit, some courts require a representative of the government agency to attend, in addition to counsel.

This emphasis on client participation is also true of other court-based ADR processes, such as early neutral evaluation (*see infra* at 3), summary jury trial (*see infra* at 19), and the minitrial (*see infra* at 25). Client participation is also increasingly required in judicially-hosted settlement conferences. *See, e.g., G. Heilman Brewing Co. Inc. v. Joseph Oat Corp.*, 848 F.2d 1415 (1989). The nature of client participation differs from process to process.

1.05 SELECTING CASES FOR MEDIATION

Some mediation programs target complex cases; others select simpler cases; many are open to all or almost all civil cases. Mediation has proved useful in so many kinds of disputes that some court ADR experts favor its use in almost all cases, both for case management and settlement.

Because of mediation's wide applicability, selection guidelines are not easily articulated. Most court mediation programs do not specify precise criteria for identifying cases for mediation. A few courts divert specified categories of cases to mediation; most courts however, ask the assigned judge to assess the suitability of individual cases on his or her docket to mediation.

ADR PROCESSES**Mediation**

One commonly-used listing of selection criteria identifies the following kinds of disputes as well-suited to mediation:

- Cases involving a bench trial, where it would be inappropriate for the assigned judge to become involved in intensive settlement discussions;
- Complex cases requiring creative solutions that cannot be fashioned through traditional adjudication;
- Cases in which the parties have a continuing relationship, including employment/labor, business disputes, and family disputes;
- Environmental, regulatory, and public policy disputes involving public or private parties, or both;
- Cases in which the dispute is caused by poor communication between the parties.

Mediation has also proved useful in so many situations that this listing, while often cited, provides only partial guidance. For example, while mediation is thought to be particularly helpful in disputes involving continuing relationships, the process has also proved worthwhile in personal injury cases, consumer cases and many other cases involving *non-continuing* relationships. Additionally, mediation has been effective in many other kinds of legal disputes, involving commercial, financial and real estate transactions, construction, technology, product liability, consumers, trademark, patent and unfair competition, antitrust, insurance coverage, partnerships and joint ventures, mineral extraction, discrimination, and defamation. *For more information about ADR case selection, see Referring Cases to ADR: A Framework for Judicial Analysis, infra at 53.*

Often excluded from eligibility for mediation are:

- Cases handled by other ADR programs in the district (such as contract and tort disputes under \$100,000 referred to a mandatory arbitration program).
- Categories of cases generally resolved without hearings, such as administrative agency appeals, habeas corpus or extraordinary writs, forfeitures or bankruptcy appeals, social security, and prisoner cases.
- Cases brought by unrepresented parties.

ADR PROCESSES**Mediation****1.06 TIMING OF MEDIATION USE**

Mediation is used at every stage of litigation. Interest in mediation as an *early* settlement device is increasing, with some courts testing mediation's capacity to resolve disputes before the parties' positions are hardened and substantial costs incurred. Where parties need additional information or legal rulings to assess settlement options, early resolution of key motions and targeted disclosure or discovery can be arranged to facilitate the effort. Mediation is also used at the end of the pretrial period in some courts.

1.07 BENEFITS AND CONCERNS

Some of the principal benefits claimed for court-sponsored mediation include:

- Offers litigants a consensual problem-solving approach and the opportunity for creative, mutually satisfactory resolutions.
- Broadens the court's dispute resolution services at a relatively low cost and meets increased litigant demand for facilitated settlement assistance.
- Provides a catalyst for settlement in many kinds of cases.
- Results in high litigant satisfaction.

Concerns voiced about court-based mediation programs include:

- Concern whether courts can and will devote sufficient staff and other resources to mediation programs to ensure quality mediator training, judicial education, bar outreach, and evaluation.
- Because some cases do not settle, concern about adding an additional layer to the pretrial process and increasing litigation costs.
- Fear that referral will be used by some judges to divert litigation and litigants they consider undesirable.
- Concern that judges will exert undue pressure on litigants to mediate or that the mediation process itself will compel settlements.
- Concern about the effect unpaid or modestly-compensated mediators will have on the quality of services rendered over time.
- Concern that issues of public significance are resolved without public visibility or accountability.

2. ARBITRATION

- 2.01 DEFINITION**
- 2.02 THE PROCESS**
- 2.03 SELECTING CASES FOR ARBITRATION**
- 2.04 RESEARCH RESULTS**
- 2.05 BENEFITS AND CONCERNS**

2.01 DEFINITION

Court-annexed arbitration is an adjudicatory dispute resolution process in which one or more arbitrators issue a nonbinding judgment on the merits after an expedited, adversarial hearing. The arbitrator's nonbinding decision addresses only the disputed legal issues and applies legal standards. Either party may reject the nonbinding ruling and request a trial de novo in district court.

Court-annexed arbitration is believed to be particularly suited to contract and tort cases involving modest amounts of money, where litigation costs are often disproportionate to the amounts at stake. Federal statute currently authorizes ten federal district courts to institute mandatory court-annexed programs in which party participation is compulsory. Ten other districts are authorized to implement voluntary court-annexed programs in which parties participate by choice. Where arbitration is voluntary, the parties can make the arbitrator's decision final and binding by mutual agreement.

2.02 THE PROCESS

Court-annexed arbitration programs generally work as follows:

- **Referral.** Cases are referred to arbitration either by court mandate or by agreement of the parties. The hearing is conducted by a single arbitrator or a panel of three arbitrators.
- **Arbitrator.** The arbitrators are lawyers who meet qualification standards set by the court and who serve for a small fee or no fee at all. Arbitrators may be assigned by one of several methods: by random draw from a pool of potential arbitrators (often with the opportunity for parties to strike names), by parties reaching consensus on a nomination, or by the court selecting the arbitrator(s).

ADR PROCESSES**Arbitration**

- **Timing.** The hearing is generally held after limited discovery and within two-to-six months of the time the case is at issue.
- **Case Presentations.** At the hearing, each side presents its case under relaxed rules of evidence.
- **Decision.** After the hearing, the arbitrator issues a decision on the merits and, where appropriate, determines an award. The decision is nonbinding.
- **Trial De Novo.** Parties dissatisfied with the decision may file a demand for trial de novo. If a demand is filed, the case returns to the regular docket for trial by the assigned judge, and the trial proceeds as though the arbitration had not occurred. In most courts, trial requests must be accompanied by a deposit equal to arbitrator's fees. If the trial requester does not improve on the arbitrator's award, the deposit is forfeited.
- **Judgment.** If a trial de novo is not demanded, the arbitration award becomes a non-appealable judgment of the court.

2.03 SELECTING CASES FOR ARBITRATION

The primary targets of *mandatory* federal court arbitration programs are small-to-moderate contract, personal injury, and property damage disputes where the amount in controversy does not exceed \$100,000. Suits involving constitutional rights, civil rights, or elective franchise, as well as claims exceeding \$100,000, are excluded by statute (except for two courts with a \$150,000 cap that pre-dated the statute). Some Civil Justice Reform Act Advisory Groups and others have recommended raising the federal monetary ceiling to \$150,000 or higher, on the theory that disputes in this range are fairly characterized as modest and well-suited to resolution through this shortened form of adjudication.

In *voluntary* federal arbitration programs, cases are selected for referral by consent of the parties and the assigned judge.

2.04 RESEARCH RESULTS

Court-annexed arbitration is the only court ADR process that has been extensively studied. The main studies suggest that the process can reduce both court burden and litigant costs, though the design and conduct of particular programs strongly affect their impact.

ADR PROCESSES**Arbitration**

The following summarizes major findings of a 1990 study by the Federal Judicial Center of the ten mandatory federal programs.¹

- **Litigant Satisfaction and Views on the Fairness of Procedures.** The study found no evidence that litigants felt that they had received second-class justice. Both lawyers and parties involved in the mandatory programs approved the arbitration procedures generally and believed that the procedures used in their individual hearings were fair.
- **Increased Options for Litigants.** Arbitration offers litigants in smaller cases the opportunity to have their cases resolved by a third-party adjudicator, an option which many of the litigants found attractive. Under traditional court processes, most smaller cases terminate without a decision on the merits. Even where a trial de novo demand was made, over half of the parties and attorneys surveyed in the Federal Judicial Center research did not consider their arbitration a waste of time.
- **Cost Reduction.** Arbitration programs may reduce the costs of litigation. When asked whether they thought savings were achieved through arbitration, about two-thirds of the attorneys responded affirmatively. When asked whether their dispute was resolved at a reasonable cost, about two-thirds of the parties responded in the same way.
- **Reduction in Time to Disposition.** Parties reported reasonable case processing times for arbitration cases, and arbitration did not appear to delay resolution of de novo cases. Other research has found that arbitration programs can, but do not always, reduce disposition times.
- **Reduction in Court Burden.** A large majority of the judges supported their court's arbitration program and believed that arbitration reduced court burden.

B. Meierhoefer, *Court-Annexed Arbitration in Ten District Courts* (Federal Judicial Center 1990).

2.05 BENEFITS AND CONCERNS

In summary, some benefits claimed for court-annexed arbitration include:

- Provides litigants in small-stakes cases with a low-cost semi-formal adjudication and a "day in court."
- Ensures, when mandatory, that court-annexed arbitration programs handle

¹ B. Meierhoefer, *Court-Annexed Arbitration in Ten District Courts* (Federal Judicial Center 1990).

ADR PROCESSES**Arbitration**

enough cases to reduce a court's caseload burden and justify the administrative costs of the program.

- Offers litigants a speedy and inexpensive avenue for resolution, while preserving access to full court process if litigants choose.
- Reduces judicial caseload burden so that judicial resources can be reallocated elsewhere.

Some concerns raised about court-annexed arbitration include:

- The additional staffing and other resources required by major court-annexed arbitration programs.
- Despite litigant approval, concern about the long-term impact on the public justice system of diverting large categories of federal litigants to the process, particularly the impact on the perception and reality of equal access by all litigants to the public courts.
- Uncertainty over the quality of arbitrators, the adequacy of selection and training, and the effect unpaid or modestly compensated arbitrations will have on the quality of services rendered over time.
- Uncertainty over whether mandatory referrals coupled with disincentives for rejecting awards unduly interfere with the right to trial.
- Concern about lower-stakes cases receiving second-class justice.



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The ABCs of ADR: A Dispute Resolution Glossary

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Some ADR procedures, such as binding arbitration and private judging, are similar to expedited litigation in that they involve a third-party decision-maker with authority to impose a resolution if the parties so desire. Other procedures, such as mediation and the minitrial, are collaborative: a neutral third party helps a group of individuals or entities with divergent views to reach a goal or complete a task to their mutual satisfaction.

Arbitration and mediation tend to be the mechanisms most often used and, for many people, are synonymous with the term, "ADR." But to respond to specific needs, parties often craft hybrid procedures that combine elements of one or more dispute resolution methods.

The following glossary is designed to help parties communicate about this rapidly changing field. Definitions are not standardized, but flexible and creative like ADR itself. And with all aspects of ADR, it is most important not that the parties use exactly the same terms, but that they understand each other.

We have divided the glossary into private and court-related ADR processes. Most of these working definitions are derived from prior publications of the CPR Institute for Dispute Resolution, a number of which address particular ADR processes in depth. Click here for a complete list of [CPR Publications](#) and [ADR practice tools](#).

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- [Private ADR Processes](#)
 - [Court-Related ADR Processes](#)

Private ADR Processes

[Arbitration](#)
[Binding Arbitration](#)
[Non-Binding Arbitration](#)
["Baseball" or "Final Offer"](#)
[Arbitration](#)
["Bounded" or "High-Low"](#)
[Arbitration](#)
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conduct the settlement negotiations or ADR procedure. The negotiation or ADR efforts may proceed concurrently with litigation or during an agreed-upon cessation of litigation. This approach is particularly useful in cases when: it may not be feasible to abandon litigation while the parties explore settlement possibilities; or as a practical matter, the specter of litigation must be present in order for the opposing party to consider or agree to an alternative mechanism. It also is useful when the litigation has become acrimonious or when a suggestion of settlement would be construed as a sign of weakness.

CPR Publications

Court-Related ADR Processes

Court-Annexed Mediation
Mediation
Early Neutral Evaluation
Court-Annexed Arbitration
Summary Jury Trial
Appellate ADR
Judge-Hosted Settlement
Conferences

Court Minitrial
Case Valuation
Multidoor Courthouse or Multi-
Option ADR
Settlement Week
Private Judging

Court-Annexed Mediation. In mediation, a neutral third party the mediator facilitates negotiations among the parties to help them settle. The mediation session is confidential and informal. Disputants clarify their understanding of underlying interests and concerns, probe the strengths and weaknesses of legal positions, explore the consequences of not settling, and generate settlement options. The mediator, who may meet jointly or separately with the parties, serves solely as a facilitator and does not issue a decision or make findings of fact. A hallmark of mediation is its capacity to help parties expand traditional settlement discussions and broaden resolution options, often by going beyond the legal issues in controversy.

Mediation works much the same in courts and in private settings, with a few important differences. A court mediation program may be based in the court, or may involve referral by the court to outside ADR programs run by bar associations, nonprofit groups, other local courts, or private ADR providers. Some courts require litigants to use mediation in what are known as mandatory mediation programs. The purpose of the mediation session is unchanged whether litigants enter the program voluntarily or by court mandate. The court mediator may be a lawyer trained in mediation and compensated by the parties, or serve as a volunteer. Judges, magistrate judges, or court ADR professionals also serve as mediators in some court programs.

Mediation is the primary ADR process in federal, state and local courts, second only to the traditional judicial settlement conference. Mediation has proved useful in so many kinds of disputes that some experts favor its use in all civil cases, to improve case management and settlement.

In the federal system, more than 40 of the 94 district courts and almost all the circuit courts have mediation programs using judges or lawyers as mediators. Mediation programs are also underway in more than one-third

of the state courts and in many bankruptcy courts.

Early Neutral Evaluation. Like mediation, ENE is applicable to many types of civil cases, including complex disputes. In ENE, a neutral evaluator a private attorney expert in the substance of the dispute holds a several-hour confidential session with parties and counsel early in the litigation to hear both sides of the case. Afterwards, the evaluator identifies strengths and weaknesses of the parties' positions, flags areas of agreement and disputes, and issues a non-binding assessment of the merits of the case.

Developed during the mid-1980's in the San Francisco federal court, ENE is now used in 18 federal district courts and several state courts. Usually, attorneys trained by the court serve as evaluators; in some courts, including the Southern District of California, magistrate judges conduct ENE sessions.

Originally designed to make both case management and settlement more efficient, ENE has evolved into a pure settlement device in some courts. Used this way, ENE resembles evaluative mediation, in which the mediator uses case evaluation as a settlement tool.

Court-Annexed Arbitration. An adjudicatory dispute-resolution process in which one or more arbitrators issue a non-binding judgment on the merits, after an expedited, adversarial hearing. The arbitrator's decision addresses only the disputed legal issues and applies legal standards. Either party may reject the non-binding ruling and proceed to trial.

Court annexed arbitration is used mainly in small- and moderate-sized tort and contract cases, when litigation costs are often disproportionate to the amounts at stake. Twenty-six federal district courts have established mandatory or voluntary arbitration programs and arbitration is common in many state courts. In some courts, about a third of all civil cases are referred to arbitration. Still, new court-annexed arbitration programs are rare these days. Once the premier court ADR process, it has lost popularity in recent years. Most court ADR development focuses on mediation.

Summary Jury Trial. The summary jury trial is a non-binding ADR process used to promote settlement in trial-ready cases headed for protracted jury trials. Usually a judge or magistrate judge presides over the SJT; occasionally, a neutral attorney conducts the process. Part or all of a complex dispute may be submitted to a summary jury trial. After an abbreviated hearing in which counsel present evidence in summary form, the jury renders an advisory verdict. Non-binding, it becomes the basis for subsequent settlement negotiations. If the parties do not reach a settlement, the case proceeds to trial.

Because they are costly, SJTs are used relatively rarely. Typically, the SJT is reserved for large cases when other settlement efforts have failed and litigants differ significantly about jury outcome.

Appellate ADR. Mediation programs have become increasingly popular among the nation's appeals courts. Each of the 12 federal circuits either has a settlement office or plans to open one shortly. One the state level, at least 50 appeals courts have used mediation at some time, and approximately 25 courts currently have active programs.

Unlike trial-level ADR, which ranges from mandatory arbitration to multidoor courthouses, appellate programs tend to look very similar. In most programs, staff attorneys or outside lawyers conduct mandatory, pre-argument conferences in those cases that seem most likely to settle. Some appellate programs are geared exclusively toward settlement, while other programs also address case management and procedural issues.

Judge-Hosted Settlement Conferences. The most common form of ADR used in federal and state courts is the settlement conference presided over by a judge or magistrate judge. Almost 94 of the federal district courts use judicial settlement conferences routinely, and nearly one-third of the courts assign this role almost exclusively to magistrate judges.

The classic role of the settlement judge is to articulate judgments about the merits of the case and to facilitate the trading of settlement offers. Some settlement judges and magistrate judges also use mediation techniques in the settlement conference to improve communication among the parties, probe barriers to settlement, and assist in formulating resolutions. In some courts, a specific judge or magistrate judge is designated as settlement judge. In others, the assigned judge (or another judicial officer who will not hear the case) hosts settlement conferences at various points during the litigation, often directly before trial.

Court Minitrial. The minitrial is a flexible, non-binding settlement process primarily used out of court. During the past decade, some federal district judges have used their own version of the minitrial. Like the summary jury trial, the court minitrial is a relatively elaborate ADR method generally reserved for large disputes.

In a typical court minitrial, each side presents a shortened form of its best case to settlement-authorized client representatives usually senior executives. The hearing is informal, with no witnesses and a relaxation of the rules of evidence and procedure. A judge, magistrate judge or non-judicial neutral presides over the one- or two-day hearing. Following the hearing, the client representatives meet, with or without the neutral adviser, to negotiate a settlement. At the parties' request, the neutral advisor may assist the settlement discussions by acting as a facilitator or by issuing an advisory opinion. If the talks fail, the parties proceed to trial.

Case Valuation ("Michigan Mediation"). This hybrid ADR process provides litigants in trial-ready cases with a written, non-binding assessment of the case's judgment value, delivered by a panel of three attorneys with subject-matter expertise after a very short hearing. If the panel's valuation is accepted by all parties, the case is settled for that amount. If any party rejects the panel's assessment, the case proceeds to trial.

Used only in the federal and state courts in Michigan, the arbitration-like valuation process is known widely by the misnomer "Michigan Mediation." Established in the Michigan state courts almost 20 years ago, today the process is used mainly for money-only contract, personal injury and civil rights cases.

Multidoor Courthouse or Multi-Option ADR. This term describes courts that offer an array of dispute resolution options or screen cases and then

channel them to particular ADR methods. Some multidoor courthouses refer all cases of certain types to particular ADR programs, while others offer litigants a menu of options in each case. Multidoor courthouses have been established in state courts in New Jersey, Texas, Massachusetts, and the District of Columbia. On the federal level, courts in the Western District of Missouri, the Northern District of California, the District of Rhode Island, and others now have multi-option ADR.

Settlement Week. In a typical settlement week, a court suspends normal trial activity and, aided by bar groups and volunteer lawyers, devotes itself to the mediation of long-pending civil cases. Mediation is the mainstay ADR method in a typical settlement week. Volunteer lawyers conduct mediations in courtrooms, conference rooms and other areas of the courthouse. Sessions may last an hour or two, with additional sessions held as needed. Unresolved cases return to the court's docket.

Settlement weeks are used regularly only in two federal district courts. The process is used more widely in state courts and a few federal courts send cases to settlement weeks sponsored by local state courts.

Private Judging. Private judging is a general term used to describe a private or court-related process in which disputing parties empower a private individual to hear and decide their case. The procedure may be exclusively a matter of contract between the parties or may be undertaken in connection with an authorizing statute. When authorized by statute, the process is sometimes referred to by the colloquial term, "Rent-a-Judge."

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Part 1:

Survey of Programs in Other Jurisdictions

This section of the report first defines each of the three dispute resolution processes specified in the legislation and summarizes research regarding their effectiveness. It then surveys court-connected programs in other state courts and in the federal courts. The report does not include information about the many programs that operate outside of, or independent of, the courts.

I. Definitions & Summary of Research Findings

Alternative Dispute Resolution (ADR) in its most general sense refers to dispute resolution procedures other than adjudication by a court. For purposes of this legislation, the Alaska Legislature limited "alternative dispute resolution" to three processes: arbitration, early neutral evaluation and mediation. These procedures are defined below. (The following definitions come largely from the Center for Public Resource's JUDGE'S DESKBOOK ON COURT ADR (1993). More detailed explanations of the three processes are included in Appendix B.)

A. Arbitration

Arbitration is a mandatory, adjudicative process in which a third party other than a judge or jury reviews facts and hears arguments from both sides and then renders a decision. When courts mandate arbitration, it is non-binding unless the parties themselves agree to be bound. Dissatisfied parties can reject the advisory arbitration award and insist on a trial de novo. Court-annexed arbitration is notable in several ways. First, it is relatively old, the first program having been set up in Philadelphia in 1952. Second, it is common, having spread by the early 1990s to both federal and state courts.

Federal arbitration programs typically include minor civil cases seeking no more than a specified upper dollar limit. Although the trend over time has been to increase the dollar limits, arbitration-eligible cases in the federal courts typically range from

\$75,000 - \$150,000 in damages. In the state courts, arbitration-eligible cases typically have lower ceilings, usually around \$50,000 (although Hawaii's arbitration program has a \$150,000 ceiling). Most arbitration programs focus on routine contract, personal injury and property damage cases.

Court-ordered arbitration, unlike other forms of ADR, has been subjected to systematic empirical study for more than a decade.¹ Researchers first compared arbitrations to trials. They found that arbitration hearings were, on average, shorter than trials, involved less attorney preparation time than trials, cost both courts and private litigants less than trials, and generally required less time in the schedule queue than trials.²

A second generation of research examined arbitration's effects on case processing and settlement behavior. These analyses showed that in most instances, the arbitration process does not divert cases from trial, but rather provides an alternative to a settlement reached without a hearing.³ In other words, arbitration provides an alternative form of adjudication to many cases that would settle without any hearing.⁴

Thus, most court-ordered arbitration programs do not significantly reduce the number or rate of trials.⁵ However, litigants and their attorneys consistently have reported high levels of satisfaction with the arbitration process and its outcome, and this is true whether they won or lost.⁶

¹ *An Alternative View*, *supra* note 36, at 406.

² *Id.* at 406-07.

³ *Id.* at 407. See also MacCoun, *Unintended Consequences of Court Arbitration: A Cautionary Tale from New Jersey*, 14 JUSTICE SYSTEM JOURNAL 229 (1991). MacCoun reported on a study of court-annexed automobile arbitration in New Jersey. He found that after the arbitration program began, there was a significant reduction in the percentage of cases settled without third-party intervention, but no reliable decrease in the trial rate, and a significant increase in filing-to-termination time for auto cases assigned to the program. *Id.* at 229.

⁴ *An Alternative View*, *supra* note 36, at 408.

⁵ *Id.*

⁶ *Id.* at 415.

B. Early Neutral Evaluation

Early Neutral Evaluation ("ENE") began in 1983 with an experiment in the U.S. Northern District of California. The program became permanent in 1988. In early neutral evaluation, a neutral evaluator (usually a private attorney expert in the substance of the dispute) holds a brief, confidential, nonbinding session early in the litigation to hear both sides of the cases. The evaluator identifies the main issues in dispute, explores the possibility of settlement, and assesses the merit of the claims. The evaluator also may discuss and review ways of settling or simplifying the case with the parties, for example, a discovery or motion plan.

Courts experimenting with ENE have used it for a wide array of civil disputes including contract, product liability, labor and employment and personal injury cases. ENE also may be helpful in cases handled by inexperienced or poorly-prepared counsel, cases involving high levels of animosity among parties, complex legal disputes involving multiple issues or cases where the parties differ substantially on legal or factual issues.

The Western District of Missouri's ENE demonstration program recently was evaluated by the Federal Judicial Center.⁷ The program, known as the Early Assessment Program, was established in 1992. Cases were assigned to the program using a true experimental design, which is to say cases were randomly assigned to the program and to the regular litigation track. Data showed that the program led to earlier case resolution and decreased fees for clients in most cases as compared to the cases on the normal litigation track.⁸

⁷ See FEDERAL JUDICIAL CENTER, REPORT TO THE JUDICIAL CONFERENCE COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT ON THE CIVIL JUSTICE REFORM ACT DEMONSTRATION PROGRAMS (1997) [hereinafter "FEDERAL JUDICIAL CENTER REPORT"]. The report evaluated five demonstration programs established under the CJRA; two different state case management programs and three ADR programs.

⁸ Cases required to participate in the program had a median age at termination almost three months shorter than cases not permitted to participate. *Id.* at 215. Also, over two-thirds of attorneys who participated in the program reported that the process did reduce their client's litigation costs. *Id.* at 216.

C. Mediation

In mediation, a neutral, third party helps the parties reach their own voluntary settlement of some or all of the issues in the case. Mediators facilitate settlement by promoting communication among parties, exploring bases for agreement and the consequences of not settling, developing a cooperative, problem-solving approach, identifying the parties' underlying interests and identifying options beyond the parties' perceptions. Mediation styles vary along a continuum from facilitative to evaluative, depending on the mediator and the parties' needs. Facilitative mediators concentrate on enhancing parties' communication and creating an atmosphere conducive to conciliation but do not attempt to evaluate the case. Evaluative mediators, on the other hand, may offer opinions about case value, liability and legal issues.⁹

Mediation is considered one of the most versatile ADR processes. It can be helpful in a wide variety of cases and circumstances. Most often cited are cases in which the parties have a continuing relationship (for example, divorces with children, landlord-tenant, business disputes, employment); however, mediation also has been effective in cases not involving a continuing relationship (for example, personal injury cases).

As mediation has become more popular, researchers have tried to quantify the effects that mediation has on case processing and case outcomes. Most of the research has involved family mediation, although some studies address non-family civil mediation. Research about family mediation suggests that mediation can be an effective and efficient service that can be more helpful than litigation to divorcing couples in conflict.¹⁰ Research shows that the majority of clients entering family mediation across a variety of settings reach agreement (either in whole or in part), report satisfaction with the experience and consider it fair and responsive to their

⁹ Mediation should not be confused with judge-hosted settlement conferences. Judge-hosted settlement conferences typically are limited to discussions of the strengths and weaknesses of the case, case value, the legal arguments and the likely outcome at trial. The judge's status as a judicial officer invests the process with weight and commands the parties' respect. Traditionally, the judge's settlement role was mainly to referee a "horse trade," although that may be changing as judges are learning more techniques for facilitating settlement.

¹⁰ Benjamin and Irving, *Research in Family Mediation: Review and Implications*, 13 *MEDIATION QUARTERLY* 53, 53 (1995). The article reviewed fifty-one mediation studies and summarized their findings on process, outcomes and predictors of mediated agreements. *Id.*

needs.¹¹ Also, relitigation rates among mediation couples have been found to be consistently low, and lower than those found among their litigation counterparts.¹² Not surprisingly, the studies further suggest that the most effective use of mediation involves matching clients amenable to it with the specific service model best suited to their needs, as opposed to blanket referrals to mediation.¹³

A limited amount of research has addressed non-family civil mediation's effects on pace, litigation costs, court workload, trial rates, settlement rates and participant satisfaction.¹⁴ Studies on litigation pace are mixed but suggest that many mediation programs cause cases to be resolved faster than traditional adjudication. For example, two studies of state court programs showed that mediation cases were resolved more quickly than adjudicated cases, while another state court study found that cases referred to mediation had longer disposition times than cases that were adjudicated.¹⁵ The recent RAND study of four federal court mediation programs¹⁶ found significantly

¹¹ *Id.* at 68. These judgments are characteristic of both men and women, but especially of women. *Id.*

¹² *Id.* at 64.

¹³ *Id.* at 71.

¹⁴ KEILITZ, ed., NATIONAL SYMPOSIUM ON COURT-CONNECTED DISPUTE RESOLUTION RESEARCH: A REPORT ON CURRENT RESEARCH FINDINGS — IMPLICATIONS FOR COURTS AND FUTURE RESEARCH NEEDS 6 (National Center for State Courts 1994) [hereinafter "NATIONAL ADR RESEARCH SYMPOSIUM"]. The report summarized the findings of four studies of non-family mediation programs in Minnesota, Maine, Florida and the District of Columbia. *Id.*

¹⁵ *Id.* at 7-8.

¹⁶ KAKALIK, DUNWORTH, HILL, MCCAFFREY, OSHIRO, PACE & VAIANA, AN EVALUATION OF MEDIATION AND EARLY NEUTRAL EVALUATION UNDER THE CIVIL JUSTICE REFORM ACT (RAND 1996) [hereinafter "RAND"]. While the RAND report is one of the most empirically rigorous evaluations of ADR, a number of commentators have concerns about applying the findings to other programs. See CPR Judicial Project Advisory Council of the CPR Institute for Dispute Resolution, *Statement of Concerns Regarding the RAND ADR Study* (1997). The RAND report evaluated several programs that were new and examined them early, or as program refinements were under way. In several of the courts studied, substantial revisions to the ADR programs were made after the RAND data were collected. In addition, several of the programs had significant design flaws that were in the process of being corrected at the time they were being studied. In fact, none of the six programs evaluated were model programs; they apparently were selected because they were pilot programs with sufficiently large case loads to allow analysis. *Id.* Indeed, the RAND authors themselves cautioned restraint in drawing any general conclusions about the effects of ADR on cost and delay, adding that the findings did not support any "definitive policy recommendations." *Id.* at 4. The authors did suggest the possibility that the programs studied "may have had smaller effects that could not be identified as statistically significant in the

shorter disposition times in one of the programs and disposition times that approached but did not reach statistical significance in two others.¹⁷ In three of the four programs a majority of lawyers reported that mediation was helpful in reducing the time needed to resolve the case.¹⁸

Studies of court workloads showed that mediation cases required fewer court hearings and motions compared to control group cases.¹⁹ With regard to settlement rates, one of the studies found that 20% of the control group cases were resolved through trial or judicial finding, compared to 13% of the assigned ADR cases and 8% of the voluntary ADR cases.²⁰ The RAND study found the likelihood that a case settled just before or as a result of the mediation session ranged from 31-72%.²¹

The research on litigant costs is limited; however, in several studies (including the RAND study) attorneys reported that they thought mediation was less costly than typical case processing.²² On the other hand, the RAND study's empirical analysis of

sample of cases studied." *Id.* at xxxiv.

¹⁷ *Id.* at 34-35.

¹⁸ *Id.* at 47, Table 4.21.

¹⁹ NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 8.

²⁰ *Id.* at 8.

²¹ RAND, *supra* note 21, at 41. The program with the lowest settlement rate suffered from mandatory sessions that occurred very early in the process and were hosted by lawyers who were not required to be trained mediators. *Id.* at 92-93. Over half of the responding lawyers and mediators in that program said settlement was difficult because more discovery was needed. *Id.* at 46. For all the programs, impediments to settlement did not appear related to difficulty in the underlying subject matter such as factual or legal complexity. Nor did parties' or lawyers' reluctance to participate in mediation appear to bar success. Rather, the problem most often cited by lawyers and ADR providers was that the parties were not "ready" to settle. The second most often cited difficulty was that more discovery was needed. *Id.* at 45-46.

²² NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 9; *see also* RAND, *supra* note 21, at 37-38 and Table 4.10 (reporting that half or more of the lawyers surveyed in two of the four mediation programs thought that mediation had decreased total case costs). The RAND report noted that the lawyers' subjective opinions on costs were not always in agreement with the objective data. *Id.* at 35.

attorney work hours found "no strong statistical evidence that lawyer work hours are significantly affected by ADR, either up or down...."²³

Studies of participant satisfaction suggest that both litigants and attorneys find mediation to be fair and satisfactory, although the data comparing satisfaction in mediation to satisfaction in litigation are mixed. Ninety percent of lawyers and a slightly smaller percentage of litigants surveyed in the RAND study felt that the ADR process was fair.²⁴ In one mediation study from Minnesota, litigants in mediation rated it more favorably than did litigants in the judicial process, while attorneys rated the judicial process more highly.²⁵ In another study, parties rated mediation more highly than parties rated unassisted negotiations.²⁶

Participants in ADR programs generally are supportive of them. In the RAND study, most of the lawyers felt that the programs were worthwhile in general and beneficial for their individual cases.²⁷ Only a small percentage in any district felt that the program should be dropped. Litigants felt the same, although they were a little less positive than the lawyers.²⁸

II. ADR in State Courts

A number of authors have published comprehensive surveys of court-connected ADR programs in other jurisdictions. The two upon which this report relies most heavily are: ELIZABETH PLAPINGER & MARGARET SHAW, *COURT ADR: ELEMENTS OF PROGRAM DESIGN* (Center for Public Resources, 1992) and ELIZABETH PLAPINGER &

²³ RAND, *supra* note 21, at 37. The RAND researchers found that lawyer work hours per litigant were actually significantly higher for cases in one program. In this program, judges encouraged the tougher cases to volunteer for mediation. The RAND researchers concluded that the non-mediation cases in this program probably were not truly comparable to the mediation cases. *Id.*

²⁴ *Id.* at 49.

²⁵ NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 8. About 75% of both groups viewed mediation as fair. *Id.*

²⁶ *Id.* The parties in mediation also had a greater perception that the outcome was fair and that the full story was told. *Id.*

²⁷ RAND, *supra* note 21, at 51.

²⁸ *Id.*

MEDIATION TASK FORCE REPORT

I. WHAT IS MEDIATION?

Mediation is a form of dispute resolution characterized by the active role the parties take in determining a solution to their conflicts. Acting as a neutral third party, a mediator guides the parties to a mutual resolution of the dispute. Mediators clarify and isolate the central issues in a dispute, identify choices, and may document the final agreement. Mediation encourages parties to actively formulate their own solution to a dispute and gives them a vested interest in the agreement and its continuing enforcement.¹

Mediation has proven successful in the following areas:

1. Divorce/dissolution and child custody matters,
2. neighbor to neighbor disputes (including landlord/tenant disputes),
3. local disputes between interest groups,
4. employer/employee differences,
5. small claims matters,

¹Mediation is one of several forms of alternative dispute resolution ("ADR"). Mediation should not be confused with arbitration, a process in which a neutral third party renders a decision resolving a dispute. ADR originally meant alternatives to the judicial decision-making process. More recently, however, several ADR methods have been institutionalized as a part of court systems. Both federal and state court-annexed arbitration and mediation services exist across the country. The term "alternative dispute resolution" now refers to alternatives to traditional dispute resolution.

6. environmental issues,
7. complex civil litigation,
8. commercial disputes, and
9. labor disputes.

Mediation can be a viable alternative when:

1. there is an ongoing relationship between the parties,
2. court processes are lengthy and costly,
3. a judgment may be difficult to enforce,
4. the desired result is not within a court's power to grant, or
5. the parties do not trust the decision-maker (e.g., the system, or the judge).

II. ADVANTAGES AND DISADVANTAGES OF MEDIATION

A wealth of written material has been generated in recent years about mediation. (A bibliography of source materials is included at the end of this report.) This report will not attempt to provide a comprehensive review of the materials available. Rather, this section outlines generally what are perceived to be the advantages and disadvantages of mediation, although there is not universal agreement about some of these assessments.

Advantages to Mediation

A. User satisfaction

Some studies have found that the parties to mediated resolutions are more likely to feel satisfied with both the process and the resolution. Parties often feel that they have been afforded more of an opportunity to air their grievances and to retain the ability to make their own decisions in a mediation context than in a judicial context. In cases in which a long-term relationship between the parties must continue (such as in the case of a divorce when the parties have minor children or in a partnership dissolution when income from partnership assets will be distributed over a long period of time), the parties may be more able to maintain the relationship without new or recurring disputes after a mediated settlement.

B. Time to resolution

Because court calendars are often seriously back-

logged² (and even with calendars which are considered current a case can wait many months for a trial date), a mediated resolution can occur much more quickly than a judicial resolution. The parties may prevent escalation and expansion of their conflicts, particularly in emotional cases.

C. Reduction of court cases

Courts may be able to reduce the number of cases thereby conserving scarce judicial resources for those matters that will only be resolved in the adversarial process. Also, at least one study has found that mediated divorces were much less likely than judicially-determined divorces to return to court with post-judgment problems and disputes.

D. Compliance

Some studies have found that the rates of compliance with the terms of final settlements resulting from mediated resolutions are higher than the rates of compliance with judicially-imposed judgments. In other words, parties who participate in the resolution of their problem are more likely to carry out the terms of that resolution.

E. Cost

One of the advantages most often mentioned is reduced costs. Savings to the parties may be realized in the reduction or elimination of attorneys' fees. Although the parties usually bear the cost of compensating the mediator, the total cost may be less than the cost to

²The task force did not make any determination as to whether court calendars in Alaska are backlogged.

the parties of compensating their attorneys through the course of a lengthy court proceeding.

F. Addressing underlying conflicts/achieving superior resolutions

Traditional litigation addresses only the effects of disputes, not their causes. Mediation can address all levels of a dispute, including matters which may not be actionable in a court proceeding.

Disadvantages to Mediation

A. Inappropriate types of disputes

Mediation may be inappropriate if one of the parties has an overwhelming edge in the balance of power between the parties--for example, in a divorce involving a powerful, forceful spouse and an unassertive, unsophisticated spouse. In such a circumstance, it has been argued that the unassertive spouse needs the assistance of an advocate (i.e., an attorney) to protect the spouse's legal rights. The weaker spouse may not be able to assert his or her own rights in mediation (although recent projects have successfully utilized mediation in settling cases involving family violence).

Some types of disputes may be inappropriate, or less appropriate, for mediated resolutions. For example, where one of the parties to a dispute is suffering from a considerable mental or emotional disturbance, mediation may be impractical. It has also been suggested that mediation is inappropriate in cases involving severe child abuse.

Mediation may be more appropriate where the parties are genuinely interested in settlement. If one or both of the parties are interested only in full vindication of their positions, or if the overwhelming motivation of the parties is revenge, attempts at mediation may be doomed to fail.

B. Relinquishment of Legal Rights

The goal of mediation is settlement, not assertion of principles. Therefore, in some cases a party to a mediated settlement may have forfeited substantive legal rights of which the party may be unaware. Similarly, a party may lose some due process protections guaranteed within the judicial process. For example, facts may be considered which would have been excluded in a judicial proceeding.

C. Public Access

Disputes heard in the courtroom are public, except in very limited confidential proceedings. Mediation proceedings are not public and may take dispute resolution behind closed doors.

D. Enforcement

If a party to a mediated agreement does not abide by its terms, it may be difficult to mandate compliance unless the agreement has been adopted in some way by a court.

E. Public Policy Disputes

Disputes which have ramifications beyond the interests of the parties (e.g., environmental law violations) may

be better handled in an open forum which allows for a broader legal impact.

F. Second Class Justice

On the one hand it has been argued that "lesser" forums, such as mediation, which provide service primarily to the poor, may provide only second class justice by denying the poor access to the courts.

Others, however, contend that since many systems require the parties to a dispute to pay for the services of the mediator, alternatives are available only to those who can pay. Thus, it has been argued that the courts will deteriorate as the disputes of the wealthy are transferred to private forums.

Court System Subcommittee
Commission on Privatization and Delivery of Government Services
Agenda
September 8, 1999
12:00 PM
Chairman: Ken Peavyhouse

1) ROLL CALL OF TELECONFERENCE SITES

- a) Juneau _____
- b) Fairbanks _____
- c) Kenai _____
- d) Other _____

2) ROLL CALL OF MEMBERS

3) REVIEW MINUTES OF PREVIOUS MEETING

4) OLD BUSINESS

- a) Update Focus On Panel Issues
- b) Arbitration / Mediation – Don Rogers Report
- c) Resume Court Visit (need to schedule)

5) NEW BUSINESS

- a) Definitions of Arbitration and Mediation with Doug Wooliver
- b) Judicial Council – Alternative Dispute Resolution
- c) Around the Horn

6) NEXT MEETING DATE AND TIME – September 15, 12:00

7) ADJOURNMENT



and Delivery of Government Services

www.privatizealaska.org

NOTICE OF SUBCOMMITTEE MEETING

Subcommittee Name: **Court System**
Chairperson: Mr. Ken Peavyhouse
Phone: 333-4881

Committee Members:

Ken Peavyhouse	Edward Leon
Al Adams	Don Rogers M.D.
Susan Gibson	Al Tamagni
Joyce Harris	Colleen Van Hatten
B Jarvi	Doug Wooliver

Date:

Wednesday, September 8, 12:00 PM

Wednesday, September 15, 12:00 PM

Wednesday, September 22, 12:00 PM

Wednesday, September 29, 12:00 PM

Wednesday, October 6, 12:00 PM

Wednesday, October 13, 12:00 PM

Wednesday, October 20, 12:00 PM

Place:

Legislative Information Office

716 W. 4th Avenue

Second Floor Conference Room

Juneau, Fairbanks & Kenai LIO Teleconference Available

We encourage you to bring a brown bag lunch to the meeting if you would like.

If you have any questions please call Representative John Cowdery's office at 269-0222
or Senator Wards office at 269-0106.

The web site has a current list of members and schedule of meetings posted
daily!

www.privatizealaska.org

TRANSACTION REPORT

P. 01

SEP-08-1999 WED 09:16 AM

BROADCAST

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TOTAL : 3M 18S PAGES: 4



and Delivery of Government Services

www.privatizealaska.org

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Subcommittee Name:

Court System

Chairperson: Mr. Ken Peavyhouse

Phone: 333-4881

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Wednesday, October 13, 12:00 PM

TRANSACTION REPORT

P. 01

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Court System Subcommittee Commission on Privatization and Delivery of Government Services Agenda September 8, 1999 12:00 PM Chairman: Ken Peavyhouse

1) ROLL CALL OF TELECONFERENCE SITES

- a) Juneau _____
- b) Fairbanks _____
- c) Kenai _____
- d) Other _____

2) ROLL CALL OF MEMBERS

3) REVIEW MINUTES OF PREVIOUS MEETING

4) OLD BUSINESS

Commission of Privatization and Delivery of Government Services
Court System Subcommittee

Date / Time: August 25, 1999 / 12:00 noon

Place: LIO Office, Room 220 – Anchorage, AK

Attendees:

Harris, Joyce	(Fairbanks)
Jarvi, "B"	(Fairbanks)
Peavyhouse, Ken	(Anchorage)
Palmer, Kathy	(Anchorage)
Pignalberi, Marco	(Anchorage)
Rogers, Don	(Anchorage)
Rollins, Charles	(Fairbanks)
VanHatten, Colleen	(Fairbanks)
Wooliver, Doug	(Anchorage)

Absentees:

Adams, Al	(Juneau)
Gibson, Susan	(Kenai)
Tamagni, Al	(Anchorage)

TOPICS OF DISCUSSION

Arbitration and Mediation

- ☐ The topic of Alternate Dispute Resolution (ADR) will be separated into two topics:
 - Arbitration – Don Rogers will lead research and discussion.
 - Arbitration – "B" Jarvi will lead research and discussion.
- ☐ Doug Wooliver will provide details on two pilot projects under ADR grants.

Other

- ☐ The tours of Anchorage and Fairbanks courts are scheduled for next Wednesday, September 1, from 11:00-12:00. The regular meeting will be held following the tours.
- ☐ Doug Wooliver will invite Susanne DiPietro from Alaska Judicial Council to attend and speak at our meeting on September 8.
- ☐ Marco Pignalberi will verify that the Judicial branch has a different payroll scale than that of the Executive branch.

Court System Subcommittee Membership							
Peavyhouse	Ken	333-4881	N/A	N/A	pvhouse@alaska.net	333-4881	
Adams	Al	485-3707	485-4821	Alaska State Legislature - Senate	Senator_Al_Adams@legis.state.ak.us		Juneau
Gibson	Susan	262-1840	262-6163	Paralegal		262-4853	Kenai
Harris	Joyce	456-8702	456-8702 call	Court Visitor Services	harris@mosquito.net	456-8702	Fairbanks
Jarvi	"B"	458-8850	458-8860	Professional Guardian Services Corp	jarvi@ptialaska.net	457-1500	Fairbanks
Palmer	Kathy	787-8546	787-8018	CTG	Palmerks@alaska_pipeline.com	274-8293	
Rogers, M.D.	Don	349-9104	522-5405		N/A	349-9104	
Rollins	Charles	488-9030	488-9030 call	Fairbanks North Slope Borough	chuck@mosquitone.com	488-9030	Fairbanks
Tamagni	Al	522-3108	562-1366		atamagni@alaska.net		
VanHatten	Colleen	488-4524	488-2822	Alaska Contracting & Consulting	acc@mosquitonet.com	488-4023	Fairbanks
Wooliver	Doug	264-8265	264-8291	Alaska Court System - Contact	dwooliver@courts.state.ak.us	346-1129	

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9-1-99 - Court Town 11-12

convened noon

discussed #44 below regarding PVAH

Kij County again

on it project possible

4 their system of funding

SDH - network

DW - distribution

Sept. 1, 1999

Court System Subcommittee Membership							
Peavyhouse	Ken	333-4881	N/A	N/A	pvhouse@alaska.net	333-4881	
Adams	Al	465-3707	465-4821	Alaska State Legislature - Senate	Senator_Al_Adams@legis.state.ak.us		Juneau
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Wooliver	Doug	264-8265	264-8291	Alaska Court System - Contact	dwooliver@courts.state.ak.us	346-1129	
Pignatelli							

add Ed Leon

Leon - Ed - 229-1042 - 243-6061 - The Leon Company - edleon@alaska.net - 243-5557 - Anchorage

Shirley Willford



and Delivery of Government Services

www.privatizealaska.org

NOTICE OF SUBCOMMITTEE MEETING

Subcommittee Name: **Court System**
Chairperson: Mr. Ken Peavyhouse
Phone: 333-4881

Committee Members:

Ken Peavyhouse	Edward Leon
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B Jarvi	Doug Wooliver

Court House Tours Available in Anchorage, Fairbanks, & Kenai. Wednesday, September 1, 11:00 AM, Court House Lobby (regularly scheduled meeting will follow tours at the LIO's)

Date:

Wednesday, September 1, 12:00 PM

Wednesday, September 8, 12:00 PM
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The web site has a current list of members and schedule of meetings posted daily!

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716 W. 4th Ave. Anchorage, AK 99501
Senator Jerry Ward: 907-269-0107 Fax 907-269-0109
Representative John Cowdery: 907-269-0222 Fax 907-269-0223

**Commission of Privatization and Delivery of Government Services
Court System Subcommittee**

Date / Time: August 25, 1999 / 12:00 noon
Place: LIO Office, Room 220 – Anchorage, AK
Attendees:

Harris, Joyce	(Fairbanks)
Jarvi, "B"	(Fairbanks)
Peavyhouse, Ken	(Anchorage)
Palmer, Kathy	(Anchorage)
Pignalberi, Marco	(Anchorage)
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Wooliver, Doug	(Anchorage)

Absentees:

Adams, Al	(Juneau)
Gibson, Susan	(Kenai)
Tamagni, Al	(Anchorage)

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Arbitration and Mediation

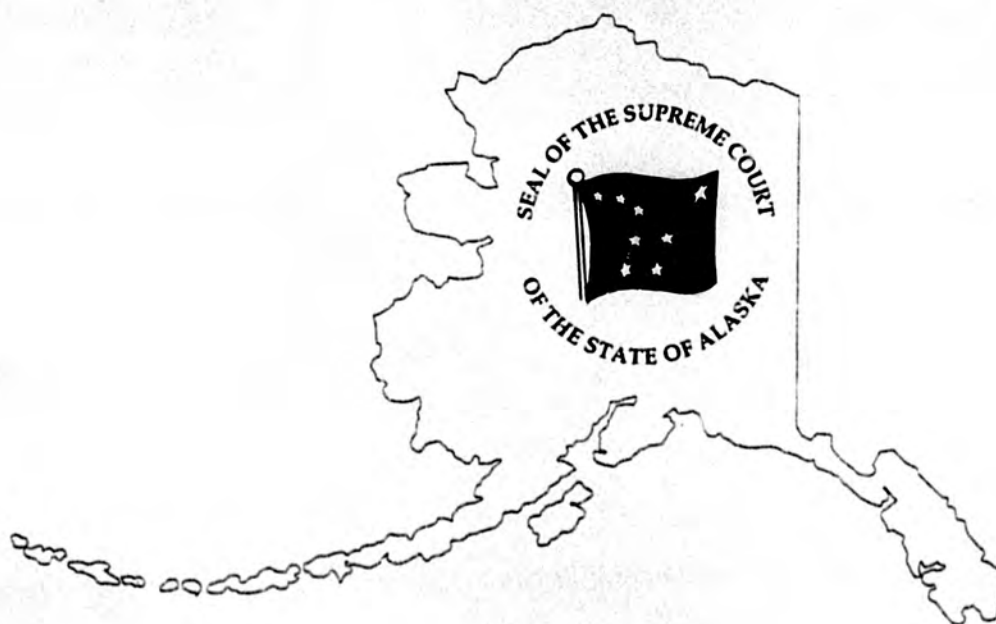
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PROFILE OF THE ALASKA COURT SYSTEM

FISCAL YEAR 1998



This information pamphlet is provided as a public service by the

Administrative Office
ALASKA COURT SYSTEM
820 West Fourth Avenue
Anchorage, AK 99501-2009

ALASKA COURT SYSTEM MISSION STATEMENT

The mission of the
Alaska Court System
is to provide an accessible and
impartial forum for the just resolution
of all cases that come before it,
and to decide such cases
in accordance with the law,
expeditiously and with integrity.

WHY DO WE HAVE COURTS? WHAT DO COURTS DO?

Eight accepted purposes of courts are:

1. To do individual justice in individual cases.
2. To appear to do justice in order to promote public trust in our system of government.
3. To provide a forum for the resolution of legal disputes.
4. To protect individuals from the arbitrary use of governmental power.
5. To provide a formal record of legal status.
6. To deter criminal behavior.
7. To rehabilitate persons convicted of crimes.
8. To separate persons convicted of crimes from society, in appropriate cases.

PROFILE OF THE ALASKA COURT SYSTEM

TABLE OF CONTENTS

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July 1, 1997 - June 30, 1998

There are four levels of courts in the Alaska Court System, each with different powers, duties and responsibilities. Alaska has a unified, centrally administered, and totally state-funded judicial system. Municipal governments do not maintain a separate court system.

The chief justice of the Alaska Supreme Court is the administrative head of the Alaska Court System. An administrative director is appointed by the chief justice with concurrence of the supreme court. The director supervises the administration of all courts in the state.

ALASKA COURT LOCATIONS



ALASKA COURT SYSTEM ORGANIZATION

ALASKA SUPREME COURT

The supreme court is the appellate court of final authority in Alaska. It consists of a panel of five justices.

COURT OF APPEALS

The court of appeals hears appeals in criminal and quasi-criminal cases (such as juvenile delinquency cases). It consists of a panel of three judges.

ADMINISTRATIVE OFFICE

The supreme court is charged with the responsibility of administering the statewide system. The supreme court delegates most of the administrative matters to the administrative director and her staff.

SUPERIOR COURT

The superior court is the trial court of general jurisdiction. It has appellate jurisdiction over district court appeals and appeals from administrative agency decisions. There are 32 superior court judgeships.

DISTRICT COURT

The district court has limited civil and criminal jurisdiction. The district court consists of 17 district court judges and 36 magistrates.

ALASKA COURT SYSTEM
(Information as of June 30, 1998)

Fiscal Year:	July 1 - June 30	
Geographical Area Served	586,413 square miles	
Number of Judges	5	supreme court judges
	3	court of appeals judges
	32	superior court judges
	17	district court judges
	36	magistrates
Number of Court Locations:	15	combined superior and district court
	44	district courts only (judge and/or magistrate)
Number of Authorized Positions:	648	permanent full-time
	48	permanent part-time
	21	non-permanent
	717	total

FIVE LARGEST TRIAL COURTS
(by number of permanent full-time employees)

Anchorage	210
Fairbanks	82
Juneau	30
Palmer	25
Ketchikan	22

THE ALASKA SUPREME COURT

The Alaska Supreme Court is the highest level of state court in Alaska. The supreme court is comprised of the chief justice and four associate justices.

The five justices, by majority vote, select one of their members to be the chief justice. The chief justice holds that office for three years and may not serve consecutive terms.

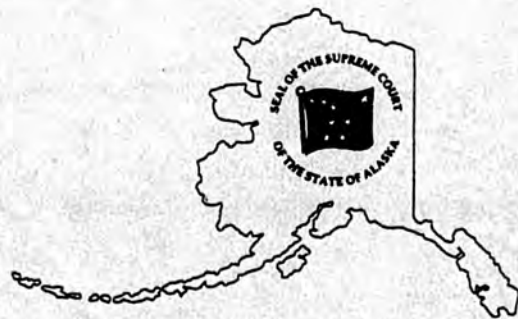
The supreme court hears cases on a monthly basis in Anchorage and Fairbanks, approximately semi-annually in Juneau, and on the basis of workload in other Alaska communities. The court prefers to hear argument in the city where the case was heard in the trial court.

The court meets after oral argument and on a weekly basis to confer on cases argued orally and on cases submitted on the briefs. The court decides the cases and announces its decisions in one of three ways:

- 1) opinions for publication in the Pacific Reporter, 2d series, and in the Alaska Reporter;
- 2) memorandum opinions and judgments (MO&J's); and
- 3) orders summarily ruling on the merits of cases or dismissing them.

Though the MO&J's and most orders are not published, the MO&J's are available for public inspection at the Anchorage, Fairbanks, and Juneau offices of the clerk of the appellate courts, and the orders are filed in the clerk's Anchorage office.

Under the Alaska Constitution, the supreme court establishes rules for the administration of all courts in the state and for practice and procedure in civil and criminal cases. The supreme court has further adopted rules for the practice of law in Alaska and procedural rules for children's matters, probate, and appeals. The Alaska Legislature may change the court's procedural rules by passing an act expressing its intent to do so by a two-thirds majority of both houses.



THE ALASKA SUPREME COURT



Chief Justice
Warren W. Matthews

Chief Justice Warren W. Matthews has served on the court for 21 years. He was born in Santa Cruz, California. He holds a B.A. degree from Stanford University and a J.D. degree from Harvard University Law School. He was in the private practice of law in Anchorage from 1965 - 1977. Chief Justice Matthews served as a member of the Board of Governors of the Alaska Bar Association, the Supreme Court Criminal Rules Revision Commission, the Alaska Sentencing Commission and as chairman of the Alaska Bar Ethics and Unauthorized Practices Commission. He was appointed to the Alaska Supreme Court in 1977 and served as chief justice 1987 - 1990. He is married to Donna Matthews and has two children. Chief Justice Matthews began his second term as chief justice in 1997.

Justice Allen T. Compton has served on the court for 22 years. Justice Compton was born in Kansas City, Missouri. He received a B.A. degree from the University of Kansas and a law degree from the University of Colorado. He moved to Juneau in 1970 and served as supervising attorney for Alaska Legal Services. He was also in the private practice of law in Juneau until he was appointed to the superior court bench in February 1976. He was appointed to the Alaska Supreme Court in 1980. Justice Compton served as Chief Justice October 1995 - July 1997. He is married to Sue Ellen Tatter and has three children.

Justice Compton retired November 2, 1998.



Justice Allen T. Compton
Retired November 2, 1998



Justice Robert L. Eastaugh

Justice Robert L. Eastaugh has served on the supreme court for four years. Justice Eastaugh was born in Seattle, Washington, and raised in Juneau. He holds a B.A. degree from Yale University and a J.D. degree from University of Michigan Law School. He was first admitted to the practice of law in 1968. He was in private practice for 22 years, after having served as an assistant district attorney in Anchorage and assistant attorney general in Juneau. He has two children.

THE ALASKA SUPREME COURT continued



Justice Dana Fabe

Justice Dana Fabe has served on the supreme court since March 1996 and is the first woman to serve on the court. Justice Fabe was born in Cincinnati, Ohio. She holds a B.A. degree from Cornell University and a J.D. degree from Northeastern University School of Law. Justice Fabe clerked for Justice Edmond W. Burke of the Alaska Supreme Court in 1976-77. She served as a staff attorney for the Alaska Public Defender Agency from 1977-81, and in 1981 she was appointed by the governor to be Chief Public Defender for Alaska. She was a member of the Board of Governors of the Alaska Bar Association in 1987-88. Justice Fabe was appointed to the superior court bench in Anchorage in 1988. She was deputy presiding judge of the third judicial district from 1992-95, as well as a training judge for the third judicial district and has served as chairperson of the Alaska Supreme Court's Committee on Criminal Pattern

Jury Instructions and its Special Committee on Contempt of Court. She is co-chair of Alaska's Joint State and Federal Court Commission on Gender Equality and chair of the Alaska Supreme Court's Access to Civil Justice Task Force. She also serves as the judicial representative to the Alaska Bar Association's Continuing Legal Education Committee. Justice Fabe is married to Randall Simpson, and they have a daughter, Mia.

Justice Alexander O. Bryner has served on the court since February 1997. He was born in Tientsin, China. Justice Bryner moved to Alaska in 1969. He holds a B.A. degree and a degree in law from Stanford University. He served as law clerk to Alaska Supreme Court Chief Justice George Boney from 1969 to 1971. He moved to San Francisco in 1971 and was legal editor for Bancroft Whitney Company. After returning to Alaska in 1972, he worked for the Public Defender Agency in Anchorage. In 1974 he entered private practice as a partner in the firm Bookman, Bryner and Shortell. He was appointed to the district court bench in Anchorage in 1975 and served until 1977. In 1977, he was appointed U.S. Attorney for Alaska and held that position until his appointment to the Court of Appeals in 1980. He served as Chief Judge of the Court of Appeals from 1980-1997.

He is married to Carol Crump Bryner and has two children, Paul and Mara.



Justice Alexander O. Bryner



Justice Walter L. Carpeneti
Appointed November 5, 1998

On November 5, 1998 Governor Tony Knowles named Juneau Superior Court Judge **Walter L. Carpeneti** to the Alaska Supreme Court. Justice Carpeneti was appointed to the superior court in 1982.

SUPREME COURT JURISDICTION

The term "jurisdiction" means a court's legal power and authority to hear particular types of cases.

The supreme court has final state appellate jurisdiction in civil and criminal matters:

1. **CIVIL APPEALS.** The supreme court must accept appeals from final decisions by the superior court in civil cases (including cases which originated in administrative agencies).
2. The supreme court may exercise its discretion to accept:
 - a. **CRIMINAL APPEALS,** from decisions of the court of appeals or upon certification from the court of appeals that the case involves a significant question of constitutional law or an issue of substantial public interest; and
 - b. **PETITIONS,** from non-final decisions by the superior court in civil cases and from final decisions of the superior court on review of the district court's decisions in civil matters.
3. **ORIGINAL APPLICATIONS.** The supreme court may also exercise its discretion to hear matters in which relief is not otherwise available, including bar admission and attorney discipline matters and questions of state law certified from the federal courts.

THE COURT OF APPEALS

The court of appeals is a three-judge panel consisting of a chief judge (appointed by the chief justice for a two-year term) and two associate judges. The court of appeals was created in 1980 by the Alaska Legislature.

Robert G. Coats was appointed chief judge for 1997 and 1998.

The court of appeals regularly meets in Anchorage, traveling to Fairbanks as caseload demands.

The court of appeals has the authority to hear appeals from judgments in criminal cases and certain other quasi-criminal cases in which a minor is accused of committing a crime (juvenile delinquency cases), cases in which prisoners are challenging the legality of their confinement (habeas corpus matters), and cases involving probation and parole decisions.

Criminal appeals from the district court can be taken to the superior court or to the court of appeals, at the option of the defendant. A defendant who appeals from district court to superior court can ask the court of appeals to review the resulting decision of the superior court, but the court of appeals may, in its discretion, refuse to hear the appeal.



Judge David Mannheimer



Chief Judge Robert G. Coats



Judge David Stewart

THE COURT OF APPEALS **continued**

COURT OF APPEALS JURISDICTION

The court of appeals has jurisdiction to hear appeals in cases involving criminal prosecutions, post-conviction relief, juvenile delinquency, extradition, habeas corpus, probation and parole, bail, and the excessiveness or leniency of a sentence:

1. **MERIT APPEALS** (issues concerning the merits of a conviction) or **SENTENCE APPEALS** (the excessiveness or leniency of a sentence) - The court of appeals must hear appeals from final decisions by the superior court or the district court.
2. **PETITIONS** - The court of appeals may exercise its discretion to hear appeals of non-final decisions from the superior court or the district court or from final decisions of the superior court on review of the district court's decisions.
3. **ORIGINAL APPLICATIONS** - The court of appeals may exercise its discretion to hear cases in which relief cannot be obtained from the court through one of the above types of appeals.

THE CLERK OF THE APPELLATE COURTS

The clerk's office of the appellate courts, which includes the supreme court and the court of appeals, is located in Anchorage. The clerk is required to be an attorney. Responsibilities of the clerk include monitoring the caseflow through the supreme court and the court of appeals as well as making recommendations for improvements in appellate procedure. The clerk is also responsible for all case filing and calendaring, publishing opinions and related tasks. Deputy clerks are located in Juneau, Anchorage and Fairbanks.

Jan Hansen was appointed Clerk of the Appellate Courts in July 1991. Ms. Hansen served as Clerk of the Appellate courts until her death in June 1998.

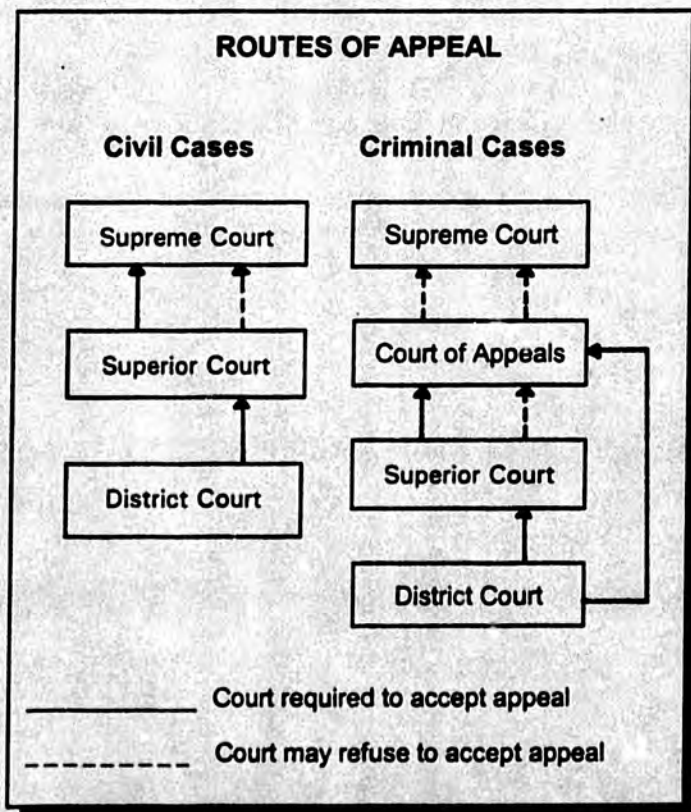
Marilyn May was appointed Clerk of the Appellate Courts in October 1998.



Jan Hansen
Clerk of the Appellate Court
July 1991 - June 1998



Marilyn May
Clerk of the Appellate Court
October 1998 - Present



THE SUPERIOR COURT

SUPERIOR COURT JURISDICTION

The superior court is the trial court of general jurisdiction. The superior court has the authority to hear all cases, both civil and criminal, properly brought before the state courts (with the very limited exception of matters taken directly to the supreme court). However, the superior court does not routinely hear cases which may be brought in the district court (a court of limited jurisdiction).

The superior court:

- ▶ is a trial court for both criminal and civil cases.
- ▶ serves as an APPELLATE COURT for appeals from civil and criminal cases which have been tried in the district court
- ▶ hears cases involving CHILDREN who have committed crimes or who are abused or neglected
- ▶ hears cases involving the PROPERTY OF DECEASED OR INCOMPETENT PERSONS
- ▶ hears cases involving INVOLUNTARY COMMITMENT of persons to institutions for the mentally ill
- ▶ handles DOMESTIC RELATIONS matters

Alaska is divided into four judicial districts. The boundaries of the districts are defined by state statute. The judicial districts define the boundaries for judicial retention elections at which voters indicate their approval or rejection of judges and justices.

In January of each year, the chief justice of the supreme court designates a superior court judge from each of Alaska's four judicial districts to serve as presiding judge for a term of one calendar year. The presiding judge, in addition to regular judicial duties, is responsible for the administration of the trial courts within the district, including assignment of cases, supervision of court personnel, efficient handling of court business and appointment of magistrates.

New Appointment: Fairbanks District Court Judge Charles Pengilly was appointed to the Fairbanks superior court by Governor Tony Knowles on November 7, 1997. Judge Pengilly had served as a district court judge since 1990.

SUPERIOR COURT JUDGES

FIRST JUDICIAL DISTRICT



Presiding Judge Larry Weeks
Juneau Superior Court
Appointed 1990



Judge Walter Carpeneti
Juneau Superior Court
Appointed 1981



Judge Thomas Jahnke
Ketchikan Superior Court
Appointed 1985



Judge Larry Zervos
Sitka Superior Court
Appointed 1990



Judge Michael Thompson
Ketchikan Superior Court
Appointed 1993

SECOND JUDICIAL DISTRICT



Presiding Judge Michael Jeffery
Barrow Superior Court
Appointed 1982



Judge Richard Erlich
Kotzebue Superior Court
Appointed 1991



Judge Ben Esch
Nome Superior Court
Appointed 1996

SUPERIOR COURT JUDGES
continued

THIRD JUDICIAL DISTRICT



Presiding Judge Elaine Andrews
Anchorage Superior Court
Appointed 1991



Judge Milton Souter
Anchorage Superior Court
Appointed 1978



Judge Brian Shortell
Anchorage Superior Court
Appointed 1980



Judge Rene Gonzalez
Anchorage Superior Court
Appointed 1984



Judge Karen Hunt
Anchorage Superior Court
Appointed 1984



Judge Peter Michalski
Anchorage Superior Court
Appointed 1985



Judge John Reese
Anchorage Superior Court
Appointed 1989



Judge Larry Card
Anchorage Superior Court
Appointed 1993



Judge Michael Wolverton
Anchorage Superior Court
Appointed 1996

SUPERIOR COURT JUDGES
continued

THIRD JUDICIAL DISTRICT - continued



Judge Dan Hensley
Anchorage Superior Court
Appointed 1996



Judge Eric T. Sanders
Anchorage Superior Court
Appointed 1996



Judge Sen K. Tan
Anchorage Superior Court
Appointed 1996



Judge Donald Hopwood
Kodiak Superior Court
Appointed 1990



Judge Jonathan Link
Kenai Superior Court
Appointed 1990



Judge Harold Brown
Kenai Superior Court
Appointed 1996



Judge Beverly Cutler
Palmer Superior Court
Appointed 1982



Judge Eric Smith
Palmer Superior Court
Appointed 1996

Not pictured:
Dillingham Superior Court
Judge Fred Torrisi
Appointed 1997



SUPERIOR COURT JUDGES
continued

FOURTH JUDICIAL DISTRICT



Presiding Judge Ralph Beistline
Fairbanks Superior Court
Appointed 1992



Judge Mary E. Greene
Fairbanks Superior Court
Appointed 1985



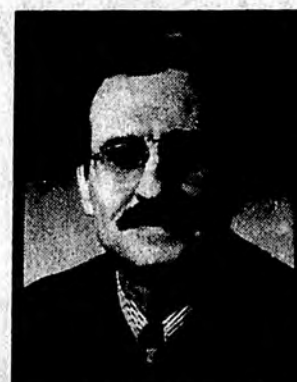
Judge Richard D. Savell
Fairbanks Superior Court
Appointed 1987



Judge Niesje Steinkruger
Fairbanks Superior Court
Appointed 1988



Judge Charles Pengilly
Fairbanks Superior Court
Appointed 1997



Judge Dale Curda
Bethel Superior Court
Appointed 1989

THE DISTRICT COURT

The Alaska Constitution provides that the legislature shall establish such lower courts as may be necessary. In 1959, the legislature created a district court for each judicial district and granted to the supreme court the power to increase or decrease the number of district court judges within each judicial district.

DISTRICT COURT JURISDICTION

The district court is a trial court of limited jurisdiction. A district court judge may:

- ▶ hear STATE MISDEMEANORS and violations of CITY AND BOROUGH ORDINANCES
- ▶ issue SUMMONSES, ARREST WARRANTS and SEARCH WARRANTS
- ▶ hear first appearances and PRELIMINARY HEARINGS in felony cases
- ▶ record VITAL STATISTICS (in some areas of the state)
- ▶ hear CIVIL CASES valued up to \$50,000
- ▶ hear SMALL CLAIMS cases (\$7,500 maximum)
- ▶ handle cases involving CHILDREN on an emergency basis
- ▶ hear DOMESTIC VIOLENCE cases

New Appointment: Former Assistant Attorney General Raymond Funk was appointed to the Fairbanks District Court in May 1998 by Governor Tony Knowles.

DISTRICT COURT continued

Magistrates preside over certain district court matters in areas of the state where services of a full-time district court judge are not required. Some magistrates serve more than one court location. Magistrates also serve in metropolitan areas to handle routine matters and to ease the workload of the district court.

A magistrate is not required to be a lawyer. The magistrate is a judicial officer of the district court whose authority is more limited than the authority of a district court judge.

MAGISTRATE JURISDICTION

A magistrate may:

- ▶ hear SMALL CLAIMS cases (\$7,500 maximum)
- ▶ hear FORMAL CIVIL cases (\$7,500 maximum)
- ▶ issue writs of HABEAS CORPUS (challenges to the legality of a person's confinement)
- ▶ solemnize MARRIAGES
- ▶ perform NOTARY PUBLIC duties and record VITAL STATISTICS (in some areas of the state)
- ▶ handle cases involving CHILDREN on an emergency basis hear DOMESTIC VIOLENCE CASES
- ▶ acts a hearing officer to review an ADMINISTRATIVE REVOCATION of a driver's license
- ▶ enter a judgment of conviction if a defendant pleads guilty or no contest to any STATE MISDEMEANOR
- ▶ hold TRIALS and enter judgments in STATE MISDEMEANORS if a defendant agrees in writing to be tried by a magistrate
- ▶ hear trials of MUNICIPAL ORDINANCE violations, STATE TRAFFIC INFRACTIONS and Alaska Statute TITLE 11 violations
- ▶ preside over PRELIMINARY HEARINGS in felony cases
- ▶ issue SEARCH AND ARREST WARRANTS, and SUMMONSES
- ▶ conduct EXTRADITION (fugitive from justice) proceedings

DISTRICT COURT JUDGES

FIRST JUDICIAL DISTRICT



Judge Peter Froehlich
Juneau District Court
Appointed 1989



Judge Patricia Collins
Ketchikan District Court
Appointed 1995

THIRD JUDICIAL DISTRICT



Judge William Fuld
Anchorage District Court
Appointed 1983



Judge Natalie Finn
Anchorage District Court
Appointed 1983



Judge Peter Ashman
Anchorage District Court
Appointed 1987



Judge M. Francis Neville
Homer District Court
Appointed 1990



Judge John Lohff
Anchorage District Court
Appointed 1991



Judge Gregory Motyka
Anchorage District Court
Appointed 1991



Judge Sigurd Murphy
Anchorage District Court
Appointed 1992

DISTRICT COURT JUDGES
continued

THIRD JUDICIAL DISTRICT - continued



Judge Stephanie Rhoades
Anchorage District Court
Appointed 1992



Judge James Wanamaker
Anchorage District Court
Appointed 1993



Judge Stephanie Joannides
Anchorage District Court
Appointed 1994



Judge Joel H. Bolger
Valdez District Court
Appointed 1997

Not pictured: Palmer District Court Judge Suzanne Lombardi
Appointed 1997

FOURTH JUDICIAL DISTRICT



Judge Jane Kauvar
Fairbanks District Court
Appointed 1981



Judge Mark Wood
Fairbanks District Court
Appointed 1993



Judge Raymond Funk
Fairbanks District Court
Appointed 1998

STATEWIDE COURT ADMINISTRATION

Statewide court administration is the responsibility of the chief justice of the supreme court. By court rule, this responsibility is delegated to the administrative director of the courts subject to general guidelines set forth by the supreme court.

JUDICIAL EDUCATION

Judicial training takes several different forms. There is a statewide judicial conference each year for judges which includes training in specific areas of court procedures or operations. Judges are eligible on a rotating basis for training at the National Judicial College in Reno, Nevada. All magistrates attend at least one magistrate conference during a calendar year. During odd-numbered years, regional magistrate conferences are held for the four judicial districts and the Bethel area magistrates. A statewide magistrate conference is held in Anchorage during even-numbered years. Training judges, deputy training judges and staff of the administrative office regularly visit with magistrates for on-site training. The administrative office prepares written educational materials that are distributed to magistrates.

THE JUDICIAL APPOINTMENT PROCESS

The governor appoints a supreme court justice or a judge of the court of appeals, superior court, or district court from a list of qualified candidates submitted by the Alaska Judicial Council. The governor has 45 days from receipt of the list to make the appointment.

In order to be eligible for appointment to the **supreme court**, a person must be a citizen of the United States and a resident of Alaska for five years prior to appointment. A justice must be licensed to practice law in Alaska at the time of appointment and must have engaged in the active practice of law for eight years.

A **court of appeals judge** must be a citizen of the United States; a resident of Alaska for five years immediately preceding appointment; have been engaged for not less than eight years immediately preceding appointment in the active practice of law; and at the time of appointment be licensed to practice law in Alaska.

The qualifications of a judge of the **superior court** are the same as for a supreme court justice, except only five years of active practice are necessary.

A **district court judge** must be 21 years of age; a citizen of the United States; a resident of the state for at least five years; and (1) be licensed to practice law in Alaska and have engaged in active practice of law for not less than three years immediately preceding appointment, or (2) have served for at least seven years as a magistrate in the state and have graduated from an accredited law school.

Magistrates are not appointed by the governor nor are their qualifications reviewed by the Alaska Judicial Council. Their appointments are made for an indefinite period by the presiding judge of the judicial district in which they will serve. Each magistrate serves at the pleasure of the presiding judge. A magistrate does not have to be a lawyer. A magistrate must be 21 years of age, a United States citizen, and a citizen of Alaska for six months prior to appointment.

JUDICIAL RETENTION ELECTIONS

Each supreme court justice and each court of appeals judge is subject to approval or rejection by a majority of voters statewide on a nonpartisan ballot at the first general election held more than three years after appointment. Thereafter, each justice must participate in a retention election every ten years; each court of appeals judge must participate every eight years.

Each superior court judge is subject to approval or rejection by the voters in the judge's judicial district at the first general election held more than three years after appointment. Thereafter, the judge is subject to approval or rejection every sixth year. Each district court judge must also run in a retention election in his or her district at the first general election held more than two years after appointment, and then every fourth year thereafter. State laws that require judges to participate in retention elections do not apply to magistrates.

In November 1998, the following judges and justices participated in retention elections:

SUPREME COURT

Justice Robert L. Eastaugh

SUPERIOR COURT

Second District

Judge Michael I. Jeffery

Third District

Judge Beverly W. Cutler

Judge John Reese

Fourth District

Judge Niesje J. Steinkruger

DISTRICT COURT

First District

Judge Patricia Collins

Judge Peter Froehlich

Third District

Judge John R. Lohff

Judge Gregory Motyka

Third District - continued

Judge Sigurd E. Murphy

Judge M. Francis Neville

Judge Stephanie Rhoades

Fourth District

Judge Jane F. Kauvar

All of these members of the judiciary were retained by the voters.

THE COMMISSION ON JUDICIAL CONDUCT

The Commission on Judicial Conduct is a constitutionally created state agency separate from the court system. The commission consists of nine members: three state court judges or justices, three lawyers with at least ten years legal practice in Alaska, and three persons who are not lawyers or judges. The chief function of the commission is to investigate complaints of ethical misconduct against state judges and justices. The commission has the power to recommend that the supreme court sanction a justice or judge. Possible sanction recommendations include suspension, removal, retirement from office, or public or private censure. Since 1990, all formal hearings before the Commission on Judicial Conduct are public. In October 1997, the commission held the first public hearing under the 1990 statute.

In calendar year 1997, the commission received forty-nine complaints and processed a total of forty-three complaints. One formal complaint was filed by the commission against a judge during the year. At the end of 1997, the commission had nineteen pending complaints and one pending recommendation for discipline before the Alaska Supreme Court. The commission privately sanctioned one judge.

For more information regarding the Commission on Judicial Conduct, call (907) 272-1033 or toll-free 800-478-1033.

THE ALASKA JUDICIAL COUNCIL

The Alaska Judicial Council is an independent judicial branch agency created by the Alaska Constitution. It has three constitutional and statutory functions. First, the council solicits, screens and nominates applicants for gubernatorial appointments to vacant judgeships, the Alaska Public Defender and administrative tax law judges. Second, it evaluates judges standing for retention and publicizes information on judges and its retention recommendations. Third, the council conducts research to improve what the constitution refers to as "the administration of justice."

The judicial council is comprised of the chief justice, who serves as chairperson and ex officio member; three attorney members appointed by the Board of Governors of the Alaska Bar Association and three non-attorney members appointed by the governor and subject to confirmation by a majority of the members of the state legislature in joint session. Council members serve six-year terms.

The Alaska Judicial Council, which must report to the Alaska State Legislature and the Alaska Supreme Court at least once every two years, is assisted by an executive director and support staff.

For more information on the Alaska Judicial Council, call (907) 279-2526 or visit the Council's Internet site at www.ajc.state.ak.us.

BUDGET AND FISCAL AFFAIRS

The Alaska Legislature annually appropriates from the state's general fund all monies for the operation of the Alaska Court System. A statewide budget for all trial courts, the appellate courts and court administration is

prepared centrally by the administrative office.

The budget process for the court system begins with the submission of budget requests by the trial and appellate courts to the administrative director. The requests are reviewed with each judicial district's area court administrator and the clerk of the appellate courts. Then, these requests are modified to conform to the overall court budget plan. The court's budget request is reviewed and approved by the supreme court. Following legislative review and appropriation, funds are then allocated to the judicial districts, the appellate courts and the administrative office.

Since fiscal year 1988, the court experienced an average annual growth rate of approximately 2.2%. The court's FY 98 operating budget increased approximately 1.1% from the FY 97 level, which is partly attributable to a cost-of-living pay adjustment. The court system's budget represents approximately 1.3% of the State's operating budget.

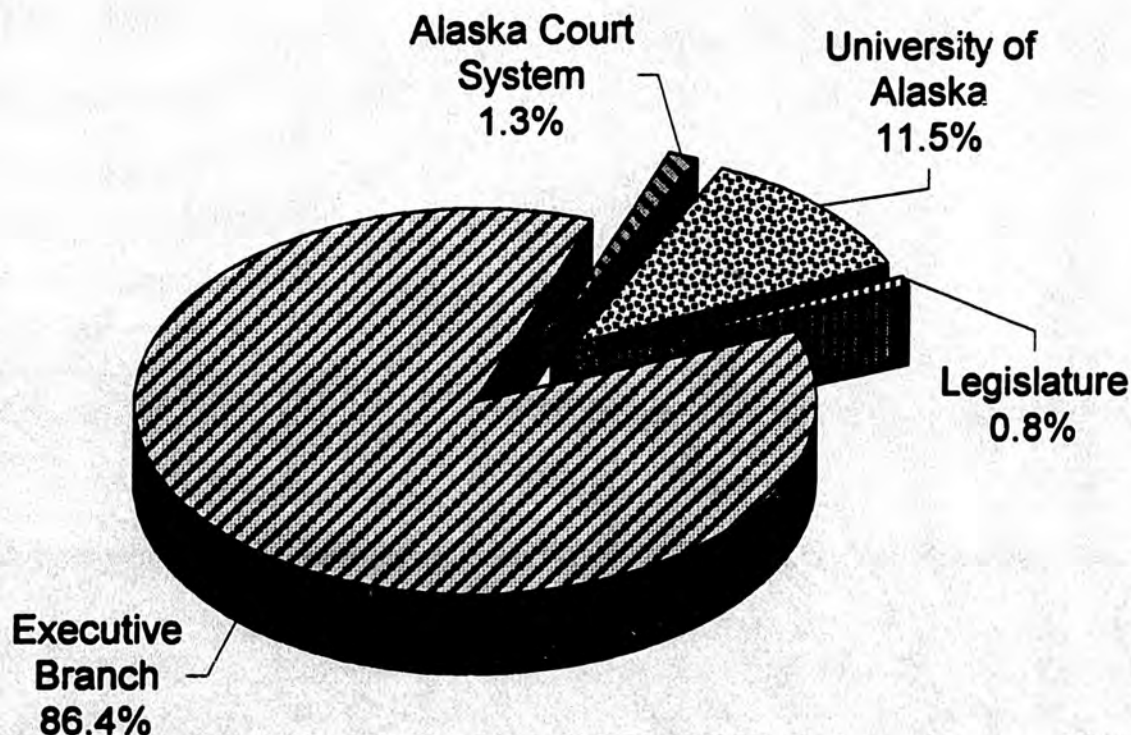
The actual expenditures incurred by the court system during fiscal year 1998 were \$48,653,000. These expenditures were incurred as follows: Appellate Courts, \$4,002,600; Trial Courts, \$38,438,700; and Administration \$6,211,700.

Personnel costs of \$37,767,700, represent approximately 78% of the total operating budget. Expenses for rent, maintenance, utilities, janitorial services and insurance on court facilities in fifty-nine locations across the state amounted to \$3,980,800. Jury fees totaled \$1,097,800. Due to the distances between courts, approximately \$1,055,000 was spent for travel including judicial, administrative, conference and juror transportation and living expenses. Other operating expenses of the court, including commodities, phones, postage, equipment rental, leasehold improvements and new equipment make up approximately \$4,751,700 of the annual expenditures.

Revenues generated by the courts are deposited in the state general fund, except those originating from municipal ordinance violations, which are disbursed to the respective municipalities. During fiscal year 1998, the court system collected \$5,859,600 in revenues. Revenues from fines and for-

feitures totaled \$3,649,100. Civil case filing fees (\$100 superior court, \$60 district court, \$25 small claims) totaled \$1,538,400. Clerical fees (notary, transcript, copies) and other miscellaneous receipts amounted to \$291,700. Cost recoveries totaled \$20,300 and interest on investments totaled \$360,100.

State of Alaska Fiscal Year 1998 Percentage of Operating Budget



Total State Operating Budget = \$3,837.6 million

BEYOND THE COURT SYSTEM

There are three separate branches of government created in the United States and Alaska Constitutions: the legislative branch, the executive branch and the judicial branch. This pamphlet outlines the functions of Alaska's judicial branch of government, which is more commonly called **the court system**.

This pamphlet discusses the roles of justices, judges and magistrates in the court system. However, many persons work within the justice system but **are not** part of the court system. For example:

- (1) A **plaintiff** is the person (or group, or corporation, etc.) who first brings a case to court and starts the court action.
- (2) The **defendant** is the person (or group, or corporation, etc.) who is on the other side of the dispute that the plaintiff has brought to court.
- (3) A **peace officer** or **enforcement officer** (for example, a policeman or state trooper) is someone who is responsible for maintaining order, enforcing the law, and preventing and detecting crime. A peace officer is **not** part of the judicial system.

A peace officer works in the executive branch of government in the Department of Public Safety or for a city government. He or she may appear in court as a **witness** or as a **prosecutor**, but a peace officer is not a part of the judicial branch of government.

- (4) A **lawyer** (also called an **attorney**, **counsel** or **counsellor**) is a person who is trained in legal matters, licensed to practice law, and who acts on behalf of other people in legal matters. The person a lawyer appears for is called the **client**. A lawyer's main duty is to his or her client, although the lawyer must also meet other obligations. (For example, a lawyer cannot knowingly make a false statement in court, even though the client may want him to.)

Some lawyers who hold special positions have special titles. A lawyer who is appointed by the court to represent a defendant in a criminal case because the defendant is too poor to hire his or her own lawyer is usually a lawyer employed by the Public Defender Agency, and is called an **Assistant Public Defender**. The lawyer who usually represents the State of Alaska in a criminal case is an **Assistant District Attorney**. Any lawyer who represents the plaintiff in a criminal case may be called the **prosecutor** or the **prosecuting attorney**. A lawyer who represents the State of Alaska in civil cases is usually called an **Assistant Attorney General**.

WHAT IS A COURT CASE?

A court case is simply a dispute that goes to court. The court is asked to decide (1) what the facts are, and (2) how the laws of Alaska apply to those facts. There are two main kinds of cases: **civil cases** and **criminal cases**.

Civil law is the law that deals with relationships between individuals. (A corporation is an "individual" under the law.) Civil suits are between private persons, such as a suit by one person to collect a debt from another person. (The word "suit" simply means "civil court case" and the word "sue" means to start a civil lawsuit.) The State of Alaska, just like an individual, can bring a civil action. An example of a civil case many people know about is a civil suit resulting from an automobile accident. One person sues another person for damages to his car or to himself from the accident. Some other kinds of civil cases are suits to collect money, suits for divorce and suits to recover property.

Criminal law is the law under which the federal, state, city or borough government brings a case against a person who has done something against the interest of **all** people. The government charges an individual with violating a criminal law or ordinance (city law) and brings a court action to punish and rehabilitate a person for what he did, so that he and other people will not do those kinds of acts in the future. The charging of a person with a crime and bringing him to trial is called a **prosecution**. The prosecution for all cases under the criminal law must be brought in the name of the federal, state, city or borough government, even though the case may be started by the complaint of a private person who is called the **complainant**. Some examples of crimes are murder, assault, disorderly conduct and drunk driving.

A person can do something which can result in both criminal and civil actions. For example, a person who steals a snow machine and wrecks it could be prosecuted by the state for the crime of theft and sued in a civil action for damages by the owner of the snow machine. The state, through the use of the courts, could bring a criminal action to punish the person by fining him, putting him in jail or both. The owner could demand in a civil court case that the thief pay him for the snow machine he destroyed.

1. Dist. data bases not reachable outside of district
- Need review by "Records Mgmt. Specialist."

Cindy
Marshall

2. Judges 6 no. rule - revise for Supremos

3. 12K criminal files, 11K civil + microfiche + family

!! process SERVING BY P.O. instead of process server.

5. RFP's for records mgmt.

Judges need authority to order mediation

Mediation agreements need to be in writing.

B. Trevi - "collectors" of judgments / restitution

"CAW" Dept. - should look at this

"Spend 1 day in jail - lose decision. Should be assigned to VICTIM.
Priority of attachments..."

*

Collections

Assigned of PFD is -

ARB/MED

Sept 8

Susan
Di Pietro

ANCHORAGE TRIAL COURT DIVISIONS

CIVIL DIVISION

The Anchorage Civil Division is responsible for processing all civil, small claims, and trial court appeal cases.

- Civil cases are actions brought to enforce, redress, or protect private rights. Examples of civil cases are:

Dissolutions/Divorces
Forcible Entry & Detainer
General Debts
Contracts
Change of Name

Medical/Legal Malpractice
Domestic Violence
Property/Auto Damage
Wrongful Death
Post Conviction Relief

- Small Claims cases are action brought before a special court which provides expeditious, informal, and inexpensive adjudication. The jurisdiction is limited to collection of small debts and accounts. The proceedings are very informal with parties normally representing themselves. A person can attempt to recover money or personal property worth \$7,500 dollars or less.
- Appeals are cases in which a party seeks review by a higher court of a decision by a lower court or administrative agency. An appeal is not a new hearing or trial and the appeals court will not accept any new evidence.

The case managers and legal technicians in the Civil Division are responsible for processing all paperwork that is filed for any civil, small claims or appeals case. They manage the cases from the day they are filed until the cases are closed. There are approximately 10,000 civil cases, 5,000 small claims cases, and 600 administrative appeals cases filed each year.

The Civil Division is located on the first floor of the Nesbett Courthouse.

CRIMINAL DIVISION

The Anchorage Criminal Division is responsible for processing all superior and district court cases for Anchorage and Whittier. This includes misdemeanor and felony cases.

- Misdemeanors are less violent crimes or involve less property loss and are punishable by imprisonment for no more than one year. Misdemeanors are heard in the district court.

- Felonies are a more serious crime and are punishable by imprisonment for more than a year. Initial proceedings in felony cases may be heard by the district court, however, trials in felony cases are held at the superior court level.

The Pre-Trial Services section of the Criminal Division reviews the financial status of litigants to determine if they qualify for a court-appointed attorney and makes a recommendation to the court. Most litigants interviewed by the Pre-Trial Services section are defendants in criminal cases, however, there are some litigants in children's proceedings, civil, and paternity cases who are interviewed for court appointed counsel.

There are approximately 11,000 criminal cases filed each year. There are between 6,000 and 7,000 closed cases that are reactivated each year due to post-judgment activity such as petitions to revoke probation.

The Criminal Division is also responsible for processing the exoneration and forfeiture of bail/bonds, suspended imposition of sentence, and overdue fines.

The Criminal Division is located on the first floor of the Nesbett Courthouse.

CUSTOMER SERVICE DIVISION

The Customer Service Division is responsible for providing assistance and information to attorneys, litigants and the general public in all aspects of the Anchorage Trial Courts.

The division is organized into the following areas:

- **The Front Counter.** Staff at the front counter assist the public by answering questions regarding all aspects of the Anchorage Trial Courts. They receive and review new civil and small claims complaints and issue summonses. They create a computer record for each of the 5,000 small claims cases and 8,000 civil cases new cases filed each year. They pull files for the public to review and make copies of files when requested.
- **The Switchboard.** The switchboard operator receives an average of 4,000 calls per month. The operator provides assistance to the callers or redirects the call to the appropriate division. The operator is also responsible for inventory and control of the lost and found for all Anchorage court facilities.
- **The Research Room.** The research room has five computer terminals, four microfilm machines, two microfiche readers, limited reference materials, and two copiers available for public usage. A customer service clerk is available in the area to assist the customers with the machines, materials, and to answer questions.
- **The Tape Duplication Office.** This section is responsible for storing all tapes from court proceedings and making copies of these tapes as requested from the public and court staff. There are two listening machines available for customers to listen to the tapes of court proceedings. The office is located in the basement in Room B-6 of the Nesbett Courthouse.

The Customer Service Division is located on the first floor of the Nesbett Courthouse.

DOMESTIC VIOLENCE DIVISION

The Domestic Violence Division provides information and assistance to the general public, attorneys, and internal employees regarding matters related to domestic violence issues.

The staff is responsible for preparing files, journal, and data entry in compliance with established laws, rules, policies, and procedures. There are approximately 3,000 cases filed each year and over 500 modifications.

Domestic violence cases can be filed 24 hours a day, seven days a week.

The Domestic Violence Division is located on the first floor of the Boney Courthouse.

IN-COURT CLERK DIVISION

The In-Court Clerk Division is responsible for operating and monitoring the electronic recording equipment in the courtroom. During the proceeding the In-Court Clerk takes log notes of what is said and done during the proceeding. The main responsibility as an In-Court Clerk is to make sure an accurate recording is made. The tapes are the official record of court proceedings [Administrative Rule 35 (a)] and will be used by judges and lawyers to review what happened at the proceedings. In addition, the In-Court Clerk is responsible for processing court orders and distributing paperwork during and after the proceedings.

In summary, the In-Court Clerk is responsible for the following:

- Preparing the courtrooms
- Announcing the opening of court
- Administering oaths
- Assisting in jury selection
- Keeping track of jury attendance
- Maintaining witness lists
- Marking and safekeeping exhibits
- Announcing the closing of court
- Labeling and security of tapes
- Filing log notes
- Other duties as required by individual courts (e.g., preparing and distributing other forms, keeping track of matters taken under advisement, etc.)

It is important that the In-Court Clerk conduct themselves in a professional manner in the courtroom. The In-Court Clerk should always try to maintain a neutral attitude and treat everyone (including criminal defendants) with courtesy. So as not to disturb or influence other persons (including jurors and witnesses) in the courtroom, it is also important that the In-Court Clerk control their facial expressions, especially during jury

trials. In addition, the In-Court Clerk must maintain confidentiality about confidential proceedings.

The In-Court Clerk Division is located on the fourth floor of the Nesbett Courthouse.

JURY CLERK DIVISION

The Jury Clerk Division is responsible for operating and monitoring the jury selection for Petit and Grand Jury qualifications. The Anchorage Trial Courts summons over 750 jurors per week, 52 weeks a year for Petit Jury and 300 jurors quarterly for Grand Jury service. Three panels of jurors are selected randomly to serve every third week for three months.

The Jury Clerk Division is responsible for the following:

- Qualification of jurors
- Preparing juror selection card for trial month
- Preparing questionnaires and selection cards of the trial week
- Processing incoming questionnaires
- Summons reminders and excusal postcards
- Research for income correspondence
- Limitation of jury service
- Deferral of jury service
- Protection for employee on jury duty
- Jury list
- Juror check-in
- No-show letters
- Jury panel
- Impaneling the trial jury
- Verdicts
- Pay entry and verify pay warrants
- Internal and external customer service

The Jury Clerk Division is located on the second floor of the Nesbett Courthouse.

RECORDS DIVISION

The Records Division is responsible for maintaining file control throughout the Nesbett and Boney Courthouses, collecting new filings with the court, executing copy requests, providing the judges with files for daily hearings, mailroom functions, and exhibit control.

The Records Division is located on the first floor of the Nesbett Courthouse.

TRAFFIC & MINOR OFFENSES DIVISION

The Traffic & Minor Offenses Division processes all state citations and any municipal citation that a citizen may wish to bring before the court.

The jurisdiction is determined by the maximum penalty that can be imposed, non-jailable offenses with fines normally less than \$300, and those offenses with a demerit point value of less than 12.

The division, in conjunction with the district court magistrates, operates independently from the rest of the court system with the exception of accounting functions. The division is open to the public through a front counter which accepts payments, requests for court appearances, and provides general information. Other internal processes include, opening and closing cases, calendaring, default judgments, bench warrants, and all other supporting procedures as required by statute, code, ordinances, regulations, and rules.

The Traffic & Minor Offenses Division is located on the third floor of the Boney Courthouse.

TRIAL COURT ACCOUNTING DIVISION

The Trial Court Accounting Division is responsible for monitoring, maintaining, and disbursing funds according to the Alaska statutes and court rules. These funds are deposited with the court by way of executions, garnishments, restitutions, bail, and civil deposits (court orders).

The Trial Court Accounting Division prepares daily bank deposits including monies receipted by Probate, Traffic, Appeals, and the Customer Service Counter. These funds are deposited to state and municipal revenue accounts as well as a state trust account. Files are reviewed for proper documentation prior to release of funds.

The Trial Court Accounting Division issues over 15,000 writs of execution each year on civil, small claims, and criminal cases. This includes writs for the Permanent Fund Dividend. Each October over 4,500 receipts for the PFD are generated. We research each file for disbursement of funds, manually generate checks, and posting to ledgers in a timely manner.

Always following the customer service standards, the Trial Court Accounting Division responds to a large variety of questions (in writing, in person or telephonically) from the public concerning Alaska statutes and court rules without giving legal advice along with maintaining communications with all other court offices.

The Trial Court Accounting Division is located on the fifth floor of the Nesbett Courthouse.

ANCHORAGE TRIAL COURTS: 1998 YEAR-END STATISTICS

Trial Court Accounting

- Number of files worked by TCA 39,000
 - Checks Disbursed 17,240 (1400 per month)
 - Writs of Executions Issued 8,007
 - Total Amount disbursed by TCA \$10,851,855.87
 - PFD Monies Received \$ 4,193,695.83 (4,129 cases)
- Goals Reached:**
- 90% PFD disbursed by 12/31/98
 - All court orders and bail disbursed within 48 hours after TCA received file

Civil Division

	<u>1997</u>	<u>1998</u>
• New Civil Cases (<i>Includes DV and Appeals</i>)	11,036	11,670
• New Domestic Violence cases	2,796	3,009
• New Appeals (<i>Appeals to District, Superior, COA and Supreme Cts</i>)		459
• Small Claims Cases	4,880	4,472
• Motions filed		9,920 (40 per day)
• Cases prepared and sent to Microfilm		11,767
• Small Claims prepared and sent to Microfilm		5,215

Goals Reached:

- New papers matched to files by 10 a.m. on day following filing
- Files worked by case managers within 3 days of receipt
- Motions worked by legal techs within 3 days of receipt. Starting January '99, this goal has been amended: Motions and default judgments to be worked within 4 days of receipt.

Criminal Division

	<u>1997</u>	<u>1998</u>
• New cases	10,576	11,118
• Post-Judgment and Out-of-Town Cases	6,473	10,989
• Cases in Judgment for Costs Entered	4,482	6,050
• Cases worked and sent to microfilm		9,406
• Search Warrants Filed	1,178	1,429
• Delinquent Fine Transferred for Collection	State: \$ 697,273	City: \$1,865,020

Customer Service Division

- Total Customers Assisted 60,500*
 - Customers Assisted in Research Room 17,055*
 - Calls through Switchboard 37,200 (150 per day)*
 - Tapes Duplicated 10,912
 - Files Pulled for Customer Reviewed 60,000*
- (*Estimated numbers extrapolated from a 1-month sampling.)

In-Court Division

- Arraignment files worked 22,828 (Approximate)
- D.C. Daily and Add-On Calendar 37,200 (Approximate)

Traffic Division**1997****1998**

• Citations filed	32,909	33,906
• Citations closed	24,311	39,305
• Arraignments	11,637	9,087
• Trials Scheduled	5,636	9,473
• Trails Called	4,469	8,503
• Bench Warrants Issued	16,617	21,181
• Out-of-Town citations Worked	1,137	741
• Default Judgments Entered	N/A	3,621 (Oct.-Dec.)
• Number of Delinquent Fines Transferred	3,581	7,457

Records

• Substitute Files Recreated from Microfilm	1,700
• Cases Rerefled	337,695* (Estimated)
• Files Pulled for Calendar (Does not include in-custody arraignments)	66,006
• Expedited Motions (Does not include those filed in-chambers)	1,909
• Research/Copy Requests (Does not include requests completed at front counter)	33,986
• Files sent to Microfilm	7,225
• Mail metered (Does not include March statistics)	256,318

Jury Office

• Jury Questionnaires Sent		29,250 (700 per week)
• # Excused/Returns/Not Answered	13,711 (352/week) 47%	
	(Not Answered 5,928 (152/week) 20%)	
• Deferred:		6745 (173/week) 23%
• Qualified Jurors		8,794 (225/week) 30%
• # Available – Previously Deferred)		1,562 (40/week) Manually
		Total: 10,356 (265/week)
• Jury Trials Reported:		
Coroner's	1	Superior Court Civil 21 (1 fold)
District Court Criminal	58 (3 folds)	Superior Court Criminal 55 (5 folds)
District Court Civil	5	Superior 6-Juror Civil 1
		Superior Court Children's 3
• Jury Costs:		
Grand Jury	\$ 56,647.40	
Petit Jury	\$234,865.00	
Meals/Travel/Lodging	\$ 43,704.88	

Prepared by Charlene Dolphin, Clerk of Court
and Cindy Marshall, Chief Deputy Clerk
January 14, 1999

Memorandum

Alaska Court System

204 Mission Road, Kodiak, AK 99615-9987

Tel: (907) 486-1623

Fax: (907) 486-1660

TO: Kathi Yeotis, Director
Court Custody Investigator's Office

FROM: Donald D. Hopwood, Superior Court Judge, Kodiak *D*

DATE: November 16, 1998

RE: Child Custody Investigation Services in Kodiak

This memorandum responds to your request of October 29, 1998 for additional information about child custody cases in Kodiak that might be referred to the court custody investigator. Please also refer to my earlier memorandum to Wendy Lyford, Third District ACA, regarding your budget request for travel to Kodiak.

Attached are two letters from Kodiak attorneys who represent low income parents in child custody cases. I asked local attorneys to send me their views about the investigator's travel for inclusion in this memorandum.

I estimate the number of cases referred each year to be 8-12. That number could increase once people know that the custody investigator is available in Kodiak.

The income range of the parents generally would be \$0 to about \$25,000 each (possibly more, depending upon the amount of debt and expenses). This is slightly higher than the income eligibility set out in Standing Order 3AN-AO-96-03 because the cost of living in Kodiak is substantially higher than in Anchorage. Also, the combined income cap in the standing order often is not realistic because the parents are maintaining two households, not one, in these cases.

I would consider ordering the parents to pay something toward the cost of the custody investigation. This likely would be on a sliding scale basis, which should be for the assigned judge to determine. Judges routinely use their discretion and judgment to determine how much in costs and attorney's fees parties pay in civil cases, administrative appeals, appeals to the superior court from the district court, and some criminal cases. I see no reason that we cannot do so for custody investigator expenses. What we do not need is a mandated fee schedule.

Memo, K. Yeotis
page 2

You asked about the effects of delay by having only 2-3 custody investigator trips to Kodiak each year, and how services can be better provided. The delay is unacceptable and the services are inadequate.

The delay is not acceptable because 1) children are at stake. Delay in these cases leaves them and the parents with uncertainty, which leads to stress, and continued disputes and turmoil; and 2) administrative goals for concluding cases within certain time frames will be frustrated.

Funding should permit a custody investigator to visit Kodiak 5 or 6 times per year if there are cases to investigate. John Hanscom's detailed expense accountings of his trips over the years should provide a reliable per day or per trip cost. In the overall scheme of things, the cost of these trips in a year is not that much. I might note that some additional economy in rental car expense might be available by using a DOT vehicle or possibly arranging for use of the adult or juvenile probation officers' vehicles here for home visits.

The several thousand dollars for 5-6 trips is an essential expenditure. We are talking about the custody of children when the parents can not sort it out and often do not have the money to even hire an attorney. The judges must have the investigator's timely observations and recommendations to decide legal and practical issues about raising children. We see cases where unrepresented parents, after filing a dissolution or divorce on their own, just quietly go away and do their own private custody arrangements because the system does not work for them.

Custody investigator travel funding raises some fundamental issues about access to justice that the court system has difficulty resolving on a day-to-day basis. I have to wonder why we must scrape and scratch for a few thousand dollars for this purpose but tens of thousands of dollars appeared for accoustic tiles on the ceilings of the new Anchorage courthouse, when the funding is available for extensive remodeling of administrative offices in the Snowden building and the Boney courthouse, when the personnel office nearly doubles in staffing, and when the parking lot around the admin building is paved in a year that there was "no money" for child custody investigators to come to some rural court sites.

The current discussion of access to the courts still is given only lip service when decisions are made about running the trial courts. In this case, we must ask why people in the rural areas must pay for services that people in Anchorage get for no cost. Access is difficult enough for divorcing parents who are indigent or nearly so without erecting the barriers of delay and money. Unfortunately,

Memo, K. Yeotis
page 3

many funding decisions in the past have not recognized this. It is time that funding priorities change to favor delivery of trial court services. Paying for the custody investigators to travel to Kodiak and other courts is one item that should be funded each year.

Finally, two groups in the child custody system are exceptions to the problems, and they should be commended highly. The first are the investigators who have worked Kodiak cases over the years, all of whom are dedicated, who work smart, who make it work under the most difficult of circumstances, and who even have advanced their personal funds for travel expenses to Kodiak. The second group are the private attorneys who do their level best to provide representation for people who have nowhere to turn, who take case after case for no or low pay, and who slog through pro bono service in its truest form. Not funding travel expenses inappropriately shifts the cost and difficulties of custody investigations to these people.

R

Memorandum

Alaska Court System

204 Mission Road, Kodiak, AK 99615-7312

Tel: (907) 486-1623

Fax: (907) 486-1660

TO: Wendy Lyford, Area Court Administrator
FROM: Donald D. Hopwood, Superior Court Judge, Kodiak
DATE: August 11, 1998
RE: Kodiak Travel Budget Request By Court Custody Investigator

Katherine Yeotis has informed me that the court custody investigator's office recently requested travel funds for fiscal year 2000 to travel to Kodiak. I fully support that request, and ask that it be given some priority.

The custody investigator's office conducts custody investigations upon appointment by the Superior Court when parties in custody disputes do not have the funds to pay for a private investigator. We have an estimated four to ten of these cases each year, and the need for an investigation is high. Because of Kodiak's location, the custody investigator does not have the funds or travel authorization to come to Kodiak, and the parties and their children must travel to Anchorage for personal interviews. Unfortunately, these people are often unable to do that because they are indigent and simply do not have the funds for airline tickets and possible lodging in Anchorage.

Over the past three years Kodiak has experienced fewer people willing and able to do custody investigations even on a full fee basis. No one is available to do them on a reduced or nominal fee basis. This results in some custody investigations being substantially delayed, or accomplished by inadequate means.

I will attempt to encourage the Kodiak bar to use the court custody investigator when their clients can pay and share the expense of travel. We did this until about two years ago when staffing limitations in the investigator's office prevented them from travelling to Kodiak, even when the expenses were paid by the parties. If we resume this practice, then we can make even better use of the custody investigator at less expense to the court system because, hopefully, some of the expenses will be paid by litigants who can afford to pay pro rata share. I think this will result in the best of all worlds; nonetheless, often it will require that some of the travel expenses be paid by the court system. Accordingly, I recommend highly that the travel budget request be approved.

Page 2
Ltr - Wendy Lyford
August 11, 1998

Thank you for your consideration of our needs in Kodiak in domestic relations cases.

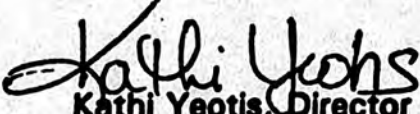


Copy to:
Katherine Yeotis, Director, Custody Investigator's Office
Magistrate Anna Moran
Clerk of Court Lori Wade

MEMORANDUM

July 14, 1998

TO: All Third Judicial District Family Court Judges and Masters

FROM: 
Kathi Yeotis, Director
Custody Investigator's Office

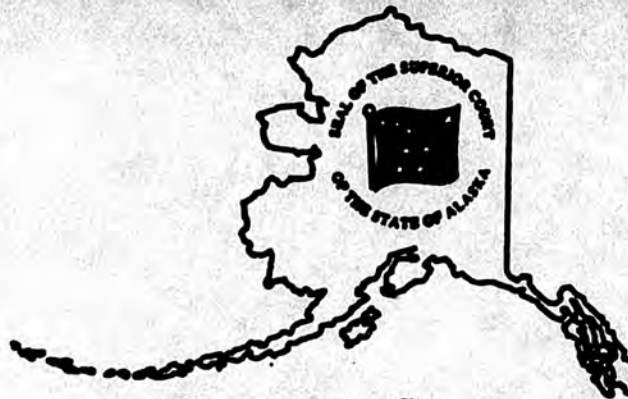
**REGARDING: New Report Format
Expedited Custody Investigations**

The Custody Investigator's Office recently completed a one day workshop on report writing. We are attempting to develop a standard format for custody investigation reports that will, hopefully, provide information in a clearer and more concise format. Most reports written beginning in mid-July will be in the new format. We plan to use this format over the next six months, at which time we will make necessary adjustments. Since our purpose is to provide information that assists the Court in making a custody/visitation determination, I would appreciate feedback on the new format, both positive and negative. Alternative suggestions are welcome.

We are also experiencing an increase in emergency domestic violence referrals and expedited custody investigations. While we will make every effort to complete these within the directed time frame, we have limited time set aside to perform these emergency investigations. It would be helpful to us, if you would have your office contact us before setting a Court date, sometimes as little as one additional week will enable us to do a thorough job. Also, if the matter is expedited, it needs to be noted on the Order For Custody/Visitation Investigation and the parties should be directed to contact us within two working days, rather than the ten days permitted in the standard language of the Order. This change just needs to be penciled in.

As always, please feel free to contact me if there are any concerns regarding this Office.

**cc: Hon. Elaine Andrews, Presiding Judge
Wendy Lyford, ACA**



Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT

FILED/RECEIVED
IN THE CHAMBERS OF
JUDGE DONALD D. HOPWOOD
Superior Court, State of Alaska
Third Judicial District at Kodiak

Time 4 PM
Date 3/24/99
Initials JS

CUSTODY INVESTIGATOR'S OFFICE
(907) 284-0428
FAX (907) 284-0522

303 K Street, Room 275
Anchorage, Alaska 99501-2083

CUSTODY INVESTIGATORS
Katherine Yeotis, Director
John Hanescom
Bobbi Gibson
Susan Arth
Lea Hamilton

March 22, 1999

Mr. [REDACTED]

Mr. [REDACTED]

Mr. [REDACTED]

Ms. [REDACTED]

Mr. [REDACTED]

Ms. [REDACTED]

3KO 97-502 CI

3KO 97-404 CI

3KO 98-260 CI

Dear Counsel, Mr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED]

The purpose of this letter is to advise you that I will be unable to come to Kodiak in April as planned. Ms. [REDACTED] never provided her portion of the funds for the trip. The addition of Mr. [REDACTED] to the list made it possible for the trip to occur without Ms. [REDACTED]'s participation; however, the Chya/Holcomb (another case scheduled to be addressed) matter settled at the last minute which again left us short of funds to complete the travel. The delay in notification of settlement in this matter led to the loss of an airfare that would have allowed the travel to occur. (On 3/19 the fare was \$109, on 3/22 it was \$224.)

Without including Ms. [REDACTED], the total cost of the trip is about \$740, for the three remaining Kodiak parties. It is anticipated that three days would be needed in Kodiak as there are nine interviews that need to occur. This cost per person would be \$246. Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] have sent checks for \$194, based on earlier estimates. The additional funds (\$47 per party) must be received in this office before any travel will be scheduled. Please advise me as to how you wish to proceed with this matter. If Ms. [REDACTED] wishes to participate, she must provide the entire \$247 amount. If I have not heard otherwise by April 2, 1999, I will return the checks to the parties who issued them.

I apologize for any inconvenience this may cause; however if the total funds are not advanced, we can not travel. If you have any questions, feel free to contact me.

Sincerely,



Katherine Yeotis
Custody Investigator

cc: Court files 3KO-97-502 Civil
3KO-97-404 Civil
3KO-98-360 Civil

Hon. Fred. Torisi
Hon. Donald Hopwood

8/18/99

TO DEPT. LAW

1. Dept. of Law does
collection for the
Court System -

2. ARBITRATION referral increases

require court to brief and allow med/
arbit. of civil cases

3. Family Court System
- Child Custody Cases -

4. Jerry L - publicize mtgs.

Court System Subcommittee
Commission on Privatization and Delivery of Government Services
Agenda
August 25, 1999
12:00 PM
Chairman: Ken Peavyhouse

1) ROLL CALL OF TELECONFERENCE SITES

- a) Juneau _____
- b) Fairbanks _____
- c) Kenai _____
- d) Other _____

2) ROLL CALL OF MEMBERS

3) REVIEW MINUTES OF PREVIOUS MEETING

4) OLD BUSINESS

- a) Update Focus On Panel Issues
- b) Arbitration – Don Rogers

5) NEW BUSINESS

- a) Family Law
- b) Other – Q& A with Court Sytem Contact – Doug Wooliver
- c) Court System Tours
- d) Around the Horn

6) NEXT MEETING DATE AND TIME – September 1, 12:00 PM (every Wednesday @ Noon until further notice)

7) ADJOURNMENT

**Commission of Privatization and Delivery of Government Services
Court System Subcommittee**

Date / Time: August 18, 1999 / 12:00 noon

Place: LIO Office, Room 220 – Anchorage, AK

Attendees:

Cowdry, John	(Anchorage)
Harris, Joyce	(Fairbanks)
Jarvi, "B"	(Fairbanks)
Peavyhouse, Ken	(Anchorage)
Palmer, Kathy	(Anchorage)
Rogers, Don	(Anchorage)
Rollins, Charles	(Fairbanks)
VanHatten, Colleen	(Fairbanks)
Wooliver, Doug	(Anchorage)

Rep. Cowdry's Staff:

Pignalberi, Marco
Higgins, Debbi

Absentees:

Adams, Al	(Juneau)
Gibson, Susan	(Kenai)
Tamagni, Al	(Anchorage)

TOPICS OF DISCUSSION

Housekeeping

- ☐ Ken Peavyhouse will give a reminder call or email to all members prior to each meeting.
- ☐ Kathy Palmer will chronicle the meetings and email notes to members.
- ☐ There is a file drawer in Room 210 (Anchorage LIO) containing files for each subcommittee. All of our documents will be kept there.
- ☐ The report of this subcommittee is due to the Commission by the last week of October, 1999.
- ☐ We will meet at noon every Wednesday until our report is complete.

Goal

- ☐ Overall, we need to find areas where the cost and efficiency of delivering Court System services can be improved by privatization.

Possible issues to assess for privatization

- ☐ Arbitration: Could the Court inform people that privatized arbitration is available up front, thereby reducing trial costs? If not, why not?
 - Doug Willover will write a white paper outlining how the Court currently uses arbitration.
 - Don Rogers will contact the American Arbitration Association in Seattle to ask how other states handle arbitration.
- ☐ Family law: How are family law issues (particularly children's cases) handled? Might there be a streamlined way to deliver those services?

Other

- ☐ Doug Willover will arrange a tour of the Court for Anchorage committee members. He will contact a Court representative in Fairbanks to arrange a tour for members there.

Court System Subcommittee Membership							
Peavyhouse	Ken	333-4881	N/A	N/A	pvhouse@alaska.net	333-4881	
Adams	Al	465-3707	465-4821	Alaska State Legislature - Senate	Senator_Al_Adams@legis.state.ak.us		Juneau
Gibson	Susan	262-1840	262-6163	Paralegal		262-4853	Kenai
Harris	Joyce	456-8702	456-8702 call	Court Visitor Services	harris@mosquito.net	456-8702	Fairbanks
Jarvi	"B"	458-8850	458-8860	Professional Guardian Services Corp	jarvi@ptialaska.net	457-1500	Fairbanks
Palmer	Kathy	787-8546	787-8018	CTG	Palmerks@alyeska_pipeline.com	274-8293	
Rogers, M.D.	Don	349-9104	522-5405		N/A	349-9104	
Tamagni	Al	522-3108	562-1366		atamagni@alaska.net		
VanHatten	Colleen	488-4524	488-2822	Alaska Contracting & Consulting	acc@mosquitonet.com	488-4023	Fairbanks
Wooliver	Doug	264-8265	264-8291	Alaska Court System - Contact	dwooliver@courts.state.ak.us	346-1129	

TRANSACTION REPORT

P. 01

AUG-24-1999 TUE 10:29 AM

BROADCAST

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
AUG-24	10:06 AM	919074654821 (907)	1' 05"	3	SEND	OK	118	
	10:26 AM	92626163 -versus	**' **"	0	SEND	BUSY	118	
	10:09 AM	919074588860	1' 30"	3	SEND	OK	118	
	10:10 AM	97878018	1' 03"	3	SEND	OK	118	
	10:12 AM	95225405	51"	3	SEND	OK	118	
	10:13 AM	95621366	5' 18"	3	SEND	OK	118	
	10:28 AM	919074882822	1' 18"	3	SEND	OK	118	
	10:19 AM	92648291	1' 13"	3	SEND	OK	118	

TOTAL : 12M 18S PAGES: 21



and Delivery of Government Services

www.privatizealaska.org

NOTICE OF SUBCOMMITTEE MEETING

Subcommittee Name:

Court System

Chairperson: Mr. Ken Peavyhouse

Phone: 333-4881

Committee Members:

Ken Peavyhouse	Kathy Palmer
Al Adams	Don Rogers M.D.
Susan Gibson	Al Tamagni
Joyce Harris	Colleen Van Hatten
B Jarvi	Doug Wooliver

Date:

Wednesday, August 25, 1999, 12:00 P.M.

Wednesday, September 1, 12:00 PM

Wednesday, September 8, 12:00 PM

Wednesday, September 15, 12:00 PM

Wednesday, September 22, 12:00 PM

Wednesday, September 29, 12:00 PM



and Delivery of Government Services

www.privatizealaska.org

NOTICE OF SUBCOMMITTEE MEETING

Subcommittee Name:

Court System

Chairperson: Mr. Ken Peavyhouse

Phone: 333-4881

Committee Members:

Ken Peavyhouse	Kathy Palmer
Al Adams	Don Rogers M.D.
Susan Gibson	Al Tamagni
Joyce Harris	Colleen Van Hatten
B Jarvi	Doug Wooliver

Date:

Wednesday, August 25, 1999, 12:00 P.M.

Wednesday, September 1, 12:00 PM

Wednesday, September 8, 12:00 PM

Wednesday, September 15, 12:00 PM

Wednesday, September 22, 12:00 PM

Wednesday, September 29, 12:00 PM

Wednesday, October 6, 12:00 PM

Wednesday, October 13, 12:00 PM

Wednesday, October 20, 12:00 PM

Place:

Legislative Information Office

716 W. 4th Avenue

Second Floor Conference Room

Juneau, Fairbanks & Kenai LIO Teleconference Available

If you have any questions please call Representative John Cowdery's office at 269-0222
or Senator Wards office at 269-0106.

The web site has a current list of members and schedule of meetings posted
daily!

www.privatizealaska.org

716 W. 4th Ave. Anchorage, AK 99501

Senator Jerry Ward: 907-269-0107 Fax 907-269-0109

Representative John Cowdery: 907-269-0222 Fax 907-269-0223



and Delivery of Government Services

www.privatizealaska.org

NOTICE OF SUBCOMMITTEE MEETING

Subcommittee Name:

Court System

Chairperson: Mr. Ken Peavyhouse

Phone: 333-4881

Committee Members:

Ken Peavyhouse	Edward Leon
Al Adams	Don Rogers M.D.
Susan Gibson	Al Tamagni
Joyce Harris	Colleen Van Hatten
B Jarvi	Doug Wooliver

Court House Tours Available in Anchorage, Fairbanks, & Kenai. Wednesday, September 1, 11:00 AM, Court House Lobby (regularly scheduled meeting will follow tours at the LIO's)

Date:

Wednesday, September 1, 12:00 PM

Wednesday, September 8, 12:00 PM

Wednesday, September 15, 12:00 PM

Wednesday, September 22, 12:00 PM

Wednesday, September 29, 12:00 PM

Wednesday, October 6, 12:00 PM

Wednesday, October 13, 12:00 PM

Wednesday, October 20, 12:00 PM

Place:

Legislative Information Office

716 W. 4th Avenue

Second Floor Conference Room

Juneau, Fairbanks & Kenai LIO Teleconference Available

We encourage you to bring a brown bag lunch to the meeting if you would like.

If you have any questions please call Representative John Cowdery's office at 269-0222 or Senator Wards office at 269-0106.

The web site has a current list of members and schedule of meetings posted daily!

www.privatizealaska.org

716 W. 4th Ave. Anchorage, AK 99501

Senator Jerry Ward: 907-269-0107 Fax 907-269-0109

Representative John Cowdery: 907-269-0222 Fax 907-269-0223

**Commission of Privatization and Delivery of Government Services
Court System Subcommittee**

Date / Time: August 25, 1999 / 12:00 noon
Place: LIO Office, Room 220 – Anchorage, AK

Attendees:

Harris, Joyce	(Fairbanks)
Jarvi, "B"	(Fairbanks)
Peavyhouse, Ken	(Anchorage)
Palmer, Kathy	(Anchorage)
Pignalberi, Marco	(Anchorage)
Rogers, Don	(Anchorage)
Rollins, Charles	(Fairbanks)
VanHatten, Colleen	(Fairbanks)
Wooliver, Doug	(Anchorage)

Absentees:

Adams, Al	(Juneau)
Gibson, Susan	(Kenai)
Tamagni, Al	(Anchorage)

TOPICS OF DISCUSSION

Arbitration and Mediation

- ☐ The topic of Alternate Dispute Resolution (ADR) will be separated into two topics:
 - Arbitration – Don Rogers will lead research and discussion.
 - Arbitration – "B" Jarvi will lead research and discussion.
- ☐ Doug Wooliver will provide details on two pilot projects under ADR grants.

Other

- ☐ The tours of Anchorage and Fairbanks courts are scheduled for next Wednesday, September 1, from 11:00-12:00. The regular meeting will be held following the tours.
- ☐ Doug Wooliver will invite Susanne DiPietro from Alaska Judicial Council to attend and speak at our meeting on September 8.
- ☐ Marco Pignalberi will verify that the Judicial branch has a different payroll scale than that of the Executive branch.

Department of Health & Social Services Subcommittee Membership							
Taurianan	Mike	262-4624	262-5777	Northern Test Lab	commak@worldnet.att.com	262-5777	Soldotna
Andress	Kathy	283-9003	283-8118	Bio Cycle Alaska	comfzone@ptialaska.net		Kenai
Andrews	Mark	452-8251 x3177	459-3953	Tanana Chiefs	mandrews@tananachiefs.org	474-8063	Fairbanks
Brown	Kelly	452-2300	452-2307	Representative from the union of DHSS workers	kelly@asea.fbx.mxmail.com		Fairbanks
Caswell	Lynn	276-5590	258-1091	Catholic Social Services	lcaswell@css.ak.org	688-4284	
Derr	Laraine	586-1790	463-3573	AK Hospital & Nursing Home Assoc.			Juneau
Foutz	Paul	272-1196	272-4850	O'Connor & CO., P.C.		561-0048	
Franz	Charles	235-8101	235-0253	Homer Hospital			Homer
Gilleen	Jerri	276-2131	276-0946	Muscular Distrophy Assn., Director	j_gilleen@hotmail.com		
Grasse	Don	786-0218	786-0270	General Mgr., K&L Distributors	dgrasse@ptialaska.net		
Hagevig	Rosemary	463-6151	586-9018	Catholic Community Services, Exec Director	rosemaryhagevig@ccsjuno.com		Juneau
Keller	Wes	694-6683	694-1015	Representative Dysons Office - SOA		376-6115	Eagle River
Kibby, Esq.	Richard	583-0373	583-5083				
Lindstrom	Elmer	465-1613	465-3068	Dept Health & Social - Dept Contact			Juneau
Lorenz	Clyde	457-7106	456-8245	Families First	Rynniva_Moss@legis.state.ak.us	457-7106	Fairbanks
Majewske	Marie	333-0717	N/A	North East Community Center	nonoinak@aol.com		
Maltman	David	269-8991	269-8995	HESS	david_maltman@health.state.ak.us		
O'Neil	Gloria	265-5917	265-5996	CEO, Cook Inlet Tribal Council	goneill@citci.com	230-0346	
Sandvik	Helvi	265-4149	265-4123	NANA Development	helvi.sandvik@nana-dev.com		
Moss	Rynniva	456-5081	456-8245	Rep Coghill	Rynniva_Moss@legis.state.ak.us	488-6583	
Villamides	Sylvia	258-6538	258-6526	Anchorage Neighborhood Health	silviav@anhc.org		
Clarke	Janet	465-1630	465-2499	Dept Health & Social - Dept Contact	Janet_Clarke@health.state.ak.us	789-3741	Juneau
Trafford Calder	Scott	474-0174	456-8245	Safe Families Inc.	Rynniva_Moss@legis.state.ak.us	474-0174	Fairbanks
Vitale	Vincent		258-7030	Attorney At Law	fiatlux@sinbad.net		
Eldridge	Barry	283-7152	283-7152	Barry Management	lridgebb@ptialaska.net	398-7811	Kenai
Short	Sarah	561-5976	562-8630	Families First	skyler@alaska.net		

www.privatizealaska.org

ABOUT US

NEWS

MEMBERS

RESOURCES

SCHEDULE

SUBCOMMITTEES

CONTACT



| | | | | | |

The Commission on Privatization and Delivery of Government Services.

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716 W. 4th Ave. Anchorage, AK 99501

This page was last updated 8/16/99; Direct corrections and technical inquiries to

Web Site Updated Daily

**Great resource for links, meeting
schedules, subcommittee
membership information, and
contact information.**

www.privatizealaska.org

Court System Subcommittee Membership							
Peavyhouse	Ken	333-4881	N/A		pvhouse@alaska.net	333-4881	
Adams	Al	465-3707	465-4821	Alaska State Legislature - Senate	Senator_Al_Adams@legis.state.ak.us		Juneau
Gibson	Susan	262-1840	262-6163	Paralegal		262-4853	Kenai
Harris	Joyce	456-8245	457-8702	Contracted court visitor for OPA cases	harris@mosquito.net	456-8702	Fairbanks
Jarvi	"B"	458-8850	458-8860	Public Guardian	jarvi@ptialaska.net		Fairbanks
Palmer	Kathy	787-8546	787-8018				
Rogers, M.D.	Don	349-9104	522-5405		N/A	349-9104	
Tamagni	Al	522-3108	562-1366		atamagni@alaska.net		
VanHatten	Colleen	488-4524	488-2822	Former Corrections Officer	acc@mosquitonet.com		Fairbanks
Wooliver	Doug	264-8265	264-8291	Alaska Court System - Contact			

COURT SYSTEM Subcommittee
Contact Information Sheet

Name:

Work Phone:

Home Phone:

Fax:

Company:

Email:

Address:

CONFERENCE CS FOR SENATE BILL NO. 33
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE CONFERENCE COMMITTEE

Offered: 5/14/99

Sponsor(s): SENATOR WARD

REPRESENTATIVE Kohring

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to contracts for the performance of certain state functions
2 previously performed by state employees and to the Commission on Privatization
3 and Delivery of Government Services; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. FINDINGS AND INTENT. (a) The legislature finds that

6 (1) the annual cost of state government is exceeding the annual revenue of the
7 state;

8 (2) the State of Alaska, other states, and the federal government have
9 successfully and substantially reduced government spending and increased government
10 efficiency by contracting with third parties to perform particular state or government functions;

11 (3) there may be functions of our current state government that can be
12 performed more efficiently by any or all of the following entities:

13 (A) nongovernmental or private organizations;

14 (B) local government or regional service organizations;

1 (4) there may be functions that state government should not continue to
2 perform, but should leave to the federal government;

3 (5) there may be state government functions that should be consolidated or
4 otherwise performed more efficiently;

5 (6) there exist state government functions that would be inappropriate to
6 contract out to nongovernmental agencies.

7 (b) The legislature finds it is in the best interest of the state to make a formal
8 determination of which state government functions can and should be transferred entirely to
9 private entities or to local government agencies and whether the state should stop performing
10 some functions for the federal government. The legislature also finds that it is in the best
11 interest of the state to determine which state government functions can be consolidated or
12 otherwise made more efficient.

13 (c) The legislature intends to make the determination set out in (b) of this section in
14 order to reduce dependency on state governmental revenues for the delivery of government
15 services.

16 * Sec. 2. COMMISSION ON PRIVATIZATION AND DELIVERY OF GOVERNMENT
17 SERVICES. (a) There is created in the legislative branch of the state government the
18 Commission on Privatization and Delivery of Government Services. The commission shall
19 consist of 11 members, as follows:

20 (1) one member of the senate appointed by the president of the senate who
21 shall serve as co-chair;

22 (2) one member of the house appointed by the speaker of the house who shall
23 serve as co-chair;

24 (3) one member appointed by the Alaska Municipal League;

25 (4) two public members appointed by the president of the senate, one of whom
26 shall be a representative of a Native corporation established under 43 U.S.C. 1601-1628
27 (Alaska Native Claims Settlement Act);

28 (5) two public members appointed by the speaker of the house, one of whom
29 shall be a representative of a Native corporation established under 43 U.S.C. 1601-1628
30 (Alaska Native Claims Settlement Act);

31 (6) one member appointed by the Alaska State Chamber of Commerce;

1 (7) one member appointed by the American Federation of Labor-Congress of
2 Industrial Organizations;

3 (8) one member from the minority caucus of the house appointed by the
4 speaker of the house;

5 (9) one member from the minority caucus of the senate appointed by the
6 president of the senate.

7 (b) The commission may appoint an advisory council to assist it in carrying out its
8 duties.

9 * Sec. 3. COMPENSATION. (a) The public members of the Commission on Privatization
10 and Delivery of Government Services appointed under sec. 2(a) of this Act are not eligible
11 for compensation but are entitled to per diem and travel expenses authorized for boards and
12 commissions under AS 39.20.180.

13 (b) Members of the advisory council appointed under sec. 2(b) of this Act are not
14 eligible for compensation, per diem, or payment of travel or other expenses by the state.

15 * Sec. 4. MEETINGS. The Commission on Privatization and Delivery of Government
16 Services shall meet as frequently as the commission determines necessary to perform its work.
17 The commission may meet and vote by teleconference.

18 * Sec. 5. DUTIES. (a) The Commission on Privatization and Delivery of Government
19 Services shall

20 (1) review and evaluate the policies and recommendations of other states that
21 are studying or have implemented recommendations to transfer the provision of government
22 services to other entities;

23 (2) review state contracting policy and procedures, including competitive
24 bidding procedures;

25 (3) identify state government functions capable of more efficient performance
26 in the delivery of government services, and determine whether those identified functions could
27 most effectively be provided by

28 (A) transferring to the private sector or contracting out;

29 (B) transferring to local governments or regional service organizations;

30 (C) the federal government;

31 (D) consolidation or other efficiency changes; or

- 1 (E) a combination of the approaches under (A) - (D) of this paragraph;
2 (4) identify state government functions that should be eliminated;
3 (5) identify present state government services that are most effectively and
4 efficiently delivered by the state and that should remain a responsibility of the state;
5 (6) solicit public comment about the delivery of state government services.
6 (b) By January 1, 2000, the Commission on Privatization and Delivery of Government
7 Services shall submit a written report of its findings and recommendations to the governor and
8 the legislature. The report must include suggested legislation that may be needed to
9 accomplish the recommendations. The report must specify which state
10 (1) functions should be transferred to the private sector or contracted out;
11 (2) functions should be transferred to local governments or regional service
12 organizations;
13 (3) agencies or functions should be consolidated or otherwise made more
14 efficient;
15 (4) functions should be performed by the federal government;
16 (5) functions should be eliminated as functions of state government.
17 * Sec. 6. This Act is repealed on January 1, 2000.
18 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

Agency Totals - FY00 Operating Budget

Agency: Alaska Court System

	FY98 Act	FY99 CC	FY99Auth	Gov Amd	House	Senate	ConfComm	FY99Auth to ConfComm	
Totals for Agency	49,699.5	49,373.5	49,717.7	52,712.1	50,240.3	49,375.6	49,720.0	2.3	0.0%
Objects of Expenditure:									
Personal Services	38,433.4	38,221.5	38,164.0	38,621.9	38,171.5	37,602.5	38,171.5	7.5	0.0%
Travel	1,081.3	955.7	960.7	1,049.5	960.7	865.0	639.8	-320.9	-33.4%
Contractual	8,891.2	10,844.4	9,281.2	11,083.2	9,496.3	9,296.3	9,296.9	15.7	0.2%
Commodities	732.6	796.0	806.0	806.0	806.0	806.0	806.0	0.0	0.0%
Equipment	428.7	609.3	279.2	624.9	279.2	279.2	279.2	0.0	0.0%
Lands/Buildings	122.3	206.6	206.6	206.6	206.6	206.6	206.6	0.0	0.0%
Grants, Claims	10.0	0.0	0.0	320.0	320.0	320.0	320.0	320.0	%
Miscellaneous	0.0	-2,260.0	20.0	0.0	0.0	0.0	0.0	-20.0	-100.0%
Funding Sources:									
1002 Fed Rcpts	11.1			315.0	315.0	315.0	315.0	315.0	%
1004 Gen Fund	49,527.3	49,294.2	49,525.8	52,317.8	49,846.0	48,981.3	49,325.7	-200.1	-0.4%
1007 I/A Rcpts	81.8							0.0	%
1037 GF/MH	79.3	79.3	79.3	79.3	79.3	79.3	79.3	0.0	0.0%
1053 Invt Loss			112.6	0.0	-0.0	-0.0	0.0	-112.6	-100.0%
Positions:									
Perm Full Time	658.0	665.0	665.0	671.0	665.0	665.0	665.0	0.0	0.0%
Perm Part Time	49.0	54.0	50.0	53.0	52.0	52.0	52.0	2.0	4.0%
Non-Perm	22.0	26.0	26.0	26.0	26.0	26.0	26.0	0.0	0.0%

Component Summary - FY00 Operating Budget

Agency: Alaska Court System

Page	Budget Component	FY98 Act	FY99 CC	FY99Auth	Gov Amd	House	Senate	ConfComm	FY99Auth to ConfComm	
	Unallocated Reduction									
1	Unallocated Reduction		-2,280.0	0.0	0.0	0.0	-659.4	-298.7	-298.7	0.0%
	* BRU Total	0.0	-2,280.0	0.0	0.0	0.0	-659.4	-298.7	-298.7	0.0%
	Alaska Court System									
2	Appellate Courts	4,002.6	4,026.3	3,980.4	4,054.4	3,980.4	3,980.4	3,980.4	-0.0	-0.0%
3	Trial Courts	38,438.7	40,213.7	38,531.9	40,851.6	38,974.5	38,839.5	38,840.1	308.2	0.8%
4	Administration and Support	6,211.7	6,497.8	6,285.2	6,651.8	6,350.2	6,285.2	6,285.2	-0.0	-0.0%
	* BRU Total	48,653.0	50,737.8	48,797.5	51,557.8	49,305.1	49,105.1	49,105.7	308.2	0.6%
	Commission on Judicial Conduct									
5	Commission on Judicial Conduct	281.0	225.4	226.3	251.3	226.3	224.1	216.3	-10.0	-4.4%
	* BRU Total	281.0	225.4	226.3	251.3	226.3	224.1	216.3	-10.0	-4.4%
	Judicial Council									
6	Judicial Council	765.5	670.3	673.9	883.0	688.9	685.8	676.7	2.8	0.4%
7	Courtwatch		20.0	20.0	20.0	20.0	20.0	20.0	0.0	0.0%
	* BRU Total	765.5	690.3	693.9	903.0	708.9	705.8	696.7	2.8	0.4%
	*** Total Agency Expenditure	49,699.5	49,373.5	49,717.7	52,712.1	50,240.3	49,375.6	49,720.0	2.3	0.0%
	Federal Funds	11.1			315.0	315.0	315.0	315.0	315.0	%
	General Funds	49,606.6	49,373.5	49,605.1	52,397.1	49,925.3	49,060.6	49,405.0	-200.1	-0.4%
	Other Funds	81.8		112.6	0.0	-0.0	0.0	0.0	-112.6	-100.0%

legislature. The duration of such appointments shall be prescribed by law.

ARTICLE IV. THE JUDICIARY.

SECTION 1. JUDICIAL POWER AND JURISDICTION. The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

SECTION 2. SUPREME COURT.

(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office.

SECTION 3. SUPERIOR COURT. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

SECTION 4. QUALIFICATIONS OF JUSTICES AND JUDGES. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

SECTION 5. NOMINATION AND APPOINTMENT. The governor shall fill any va-

cancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

SECTION 6. APPROVAL OR REJECTION. Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

SECTION 7. VACANCY. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

SECTION 8. JUDICIAL COUNCIL. The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

SECTION 9. ADDITIONAL DUTIES. The judicial council shall conduct studies for improvement of the administration of justice, and

make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

SECTION 10. COMMISSION ON JUDICIAL CONDUCT. The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.

SECTION 11. RETIREMENT. Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

SECTION 12. IMPEACHMENT. Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

SECTION 13. COMPENSATION. Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Com-

pensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

SECTION 14. RESTRICTIONS. Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

SECTION 15. RULE-MAKING POWER. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

SECTION 16. COURT ADMINISTRATION. The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system.

ARTICLE V. SUFFRAGE AND ELECTIONS.

SECTION 1. QUALIFIED VOTERS. Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. A voter shall have been, immediately preceding the election, a thirty day resident of the election district in which he seeks to vote, except that for

SUGGESTED OUTLINE FOR SUBCOMMITTEE REPORTS

I. Agency & Department Name

II. BRU and Component Names as listed in state budget

III Total Budget, all funds

- identify fund sources

IV. Total Revenue derived

- net cost/income to state

V. Identify Constitutional and Statutory Provisions Governing Agency Operation.

VI. Agency Mission, Goals and Objectives

- do reality check

VII. Number of Employees

- Identify Specialized Expertise Needed for Mission

VIII. Describe Technology Used to Perform Mission

- Identify Specialized Equipment Needed for Mission

IX. List Existing Agency Contracts including amount, contractor, purpose, term, and procurement method.

X. Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability.

XI. Make Recommendations per Section 5 in SB 33, including suggestions for new legislation.

XII. Explain rationale for each recommendation, the number of votes for and against it.

XIII. List problems or barriers to implementing proposed privatization.

8/25/99

Court System Subcommittee Membership							
✓ Peavyhouse	Ken	333-4881	N/A	N/A	pvhouse@alaska.net	333-4881	
Adams	Al	465-3707	465-4821	Alaska State Legislature - Senate	Senator_Al_Adams@legis.state.ak.us		Juneau
Gibson	Susan	262-1840	262-6163	Paralegal		262-4853	Kenai
✓ Harris	Joyce	456-8702	456-8702 call	Court Visitor Services	harris@mosquito.net	456-8702	Fairbanks
✓ Jarvi	"B"	458-8850	458-8860	Professional Guardian Services Corp	jarvi@ptialaska.net	457-1500	Fairbanks
✓ Palmer	Kathy	787-8546	787-8018	CTG	Palmerks@alyeska_pipeline.com	274-8293	
✓ Rogers, M.D.	Don	349-9104	522-5405		N/A	349-9104	
Tamagni	Al	522-3108	562-1366		atamagni@alaska.net		
✓ VanHatten	Colleen	488-4524	488-2822	Alaska Contracting & Consulting	acc@mosquitonet.com	488-4023	Fairbanks
✓ Wooliver	Doug	264-8265	264-8291	Alaska Court System - Contact	dwooliver@courts.state.ak.us	346-1129	

+ CHUCK ROLLINS

Court System Subcommittee
Commission on Privatization and Delivery of Government Services
Minutes
September 29, 1999 Meeting

Roll Call:

Harris
Jarvi
Rogers
Rollins
Tamagni
Vanlatten
Willford
Wooliver

The sub-committee members began with looking at issues that were presented at the prior meeting due to the absence of all Anchorage members the prior week.

Chuck reviewed the Pro Se litigants issues: Doug reported that there is currently a \$100,000 grant for the Anchorage area for a ProSe litigant center. Apparently this is a grant that has been recently received. The issue of the variety of forms used by the different judicial districts was again discussed. Doug expressed the opinion that the courts forms are currently pro se friendly, however there was not wide acceptance of the opinion. There is a forms committee which is addressing the issues of making the court forms uniform throughout the State. The issue of an integrated computer network was mentioned as a means of assisting in this area. Chuck gave as example his research on the Federal pro se clerk and how that process works.

Shirly gave a report on her prior research into the collections process with 4 Assistant AG's doing collections. It appears that if someone show up at the court house attempting to pay a delinquent fine, they are referred to the Dept. of Law in Anchorage and are not allowed to pay the fine. This is an area where a mechanism can be set up for the collection of these fees. It was determined that a referral will be made to the Law Sub-committee to follow through on this area. Doug provided information as to why the division of collections required so many employees re: it is the centralized collection agency for all State agencies.

"B" reported on her investigations into the collection of fees for court appointed attorneys. This reverted back to the collections unit of the Dept. of Law. Doug provided a hand out on the regulations governing this collection process. The research revealed that the court system does have mechanisms in place, however the Office of Public Advocacy does not. The OPA falls under the Dept. of Admin. and a referral will be made to this subcommittee to follow through on research on this income stream.

Doug reported that the computer system upgrades are all ready moving along.

The computer system was discussed at length. The need to upgrade and for the court system to appropriate funds on an annual basis to continue these upgrades. Roger suggested that we have the computer expert from the court system speak with the sub-committee. Doug agreed to make the arrangements.

"B" reported on the collection of court appointed attorney fees. Once again the discussion lead to Dept. of Law and collections for court appointed attorneys, however the Office of Public Advocacy court appointed attorneys do not appear to have a collection mechanism in the probate sector. This will be referred to the Dept. of Admin. for follow up.

Don introduced the subject matter of committees within the court system. Doug agreed to provide a hand out on all the current standing committees. Don agreed to follow up on research in this area.

Al requested a copy of the court system budget and will provide a break-down for the full sub-committee. Al introduced the area of purchasing/ discounts and how bills are paid by the court system. He requested information of how fees are collected and what fees are collectable. Al will follow up on this area. Doug will attempt to get the procurement officer for a sub-committee meeting.

The meeting was adjourned at 1:15pm.

1. Introduction

2. Mission

3. Objectives

4. Subcommittees

5. Schedule

6. Resources

7. Appendix

Suggested Outline for Subcommittee Reports

I. Agency & Department Name

II. BRU and Component Names as listed in state budget

III Total Budget, all funds

- Identify fund sources

IV. Total Revenue derived

- Net cost/income to state

V. Identify Constitutional and Statutory Provisions Governing Agency Operation

VI. Agency Mission, Goals and Objectives

- Do reality check

VII. Number of Employees

- Identify Specialized Expertise Needed for Mission

VIII. Describe Technology Used to Perform Mission

- Identify Specialized Equipment Needed for Mission

IX. List Existing Agency Contracts including amount, contractor, purpose, term, and procurement method

X. Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability

XI. Make Recommendations per Section 5 in SB 33, including suggestions for new legislation.

XII. Explain rationale for each recommendation, the number of votes for and against it.

XIII. List problems or barriers to implementing proposed privatization.

September 22, 1999

Privatization Commission
Court Subcommittee Minutes
Drafted by Marco Pignalberi

1. Shirley Willford reported on **COLLECTION OF FINES**. In Fairbanks, the court collects fines directly paid to them, but, all other others go to a collections office in the Dept. of Law. This office has nine people including 4 ass't attorney generals. About 25% of the court imposed fines go to the Dept. of Law.

We'd like to get more information on the back log of fines not paid. Need info for each judicial district. By what measure can we tell if Dept of Law is doing a good job collecting fines. Do they keep an 'aged accounts' listing like a business does for unpaid bills. Why can't we privatize these collection tasks.

According to a court employee in Fbx, they do not make their own **DEPOSITS**. They must send everything to Anchorage and Anchorage makes the deposits. This seems like a waste of interest income. Contact in Anchorage is Susan Wenton 269-6600.

All employees, everywhere in the court system, complain about their **OUTMODED COMPUTER SYSTEM**. It wastes time and causes them to incur extra costs for phone and repairs. Their not connected to other districts. We want to hear from the Court's computer operations chief.

The committee would like the Dept. of Law and/or Court system to report on these issues.

2. Joyce Harris reported on issues relating to **COURT APPOINTED LAWYERS**. It seems that the court appoint attorneys for people without verifying their financial need. Then, the attorneys bill the state directly without ever trying to recover costs from their clients. The state pays without checking on the ability of the client to pay their own fees. This situation seems to be worse in Fairbanks than in Anchorage. There is no standardization of policy on court appointed attorneys among all the judicial districts. Why not?
3. Chuck Rollins selected the issue of **PRO SE** litigants, (self -representation). We want to make it easier for people to represent themselves. We need an explanation of how the system works now, i.e., what hoops does a person have to jump through to represent him/herself in court. Then, what does the court system suggest to make it easier. We want to make small businesses eligible for **PRO SE**, too.
4. Colleen Van Hatten is investigating policies and practices of **RESTITUTION PAYMENTS** to victims. Restitution is often a court imposed condition of probation. But, Probation Officers, who handle 100 or more probationers, can't keep up and

usually ignore restitution issues. What are the policies in place for the Probation Officers relating to restitution payments. Why can't we privatize the restitution collections? Corrections Committee is not dealing with this, so Marco is asking the Department to send someone to our next meeting to discuss it.)

This investigation gave rise to a new issue: Troopers have a backlog of unserved warrants, especially those relating to collection of state debts and restitution. (Marco will refer this to Public Safety Committee, Debra Luper)

5. Joyce Harris and B Jarvi agreed to co-chair the subcommittee for the remainder of the work to be done. We extend our thanks to Ken Peavyhouse for getting us this far in fine fashion.

END OF NOTES

Court System Subcommittee
Commission on Privatization and Delivery of Government Services
Minutes
September 22, 1999 Meeting

Roll Call:

Harris
Jarvi
Rollins
VanHatten
Willford
Marco

Shirley reported on her research into the payment of fines. She reported that her investigations revealed the approx. 75% of fines are voluntarily paid in a timely manner. The outstanding 25% is referred to a special unit in the Department of Law. It was determined that this information should be referred to the subcommittee on the Law Dept. for further assessment due to have such a large number of attorneys devoted to collections.

Colleen reported on her research into the area of probations and how probation officers interact with the court system, can the systems be stream lined? Her report lead back into a discussion of the computer systems and how upgrades in that area will help to streamline the flow of information between the courts and probation. Colleen also researched the area of victim restitution which falls to the probation. We once again came back to the computer system and how an integrated system would assist with the flow of information back to the sentencing judges.

"B" reported on her investigations into the collection of fees for court appointed attorneys. This reverted back to the collections unit of the Dept. of Law. Doug provided a hand out on the regulations governing this collection process. The research revealed that the court system does have mechanisms in place, however the Office of Public Advocacy does not. The OPA falls under the Dept. of Admin. and a referral will be made to this subcommittee to follow through on research on this income stream.

Joyce reported on her findings of a lack of standard of forms and general procedures between the judicial districts.

Chuck reported on Pro Se services within the court. Two issues were discussed: 1) the potential for a designated ProSe law clerk who would assist individuals. 2) Currently due to Probate Rules Corporations are prohibited from ProSe representation. A sub-committee member was going to address the issue of recommending changes to the probate rules committee.

Court System Subcommittee
Commission on Privatization and Delivery of Government Services
Minutes
September 15, 1999 Meeting

Roll Call

Special Guest Speakers: Kris Conquergood and Dan Chey.

Kris and Dan discussed what is currently being used in the State of Alaska in alternative dispute resolution.

Both Kris and Dan have volunteered to draft a letter to the subcommittee regarding what they believe can be improved upon with help from the subcommittee. Their letter will include points regarding cost effectiveness of alternative dispute resolution as well as alternative ways of funding.

Subcommittee Members choose a specific area of interest to focus their attention. Each topic will be researched by the individual / group and information brought back to the main subcommittee for discussion and clarification of issues which are discovered.

The following is a list of subcommittee members and their area of interest.

Chuck:	Pro Se and system interaction court system interaction with law makers
"B":	Restitution to the court system for attorney fees (court appointed) Fines. How much is being collected and how to stream-line collection.
Colleen	Probation ; How the court interacts with probation and how can this area be streamlined. Is probation being overused?
Joyce:	Family law and child protective services. How can this area be stream l ined. Privatization of the Child Custody investigator, would it be cost effective?
Shirley:	Fines and collections. What are the current mechanisms? How are outstanding warrants being handled and how can this area be stream lined? Family restitution, how the court interacts with other agencies to meet these judgments.
Susan :	Pro Se system and how it's working. Interviewing court employees to get their opinions and perspective on what could be improved in their areas.
Mike:	Computerized system: How to update that and the general computer venue currently in existence.
Ken:	Alternative Dispute Resolution.
Don Rogers:	Alternative Dispute Resolution.

Meeting was adjourned 1:15 PM

Pension Services Int'l., Inc.520 E. 34TH AVENUE, SUITE 303, ANCHORAGE, ALASKA 98503-4118
PHONE: 907-562-3938 • FAX: 907-562-1366**FAX TRANSMITTAL COVER SHEET**DATE: 10/20/1999SENT FROM: (907) 562-1366SENDER'S NAME: AL TAMAGNI, SR.**RECEIVER INFO:**NAME: MARCO

COMPANY: _____

FAX #: 209-0223NUMBER OF PAGES, INCLUDING THIS COVER: 6COMMENTS: MARCO - PRELIMINARY LEIBW
at Budget and contracts with
Comments for TODAY call**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT THIS OFFICE AS SOON AS POSSIBLE.**

BUDGET REVIEW OF ALASKA COURT SYSTEM

YEAR REQUESTED 2000 OPERATING BUDGET
PERIOD JULY 1, 1999 THRU JUNE 30, 2000

	<u>Amount</u>	<u>% of Total</u>
1. Total Budget all Sources:		
Appellate Courts:	\$4,054,400.00	07.8183
Trial Courts:	\$40,851,600.00	78.7762
Administration:	\$6,651,800.00	12.8270
Grants	\$300,000.00	00.5785
TOTAL:	\$51,857,800.00	100.0000 %
2. Source of Funds:	Legislative Appropriation: 100%	
3. Revenue Unrestricted to General Fund:		
Miscellaneous:	\$303,500.00	
Filing Fees:	\$1,600,600.00	
Fines & Forfeitures:	\$3,749,300.00	
Cost Recovery:	\$47,200.00	
Service Fees:	\$21,100.00	
Interest earned on Bank Accounts:	\$374,600.00	
TOTAL:	\$6,218,200.00	
4. Ratio of Expense to Income:	8.33 to 1	
5. Difference between Expense and Income:	\$45,639,600.00	
6. Number of Employees:	726 + or -	
7. List of Contracts of \$5,000.00 or more:	See Attached Exhibit "A" (1-3)	

BUDGET AND OPERATIONAL SUGGESTIONS

1. Explore Lease vs. Purchase on all equipment, in particular electronic and technological modes. This would allow most technological equipment to be updated on a 3, 4 or 5 year period.
2. Hold line on additional personnel, except technological until conversion is made to new state wide computer system modalities.
3. Increase Recording fees: Last change was made in March of 1991.
4. Increase All uniform commercial code filing fees: Last change was made in March of 1991
5. Legislature should periodically review all fines and assessments for inflation considerations.
6. Court System upon installation of new computer system modalities, should implement use of credit card transactions in all courts, and related entities for all types of services. This should be reviewed as to installation and maintenance by the private sector. This should reduce man hours, transaction time and costs, and increase cash investment return sufficient to offset cost of the program.
7. Legislature should review Judicial Retirement System as to implement a new tier, currently those benefits exceed 25% of Salary in relationship to other employees of about 8%.
8. The Appellate and Superior Courts need to reduce the backlog of cases in a more timely manner to meet national standards and provide better service to the public. This can be accomplished while still maintaining prudence and quality.

**Alaska Court System
FY 99 Contracts > \$5,000**

A-1

Contract Type	Vendor	Location	99 Total Amount	How Acquired
Courier	John Hastie & Co.	Bethel	\$7,700	3 or More Quotes
Courier	Express Delivery	Anch Admin/Trial Court	\$8,715	3 or More Quotes
Copier/Rental	Xerox	Anch Admin	\$9,576	State Contract #27703
Snow Removal	Starr Trucking	Palmer	\$9,880	RFP/2 Yr Option/Final 8/99
Snow Removal/Lawn Care	ASSETS	Anch Admin	\$10,242	Negotiated/2 Yr Option
Landscaping	Mike's Landscaping	Palmer	\$10,406	RFP/2 Yr Option /Renewal 3/00
Snow Removal/Lawn Care	ASSETS	Anch Nesbett Bldg	\$12,366	RFP/2 Yr Option/Renewal 3/00
Snow Removal/Lawn Care	ASSETS	Anch Boney Bldg	\$21,021	RFP/2 Yr Option/Renewal 3/00
Snow Removal	Currier's Asphalt	Anch Admin/Trial Court	\$21,496	RFP/2 Yr Option/Renewal 6/00
Janitorial	Universal Floor Care	Palmer	\$31,700	RFP/2 Yr Option/Renewal 12/31/99
Janitorial	Frontier Training	Kenai	\$35,182	RFP/1 Yr Option/Renewal 10/99
Janitorial	ASSETS	Anch Admin	\$59,700	RFP/Renegotiated 5/99
Security	Guardian Security	Fairbanks	\$90,275	RFP-001-95/5 Yr Option
Janitorial	ASSETS	Anch Boney Bldg	\$138,866	RFP/Renegotiated 10/99
Transcription Svcs	All Vendors	All Courts	\$205,342	RFP's
Security	Guardsmark	Anch Admin/Trial Court	\$283,033	RFP-002-94/5 Yr Option
Janitorial	ASSETS	Anch Nesbett Bldg	\$350,754	RFP/Renegotiated 1/99

Capital Leases as of June 30, 1999

Alaska Court System

Completed By Linda Creed

Date 8-Aug-99

A.2

Vendor	Description of Item	Prior Year Balance	Increases	Decreases / Payments	Balance of Payments Remaining
Xerox	Copier 5028 681-493903	663.00	1,325.00	1,325.00	663.00
Xerox	Copier 5028 681-497484	1,280.00	1,860.00	1,731.00	1,419.00
Xerox	Copier 5085, 6VW-011682	6,150.00	6,300.00	6,300.00	6,150.00
Xerox	Copier 5085, 6VW-200504	6,150.00	6,300.00	6,300.00	6,150.00
Xerox	Copier 5052, 6VW-108584	3,181.00	2,360.00	2,361.00	3,180.00
Xerox (replaced 6VW-108584)	Copier 5085, 6VW-013088	3,967.00	3,932.00	3,933.00	3,966.00
Xerox	Copier 5085, 6VW-108540	3,967.00	3,932.00	3,933.00	3,966.00
Xerox	Copier 5085, 6VW-010735	4,204.00	3,932.00	3,932.00	4,204.00
Xerox	Copier 5085, 6VW-200436	3,966.00	3,932.00	3,932.00	3,966.00
Xerox	Copier 5085, 6VW-108567	2,848.00	1,450.00	1,450.00	2,848.00
Copy Star	Copier 2340, 37016646	2,339.00		2,339.00	
Xerox	Copier 5322, 1M2-471867	1,497.00	2,241.00	2,241.00	1,497.00
Sharp	Copier 2050, 66200486	5,828.00		5,828.00	
Sharp	Copier 2040, 66604636	7,772.00		5,468.00	2,286.00
Sharp	Copier 2040, 66602856	7,315.00		5,465.00	1,850.00
Ilkon Office	Copier 4527, 3716831034	7,768.00		4,660.00	3,108.00
Ilkon Office	Copier 4527, 3716830985	7,768.00		4,660.00	3,108.00
Ilkon Office	Copier R400, 3816120061	9,065.00		5,737.00	3,328.00
Alta Financial	Copier 2340, 37021855	3,638.00		3,117.00	521.00
Pitney Bowes	Copier C320, 6092494	4,369.00		3,276.00	1,093.00
Xerox	Copier 5021, 0MWD52864	2,964.00		1,723.00	1,261.00
Xerox	Copier 5021, 0MWD46939	2,303.00		1,631.00	672.00
Ilkon Office	Copier 4522, 3727830261	9,257.00		4,443.00	4,814.00
Ilkon Office	Copier R401, 7207160140	14,226.00		5,606.00	8,340.00
Ilkon Office	Copier R400, 7206020265	16,256.00		5,737.00	10,519.00
Ilkon Office	Copier 3213, 7416810346	3,509.00		1,238.00	2,271.00
EKCC	Reader Printer, 32131296	13,707.00		3,655.00	10,052.00

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P. 02/04

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Snow Removal/Lawn Care	ASSETS	Anch Admin	\$10,242	Negotiated/2 Yr Option
Landscaping	Mike's Landscaping	Palmer	\$10,406	RFP/2 Yr Option/Renewal 3/00
Snow Removal/Lawn Care	ASSETS	Anch Nebbett Bldg	\$12,366	RFP/2 Yr Option/Renewal 3/00
Snow Removal/Lawn Care	ASSETS	Anch Boney Bldg	\$21,021	RFP/2 Yr Option/Renewal 3/00
Snow Removal	Curtier Asphalt	Anch Admin/Trial Court	\$21,496	RFP/2 Yr Option/Renewal 6/00
Janitorial	Universal Floor Care	Palmer	\$31,700	RFP/2 Yr Option/Renewal 12/31/99
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Alaska Court System

Date 8-Aug-99
Completed By Linda Creed

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Xerox	Copier 5085, BWE-200504	8,150.00	8,300.00	8,300.00	8,150.00
Xerox	Copier 5052, BWE-108584	3,181.00	2,380.00	2,381.00	3,180.00
Xerox (replaced BWE-10855)	Copier 5085, BWE-013086	3,987.00	3,932.00	3,933.00	3,986.00
Xerox	Copier 5085, BWE-108540	3,987.00	3,932.00	3,933.00	3,986.00
Xerox	Copier 5085, BWE-010735	4,284.00	3,932.00	3,932.00	4,284.00
Xerox	Copier 5085, BWE-200436	3,986.00	3,932.00	3,932.00	3,986.00
Xerox	Copier 5085, BWE-108567	2,848.00	1,450.00	1,450.00	2,848.00
Copy Star	Copier 2340, 37016848	2,339.00		2,339.00	-
Xerox	Copier 5322, 1M2-471867	1,487.00	2,241.00	2,241.00	1,487.00
Sharp	Copier 2050, 56200486	5,626.00		5,626.00	-
Sharp	Copier 2040, 66604836	7,772.00		5,408.00	2,268.00
Sharp	Copier 2040, 66602958	7,315.00		5,485.00	1,830.00
Ilkon Office	Copier 4527, 3716831034	7,768.00		4,660.00	3,108.00
Ilkon Office	Copier 4527, 3716830985	7,768.00		4,660.00	3,108.00
Ilkon Office	Copier R400, 3816120061	9,085.00		5,737.00	3,348.00
Alta Financial	Copier 2340, 37021655	3,638.00		3,117.00	521.00
Pitney Bowes	Copier C820, 6082494	4,368.00		3,276.00	1,092.00
Xerox	Copier 5021, OMW052964	2,984.00		1,723.00	1,261.00
Xerox	Copier 5021, OMW048939	2,303.00		1,631.00	672.00
Ilkon Office	Copier 4522, 3727830241	9,257.00		4,443.00	4,814.00
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Ilkon Office	Copier 3213, 7416810346	3,509.00		1,239.00	2,270.00
EKCC	Reader Printer, 32131296	13,707.00		3,856.00	10,052.00

