

HB

92

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MEMORANDUM

March 23, 2007

SUBJECT: Authority of Ombudsman over records of the Office of Victims' Rights

TO: Representative Andrea Doll
Attn: Terry Harvey

FROM: Tamara Brandt Cook
Director

of the Ombudsman

TBC

(1) As an agency of the legislature, is the Office of Victims' Rights subject to the jurisdiction of the Ombudsman?

Under AS 24.55.150, the Ombudsman has jurisdiction to investigate an act of an agency if the ombudsman "has reason to believe" the act may be defective in one or more of the ways listed in the statute. In carrying out an investigation the Ombudsman is granted access to state records, including those of agencies not the subject of the investigation. AS 24.55.160(a) states:

In an investigation, the ombudsman may . . . (4) notwithstanding other provisions of law, have access at all times to records of every state agency, including confidential records, except sealed court records, production of which may only be compelled by subpoena, and except for records of active criminal investigations and records that could lead to the identity of confidential police informants.

Under AS 24.55.160(b) the ombudsman is forbidden from disclosing a confidential record obtained from an agency.

AS 24.55.330(2) provides a definition of "agency" for purposes of AS 24.55, the chapter that deals with the Office of the Ombudsman (emphasis added):

(2) "agency" includes a department, **office**, institution, corporation, authority, organization, commission, committee, council, or board of a municipality or **in the** executive, **legislative**, or judicial branches of the state government. . . .

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Only certain elected officials and judicial officials are specifically exempted from coverage under the definition of "agency." The Alaska Office of Victims' Rights is an "agency" for purposes of AS 24.55 and is subject to the jurisdiction of the Ombudsman.

(2) Does the Office of Victims' Rights privilege not to produce documents under AS 24.65.110(d) and AS 24.65.200 yield to the Ombudsman's power to obtain information?

While the matter is not entirely free from doubt, it appears the better reading of the statutes would result in the conclusion that the Ombudsman does have access to records of the Office of Victims' Rights. AS 24.55.160(a) unambiguously grants access to confidential records of "every" state agency (with specific exceptions that probably do not apply to most records of the Office of Victims' Rights) and grants that access "**notwithstanding other provisions of law.**" I read that phrase as superseding contrary provisions in AS 24.65. Under (b) of that section the Ombudsman is, in turn, required to maintain the confidentiality of those records.

TBC:med

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BILL STOLTZE

State Representative

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House Bill 92

Jurisdiction of Ombudsman

"An Act removing the victims' advocate and the staff of the office of victims' rights from the jurisdiction of the office of the ombudsman in the legislative branch."

House Bill 92 would amend Alaska statutes to explicitly exempt the Office of Victims' Rights (OVR) from the jurisdiction of the ombudsman. The statute should be amended to clarify the legislature's intent to have the OVR act as a special ombudsman for the legislature in criminal matters on behalf of crime victims. If this is not cleaned up, several problems arise.

If the Ombudsman continues to have jurisdiction over the OVR, it will add an unnecessary layer of investigation in which the "ombudsman investigates the ombudsman".

The OVR is staffed by attorneys with specialized knowledge; the ombudsman is not. This raises the question of "institutional competency" when the Ombudsman lacks that special legal knowledge necessary to investigate. Additionally, since the victims' advocate and staff are attorneys, they are already subject to ethical obligations to their clients in the Alaska Rules of Professional conduct, including the ARPC 1.3 requirement to exercise due diligence.

The OVR has access to confidential information and records beyond the scope of the access allowed to the Ombudsman. Currently, the OVR is prohibited by statute from providing confidential information and documents to the Ombudsman under confidentiality requirements.

For these reasons it is imperative that the legislature clarify their intent and remove the OVR from the jurisdiction of the Ombudsman.

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BILL STOLTZE State Representative

Representative_Bill_Stoltze@legis.state.ak.us

MEMORANDUM

TO: Representative Bob Lynn, Chairman
House State Affairs Committee

FROM: Bill Stoltze *BS*

DATE: February 28, 2007

SUBJECT: Hearing Request

I respectfully request a hearing be scheduled for House Bill 92, removing the victims' advocate and the office of victims' rights from the jurisdiction of the office of the ombudsman in the legislative branch.

Thank you for your consideration.

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