

**HB**

**127**

<TARGET><BILL>HB 127</BILL><SUBJECT>HB  
127</SUBJECT><COMM>HJUD28</COMM></TARGET>



# ALASKA STATE LEGISLATURE

**Interim:**

600 East Railroad Avenue  
Wasilla, Alaska 99654  
Phone (907) 373-1842  
Fax: (907) 373-4729



**Session:**

State Capitol Building  
Juneau, Alaska 99801-1182  
Phone: (907) 465-2186  
Fax: (907) 465-3818

## REPRESENTATIVE WES KELLER DISTRICT 7 SECTIONAL

To: Members of the Alaska Legislature

Date: February 20, 2014

Re: Sectional of CS for House Bill 127 (28-LS088\G)

---

CS for House Bill 127 is broken into 10 sections:

**Section 1:** Permits the ombudsman to receive step increases while in office.

**Section 2:** Permits employees of the ombudsman to be hired under personal service contracts.

**Section 3:** Maintains privacy under attorney client privilege.

**Section 4:** Exempts the ombudsman and staff from being forced to testify in either a judicial or administrative hearing regarding matters involving official duty work.

**Section 5:** Brings procurement language in compliance with standard Legislative procurement code including future changes as they develop.

**Section 6:** "Instrumentality" is added to the list of agencies that can be investigated by the Ombudsman which includes any statutorily established "instrumentality of the state."

Additionally, persons who hold contracts with the state to provide adult and minor inmate services, or mental health treatment can be investigated by the ombudsman.

**Section 7:** Notice to contract services in section 6 will be included in the contract language for those services.

**Section 8:** Addresses an amendment to Court Rules 501 and 503 of the right not to be forced to testify in the case of attorney-client privilege as indicated in Section 4 of the bill.

**Section 9:** Effective date

**Section 10:** Required language for legislative vote on indirect court rule amendment. Necessary for implementing Section 3 and 4

*Please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.*

E-Mail: [Representative.Wes.Keller@akleg.gov](mailto:Representative.Wes.Keller@akleg.gov)

Call Juneau Toll free: (800) 468-2186

Website: [www.akrepublicans.org/keller/](http://www.akrepublicans.org/keller/)

AMENDMENT #1

*adopted  
unanimously*

OFFERED IN THE HOUSE

TO: CSHB 127(JUD), Draft Version "D"

- 1 Page 3, lines 9 - 10:
- 2 Delete "construction, and office space"
- 3 Insert "and office space, and for construction limited to providing and
- 4 maintaining office space for the office of the ombudsman"

28-LS0088VD  
Gardner  
3/19/14

**CS FOR HOUSE BILL NO. 127(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to compensation of the ombudsman and to employment of staff by the  
2 ombudsman under personal service contracts; relating to disclosure by an agency to the  
3 ombudsman of communications subject to attorney-client and attorney work-product  
4 privileges; relating to the privilege of the ombudsman not to testify and creating a  
5 privilege under which the ombudsman is not required to disclose certain documents;  
6 relating to procedures for procurement by the ombudsman; and amending Rules 501  
7 and 503, Alaska Rules of Evidence."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 \* **Section 1.** AS 24.55.060 is amended to read:

10 **Sec. 24.55.060. Compensation.** The ombudsman is entitled to receive an  
11 annual salary equal to a step in [A,] Range 26 on the salary schedule set out in  
12 AS 39.27.011(a) [FOR JUNEAU].

13 \* **Sec. 2.** AS 24.55.070 is amended by adding a new subsection to read:

1 (d) Notwithstanding (c) of this section, staff appointed by the ombudsman  
2 may be employed under a personal services contract as provided by AS 24.10.060(f).

3 \* **Sec. 3.** AS 24.55.160(a) is amended to read:

4 (a) In an investigation, the ombudsman may

5 (1) make inquiries and obtain information considered necessary;

6 (2) enter without notice to inspect the premises of an agency, but only  
7 when agency personnel are present;

8 (3) hold private hearings; and

9 (4) notwithstanding other provisions of law, have access at all times to  
10 records of every [STATE] agency, including confidential records, except sealed court  
11 records, production of which may only be compelled by subpoena, and except for  
12 records of active criminal investigations and records that could lead to the identity of  
13 confidential police informants.

14 \* **Sec. 4.** AS 24.55.160 is amended by adding a new subsection to read:

15 (c) Disclosure by an agency to the ombudsman under this chapter of a  
16 communication that is subject to the attorney-client privilege, or attorney work-  
17 product privilege, does not waive the privilege as to any other person. The  
18 ombudsman may not disclose a privileged communication provided under this  
19 subsection.

20 \* **Sec. 5.** AS 24.55.260 is repealed and reenacted to read:

21 **Sec. 24.55.260. Ombudsman's privilege not to testify or disclose**  
22 **documents.** (a) The ombudsman and staff of the ombudsman may not testify or be  
23 deposed in a judicial or administrative proceeding regarding matters coming to their  
24 attention in the exercise of their official duties, except as may be necessary to enforce  
25 the provisions of this chapter.

26 (b) The records of the ombudsman and staff of the ombudsman, including  
27 notes, drafts, and records obtained from an individual or agency during intake, review,  
28 or investigation of a complaint, and any reports not released to the public in  
29 accordance with AS 24.55.200, are not subject to disclosure or production in response  
30 to a subpoena or discovery in a judicial or administrative proceeding, except as the  
31 ombudsman determines may be necessary to enforce the provisions of this chapter.

1 Disclosure by the ombudsman is subject to the restrictions on disclosure in  
2 AS 24.55.160 - 24.55.190.

3 \* **Sec. 6.** AS 24.55.275 is amended to read:

4 **Sec. 24.55.275. Contract procedures.** The ombudsman shall adopt by  
5 regulation procurement procedures that are appropriate for the office of the  
6 ombudsman and that are similar to those adopted by the legislative council under  
7 AS 36.30.020, as they may be amended from time to time. The procedures shall  
8 [CONSISTENT WITH AS 36.30 TO] be followed by the office of the ombudsman in  
9 contracting for professional and other services, supplies, construction, and office  
10 space. However, competitive principles in the procurement procedures adopted  
11 by the legislative council under AS 36.30.020 do [THE PROCEDURE FOR  
12 REQUESTS FOR PROPOSALS DOES] not apply to contracts for investigations  
13 under AS 24.55.100 [, AND THE OFFICE OF THE OMBUDSMAN SHALL  
14 COMPLY WITH THE FIVE PERCENT PREFERENCE UNDER AS 36.30.321(a)].

15 \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
16 read:

17 **INDIRECT COURT RULE AMENDMENTS.** (a) The change made to  
18 AS 24.55.160(c), added by sec. 4 of this Act, has the effect of changing Rules 501 and 503,  
19 Alaska Rules of Evidence, by clarifying that disclosure by an agency to the ombudsman under  
20 AS 24.55 of a communication that is subject to the attorney-client privilege or attorney work-  
21 product privilege does not waive the privilege as to any other person and that the ombudsman  
22 has a privilege not to testify or disclose documents as provided under AS 24.55.260, added by  
23 sec. 5 of this Act, and may not be made to disclose a communication provided by an agency  
24 to the ombudsman that is subject to the attorney-client privilege or attorney work-product  
25 privilege.

26 (b) The change made by sec. 5 of this Act has the effect of changing Rule 501, Alaska  
27 Rules of Evidence, by clarifying that the ombudsman and the staff of the ombudsman have a  
28 privilege not to testify or disclose or produce records in a judicial or administrative  
29 proceeding, except as provided under AS 24.55.160 - 24.55.200.

30 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1           CONDITIONAL EFFECT. (a) AS 24.55.160(c), added by sec. 4 of this Act, takes  
2 effect only if sec. 7(a) of this Act receives the two-thirds majority vote of each house required  
3 by art. IV, sec. 15, Constitution of the State of Alaska.

4           (b) Section 5 of this Act takes effect only if sec. 7(b) of this Act receives the two-  
5 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of  
6 Alaska.

AMENDMENT

#1 passed unanimously

OFFERED IN THE HOUSE  
TO: CSHB 127(STA)

BY REPRESENTATIVE KELLER

- 1 Page 2, line 11, following "if":
- 2 Delete "the chair of"
- 3
- 4 Page 2, line 12, following "requests an":
- 5 Insert "ombudsman"
- 6
- 7 Page 2, line 18, following "complainant":
- 8 Delete "consents to disclosure"
- 9 Insert "requests"

AMENDMENT

*withdrawn*

OFFERED IN THE HOUSE  
TO: CSHB 127(STA)

BY REPRESENTATIVE MILLETT

1 Page 1, lines 8 - 11:

2 Delete "relating to the definition of 'agency' for purposes of the Ombudsman Act  
3 and providing jurisdiction of the ombudsman over persons providing certain services to  
4 the state by contract or grant and over instrumentalities of the state;"

5

6 Page 4, lines 7 - 30:

7 Delete all material.

8

9 Renumber the following bill sections accordingly.

10

11 Page 5, lines 15 - 18:

12 Delete all material.

13

14 Renumber the following bill section accordingly.

15

16 Page 5, line 22:

17 Delete "sec. 12(a)"

18 Insert "sec. 10(a)"

19

20 Page 5, line 24:

21 Delete "sec. 12(b)"

22 Insert "sec. 10(b)"

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 127(STA)  
Fiscal Note Number: 1  
(H) Publish Date: 3/10/14

Identifier: HB127-DOC-OC-01-21-14  
Title: OMBUDSMAN  
Sponsor: RLS BY REQUEST  
Requester: House State Affairs

Department: Department of Corrections  
Appropriation: Administration and Support  
Allocation: Office of the Commissioner  
OMB Component Number: 694

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

|                               | FY2015<br>Appropriation<br>Requested | Included in<br>Governor's<br>FY2015<br>Request | Out-Year Cost Estimates |            |            |            |            |            |
|-------------------------------|--------------------------------------|--|-------------------------|------------|------------|------------|------------|------------|
|                               |                                      |  | FY 2015                 | FY 2016    | FY 2017    | FY 2018    | FY 2019    | FY 2020    |
| <b>OPERATING EXPENDITURES</b> |                                      |  |                         |            |            |            |            |            |
| Personal Services             |                                      |  |                         |            |            |            |            |            |
| Travel                        |                                      |  |                         |            |            |            |            |            |
| Services                      |                                      |  |                         |            |            |            |            |            |
| Commodities                   |                                      |  |                         |            |            |            |            |            |
| Capital Outlay                |                                      |  |                         |            |            |            |            |            |
| Grants & Benefits             |                                      |  |                         |            |            |            |            |            |
| Miscellaneous                 |                                      |  |                         |            |            |            |            |            |
| <b>Total Operating</b>        | <b>0.0</b>                           | <b>0.0</b>                                     | <b>0.0</b>              | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**Fund Source (Operating Only)**

|              |            |            |            |            |            |            |            |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None         |            |            |            |            |            |            |            |
| <b>Total</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**Positions**

|           |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |

|                           |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|
| <b>Change in Revenues</b> |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0

Estimated CAPITAL (FY2015) cost: 0.0

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

|  |
|--|
| Updated for 2nd session to accurately reflect FY2015 and out year costs. |
|--|

|              |  |        |                            |
|--------------|--|--------|----------------------------|
| Prepared By: | <u>April Wilkerson, Director</u>                           | Phone: | <u>(907)465-4641</u>       |
| Division:    | <u>Department of Corrections - Administrative Services</u> | Date:  | <u>10/04/2013 08:52 AM</u> |
| Approved By: | <u>Leslie Houston, Deputy Commissioner</u>                 | Date:  | <u>10/04/13</u>            |
| Agency:      | <u>Department of Corrections</u>                           |        |                            |

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 127(STA)

**Analysis**

This bill amends AS 24.55.330(2) to expand the Ombudsman's jurisdiction to entities that contract with the Department of Corrections to provide prison, halfway house, or other residential type services. As a state agency, the Department of Corrections currently works with the Ombudsman to resolve complaints and the inclusion of these contractors would not require a substantial adjustment to current practices. Therefore, passage of this legislation would not result in additional costs to the Department.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 127(STA)  
Fiscal Note Number: 2  
(H) Publish Date: 3/10/14

Identifier: HB127-DOA-PDA-01-21-14  
Title: OMBUDSMAN  
Sponsor: RLS BY REQUEST  
Requester: House State Affairs

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Public Defender Agency  
OMB Component Number: 1631

### Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

|                               | FY2015<br>Appropriation<br>Requested | Included in<br>Governor's<br>FY2015<br>Request | Out-Year Cost Estimates |         |         |         |         |
|-------------------------------|--------------------------------------|--|-------------------------|---------|---------|---------|---------|
|                               |                                      |  | FY 2016                 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| <b>OPERATING EXPENDITURES</b> | ***                                  | ***  | ***                     | ***     | ***     | ***     | ***     |
| Personal Services             |                                      |  |                         |         |         |         |         |
| Travel                        |                                      |  |                         |         |         |         |         |
| Services                      |                                      |  |                         |         |         |         |         |
| Commodities                   |                                      |  |                         |         |         |         |         |
| Capital Outlay                |                                      |  |                         |         |         |         |         |
| Grants & Benefits             |                                      |  |                         |         |         |         |         |
| Miscellaneous                 |                                      |  |                         |         |         |         |         |
| <b>Total Operating</b>        | ***                                  | 0.0  | ***                     | ***     | ***     | ***     | ***     |

### Fund Source (Operating Only)

|              |     |     |     |     |     |     |     |
|--------------|-----|-----|-----|-----|-----|-----|-----|
| None         |     |     |     |     |     |     |     |
| <b>Total</b> | *** | 0.0 | *** | *** | *** | *** | *** |

### Positions

|           |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |

|                           |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|
| <b>Change in Revenues</b> |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0

Estimated CAPITAL (FY2015) cost: 0.0

### ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

### Why this fiscal note differs from previous version:

|  |
|--|
| Updated for 2nd session to accurately reflect FY2015 and out year costs. |
|--|

|              |                                    |        |                     |
|--------------|------------------------------------|--------|---------------------|
| Prepared By: | Quinlan Steiner                    | Phone: | (907)334-4414       |
| Division:    | Public Defender Agency             | Date:  | 09/17/2013 12:00 AM |
| Approved By: | Curtis Thayer, Acting Commissioner | Date:  | 01/10/14            |
| Agency:      | Department of Administration       |        |                     |

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 127(STA)

**Analysis**

This bill places the Alaska Bar Association under the jurisdiction of the Ombudsman's Office. The bill also purports to prevent the waiver of the attorney-client privilege if such information is provided to the Ombudsman's office and to prevent further disclosure by the Ombudsman's office.

This bill would likely make attorney responses to bar grievances subject to disclosure to the Ombudsman's office should that office conduct an investigation into the Bar Association's action on a grievance filed against an attorney. This would prevent attorneys from fully responding to bar grievances due to the risk that client confidences would be revealed to a third-party in violation of Alaska Code of Professional Conduct.

The failure to respond fully to bar grievances is likely to result in additional expenses surrounding litigation of proper response to bar grievances and increased acceptance of grievances for investigation. The Agency cannot predict the fiscal impact of this legislation and, therefore, submits an indeterminate fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 127(STA)  
Fiscal Note Number: 3  
(H) Publish Date: 3/10/14

Identifier: HB127-DOA-OPA-01-21-14  
Title: OMBUDSMAN  
Sponsor: RLS BY REQUEST  
Requester: House State Affairs

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Office of Public Advocacy  
OMB Component Number: 43

### Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

|                               | FY2015                  | Included in               | Out-Year Cost Estimates |             |             |             |             |
|-------------------------------|-------------------------|---------------------------|-------------------------|-------------|-------------|-------------|-------------|
|                               | Appropriation Requested | Governor's FY2015 Request | FY 2016                 | FY 2017     | FY 2018     | FY 2019     | FY 2020     |
| <b>OPERATING EXPENDITURES</b> | <b>FY 2015</b>          | <b>FY 2015</b>            |                         |             |             |             |             |
| Personal Services             |                         |                           |                         |             |             |             |             |
| Travel                        |                         |                           |                         |             |             |             |             |
| Services                      |                         |                           | 25.0                    | 25.0        | 25.0        | 25.0        | 25.0        |
| Commodities                   |                         |                           |                         |             |             |             |             |
| Capital Outlay                |                         |                           |                         |             |             |             |             |
| Grants & Benefits             |                         |                           |                         |             |             |             |             |
| Miscellaneous                 |                         |                           |                         |             |             |             |             |
| <b>Total Operating</b>        | <b>0.0</b>              | <b>0.0</b>                | <b>25.0</b>             | <b>25.0</b> | <b>25.0</b> | <b>25.0</b> | <b>25.0</b> |

### Fund Source (Operating Only)

|               |            |            |             |             |             |             |             |
|---------------|------------|------------|-------------|-------------|-------------|-------------|-------------|
| 1004 Gen Fund |            |            | 25.0        | 25.0        | 25.0        | 25.0        | 25.0        |
| <b>Total</b>  | <b>0.0</b> | <b>0.0</b> | <b>25.0</b> | <b>25.0</b> | <b>25.0</b> | <b>25.0</b> | <b>25.0</b> |

### Positions

|           |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |

| Change in Revenues |  |  |  |  |  |  |  |
|--------------------|--|--|--|--|--|--|--|
|                    |  |  |  |  |  |  |  |

Estimated SUPPLEMENTAL (FY2014) cost: 0.0

Estimated CAPITAL (FY2015) cost: 0.0

### ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No.  
If yes, by what date are the regulations to be adopted, amended or repealed?

### Why this fiscal note differs from previous version:

|  |
|--|
| Updated for 2nd session to accurately reflect FY2015 and out year costs. |
|--|

|  |                                  |
|--|----------------------------------|
| Prepared By: <u>Richard Allen, Director</u>            | Phone: <u>(907)269-3504</u>      |
| Division: <u>Office of Public Advocacy</u>             | Date: <u>09/13/2013 11:25 PM</u> |
| Approved By: <u>Curtis Thayer, Acting Commissioner</u> | Date: <u>01/10/14</u>            |
| Agency: <u>Department of Administration</u>            |                                  |

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 127(STA)

**Analysis**

This bill places the Alaska Bar Association under the jurisdiction of the Ombudsman's Office. The bill also purports to prevent the waiver of the attorney-client privilege if such information is provided to the Ombudsman's office and to prevent further disclosure by the Ombudsman's office.

This bill would likely make attorney responses to bar grievances subject to disclosure to the Ombudsman's office should that office conduct an investigation into the Bar Association's action on a grievance filed against an attorney. This would prevent attorneys from fully responding to bar grievances due to the risk that client confidences would be revealed to a third-party in violation of Alaska Code of Professional Conduct.

The failure to respond fully to bar grievances is likely to result in additional expenses surrounding litigation of proper response to bar grievances and increased acceptance of grievances for investigation. The Office of Public Advocacy anticipates increased litigation with the passage of the bill, and would need to hire someone on a flat fee basis to litigate as necessary. Estimated costs: \$25,000.00/year.

## Alaska Statutes

### 08.08.010. Creation of Alaska Bar Association.

There is created an instrumentality of the state known as the Alaska Bar Association, referred to in this chapter as the Alaska Bar. The Alaska Bar shall have a common seal, may sue and be sued, and may, for the purpose of carrying into effect and promoting the objects of the Alaska Bar, enter into contracts and acquire, hold, encumber, and dispose of real and personal property.

## Alaska Bar Rules

### Rule 21. Public Access to Disciplinary Proceedings.

(a) Discipline and Reinstatement Proceedings. After the filing of a petition for formal hearing, hearings held before either a Hearing Committee or the Board will be open to the public. This Rule will not be interpreted to allow public access to disability proceedings described in Rule 30.

(b) Deliberations. The deliberations of any adjudicative body will be kept confidential.

(c) Bar Counsel's Files. All files maintained by Bar Counsel and staff will be confidential and are not to be reviewed by any person other than Bar Counsel or Area Division members appointed for purposes of review or appeal under these Rules. This provision will not be interpreted to:

(1) preclude Bar Counsel from introducing into evidence any documents from his or her files;

(2) preclude Bar Counsel from providing the Board, the Court, or the public with statistical information compiled pursuant to Rule 11(e), provided that the name of the Respondent is kept confidential;

(3) deny a complainant information regarding the status or disposition of his or her grievance;

(4) deny the public facts regarding the stage of any proceeding or investigation concerning a Respondent's conviction of a crime;

(5) deny the Alaska Judicial Council confidential information about attorney applicants for judicial vacancies;

(6) preclude a court from reviewing in camera a confidential file upon a discovery request made pursuant to Criminal Rule 16(b)(7), and from exercising discretion as to whether to release relevant information from the file to counsel pursuant to Criminal Rule 16(d)(3); or

(7) prevent the Board Discipline Liaison from having access to any and all files maintained by Bar Counsel as necessary in the performance of the Liaison's duties.

(d) Director's File. The file maintained by the Director, acting in his or her capacity as clerk, will be open for public review.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 13 effective April 1, 1979; rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989; by SCO 963 effective July 15, 1989; by SCO 1043 effective January 15, 1991; and by SCO 1082 effective January 15, 1992)

---

**Rule 22. Procedure.**

(a) Grievances. Grievances will be in writing, signed and verified by the Complainant, and contain a clear statement of the details of each act of alleged misconduct, including the approximate time and place of each. Grievances will be filed with Bar Counsel. Bar Counsel will review the grievance filed to determine whether it is properly completed and contains allegations that warrant investigation. Bar Counsel may require the Complainant to provide additional information and may request a voluntary verified response from the Respondent prior to accepting a grievance.

If Bar Counsel determines that the allegations contained in the grievance do not warrant an investigation, Bar Counsel will so notify the Complainant and Respondent in writing. Complainant may file a request for review of the determination within 30 days of the date of Bar Counsel's written notification. The request shall be reviewed by the Board Discipline Liaison, who may affirm Bar Counsel's decision not to accept the grievance for investigation or may direct that an investigation be opened as to one or more of the allegations in the grievance.

If a grievance is accepted for investigation, Bar Counsel will serve a copy of the grievance upon the Respondent for a response. Bar Counsel may require the Respondent to provide, within 20 days of service, verified full and fair disclosure in writing of all facts and circumstances pertaining to the alleged misconduct. Misrepresentation in a response to Bar Counsel will itself be grounds for discipline. Failure to answer within the prescribed time, or within such further time that may be granted in writing by Bar Counsel, will be deemed an admission to the allegations in the grievance.

For the purposes of this Rule, a grievance or response is "verified" if it is accompanied by a signed statement that the writing is true and correct to the best knowledge and belief of the writer.

(b) Confidentiality. Complainants and all persons contacted during the course of an investigation have a duty to maintain the confidentiality of discipline and disability proceedings prior to the initiation of formal proceedings subject to Bar Rule 21(c). It will be regarded as contempt of court to breach this confidentiality in any way. It will not be regarded as a breach of confidentiality for a person so contacted to consult with an attorney. A Respondent may waive confidentiality in writing and request disclosure of any information pertaining to the Respondent to any person or to the public.

(c) Dismissal Before Formal Proceedings. If after investigation it appears that there is no probable cause to believe that misconduct has occurred, Bar Counsel may dismiss the grievance.

(d) Imposition of Private Admonition or Reprimand. Upon a finding of misconduct, and with the approval of one Area Division member, Bar Counsel may impose a written private admonition upon a Respondent. A Respondent will not be entitled to appeal a private admonition by Bar Counsel but may demand, within 30 days of receipt of the admonition, that a formal proceeding be instituted against him or her before a Hearing Committee. If Respondent demands a formal proceeding, the admonition will be vacated and Bar Counsel will proceed under Section (e) of this Rule.

In the discretion of Bar Counsel, (s)he may refer a matter to the Board for approval and imposition of a reprimand by the Board, provided that the Respondent has, under Section (h) of this Rule, consented to the discipline before the Board.

(e) Formal Proceedings. Upon a finding of misconduct, and after seeking review in accordance with Rule 25(d), Bar Counsel may initiate discipline proceedings by filing with the Director a petition for formal hearing which specifically sets forth the charge(s) of misconduct. A copy of the petition will be served upon the Respondent.

Respondent will be required to file the original answer with the Director, and serve a copy upon Bar Counsel, within 20 days after the service of the petition for formal hearing. Should Respondent fail to timely answer, the charges will be deemed admitted without need of any further action by Bar Counsel.

Charges before a Hearing Committee will be presented by Bar Counsel. Bar Counsel will have the burden at any hearing of demonstrating by clear and convincing evidence that the Respondent has, by act or omission, committed misconduct as provided in Rule 15.

Bar Counsel may amend a petition for formal hearing at any time before an answer is filed. Bar Counsel may amend a petition for formal hearing after an answer is filed only by leave of the Hearing Committee or by written consent of the Respondent. Leave to amend will be freely given when justice requires. A Respondent will file an answer to an amended petition for formal hearing within the time remaining to file an answer to the original petition, or within 10 days after service of the amended petition, whichever is later.

(f) Assignment to Hearing Committee. In accordance with Rule 12(e), a petition for formal hearing will be assigned by the Director to a Hearing Committee after an answer is filed or after the expiration of the time for filing an answer, unless Respondent tenders conditional consent to a specific discipline. The notice of assignment to Hearing Committee will indicate the names of the members of the Hearing Committee assigned to hear the matter and will advise Respondent that (s)he is entitled to

(1) be represented by counsel;

(2) examine and crossexamine witnesses;

(3) present evidence in his or her own behalf;

(4) have subpoenas issued in his or her behalf; and

(5) challenge peremptorily and for cause members of the Hearing Committee, as provided in Rule 12(h).

(g) Pre-Hearing Conference. A pre-hearing conference may be convened by the Chair of the Hearing Committee or the Director for stipulation as to matters of fact, simplification of issues, scheduling of pre-hearing motions, the establishment of a date for the formal hearing, and other similar matters which may be resolved prior to hearing.

(h) Discipline by Consent. Respondent may tender a conditional consent to a specific discipline contained in Rule 16. This conditional consent will be submitted to Bar Counsel for his or her approval. If accepted by Bar Counsel, (s)he will refer the conditional admission to the Board for its approval or rejection of the requested discipline.

The consenting Respondent will present to the Board an affidavit stating that (s)he desires to consent to the specific discipline and that

(1) his or her consent is freely and voluntarily given and is not the subject of any coercion or duress; and

(2) (s)he admits to the charges stated in the grievance.

Acceptance of the conditional consent by the Board will be subject to Court approval if the specific discipline to be imposed includes discipline provided in Rule 16(a) (1), (2), (3) and (4). Any conditional admission rejected by the Board or the Court will be withdrawn and Bar Counsel will proceed under Section (e) of this Rule. Any admission made by Respondent in a conditional consent rejected by the Board or the Court cannot be used against the Respondent in any subsequent proceeding.

If the Court or the Board rejects a conditional consent, the matter will be remanded to the Hearing Committee, if any, which was appointed to hear the petition. If no Hearing Committee has been appointed, the Director will appoint one in accordance with Section (f) of this Rule.

(i) Notice of Hearing. The Director will serve a notice of formal hearing upon Respondent, or his or her counsel, indicating the date and place of the formal hearing.

(j) Rules of Evidence. The rules of evidence applicable in administrative hearings will apply in all hearings before Hearing Committees. No new evidence shall be allowed by the Committee chair after the hearing without notice to the opposing party and an opportunity to respond.

(k) Motions, Findings, Conclusions, Recommendation. Hearing Committees may consider and rule on pre-hearing motions. On procedural motions, the Committee chair will rule; on dispositive or substantive motions, the full Hearing Committee will rule. The Hearing Committee may direct either or both parties to submit proposed findings of fact, conclusions of law, and a recommendation after the formal hearing, which will be filed within 10 days of the date of the request by the Committee.

(l) Report of Hearing Committee and Appeal. Within 30 days of the conclusion of a formal hearing, the Hearing Committee will submit its report to the Board in accordance with 12(i) (4), unless an extension of time is granted by the President of the Board. Within 10 days of service of the report, Bar Counsel or Respondent may appeal the Hearing Committee's findings of fact, conclusions of law, and recommendation and request oral argument before the Board, as provided in Rule 25(f). The Director will thereafter set the dates for submission of briefs and oral argument before the Board.

(m) Oral Argument. Oral argument before the Board will be waived unless either Bar Counsel or Respondent requests argument as provided in Section (1) of this Rule.

(n) Board Recommendation or Order. The Board will review the Hearing Committee report and record and enter an appropriate recommendation or order as provided in Rule 10(c) (4), (5), and (6). If the Board has recommended discipline as provided in Rule 16(a) (1), (2), (3) or (4), it will submit to the Court its findings of fact, conclusions of law, recommendation, and the record. The record will include a transcript of all proceedings before the Board as well as the Hearing Committee report.

(o) Notification of Disposition. The Director will promptly notify all parties of the Board's action.

(p) Appeal from Board Order or Recommendation. Bar Counsel or Respondent may appeal from an order or recommendation of the Board made under Section (n) of this Rule by filing a notice of appeal with the Court within 10 days of service of the Board's order or recommendation. Parts II

and V of the Alaska Rules of Appellate Procedure will govern appeals filed under this Rule, except that for purposes of Appellate Rule 210(c)(2), excerpts of record must contain:

(1) the petition for formal hearing and answer and any amended petition or answer;

(2) the Hearing Committee report and any amended or supplemental report;

(3) all briefing and transcripts of proceedings before the Board and the Board's findings of fact, conclusions of law, and recommendation, and any amended or supplemental findings of fact, conclusions of law, and recommendation;

(4) all Hearing Committee or Board orders or rulings sought to be reviewed;

(5) if the grant or denial of a motion is at issue in the appeal, the motion, the transcript of any discussion of the motion, and briefs, memoranda, and relevant portions of documents filed in support of or in opposition to the motion; and

(6) specific portions of other documents in the record, including documentary exhibits, that are referred to in the brief and essential to the resolution of an issue on appeal.

(q) Record of Proceedings. A complete stenographic or electronic record of all proceedings before Hearing Committees and before the Board will be made and preserved. The Court shall furnish at its expense the necessary equipment, operator, and stenographic services for the preservation of the record of all such proceedings, and for the preparation of transcripts of all such proceedings.

(r) Review by Supreme Court. The Court will review findings of fact, conclusions of law, and recommendations of discipline made by the Board pursuant to Section (n) of this Rule. The Court will decide the grounds for discipline, pursuant to Rule 15; the type of discipline to be imposed, pursuant to Rule 16(a); and any requirements to be imposed, pursuant to Rule 16(c). When no appeal has been taken pursuant to Section (p) of this Rule, and if the Court determines that discipline different than that recommended by the Board may be warranted, the Court will so notify the parties and give them an opportunity to be heard.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 14 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; by SCO 962 effective July 15, 1989; by SCO 963 effective July 15, 1989; by SCO 1048 effective nunc pro tunc September 12, 1990; by SCO 1153 effective July 15, 1994; by SCO 1454, effective October 15, 2003; and by SCO 1601 effective April 16, 2007)



## **Ombudsman's Comments for the Subcommittee Work Session on HB 127, February 7, 2014**

### ***Delete Section 4 of HB 127.***

Section 4 would have amended AS 24.55.160(b) to remove communications between an agency and the ombudsman during an investigation from the scope of public records requests. This would be similar to the existing confidentiality provision for the ombudsman's preliminary report provided to an agency, and the amendment was intended to encourage candor in communication with the ombudsman. However, the ombudsman has concluded that this section is unnecessary for the following reasons:

- The ombudsman can use its own regulations to allow designation of more correspondence as preliminary opinions or recommendations subject to AS 24.55.180; thus the communications containing critical opinions, even when informally stated in e-mail, will be confidential until the agency has had a chance to respond.
- The ombudsman's records, including communications received from an agency during an investigation, will be expressly protected by the proposed amendment to AS 24.55.260 (ombudsman's privilege not to testify) in Section 10 of HB 127.
- Although some communications between the ombudsman and an agency may eventually be released pursuant to a public records request made to the agency in question, the ombudsman has concluded that creating a new exception to the Alaska Public Records Act, particularly for the executive branch agencies that comprise most of the ombudsman's investigative work, is likely to create delays and confusion in agency responses to legitimate public requests, without providing a benefit that outweighs those costs.

### ***Delete Sections 6 – 9 of HB 127***

These sections proposed a new category of informal report for ombudsman complaints that required investigation and resulted in suggestions to the agency, but that did not merit the resources usually committed to the typical ombudsman's reports published under AS 24.55.190. Section 7 of the bill proposed a new section (proposed AS 24.55.185) creating the category of informal report, and Section 6, 8, and 9 were amendments necessary to harmonize AS 24.55.180 and AS 24.55.190 with the proposed new section.

A report under AS 24.55.190, and a public report under AS 24.55.200, can only be issued by the ombudsman, which inevitably creates a bottleneck. Further, the investigative reports issued by the ombudsman under AS 24.55.190 have become detailed and formal, which means that the office's resources only allow for a dozen or so such reports per year. That is a tiny fraction of the jurisdictional complaints actually investigated by the ombudsman's staff. Since the 1980's, the office has had a practice closing these smaller investigations as "assists" or "discontinued," often featuring an assistant ombudsman sending a closing letter with suggestions to an agency. This practice is expedient, but it has problems. First, the closing letter is not confidential, no matter how pointed the "suggestion," because the closing letter is neither a preliminary finding, which would be confidential under AS 24.55.180, nor a "report" issued personally by the ombudsman, which would be confidential under AS 24.55.190. Further, unlike reports made by the ombudsman under AS 24.55.190, there is no clear statutory path to allow the ombudsman to publish the results, which makes it more difficult for the ombudsman to illustrate what the office has done. In short, the staff closing letters – although they often contain detailed investigation and criticisms – do not have the protections offered by AS 24.55.180 and AS 24.55.190, nor the route to eventual publication provided by AS 24.55.200.

The ombudsman believes that the proposed legislation is one way to bring office practice out of a statutory grey area. However, section 7 of the bill is admittedly cumbersome. The ombudsman instead proposes withdrawing Sections 6-9 and adopting new regulations that will serve the same purpose:

- When the ombudsman's staff offers an agency criticism and suggestions, these will no longer be offered in closing letters. Instead, such content will be categorized as a consultation or preliminary opinion issued pursuant to AS 24.55.180, and the agency will be offered a set time to respond.
- After the agency has responded, or failed to do so, the ombudsman's staff will submit to the ombudsman a summary of the investigation and any response by the agency. The ombudsman will issue a summary to the agency under AS 24.55.190, and may publish the summary under AS 24.55.200. These summaries will still require the ombudsman's personal approval, but should proceed more quickly than the full-scale, highly formalized reports that are the usual work product under AS 24.55.190.

*Update Section 11 of HB 127 to account for statutory change in 2013*

This section amends AS 24.55.275 (Contract procedures). The Legislature updated and renumbered much of the state procurement code last year, including a change to AS 24.55.275 that took place after HB 127 was introduced. As a result, HB 127 now refers to a non-existent provision. The last sentence of the section currently reads:

However, competitive principles in the procurement procedures adopted by the legislative council under AS 36.30.020 do [THE PROCEDURE FOR REQUEST FOR

PROSPOSALS DOES] not apply to contracts for investigations under AS 24.55.100, and the office of the ombudsman shall comply with AS 36.30.170(b).

Due to changes to the procurement code made by SB 12 in 2013 (effective June 27, 2013), HB 127 needs to be updated to be consistent with current organization of the procurement code.

However, **competitive principles in the procurement procedures adopted by the legislative council under AS 36.30.020 do** [THE PROCEDURE FOR REQUEST FOR PROSPOSALS DOES] not apply to contracts for investigations under AS 24.55.100, and the office of the ombudsman shall comply with [AS 36.30.170(b)] **the five percent preference under AS 36.30.321(a).**

*Considering Section 12 of HB 127: changes to jurisdiction over certain state contractors*

Please note that there is already a proposed committee amendment to this section (28-LS0088\R.1 (3/20/13)), which provides that service providers are included regardless of whether they provide the specified services pursuant to a grant or a contract. For Section 12 to function as intended, the inclusion of grantees is necessary, at least for service providers working with the Department of Health and Social Services.

Roughly speaking, the section covers three types of service providers:

- adult halfway houses and private-sector prisons;
- residential facilities (other than individual foster homes) with placement of juveniles in state custody, especially those adjudicated and placed in the custody of the Division of Juvenile Justice;
- “gatekeeper” services whose staff determine eligibility for a state program/benefit.

Of these three categories, the ombudsman considers the first the most important, because inmates (even in a halfway house) are very much in the state’s power, but oversight appears to be limited to the Department of Corrections and the contractor’s own management. Short of a potentially costly lawsuit, we have found little oversight external to DOC.

There has already been considerable opposition to including juvenile facilities within the ombudsman’s jurisdiction. The ombudsman believes that juveniles held by the Division of Juvenile Justice in institutions paid for by the Division of Juvenile Justice, and their parents, should be able to access the ombudsman no less than adult inmates. However, the Department of Health and Social Services has offered evidence of existing oversight mechanisms that are more extensive than those for adult facilities. Hopefully, this list of involved entities corresponds to a lesser need for the ombudsman’s jurisdiction. The ombudsman is therefore willing to discuss dropping this category, if necessary to allow the rest of the bill to proceed.

*Edit Section 13 of HB 127*

Change “contract between the state and a person providing a service in AS 24.55.330(2)” to “contract between the state and a person providing a service listed in AS 24.55.330(2)....”

*Additional Comments*

There was some discussion of adding to the grounds for an ombudsman’s investigation, which are listed in AS 24.55.150. As grounds for investigation of an administrative act already include broad terms such as unreasonable, unfair, oppressive, abuse of discretion, and otherwise erroneous, the ombudsman believes that the existing ombudsman standards for investigation provide a sufficient umbrella to cover complaints that are jurisdictional for ombudsman review under AS 24.55.

\* \* \*

There was also discussion of deleting Section 1 of HB 127, relating to the Alaska Bar Association, but accomplishing the same goal by adding “instrumentality” to the list of state or municipal bodies included in the ombudsman’s jurisdiction. AS 24.55.330(2) (definition of “agency” for purposes of the ombudsman’s jurisdiction) would be amended as follows:

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, instrumentality, council, or board of a municipality or in the executive, legislative, or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, instrumentality, council, or board of a municipality or of the state government independent of the executive, legislative, and judicial branches; it also includes an officer, employee, or member of an "agency" acting or purporting to act in the exercise of official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

The ombudsman does not oppose the change. At this point, the ombudsman is unaware of any instrumentalities of the state, other than the Alaska Bar Association, that dispute the ombudsman’s jurisdiction.

\* \* \*

Representative Keller has suggested changes to the Ombudsman Act that would require the ombudsman to make quarterly reports to the Legislature giving specific information on both closed and pending complaints. In the interests of making it clear that the ombudsman may provide the legislature with reports on the office’s activities more often than the annual report

specified in AS 24.55.230, the ombudsman suggests amending AS 24.55.230 by adding a new subsection:

(b) The ombudsman may submit supplemental reports as the ombudsman finds necessary to inform the public, the executive branch, or the legislature of the ombudsman's activities under this chapter. Supplemental reports may include the number, description, and disposition of closed complaints, distribution of complaints by geographic region or election districts, and the number of complaints filed against individual agencies. No supplemental report will include a complainant's identifying information, unless the complainant expressly agrees to the inclusion. If the ombudsman reasonably believes that the description of a complaint or its geographic origin will lead to identification of a complainant, the ombudsman will redact the report as necessary to protect the complainant's confidentiality, unless the complainant waives confidentiality for purposes of the ombudsman's report.

Ombudsman Comments for Work Session 02/06/14

---

# ALASKA BAR

---

## A S S O C I A T I O N

March 7, 2013

Rep. Bob Lynn, Chair,  
House State Affairs Committee  
State Capitol, Room 108  
Juneau, AK 99801-1182

Rep. Wes Keller, Vice-Chair  
House State Affairs Committee  
State Capitol, Room 118  
Juneau, AK 99801-1182

Rep. Lynn Gattis, Member  
House State Affairs Committee  
State Capitol, Room 420  
Juneau, AK 99801-1182

Rep. Shelley Hughes, Member  
House State Affairs Committee  
State Capitol, Room 409  
Juneau, AK 99801-1182

Rep. Doug Issacson, Member  
House State Affairs Committee  
State Capitol, Room 13  
Juneau, AK 99801-1182

Rep. Charisse Millett, Member  
House State Affairs Committee  
State Capitol, Room 403  
Juneau, AK 99801-1182

Rep. Jonathan Kreiss-Tomkins,  
Member  
House State Affairs Committee  
State Capitol, Room 426  
Juneau, AK 99801-1182

RE: House Bill No. 127

Dear Rep. Lynn and members of the Committee:

I'm writing regarding Section 1 of House Bill No. 127 that would add a section to AS 08.08.010 making the Alaska Bar Association an "agency" for the purposes of Ombudsman's investigations under AS 24.55.

Respectfully, this portion of House Bill No. 127 should be removed for three reasons:

(1) The Legislature classified the Alaska Bar Association as an "instrumentality" of the state in 1955 when AS 08.08.010 was enacted. As such, it is not an "agency" of the executive, legislative, or judicial branch of state government;

(2) The disciplinary responsibilities of the Alaska Bar Association are strictly supervised by operation of the Alaska Bar Rules, adopted by the Alaska Supreme Court, and by the Court itself. If a complainant is dissatisfied with a grievance decision, the complainant may ask for review by the Board Discipline Liaison. Alaska Bar Rule 22(a). If the complainant is still dissatisfied, the complaint may file an original application for review by the Alaska Supreme Court. *Anderson v. Alaska Bar Association*, 91 P.3d 271 (Alaska 2004); and,

House State Affairs Committee  
March 7, 2013  
Page 2 of 2

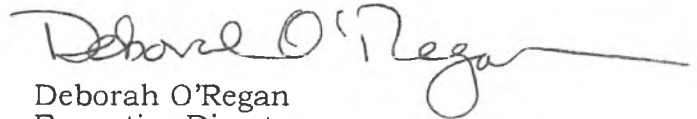
(3) Because of the confidentiality provisions of Alaska Bar Rules 21 and 22, bar counsel's office would be unable to acknowledge the existence of a grievance much less provide access to bar counsel files unless the respondent attorney consented, an exception applied in Bar Rule 21, or disclosure was ordered by the Alaska Supreme Court.

For the Committee's convenience, I have attached a copy of the statute, rules, and case I've referenced.

If there is any further information I may provide, please let me know.

Sincerely,

ALASKA BAR ASSOCIATION

A handwritten signature in black ink that reads "Deborah O'Regan". The signature is written in a cursive style with a long horizontal line extending to the right.

Deborah O'Regan  
Executive Director

Encl.

G:\Ds\BCI\House State Affairs Committee\Ltr to House State Affairs 03-07-13.doc

91 P.3d 271 (Mem)  
Supreme Court of Alaska.

John A. ANDERSON, Appellant,  
v.  
ALASKA BAR ASSOCIATION, Appellee.

No. S-11215. | May 14, 2004.

\*271 Appeal from the Superior Court of the State of Alaska,  
Third Judicial District, Anchorage, Morgan Christen, Judge.

#### Attorneys and Law Firms

John A. Anderson, pro se, Anchorage.

Mark Woelber, Assistant Bar Counsel, Alaska Bar  
Association, Anchorage, for Appellee.

Before: BRYNER, Chief Justice, MATTHEWS,  
EASTAUGH, FABE, and CARPENETI, Justices.

#### Opinion

#### OPINION

PER CURIAM.

Anderson filed a grievance with the Alaska Bar Association alleging various instances of attorney misconduct. After taking preliminary steps, Bar Counsel decided that a formal investigation was not warranted and so notified Anderson. When Anderson sought reconsideration, Bar Counsel forwarded the file to Board Discipline Liaison to review. Board Discipline Liaison concurred in Bar Counsel's decision not to open an investigation.

\*272 Each of the above steps was authorized and taken pursuant to Bar Rule 22(a). What Anderson did next is not covered by any rule. He filed a "Notice of Appeal from Administrative Agency" with the superior court, seeking review of the decision not to open a formal investigation of the grievance that he had filed. On motion of the Bar Association the superior court dismissed the appeal. Anderson then appealed to this court, urging that we review the Bar Association's decision not to accept the grievance for investigation.

In an order dated February 24, 2004, we affirmed the order of the superior court on the ground that the superior

court lacks jurisdiction to hear appeals from the Alaska Bar Association concerning lawyer disciplinary matters. But we also concluded that grievance-closing decisions under Bar Rule 22(a) may, upon timely request of a complainant, be reviewed by this court. We based this conclusion on the presumption of reviewability pertaining to all final administrative orders, and the inherent authority of this court to regulate the practice of law. We called for further briefing on the question whether Bar Counsel abused his discretion in determining that the allegations contained in the grievance did not warrant an investigation.<sup>1</sup>

The additional briefing is now complete. Based on our review of the parties' arguments and the record, we conclude that Bar Counsel did not abuse his discretion in declining to accept the grievance for investigation. This proceeding is therefore DISMISSED.

#### Order

1. The order of the superior court of August 23, 2003, dismissing this case is AFFIRMED because the superior court lacks jurisdiction to hear appeals from the Alaska Bar Association concerning lawyer disciplinary matters.

2. Although the Bar Rules do not provide for supreme court review of decisions of the board discipline liaison when the liaison affirms the decision of bar counsel not to accept a grievance for investigation under Bar Rule 22(a), such review is appropriate. All final administrative actions are presumed to be reviewable. *State, Dep't of Fish & Game v. Meyer*, 906 P.2d 1365, 1370 (Alaska 1995). A case-closing decision rejecting a grievance for investigation is a final administrative action by the Alaska Bar Association. *See id.* at 1370-72. As an adjunct of the judicial power vested in it by article IV, section 1 of the Alaska Constitution, this court has the inherent authority to regulate the practice of law which encompasses the power to discipline members of the Alaska Bar Association. *Citizens Coalition for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 165 (Alaska 1991).

3. In light of the presumption of reviewability and the court's inherent authority, we conclude that grievance-closing decisions under Bar Rule 22(a) may, upon timely request of a complainant, be reviewed by this court. The standard of review should be deferential, namely, whether bar counsel abused his or her discretion in determining that the allegations contained in the grievance do not warrant an investigation.

*See Vick v. Board of Electrical Examiners*, 626 P.2d 90, 93 (Alaska 1981).

4. Appellant describes the substance of his grievance in his opening brief filed November 3, 2003. On or before March 25, 2004, the Alaska Bar Association shall file a brief in support of bar counsel's decision not to accept the grievance for investigation and the affirmance of that decision by board discipline liaison. If deemed necessary, the bar association

may submit a confidential disciplinary file as an appeal record.

5. The appellant shall have twenty days after receipt of the bar association's brief within which to file a reply brief.

Entered at the direction of the full court.

Footnotes

1 The order of February 24, 2004, is appended to this opinion.

Providence Health & Services Alaska  
3760 Piper Street  
Anchorage, Alaska 99508



February 24, 2014

The Honorable Bob Lynn, Chairman  
State Affairs Committee  
Alaska State House of Representatives  
State Capitol, Room 108  
Juneau, AK 99801

Dear Representative Lynn:

On behalf of Providence Health & Services Alaska, I write today to express opposition to the provision in House Bill 127 that seeks to extend ombudsman authority and jurisdiction to patient complaints from certain private, non-governmental health care providers. As has been pointed out to the committee by the Alaska Mental Health Board and the Advisory Board on Alcoholism and Drug Abuse, there is a fundamental misconception about the nature of services provided by residential behavioral health care providers. We concur with that observation.

Providence serves between 350 and 400 patients a month in our Psychiatric Emergency Department. In addition, we care for over 784 patients per year in our inpatient Behavioral Health Units. We incorporate multiple treatment modalities in which clients learn healthy patterns of living through constant exposure to role models and strict expectations. We are a voluntary, general hospital unit serving adults and adolescents. We provide a therapeutic environment that is physically secure and emotionally safe. Family members are included in the treatment of our patients and may visit at any time during their stay.

All behavioral health providers in Alaska are subject to three layers of oversight which require formal grievance and complaint procedures. We believe with the policies and procedures we have in place, coupled with the required oversight already in position, additional oversight as outlined in House Bill 127 is unnecessary and will take away valuable patient care time, replacing it with potentially labor-intensive processes.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Herman".

Laurie Herman, Director  
Government Relations

## Ernest Prax

---

**From:** Steiner, Quinlan G (DOA) <quinlan.steiner@alaska.gov>  
**Sent:** Wednesday, February 05, 2014 11:12 AM  
**To:** Jim Pound  
**Subject:** Re: Ombudsman draft

Sure. I will be out of town on Friday, so I can't attend the meeting. I would be happy to make myself available to anyone who has questions about my concerns.

Quinlan Steiner  
Public Defender

On Feb 4, 2014, at 12:00 PM, "Jim Pound" <[Jim.Pound@akleg.gov](mailto:Jim.Pound@akleg.gov)> wrote:

Quinlan,

With your permission I will pass this email on to the sub-committee members.

Jim

---

**From:** Steiner, Quinlan G (DOA) [<mailto:quinlan.steiner@alaska.gov>]  
**Sent:** Tuesday, February 04, 2014 11:54 AM  
**To:** Jim Pound  
**Subject:** Re: Ombudsman draft

These changes do not address the concerns I raised during hearings on this bill last session.

If the ombudsman's office has jurisdiction over the Alaska Bar Association, Agency responses to bar complaints, which include attorney-client confidences, will be made available to the ombudsman's office.

Under the rules of professional conduct, attorneys would then be prohibited from disclosing client confidences in our responses to bar complaints. This would eliminate an avenue for indigent clients to raise concerns about their attorney and it would prohibit the bar association from conducting a meaningful review of our conduct on a case.

My concerns could be addressed by either removing the bar association from the ombudsman's jurisdiction or making it clear that the ombudsman's office was not entitled to a copy of our response to a bar complaint or any other documents containing attorney-client privileged material.

Let me know if you have any questions.

Quinlan Steiner  
Public Defender

On Feb 3, 2014, at 4:11 PM, "Jim Pound" <[Jim.Pound@akleg.gov](mailto:Jim.Pound@akleg.gov)> wrote:

Attached for your review and input.

Jim

## Nancy Manly

---

**From:** Beth Leibowitz  
**Sent:** Tuesday, March 19, 2013 3:20 PM  
**To:** Rep. Doug Isaacson  
**Cc:** David Talerico; Skiff Lobaugh; Linda Lord-Jenkins; Nancy Manly  
**Subject:** ombudsman salary questions

Dear Representative Isaacson:

In response to your questions regarding the ombudsman's salary as it compares to heads of other legislative agencies, I spoke with Skiff Lobaugh, the Human Resources Manager for Legislative Personnel. Mr. Lobaugh indicated that the Legislative Council determines the salary of executive director for the Legislative Affairs Agency. The Legislative Budget and Audit Committee determines the salaries for the directors of the Legislative Finance Division and the Division of Legislative Audit. The Legislative Council and the Legislative Budget and Audit Committee each have the discretion to grant step increases, and have previously done so.

The Office of Victims' Rights is headed by the Victims' Rights Advocate, whose salary is set by AS 24.65.060, which currently reads: "The victims' advocate is entitled to receive an annual salary of Range 26 on the salary schedule set out in AS 39.27.011(a) for Juneau."

Mr. Lobaugh will be available to answer questions for the House State Affairs Committee on Thursday morning.

In the executive branch, the current statutory provision regarding executive department heads provides:

**Sec. 39.20.080. Salary of executive department head and deputy.**

(a) The monthly salary of the head of each principal executive department of the state shall be in accordance with AS 39.23.

(b) The monthly salary of a deputy head of a principal executive department of the state is equal to a step in Range 28 of the salary schedule in AS 39.27.011.

(c) Except as provided by a general law applicable to all officers of the state, the compensation of the head of each principal executive department of the state may not be reduced during the executive's tenure in office.

The salaries of commissioners are set pursuant to recommendations from the State Officer's Compensation Commission, as provided by AS 39.23. See <http://doa.alaska.gov/dop/socc/>. Commissioners thus do not appear to receive step increases as such, as the mechanism for increasing their salaries is through recommendations by the State Officer's Compensation Commission. However, deputy commissioners receive a salary equal "a step in Range 28," which appears to leave room for variation within Range 28.

As of 2011, department commissioners received an annual salary of \$135,000. The State Officers' Compensation Commission has not recommended an increase to department commissioners' salaries since 2011.

I believe the ombudsman's annual salary is \$95,316, although Skiff Lobaugh is the authoritative source for personnel and salary issues.