

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8072

10767 HOUSE JUDICIARY

**Sec. 24.60.130. Select committee on legislative ethics.**

(a) There is established as a permanent interim committee within the legislative branch of state government the Select Committee on Legislative Ethics.

(b) The committee consists of nine members, in two subcommittees, as follows:

- (1) the senate subcommittee, which consists of two members of the senate, one of whom shall be a member of the minority organizational caucus, if any, appointed by the president of the senate with the concurrence by roll call vote of two-thirds of the full membership of the senate, and includes the five public members appointed under (3) of this subsection;
- (2) the house subcommittee, which consists of two members of the house, one of whom shall be a member of the minority organizational caucus, if any, appointed by the speaker of the house with the concurrence by roll call vote of two-thirds of the full membership of the house, and includes the five public members appointed under (3) of this subsection; and
- (3) five public members who are selected by the Chief Justice of the Alaska Supreme Court and who are ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house.

(c) No more than one public member may be a former legislator and no more than two public members of the committee may be members of the same political party.

(e) Except as provided in this subsection, a vacancy on the committee shall be filled under (b) of this section. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the first regular session of a legislature or during the interim between regular sessions of that legislature serves without concurrence or ratification through the 10th day of the second regular session of the legislature. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the second regular session of a legislature or during the interim after the second regular session serves without concurrence or ratification through the convening of the first regular session of the next legislature.

(g) Each legislative member serves for the duration of the legislature during which the member is appointed. Each public member serves for a term that commences on the date the member is ratified and ends on the first day of the third regular session that follows the ratification. A public member whose term has expired continues in office until a successor has been appointed and ratified or until the 30th calendar day of the first legislative session that follows the successor's appointment, whichever is earlier. A member of the committee may be removed from membership on the committee for failure to carry out the person's duties as a member of the committee. A legislator may be removed with the concurrence by roll call vote of two-thirds of the full membership of the house of the legislature to which the member belongs. A public member may be removed with the concurrence by roll call vote of two-thirds of the full membership of each house of the legislature.

July, 2000

## COMMITTEE PROCEDURES

## INDEX

SEC. 1	SCOPE	2
SEC. 2	ADVISORY OPINIONS	2
SEC. 3	POTENTIAL COMPLAINTS	3
SEC. 4	ATTORNEY-CLIENT PRIVILEGE	4
SEC. 5	COMPLAINTS	4
SEC. 6	CONFIDENTIAL MATERIALS	6
SEC. 7	DECISIONS	7
SEC. 8	DELEGATION OF AUTHORITIES	9
SEC. 9	DISCLOSURES	9
SEC. 10	DISCOVERY	10
SEC. 11	EDUCATION	12
SEC. 12	EXECUTIVE SESSION	13
SEC. 13	GUIDELINES	14
SEC. 14	HEARING PROCEDURES	14
SEC. 15	INFORMAL ADVICE	16
SEC. 16	INVESTIGATIONS	17
SEC. 17	JURISDICTION	17
SEC. 18	MEETINGS/NOTICE	18
SEC. 19	TELECONFERENCE	18

ALASKA STATE LEGISLATURE  
SELECT COMMITTEE ON LEGISLATIVE ETHICS

**COMMITTEE PROCEDURES**

**SEC. 1 SCOPE**

These publicly adopted procedures are intended to supplement the statutory procedures set forth in AS 24.60 and must be read in conjunction with those statutory procedures.

**SEC. 2 ADVISORY OPINIONS**

(a) **FORMAT**: A request for an advisory opinion by a person eligible to make a request (AS 24.60.160) may be filed with the committee in any written form, including electronic transmission. The requester may withdraw the request at any point prior to the committee's rendering of an opinion.

(b) **RESPONSE**: The committee's sixty day period to respond begins upon receipt at the committee office. The document will be dated and marked confidential, unless the requester waives confidentiality in writing.

If the request is clearly answerable in statute and does not require a formal opinion, a letter will be sent to the requester outlining the statutory response. The requester may either withdraw the request or maintain the request, after receipt of the statutory response letter.

The committee will send a confidential copy of the inquiry and a letter requesting a draft advisory opinion to the LAA Legal Counsel. If LAA Legal Counsel is unable to or has a conflict in drafting the opinion, committee staff will draft the opinion.

(c) **REQUEST FOR EXTENSION**: The committee will send a letter to the requester acknowledging receipt of the request, requesting an extension if the full committee is not able to meet within the sixty day period or if the period prior to the meeting does not allow LAA Legal adequate time to prepare a draft opinion, and advising when the opinion will be considered.

If the facts presented are not sufficient to allow the committee to render an opinion, a letter will be sent requesting additional information, noting the timeline and, if necessary, requesting an extension for response.

(d) **EXTENSION DENIAL**: If the requester does not grant an extension, at the discretion of the committee chair, a draft advisory opinion may be prepared and provided to all members of the committee. Members will be asked to concur or not concur in writing including counterpart. If a quorum of members who acknowledged receipt of the draft concur, the draft is adopted as a tentative advisory opinion of the committee, which does

not bind the committee unless formally adopted at a committee meeting. A copy of the tentative advisory opinion shall be made available to the requester, with an accompanying letter explaining the tentative status. If any member, who acknowledged receipt of the draft, objects to the adoption of the draft, the committee shall meet to discuss the opinion request.

(e) SUMMARY/PUBLICATION: The committee shall publish a summary of its advisory opinions rendered in the prior period, after deletions, as specified in AS 24.60.150(a)(2) promptly after June 30th each year and promptly after the day on which the legislature convenes each January. The committee will prepare a letter of transmittal, a cover identifying committee members and contents, a table of contents and any advisory opinions from that period. Copies will be prepared by the Legislative Print Shop. The committee will distribute the summaries. The committee will summarize advisory opinions, when appropriate, in the monthly newsletter.

(f) CLOSURE: All information concerning the request, with the exception of the publishable advisory opinion, shall be designated "closed" upon adoption of a formal advisory opinion and scheduled for destruction two years and six months thereafter. LAA Legal Services will destroy their copies of any confidential documents related to the opinion in accordance with their destruction policies.

(g) DELIBERATIONS/VOTING ON ADVISORY OPINIONS Unless the requester has waived confidentiality, deliberations on advisory opinions are to be conducted in executive session. Upon completion of deliberations, the committee will reconvene in open session and the chair will announce the advisory opinion number and the general topic. The committee will vote to concur or not concur with the draft advisory opinion. The published opinion will reflect the vote.

### SEC. 3 POTENTIAL COMPLAINTS

(a) ANONYMOUS INFORMATION: Anonymous information concerning potential violations received by the committee will be treated confidentially, except as provided in (c) below. Anonymous information provided only verbally will not be considered, except as provided in (c) below. Committee staff or members will provide information on the complaint process and requirements to the caller. If anonymous information is received concerning a potential violation and if a complaint based on that information is not received within 30 days, committee staff and the appropriate subcommittee chair will review anonymous tangible information as to credibility, seriousness and jurisdiction. If it is found to be sufficient, the information will be forwarded to a subcommittee or the full committee as appropriate, for review. Copies of the information will not be made available to the subject unless a complaint is filed. If the subcommittee or the committee determines to not consider the anonymous information, it will be considered closed and scheduled for destruction two years and six months from the date of receipt of the information or at a later date if the committee specifically designates.

(b) INFORMATION FROM A KNOWN SOURCE: The committee will treat all material information received concerning potential violations of the ethics code as confidential, except as provided in (c) below. Information provided only verbally will not be considered, except as

provided in (c) below. Committee staff or members will provide information on the complaint process and requirements to the known source. If a complaint is not received within 30 days, committee staff and the appropriate subcommittee chair will review the tangible information as to credibility, seriousness and jurisdiction and if it is found to be sufficient, the information will be forwarded to the appropriate subcommittee. The subcommittee will review the information and make a determination as to whether to return the information to the source, with or without a recommendation to file a complaint. The committee may retain the information as support documentation. The source of the information will be notified, when possible, if a complaint has otherwise been initiated. The source will not receive a copy of the complaint or any other confidential information. If the subcommittee or the committee determines to not consider the anonymous information, it will be considered closed and scheduled for destruction two years and six months from the date of receipt of the information or at a later date if the committee specifically designates.

(c). INFORMING THE SUBJECT OF INFORMATION PROVIDED UNDER (a) OR (b) ABOVE. The committee authorizes the committee staff to contact the subject of the written or verbal information received under (a) or (b) above, at any point after receipt of the information prior to a complaint being filed, if the information appears to allege a possible violation of the ethics code. The purpose of the contact would be to inform the subject that there exists a perception by an unnamed source that a violation has occurred. Staff will clarify to the subject that the purpose of the contact is limited to alerting the subject of the existence of the perception, and that the call itself has no affect on whether or not a complaint may be filed. The contact does not obligate the subject to take any action, remedial or otherwise. Staff is not authorized to initiate investigative actions under this subsection.

#### SEC. 4 ATTORNEY-CLIENT PRIVILEGE

All communications between the committee, its members and the committee's legal counsel are protected by attorney-client privilege.

#### SEC. 5 COMPLAINTS

(a) PROCESS: The committee shall furnish forms to any person upon request. A complaint may be filed in any written form as long as it is signed under oath, pursuant to AS 24.60.170(b).

1. Complaints improperly submitted will be returned, with all accompanying materials, with instructions for proper filing, and, without reference to the specifics of the complaint. The committee will retain only the cover letter.

2. Invalid complaints will be returned to the complainant without action. A complaint is considered invalid if an alleged violation is not specified, if an alleged violator(s) is not identified, if the committee lacks jurisdiction over the allegation or if the allegation does not allow the committee to act.

3. Complaints that have been dismissed for lack of jurisdiction, that are refiled by the same complainant containing substantially the same allegations and information, will be returned to the complainant without action.

4. Complaints filed, during a campaign period, against a candidate for state office will be processed as specified in AS 24.60.170(o).

5. Complaints against a candidate for state office which are pending at the beginning of a campaign period will be processed as specified in AS 24.60.170(m).

6. Committee staff will immediately, upon receipt of a complaint, notify the complainant of the provisions in AS 24.60.170(i).

(b) RECEIPT: Upon receipt of a sworn complaint, the committee staff will mark the document "confidential", log in the complaint, assign a control number and file the complaint with the appropriate subcommittee or full committee chair. The chair will immediately direct staff to transmit a copy of the complaint to the person accused and ask the subject to acknowledge, in writing, receipt of the complaint.

(c) WAIVER OF CONFIDENTIALITY BY SUBJECT OF COMPLAINT: The subject of a complaint may waive confidentiality of proceedings at any point in the proceedings under AS 24.60.170 or at the close of the proceedings. The subject may not waive the committee's duty of confidentiality. The subject of a complaint may waive confidentiality only for those materials and proceedings that pertain to him or her. The subject may not waive confidentiality for others, including others named in the complaint and those involved or assisting in the committee's investigation of the complaint. If a complaint names more than one subject, the committee will release the complaint with sufficient deletions to preserve the confidentiality of the other named subject(s), an individual's constitutional right to privacy and/or any information related to juveniles or juvenile proceedings.

If confidentiality is waived prior to a determination of probable cause, the committee will treat any proceedings related to the complaint consistent with AS 24.60.170(m), which requires that hearings be public and documents presented at a hearing and motions filed in connection with the hearing are subject to public inspection. Under a waiver of confidentiality, deliberations of the committee will be conducted in closed session with the statement of the motion and vote held in public session. The subject may not waive, in whole or in part, the committee's confidentiality obligations as set forth in AS 24.60.170.

If confidentiality is waived after a determination of probable cause, the committee or subcommittee will release copies of all the following documents, after ensuring that release of documents will not infringe upon an individual's constitutional right to privacy or another subject's right to maintain confidentiality, including:

1. Public documents which are part of the investigative file e.g. reports filed with the Alaska Public Offices Commission.
2. Materials submitted to the committee by the subject of the complaint.
3. The formal complaint, with deletions if necessary, accompanying documents and correspondence from the complainant.
4. The resolution identifying the scope of the investigation.
5. Correspondence from the committee to the subject of the complaint and/or the complainant.

6. A statement of the motion and record of the vote taken to reach the final decision.

The committee reserves discretion to determine which documents are subject to public inspection. The committee will not release investigative files, notes from deliberations held in confidential sessions or documents produced by legal counsel, protected by attorney-client privilege, unless the committee or sub-committee reviews the materials, removes any information that would infringe upon the constitutional right of privacy of an individual or another subject's right to maintain confidentiality and formally adopts a motion to release the identified materials.

(d) COMMUNICATION: When the nature of the complaint is generally known to the public, the committee may clarify the procedural aspects of a complaint or explain the right of a person to a fair hearing. The committee may not identify the individual against whom the complaint has been filed. The committee may dismiss a complaint pursuant to AS 24.60.170(c) for lack of jurisdiction. After investigation, if the committee dismisses a complaint or finds probable cause, the committee will issue an explanatory statement.

(e) COMPLAINT AGAINST A REHIRED EMPLOYEE: The committee may consider a complaint filed against a person previously employed by the legislative branch of government who has been rehired in the legislative branch, within the time limitations specified in AS 24.60.170(a).

(f) RESPONSE BY THE SUBJECT OF A COMPLAINT: The committee may invite the subject of a complaint to appear before the appropriate subcommittee or representatives of the subcommittee, to meet with the assigned investigator and/or to respond in writing at any time after receipt of the complaint. The committee is not limited to one response from the subject of a complaint; request for information may be on-going. Pre-investigative contact with the subject may be made for the purposes of defining the scope of the investigation.

(g) PRELIMINARY EXAMINATION OF COMPLAINT: Before the committee considers a complaint, staff will conduct a preliminary examination of the complaint to determine and make a recommendation to the committee as to whether, based on the information and evidence on hand:

(1) the act(s) complained of is within the jurisdiction and time limitation of the committee under AS 24.60 and

(2) there is specific and credible information to indicate that an investigation is warranted.

## SEC. 6: CONFIDENTIAL MATERIALS

(a) IDENTIFICATION: All confidential documents will be marked "confidential. Copies of confidential documents may be conspicuously marked using notations (such as pre-assigned numbers) that will identify the recipients.

(b) DISTRIBUTION: Confidential documents, other than those delivered to committee members, will be hand delivered and signed for, or delivered by a receipted process. Confidential documents will not be faxed unless absolutely necessary and the sender first faxes a cover letter while on the phone with the designated recipient, who confirms that the fax is being received properly. When confidential documents are distributed to committee members, they will be contained in sealed folders or envelopes, which distinguish them from other committee materials.

(c) SECURITY: Committee staff, members and contractors will store confidential documents in locked receptacles. Before anyone other than a committee member is authorized to handle confidential documents, his or her name must first be submitted to the committee. The individual must also sign a statement that he or she is aware of the laws and procedures governing access to confidential information. All outstanding copies of confidential documents must be returned to the Ethics Committee staff at the conclusion of the relevant meeting, unless the committee authorizes continued possession or personal destruction by the committee member. The staff will dispose of unnecessary copies by shredding.

(d) RECEIPT: If a committee member receives the original complaint letter or advisory opinion request, s/he will send the original, without making any copies, to the Ethics Committee staff, who will record it in the log and make any necessary copies.

(e) CLOSURE:

- 1.) See Sec. 2 (e) for closure of advisory opinion files.
- 2.) A complaint file is considered closed upon completion of proceedings under AS 24.60.170. All originals and copies of confidential information, including those of legal counsel and investigators, are to be returned to the committee office, logged in and scheduled for destruction. Copies may be destroyed at any time.

Destruction of the originals of closed confidential materials under this section will be scheduled for 2 years and 6 months from the date of final committee action.

(f) INVESTIGATIVE MATERIALS: An investigative report, and any attorney or investigator work products related to the investigation, either prepared on behalf of the committee or disclosed to it as part of the investigation are required to be kept confidential. The committee will request all original products generated by an investigator at the close of the investigation and will require that the investigator destroy all copies in his or her possession.

### SEC. 7 DECISIONS

(a) PUBLIC DECISIONS AND ORDERS: Reports on decisions will include the names of those in attendance and the vote on the specific decision, if publicly determined. Decisions that require public release will be transmitted in the fastest mode possible in the following order,

- (1) Subject of the complaint.
- (2) Speaker of the House and Senate President
- (3) Members of the committee
- (4) Complainant
- (5) Media request list

A formal copy will be sent to the Senate Secretary, Senate President, House Clerk, and Speaker of the House via pouch or mail:

(b) CONFIDENTIAL DECISIONS: Complaints dismissed for lack of jurisdiction under AS 24.60.170(c), will not be made public either during the time when the vote is taken or afterwards. When a complaint is dismissed under (c), the committee will only notify the complainant and the subject of the complaint. The notification will only contain the determination that the complaint is dismissed on jurisdictional grounds.

(c) ANNUAL PUBLICATION: The committee will publish all public decisions and orders on an annual basis.

(d) WAIVER OF CONFIDENTIALITY

See Section 5(c), COMPLAINTS, concerning waiver of confidentiality.

(e) DISMISSAL FOR LACK OF PROBABLE CAUSE

If the committee or sub-committee determines, after investigation, that there is not probable cause to believe the subject has violated the Ethics Code, the committee or sub-committee shall issue an order dismissing the complaint and a written decision explaining the dismissal. The dismissal order shall be sent to the subject of the complaint and the complainant. The dismissal order shall also be open to inspection and copying by the public.

The committee will publicly issue a dismissal order for lack of probable cause, under AS 24.60.170(f), which identifies the subject and the allegations made against the subject, following delivery of a copy to the subject of the complaint and the complainant.

(f) PROBABLE CAUSE In cases under AS 24.60.170(g) where the subcommittee finds probable cause of a violation and recommends corrective action(s), the following information will be included with the recommendation in the public decision:

1. An explanation of the subject's right to request, within 20 days after receiving the decision, a confidential meeting or teleconference with the committee at which the committee shall explain the reasons for its explanation.
2. Requirement for the subject to submit a letter to the subcommittee, within 30 days from the date of receipt of the public decision, either accepting the corrective actions or requesting a public hearing.
3. If the subject accepts the recommended corrective actions, the letter must also contain a statement acknowledging the violation.
4. Each recommended corrective action must include a date by which it must be accomplished or a statement specifying the period of time that the corrective action

remains in effect. (e.g. if the action is a commitment to file timely disclosures, the decision would include a statement "for as long as the subject serves in the legislature").

5. The public decision must state when and how compliance with the recommendations will be reviewed. (e.g. the subcommittee will review the status of the recommended actions by (date) or the subcommittee authorizes the chair to review the status by (date) and to report any non-compliance to members.)

6. The public decision may also include the statement; "If the actions have not been completed as specified, the subcommittee may issue formal charges on the complaint".

## SEC. 8 DELEGATION OF AUTHORITIES/CONTRACTS

(a) AUTHORIZATION: Any authorities delegated to the Chair, may be redelegated to the Vice-Chairs. The Chair may authorize or delegate authority:

to approve travel/per diem for members, staff time sheets, ability to incur and be reimbursed for expenses, and purchases less than \$400; to negotiate with and retain professional service contractors, issue and sign subpoenas and to approve/disapprove payment of professional contract invoices.

(b) CONTRACTS: Contracts with the committee must receive approval, in a public meeting, of a majority of the members of the full committee, if it is an issue under the jurisdiction of the full committee or a majority of the members of the subcommittee, if it is an issue under the jurisdiction of the subcommittee. Members of the full committee and members of the sub-committees delegate authority to the chair of the appropriate committee or sub-committee to serve as Project Director for approved contracts.

## SEC. 9 DISCLOSURES

(a) FORMS: The committee will provide forms upon request and will encourage use of the appropriate form. Disclosures will be accepted in any written, signed form which identifies the type of disclosure. The committee will accept faxed forms. The committee may request additional information for the purpose of identifying which type of disclosure has been filed.

(b) RECORD: The committee will maintain a public record and log of those disclosures that are not confidential by law and a confidential record and log of those which fall under AS 24.60.080(c)(6).

(c) PUBLICATION: During session, a copy of those public disclosures that require publication will be sent to the clerk of the appropriate body following a schedule mutually agreed upon by the clerks of both bodies and the committee staff. During the interim, the record will be kept by the committee and sent to the clerk of the appropriate body the first week of the legislative session. The committee staff will send the necessary copies to the Alaska Public Offices Commission.

- (d) **REVIEW OF CONFIDENTIAL DISCLOSURES**: The Chair shall appoint three members to review confidential disclosures under AS 24.60.080(c)(6).
- (e) **CLOSURE**: The public disclosure files may be destroyed 6 months after the end of the legislature in which they were filed and published. The disclosures under AS 24.60.080(c)(6) are not considered closed until 2 years and six months from date of receipt by the committee, at which time they will be destroyed.
- (f) **LATE DISCLOSURES**:
1. Committee staff will mark the date of disclosure on all disclosure reports received. The date of disclosure is considered the date the form is faxed, postmarked for mailing, pouched or hand delivered.
  2. Committee staff will mark as "late" if the report is received more than 5 days late.
  3. Staff will send a letter notifying the discloser of receipt of late report and alerting the discloser of a future monetary fine if any subsequent reports are late. Letter will include an offer for the discloser to explain lateness. Staff will keep a list of all those who have received the letter of notification.
  4. Upon receipt of a second late disclosure report from an individual on the list described in #3, staff will notify committee of intent to impose a fine and then send a letter notifying the discloser of the fine due (\$2.00 per day, maximum of \$100). Fine will begin on the 6<sup>th</sup> day after the due date. Letter will explain that payment is to be made to LAA but sent to the Ethics Committee for recording. Staff will forward the payment to LAA.
  5. If the fine is not paid within 30 days from date letter is sent, the names of those late in payment or those who refuse to make payment will be listed in the following month's ethics committee newsletter.

## SEC. 10 DISCOVERY

(a) **DISCOVERY BY SUBJECT**: AS 24.60.170 (i) A person against whom a complaint has been filed is entitled to engage in discovery in a manner consistent with the Alaska Rules of Civil Procedure, subject to reasonable restrictions imposed by the committee for the time of discovery and the materials that may be discovered. When allowing discovery, the committee will take into consideration the potential for public distribution of materials, under AS 24.60.170(i).

(1) **TIME**: The subject of a complaint may request discovery at any time after the committee has formally charged the subject, under AS 24.60.170(h). The committee is authorized but not required, to allow discovery at an earlier stage of the proceeding.

(A) The subject of the complaint may request discovery after the determination of probable cause but before making a decision as to whether or not to comply with the decision or to request a public hearing. If the committee authorizes the chair to allow early discovery, the committee shall have 20 days to respond to this

discovery request. The subject of the complaint remains obligated to respond to the committee under the conditions set out in the decision and order.

(B) If the discovery request is made after the subject requests a public hearing or the committee issues formal charges, but before the committee has scheduled the public hearing, the committee shall have 30 days to respond to the discovery request. The committee shall set a date for the public hearing not fewer than 30 days after serving its responses to the discovery request.

(C) If a discovery request is made by the subject after the committee has set the date for the public hearing, the committee shall make all reasonable efforts to respond fully to the request prior to the public hearing but is not obligated to do so and is not obligated to postpone the hearing.

(D) Under AS 24.60.170(p), the discovery process may continue during a campaign period, if the committee has formally charged the subject prior to the beginning of the campaign period.

(2) MATERIALS: The committee must produce to the subject of the complaint any materials relevant to the subject matter involved in the pending investigation that is not privileged material, in accordance with subsections (b), (c), (d) and (e) of this section. Such material includes the names and addresses of persons known to have knowledge or relevant facts, their written or recorded statements, any reports or statements of experts, books, papers, documents, photographs or tangible objects relevant to the probable cause determination.

(b) DUTY TO SUPPLEMENT: The committee has an on-going duty to supplement produced materials.

(c) CONFIDENTIALITY: The subject is required by law to keep confidential all materials discovered in this process, unless the subject who was formally charged under AS 24.60.170(h) provides written notification to the committee that he or she is not restricted under the provisions in AS 24.60.170(i) and attaches supporting evidence. The committee can not make materials subject to public inspection unless produced at a public hearing.

(d) DISCOVERABLE DOCUMENTS: Materials or information subject to the attorney-client privilege or the work-product doctrine shall not be discoverable. This privilege shall extend to the work-product of investigators or others concerning work supervised by the committee's attorneys. Documents produced or discovered during the committee's investigation shall remain confidential and are not subject to public inspection unless produced at a public hearing. The subject of an investigation, however, may exercise his or her limited rights to waive confidentiality under AS 24.60.170(1). Unless the entire confidentiality is waived, the subject may not release the confidential documents per AS 24.60.060. See Sec. 5 COMPLAINTS, subsection (c) for additional information on waiver of confidentiality.

(e) **RESTRICTIONS**: The committee is authorized to issue protective orders under AS 24.60.170(i)(1). A legislator or legislative employee who makes an unauthorized disclosure of information under a protective order is in violation, under AS 24.60.060(b). Materials obtained during the course of investigation that will not be used in deliberations on specific allegations may be discoverable by the subject of the complaint. The committee may place reasonable restrictions on the material's discoverability in order to protect the privacy of individuals not under investigation or for any other reasonable, legitimate purpose. Such restrictions may include providing for "in camera" review of the materials, providing copies of the materials with the names of people mentioned therein deleted, or denying discovery altogether. The committee, or the person authorized by the committee, will review all information, prior to release for discovery by the subject. If the committee has not reviewed the irrelevant materials, production of such materials may be denied in total. The principle of fundamental fairness to all involved will be applied to discovery decisions.

(f) **DEPOSING COMMITTEE MEMBERS/STAFF**: Committee members are not subject to deposition by the subject of the complaint, or the subject's counsel, unless a member has personal, first-hand knowledge relevant to the case and is considered a potential witness. A member who has personal, first-hand knowledge relevant to the case is recused from participation in matters related to the complaint and may be subject to deposition. A member whose knowledge of information relevant to the case is based solely upon information gathered from the complainant, the complaint or the investigation of the complaint does not have "personal, firsthand knowledge" and may not be deposed on matters relating to the complaint.

Committee staff is not subject to deposition by the subject of the complaint, or the subject's counsel, unless the staff person has personal first-hand knowledge relevant to the case or if the staff person is performing investigative duties related to the case. A staff person who is performing investigative duties may not be deposed until after the investigation is complete.

Depositions taken under this subsection are subject to all attorney work product privileges and other applicable privileges and must be kept confidential.

## SEC. 11 EDUCATION

(a) **HANDBOOK**: The committee will publish a current standards of conduct handbook for the purpose of providing a practical guide for those affected by the legislation, a copy of the statutes of the Ethics Law and examples of the disclosure and complaint forms.

(b) **TRAINING**: The committee will participate in training new legislators and staff on the requirements and prohibitions in the legislative ethics law.

(c) INFORMATION: The committee will provide the leadership of both legislative bodies a list of requirements and deadlines, for general announcement and distribution to all legislators and their staff at the beginning of each legislative session.

(d) COMMUNICATION: Any decision or opinion rendered by the committee that may affect more than one legislator or employee, will be cleansed of any confidential information and communicated to members and staffs as soon as possible. Communication may be in newsletter, memo or other informal presentations.

(e) NEWSLETTER: The committee will issue a monthly newsletter, in any form including electronic, highlighting various sections of the ethics code, informing of upcoming deadlines and providing other information of value to legislators and legislative employees statewide.

## SEC. 12 EXECUTIVE SESSIONS

(a) LIMITATIONS: Attendance at executive sessions will be limited to members of the committee and essential personnel, as determined by the committee. In cases of discussion, investigation, data gathering, interviews, deliberations or decision making on complaints prior to probable cause determination, neither the subject of the complaint, nor any other legislator not on the appropriate subcommittee, shall be allowed in the executive session.

(b) EXCEPTION: The only exception to (a) above will be if the legislator or legislative employee is a witness and is requested to be a part of the executive session by the committee. The subject of the complaint will have an opportunity pursuant to AS 24.60.170(d) to explain the conduct alleged to be a violation of this chapter to the committee in executive session, at a time set by the committee. The subject may choose to give a written explanation.

(c) ADVISORY OPINIONS: In discussions on advisory opinion requests, the legal advisor and essential personnel will be allowed in the executive session but no other individuals, including the person requesting the opinion, will be allowed in the executive session. If the requester waives confidentiality in writing, the issue will be discussed in public session.

(d) LEGISLATOR IN ATTENDANCE: Except as provided in (a) above, under AS 44.62.310-AS 44.62.312, of the Open Meetings law, any legislator can request to be in the session as an observer but will be bound by the ethics committee confidentiality standards.

(e) EXECUTIVE SESSIONS WILL NOT BE TAPE RECORDED.

### SEC. 13 GUIDELINES

- (a) AUTHORITY: The committee may issue guidelines other than those statutorily mandated.
- (b) DEFINITION: *Guidelines* are defined as those interpretations of the Ethics Law formally made and adopted by the committee for use by covered employees and legislators in making a judgment or determining a policy or course of action under this law.
- (c) BINDING/PUBLICATION: Guidelines, as well as any amendments or deletions of guidelines, adopted by the committee will be published on the same schedule as the Advisory Opinions and will be considered binding after publication.
- (d) ANNUAL REVIEW: The committee will annually review guidelines in a public meeting.

### SEC. 14 HEARING PROCEDURES

(a) GENERAL: The same procedure will apply to either the house or senate subcommittee. The intent of these procedures is to provide due process to people charged under the ethics law and to protect the privacy and rights of the victims, complainants and the public in the process. Every effort has been made to make these procedures consistent with and parallel to those for State Administrative Hearings pursuant to AS 44.62.330-630, Alaska Bar Rule 22 and the Commission on Judicial Conduct, Rule 10.

These procedures are applicable to all hearings of the Select Committee on Legislative ethics and its subcommittees pursuant to AS 24.60.170(g)(h)(j)(m). These procedures are adopted under AS 24.60.150(a)(1).

(b) COUNSEL: A person who is subject to charges under AS 24.60.170(h) or findings of probable cause with corrective action under AS 24.60.170(g)), is entitled to a hearing in accordance with AS 24.60.170(j). The subject of the probable cause determination or the charge shall be entitled to be represented by counsel in all pre-hearing and hearing matters. The committee shall designate its own counsel to present the evidence supporting the violations alleged in the probable cause findings.

(c) COMMITTEE RESTRICTIONS: In order to assure a separation between the determination of probable cause and the hearing, the committee members will not avail themselves of any information, notes or other materials from confidential deliberations in the probable cause stage, unless introduced in the hearing as evidence. Following a finding of probable cause, the committee members should avoid any ex parte discussions with the committee counsel on the merits of the matter.

(d) TIMELINESS: A hearing will be scheduled no sooner than 20 days and no later than 60 days from the date of service of charges or probable cause findings on the person subject to the charges, unless conditions in Committee Procedures: Sec. 10 (a) apply.

Upon summons and notice of hearing, the person subject to the charges pursuant to AS 24.60.170(h) shall have 10 days to admit to the charges or request a hearing.

(e) DISCOVERY: The subject and/or the counsel for the subject shall have the right to reasonable discovery, under Section 10 in these Procedures.

The counsel for the committee, in a manner consistent with the Alaska Civil Rules of Procedure, shall have rights of discovery and productions of documents relating to the hearing once a hearing has been requested and scheduled.

(f) PRE-HEARING PROCEDURES: The committee may issue a pre-hearing order including such items as:

time limits on opening statements, presentation of evidence and closing arguments and deadlines for submitting witness lists, exhibit lists and any motions raising issues resolvable prior to the beginning of the hearing. Pre-trial motions should be submitted to the committee at least one week prior to the hearing.

Counsel for the committee and the person subject to charges or their counsel, are encouraged to stipulate prior to hearing, as to any matters including evidentiary matters or undisputed facts.

(g) CONDUCT OF HEARING: The hearing shall be in front of the appropriate subcommittee of the Select Committee on Legislative Ethics and presided over by the chair of that subcommittee or the full committee if the case requires full committee participation.

1. Hearing Officer: The committee may appoint an impartial Hearing Officer to facilitate and expedite procedural aspects of the hearing. Both the committee counsel and the counsel for the person charged or the person charged, will be provided a list of the final candidates for the Hearing Officer position and may submit recommendations to the chair for selection or disqualification of any candidate. The committee's decision is final.

The Hearing Officer will rule on whether a witness is to appear in person or on teleconference; on admission and exclusion of evidence; advise the chair on matters of law; and control the conduct of participants and the time allotments to participants. Decisions on all procedural matters will be made by the Hearing Officer, subject to a right to appeal to the chair of the subcommittee. The subcommittee may overrule a determination by the Hearing Officer. The chair and the members may question the witnesses and the person charged or ask clarifying question of either counsel, the person charged or the hearing officer.

2. Person Charged: The person charged shall have the right to appear personally before the subcommittee at the hearing. The hearing will proceed with or without the appearance of the person charged.

3. Witnesses: Both counsel (or the person charged if counsel is not used), have the right to subpoena witnesses. All witnesses shall testify under oath. In the event of problems in travel arrangements, especially for witnesses not subject to subpoena; depositions or affidavits may be used in lieu of live testimony. If agreed to by both parties, a witness may participate via teleconference. The Hearing Officer will intervene if agreement is not reached. The opposing party must have been offered the opportunity to participate in any deposition or to refute any affidavit which is admitted.

4. Order of Proceedings: The person charged and the committee counsel will have the opportunity to make opening and closing statements. Each party will have the right to examine and cross-examine witnesses and present evidence in his or her behalf. One opportunity for redirect for each witness will be allowed. The entire proceeding will be recorded and evidence will be secured and preserved.

5. Decorum in the hearing room: All media personnel, citizens and participants will be required to conduct themselves in an orderly manner consistent with that of a court room. Failure to do so or disruption of the hearing may result in removal from the hearing room and charges of disturbing the peace in a public place. If the person charged is disruptive, that lack of cooperation will be considered during deliberations on any sanctions recommended. Media personnel will be provided a designated place and will not be allowed to move freely throughout the hearing room.

6. Teleconference: In the interest of the public, the proceedings of the hearing may teleconferenced on a listen only basis, with the exception of witnesses who have been scheduled to participate.

(h) POST-HEARING: At the end of the hearing and prior to subcommittee deliberations, the Hearing Officer will provide to the chair, a summary of the rulings and issues unresolved. Only the subcommittee members will participate in the deliberations and those deliberations shall be confidential as required by AS 24.60.170(m).

After deliberations, the subcommittee will either issue a written decision and determination with findings of violation(s) of AS 24.60, based on clear and convincing evidence or dismiss the charge. If the subcommittee finds that a violation occurred or that the subject did not cooperate, it will make a written recommendation of sanctions to the appropriate body of the legislature.

## SEC. 15 INFORMAL ADVICE

A brief summary of informal advice and responses to inquiries given by committee staff will be provided in the quarterly staff report. The advice and responses will be cleansed of identifying information.

## SEC. 16 INVESTIGATIONS

(a) SCOPE: The resolution defining the scope of the investigation will include steps to follow, whenever possible.

EXAMPLE:

1. Did Senator Q accept a campaign contribution during the 199- legislative session?
  - a. If Senator Q did accept the contribution, was it kept or was it returned within a reasonable period of time per APOC?
  - b. If the contribution was kept, who made the contribution, date, amount?
  - c. Did Senator Q take any legislative, administrative or political actions that during the 199- session on behalf of the contributor?
  - d. Did Senator Q require an employee to assist in any part of the contribution activity?

(b) INVESTIGATIVE PLAN: After the committee or subcommittee adopts a resolution defining the scope of the investigation, the committee or subcommittee will set an investigative plan to include the following:

1. Who will coordinate the investigation? Committee chair, subcommittee vice-chair, legal services contractor, other?
2. Will the investigation be conducted by one firm or person or will portions be conducted by several persons; such as APOC reports reviewed by staff, interviews with Senator Q and Contributor Z conducted by attorney.
3. Specific identification of those involved in the investigation: Professional investigator, staff, or others.
4. Determination as to when and whether findings are to be reported verbally, in writing or both.

## SEC. 17 JURISDICTION

(a) PROCESS TO DETERMINE WHICH SUBCOMMITTEE: In circumstances where both the House and Senate subcommittees have jurisdiction over a complaint, the complaint will be referred to one subcommittee as follows:

- (1) If the subject of the complaint is a member of the legislature at the time of the filing of the complaint, the complaint will be referred to and handled by the subcommittee of the house in which the subject presently serves, even if the alleged conduct complained of occurred during service in the other house.
- (2) If the subject of the complaint is a former legislator, the complaint will be referred and handled by the subcommittee of the house in which the subject served when the alleged conduct occurred. If the complaint alleges conduct during

the subject's service in both houses, the complaint will be referred to and handled by the subcommittee of the house in which the subject most recently served.

(3) If the subject of the complaint is a person employed by a member or committee of a house, the complaint will be referred to the subcommittee of the house in which the person is presently employed, even if the alleged conduct complained of occurred during employment in the other house.

(b) REFERRAL: Referral shall be automatic, without the need for action on the part of the subcommittee declining jurisdiction.

### SEC. 18 MEETINGS/NOTICE

(a) SESSION: Meetings during session will be held in Juneau, unless the committee agrees to another location.

(b) NOTICE: Notice providing date, time, place of the committee and subcommittee meetings will be sent to the House clerk for House subcommittee meetings, the Senate Secretary for Senate Subcommittee meetings, to the clerk and secretary for full committee matters, a minimum of 5 days in advance. It is the committee's preference to provide notice as far in advance as possible.

(c) RULE 23(a): The committee is subject to the notification requirements in Rule 23(a) of the Uniform Rules of the Alaska State Legislature during session.

### SEC. 19 TELECONFERENCE

(a) NON-CONFIDENTIAL: Use of teleconference or telephonic equipment to communicate with off-site members or persons designated by the committee is permitted for non-confidential business,

(b) ADVISORY OPINIONS: Discussion of advisory opinions, which may require off-site communication with a legal advisor, is allowed if no portable, cellular, partyline or speaker phones are used and the committee and caller verify that no one else can listen in and that the bridge for teleconference is secure.

(c) COMPLAINTS: Use of teleconference or telephonic equipment is not permitted for discussion of complaints, unless the committee approves use of teleconference in advance of meeting and the rules under (b) of this subsection are adhered to. Deliberations must be conducted in person.

## COMPLAINTS

### WHO CAN FILE AN ETHICS COMPLAINT?

Anyone who believes the legislative ethics law has been violated may file a complaint with the Ethics Committee. For more information, see pages 32-35 of this handbook.

### HOW DOES ONE FILE A COMPLAINT?

Appendix H of this handbook contains a complaint form. Complaints will be accepted in any form so long as they are in writing, notarized and include a statement that the complainant has reason to believe a violation occurred and that they understand they may be called upon to testify as to their belief that a violation occurred.

### AGAINST WHOM MAY AN ETHICS COMPLAINT BE FILED?

The Ethics Committee may consider complaints filed against current legislators and legislative employees, including public members of the Ethics Committee, if the complaint alleges that a violation occurred within two years of the filing date. The committee may also consider complaints filed against a former member of the legislature if the complaint alleges violations committed while the member was in office and the complaint is filed within one year of the legislator's departure from office.

The committee has the authority to reinstate a complaint that was closed upon an employee's termination, if the employee is rehired within two years of the date of the complaint. The same procedure is available for a former legislator who resumes legislative service within two years of the complaint.

The committee may not consider complaints filed against all members of the legislature or all members of one house. The committee lacks authority to consider complaints filed against family members of either legislators or legislative employees.

### ARE THERE RESTRICTIONS ON WHEN A COMPLAINT MAY BE FILED?

If a complaint is filed against a legislator or legislative employee who is a candidate for state office and if the complaint is filed during a \*campaign period, the committee must return the complaint without action, unless the subject of the complaint waives suspension of action. The complaint may be refiled after the closure of the \*campaign period. *\*Campaign Period: begins on the later of 45 days before a primary election or the day on which the individual files as a candidate for state office and ends at the close of election day for general or special elections or on the day the candidate withdraws from the elections, whichever is earlier.*

### WOULD I KNOW IF A COMPLAINT HAD BEEN FILED AGAINST ME?

AS 24.60.170(b)

Yes. A copy of the complaint is delivered to the subject of the complaint as soon as possible.

## **COMPLAINTS ALLEGING VIOLATION OF THE ETHICS CODE**

**AS 24.60.170**

Anyone who believes the legislative ethics law has been violated may file a complaint with the Ethics Committee. A complaint must be in writing and notarized. Complaints should be sent to the committee chair at the Ethics Committee office. It is a Class A misdemeanor under AS 11.56.805 to knowingly or intentionally file a false complaint with the Ethics Committee. Complainants may be asked to testify in support of their complaint. A complaint form is provided in Appendix H.

Complaints received during a \*campaign period against a candidate who is subject to the ethics code, will be returned without action, unless the subject of the complaint waives the right to suspend consideration within 11 days. \*A campaign period begins 45 days before the primary election in which one is a candidate or the day one files for office, whichever is later and ends the day of the general or special election, the day after primary results are certified for a candidate who loses in the primary or the day a candidate withdraws. Complaints may be refiled at the end of the campaign period.

During the campaign period (described in the paragraph above), the committee is restricted from proceeding beyond the point of confidentiality on a pending complaint concerning a candidate, unless the subject waives the right to suspended proceedings.

The Ethics Committee and its House and Senate subcommittees have authority to consider complaints against legislative employees, including the public members of the Ethics Committee, and current or former legislators. The Ethics Committee does not have the authority to consider a complaint against a legislative employee after the employee has stopped working for the Legislature. If the employee leaves legislative work, the Ethics Committee must dismiss a complaint against the employee. However, the committee may reinstate a complaint if that person is rehired as a legislative employee. The Ethics Committee may not consider complaints against the family members of legislators or legislative employees.

A complaint must be filed within two years after the date of the alleged ethics violation. A complaint against a former legislator for alleged violations he or she committed while in office must be filed within one year after the legislator's departure from office. The time limitations on complaints do not apply if the subject of the complaint intentionally prevented discovery of the violation of the law.

The House Subcommittee handles complaints against representatives, former representatives, and employees of representatives and committees of the House, chaired by representatives. The Senate Subcommittee handles complaints against senators, former senators and employees of senators and committees of the Senate, chaired by senators. The full Ethics Committee considers complaints against employees of legislative agencies, joint committees and the public members and employees of the Ethics Committee. When the Ethics Committee Chair receives a complaint, the Chair refers it to the appropriate subcommittee or to the full Committee.

**In considering a complaint, the Ethics Committee, or the appropriate House or Senate subcommittee (referred to collectively as "the committee"), must take the following steps:**

1. Verify the complaint is sworn to, validly filed against a person subject to the ethics code and not filed against a person who is a candidate during a campaign period. If filed against a candidate during the campaign period, complaint must be returned, unless the subject waives suspension. Send a copy of the complaint to the subject(s) of the complaint immediately. Determine if the alleged misconduct occurred over two years ago and if it did, was there an attempt to intentionally prevent discovery. If it did occur over two years ago and there was no cover-up, the complaint must be dismissed.
2. Decide whether the allegations in the complaint would constitute a violation of the legislative ethics law over which the committee has jurisdiction if they were proven to be true. If not, the complaint must be dismissed.
3. Pass a resolution defining the scope of the investigation which will be made, then investigate the facts of the case. A copy of the resolution is given to the complainant and the subject of the complaint.
4. Decide whether there is probable cause to believe the accused person has violated the legislative ethics law. If not, the complaint must be dismissed. If probable cause is found, the committee must determine whether they may proceed if the complaint concerns a candidate during the campaign period.
5. Decide whether the probable violation can be corrected by the accused person and whether or not additional penalty is warranted. If a probable violation can be corrected, the committee may issue an opinion recommending corrective action. The accused person may request a meeting with the committee for the purpose of explaining the decision and then he or she may accept the recommended corrective action or request a formal hearing. After the meeting, the committee may change or reissue its opinion on corrective action. If the accused person does not take the recommended corrective action or the committee decides the

probable violation cannot be corrected without additional penalty, the complaint continues to the next step.

6. Formally charge the accused person. If the person admits he or she violated the law, the committee shall state the facts of the case and recommend a penalty. If the accused person does not admit to the allegations, the committee must schedule a formal, public hearing.
7. Hold a formal hearing to take testimony and other evidence, and decide whether there is clear and convincing evidence that the accused person violated the legislative ethics law. The committee may also indicate whether the accused person cooperated with the committee in the complaint process.
8. Recommend to the appropriate legislative body (for legislators) or the appointing authority (for legislative employees) the penalty the committee believes is warranted.

Meetings of the Ethics Committee to consider a complaint are confidential until the committee determines there is probable cause to believe the accused person violated the law. Committee documents are confidential until that point as well. After a finding of probable cause, hearings are open to the public and documents issued by the committee or documents presented at the formal hearing are open to public inspection. All committee deliberations, however, are confidential. Please see AS 24.60.170 for information on a subject's ability to waive confidentiality for portions of complaint proceeding.

#### **FAILURE TO COMPLY WITH CORRECTIVE ACTIONS**

**AS 24.60.170(g)**

If a subject of a complaint agrees to comply with the committee's recommended corrective actions but fails to do so in a timely manner, the committee may formally charge the person or refer the matter to a supervisory authority.

## **VIOLATIONS OF ETHICS CODE: PENALTIES**

**AS 24.60.174 - 176 and 24.60.970**

If the Ethics Committee decides a person has violated the legislative ethics law, the committee, or the appropriate House or Senate subcommittee, must recommend what penalty should be imposed.

If the violator is or was a legislator, the body in which the legislator served (i.e. the House or Senate) must vote on the penalty. The body has the power to review the committee's recommendation and to alter the penalty. Expulsion from the legislature requires a two-thirds vote of the full body. All other penalties require a majority vote of the full body in which the legislator served. If the violator is or was a legislative employee, the appointing authority (defined in AS 24.60176(b)) must determine the penalty. The appointing authority must assume the Ethics Committee's finding that the law was broken is correct and must impose an appropriate penalty.

In addition to any Ethics Committee action, the Attorney General may bring civil lawsuits against anyone covered by the legislative ethics law.



(continued from prior page)

Please list any additional materials attached to this complaint:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of person filing complaint (please print): \_\_\_\_\_

Daytime phone number: \_\_\_\_\_

Evening phone number: \_\_\_\_\_

Address: \_\_\_\_\_

I understand that a person commits the crime of false accusation if the person knowingly or intentionally initiates a false complaint with the Select Committee on Legislative Ethics (AS 11.56.805). I understand that I may be asked by the committee or the subject of the complaint to testify at any stage of the complaint proceeding as to my belief that the subject(s) of this complaint violated the ethics law. I understand there may be later implications under AS 24.60.170(i)(3) if I make public the information contained in this complaint. The above is a true and accurate representation of my belief that a violation of the Legislative Ethics Law occurred.

\_\_\_\_\_  
Signature Date

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

\_\_\_\_\_  
Notary Public's Signature Notary Public's Printed Name

State of \_\_\_\_\_ Judicial District \_\_\_\_\_  
Commission expires: \_\_\_\_\_

**Note:** If a complaint is filed against a legislator or legislative employee who is a candidate for state office and if the complaint is filed during a *\*campaign period*, the committee must return the complaint without action, unless the subject of the complaint waives suspension. The complaint may be refiled after the closure of the *\*campaign period*. *\*Campaign Period: begins on the later of 45 days before a primary election or the day on which the individual files as a candidate for state office and ends at the close of election day for general or special elections or on the day the candidate withdraws from the elections, whichever is earlier.*

# Alaska State Legislature

## Select Committee on Legislative Ethics

716 W. 4th, Suite 230  
Anchorage AK  
(907) 269-0150  
FAX: 269-0152

Mailing Address:  
P.O. Box 101468  
Anchorage, AK.  
99510 - 1468

December 20, 2002

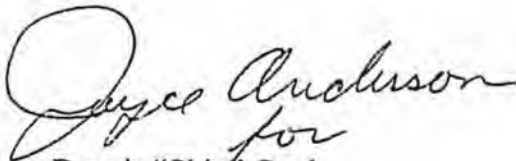
Ronald Irwin  
Senate Majority Press Secretary  
716 West 4<sup>th</sup> Avenue  
Suite 540  
Anchorage AK 99501

Mr. Irwin:

The question has been raised as to whether Mr. Popely, an employee of the Legislative Majority, may provide legal services to a legislative employee of the majority, without charge to that person, at the public hearing stage of an ethics complaint.

The concern is that public resources may be used to represent a legislative employee in an individual capacity. The committee has not addressed this issue but wanted you to be aware of the concern so you could consider possible ramifications of continued representation in connection with next month's hearing.

Sincerely,

A handwritten signature in cursive script that reads "Jayce Anderson" with "for" written below it.

Dennis "Skip" Cook  
Chair, Senate Subcommittee

cc: Ted Popely  
Majority Legal Counsel

**LEGAL SERVICES**

**DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

December 23, 2002

**SUBJECT:** Use of leadership staff attorney time to defend legislative employee at hearing before Legislative Ethics Committee

**TO:** Senator Rick Halford  
Attn: Ted Popely

**FROM:** Barbara R. Craver *BRC*  
Legislative Counsel *MB*

You have asked whether it is a violation of the legislative ethics code for the legislative majority to direct Ted Popely, staff attorney for the majority, to advise and represent Ron Irwin, the majority press secretary, in regard to a complaint against Mr. Irwin by the Legislative Ethics Committee. The conduct at issue in the ethics complaint involves whether it was appropriate for Mr. Irwin to issue a press release in regard to statements made by Lieutenant Governor Fran Ulmer about her plans to address the state's budget if elected to the governorship. You say that the ethics complaint charges Mr. Irwin with using public funds for a partisan political purpose. The basis of the ethics complaint against Mr. Irwin is triggered by the fact that Fran Ulmer was a candidate for governor while she was serving as lieutenant governor, and running as the candidate of the opposition party to that in the legislative majority.

The select Committee on Legislative Ethics has the authority to hear complaints about the conduct of legislators and legislative branch employees and is responsible for the enforcement of the Legislative Ethics Code. The Select Committee on Legislative Ethics has not reviewed this opinion. It is therefore not necessarily the opinion of the committee and is not binding on the committee. You may wish to seek informal written nonbinding advice from the Legislative Ethics Committee staff under AS 24.60.158 or you may request a formal advisory opinion from the committee under AS 24.60.160.

Legislators, including majority members, are bound by the provisions of the ethics code which prohibit the use of "public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in our support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person..." AS 24.60.030(a)(2). The issue here is whether Mr. Popely's representation of Mr. Irwin is for a legislative purpose.

Senator Rick Halford  
December 23, 2002  
Page 2

I believe an argument can be made that there is a legislative purpose involved in Mr. Popely's representation of Mr. Irwin. Mr. Irwin was performing his job in good faith. His supervisors contend that Mr. Irwin was performing his job properly when he issued the press release, and dispute that the action violated the ethics code. The majority argues that it is in its own interest to defend the parameters of how a majority press secretary performs his or her job. The outcome of this matter is of concern to the majority. The holding of the Ethics Committee may restrict how the majority is allowed to direct its employees to perform their jobs.

I do not think that it would always be appropriate for the majority or another legislative entity to represent individuals that are the subject of ethics complaints. Where a person takes an action that results in pure personal benefit, such as accepting an improper gift, or granting public funds to a personal friend or relative, there probably would be little legislative purpose to support the use of public assets and services, such as those of Mr. Popely, to defend that person's actions. However, the majority has some discretion to determine when a legislative purpose is served in using its resources.

Arguably, when an employee, such as Mr. Irwin, is performing the functions he or she has been directed to perform by a legislative employer and that performance results in the filing of an ethics complaint against the employee, the legislative employer ought to provide a defense.

The ethical issue of using public funds to represent an individual arises in cases when reimbursement is sought for the cost of private defense incurred by a public official who is found to have acted in the course and scope of the official's employment. Generally, a public body may reimburse a public official for his or her legal expenses if (1) the legal action arises from the discharge of an official duty in which the government has an interest; (2) the official acted in good faith; and (3) the body has the implied or express power to make the reimbursement. Powers v. Goodwin, 291 S.E. 2d 466 (W.Va. Ct. App. 1982); Edison v. Reid, 397 So.2d 352 (Fla. Ct. App. 1981); Annot. 130 ALR 736. Reimbursement in other circumstances would probably violate the requirement of article IX, section 6 of Alaska's Constitution that public money be appropriated only for a "public" purpose. Bowling v. Brown, 469 A.2d 896, 902 (Md. Ct. Spec. App. 1984)(payment of legal fees for criminal defense, even where criminal charges were dismissed, did not further a public purpose).

Courts have had some trouble applying the "scope of employment" and "good faith" tests in a consistent manner, but in general a factual finding that the official used a public office for private gain will preclude reimbursement of attorneys fees. Powers v. Goodwin, 291 S.E.2d 466 at 475 (W.Va. Ct. App. 1982) (use of government credit card for private purposes is not within the scope of employment.) Courts have usually been willing to allow reimbursement of attorney's fees for successful defenses of claims of unethical behavior, Ellison v. Reid, 397 So.2d 352 (Fla. Ct. App. 1981)(charges of official misconduct before ethics committee). However, in one case, where it appeared the successful defense was based more on legal technicalities than true innocence of

Senator Rick Halford  
December 23, 2002  
Page 3

wrongdoing, the court found it was wrong to reimburse an official for attorney's fees incurred in successfully defending against charges of using a public employee for private gain. Bowling v. Brown, 469 A.2d 896 at 899 (Md. Ct. App. 1984) (criminal charges dismissed because accused was not an official within the meaning of the criminal statute).

BRC:mdr  
02-036:mdr

ALASKA STATE LEGISLATURE

SELECT COMMITTEE ON LEGISLATIVE ETHICS

In Re: RON IRWIN )  
 ) Complaint No. S 02-02

PREHEARING MEMORANDUM AND MOTION FOR IMMEDIATE DISMISSAL

Ron Irwin, the Alaska Senate majority press secretary, is before this committee charged with a violation of AS 24.60.030(a)(2). This section provides that a legislative employee may not;

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit (A) limited use of state property for personal purposes if the use does not interfere with the performance of public duties and whether the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use: ...

This charge arose from a complaint by Tammy Troyer, Executive Director of the Alaska Democratic Party. This complaint and other legislative ethics complaints were signed by Ms. Troyer on television, and made public by Ms. Troyer at that time.

The acts complained of were the issuance of two press releases on September 4 and 5, 2002, dealing with a proposed legislative press conference on the subject of the announced tax plan of the Lieutenant Governor, why it will not work, and the ramifications of a tax and spend plan like she was proposing. (Exhibits A & B)

There are a number of reasons that this charge should be dismissed, as follows:

(1) Mr. Irwin did not engage in "partisan political activity" in the issuance of these press releases.

LAW OFFICES OF  
KENNETH P. JACOBUS, P.C.  
425 G STREET, SUITE 920  
ANCHORAGE, ALASKA 99501-2140  
TELEPHONE (907) 277-3333  
FAX (907) 278-4848

(2) The phrase "partisan political activity" is not defined in the Alaska Statutes. The lack of a definition, especially because the phrase is being applied in a context which is inherently partisan and political, renders the statute void for vagueness as it applies to Mr. Irwin.

(3) The charge should be dismissed as a sanction against complainant, Tammy Troyer, for violating the letter and spirit of the confidentiality provisions of the Alaska Ethics Act and the Constitutionally guaranteed right of privacy of the accused individuals, by signing the complaints on television against several persons against whom she brought charges.

(4) The role of Brent Cole as both a prosecutor and advisor to the Board is a denial of Mr. Irwin's Constitutional right to due process of law.

These issues are discussed below:

#### ARGUMENT

(1) Mr. Irwin did not engage in "partisan political activity" in the issuance of these press releases.

There is little dispute as to the relevant facts of this case. This Committee must determine whether Mr. Irwin engaged in "partisan political activity" by issuing the two press releases in question. Mr. Irwin is employed by and works at the direction of the Senate majority. This is a partisan group by definition, since it consists of members of only one party. The work done is inherently partisan, since the whole point of the position is to assist the Republican senators in matters of legislative concern. This type of activity cannot be what is proscribed because it is an inherent part of the position.

The testimony will establish that the subject matter of the press releases was of legislative concern. Mr. Irwin was simply publicizing what would have been a press conference about a matter of legislative concern - taxation and spending. Nothing more.

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This is legislative and not political activity. Examples of even more egregiously partisan and political statements are provided as Mr. Irwin's exhibits. Exhibits J through M are Democratic legislative press releases. These releases are certainly partisan because they are phrased in such a way as to make the Democrats look good and the Republicans look bad. But they are published as matters of legislative concern. Are they political acts?? If so, every one of these press releases violates the Ethics Act.

The Democrat commentary on the House Finance Budget (Exhibit N) clearly criticizes the Republican budget, and points out (in a non-neutral manner) that child protection will be hampered, disabled children put at risk, school accountability will be crippled, diplomas denied, university will not be funded, troopers cut, laws ignored, etc. Again, the choice of words is clearly partisan and politically motivated to make the Republicans look bad.

Kim Elton's newsletter, Exhibit O, brings the discourse one step lower. It is clearly partisan and political, again designed to make the Republicans look bad. The words chosen make fun of the fact that many Republicans are religious people - and religion is a freedom guaranteed by the First Amendment. The discussion is only peripherally about matters of legislative concern, and no light is shed or real information given on the subject as is done by Exhibit N. Exhibit O is simply a diatribe against the "religious" Republicans. Is this partisan political?? Sure it is. Should it be prohibited and deemed to be a violation of the Ethics Act. Probably not. However, it is a lot more "partisan political" than anything that Mr. Irwin did in issuing the press releases.

We finally reach the Ernie Hall statement, Exhibit S. This entire statement was posted on the legislative minority web page during the period of time that Ernie Hall (not a legislator)

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was a candidate for the office of lieutenant governor. This was downloaded from that web page on September 18, 2002. (Exhibit V) Yet, this document had been posted, and egregious violation committed, by the legislative minority, in the apparent belief that the posting was entirely appropriate.

In summary, the testimony will establish that Mr. Irwin did no more than act within the course and scope of his employment, and did what he was hired to do. His actions were not partisan or political, but were actions taken in a matter of legislative concern.

(2) The phrase "partisan political activity" is not defined in the Alaska Statutes. The lack of a definition, especially because the phrase is being applied in a context which is inherently partisan and political, renders the statute void for vagueness as it applies to Mr. Irwin.

After listening to the testimony in this case, and looking at the exhibits listed above, it will become clear that there is no uniformity of belief on what a "partisan political activity" is, especially in the context of a legislative position which is inherently partisan and political. The definition of "partisan political activity" is vague, to say the least, and is in fact non-existent. The statute should contain a definition, but does not. Therefore, it leaves the defining of the term to the unfettered discretion of this Committee.

A vague statute violates the due process clause if its indefinite contours confer unbridled discretion on government officials and thereby raise the possibility of uneven and discriminatory enforcement. Brown v. Municipality of Anchorage, 584 P.2d 35 (Alaska 1978) One of the important factors related to due process in criminal cases is that a the defendant must be placed on adequate notice as to what conduct is prohibited, so that the defendant can direct his own behavior accordingly. The undefined phrase "partisan political activity" simply does not satisfy the requirements of due process of law.

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There is very little case law related to this definition, but what there is supports the position of Mr. Irwin by analogy. In the one Alaskan case, State v. Haley, 687 P.2d 305 (Alaska 1984), a legislative researcher had been discharged from her employment because she participated in an "activity which would tend to undermine the essential nonpartisan nature of their functions and services." Ms. Haley had participated in a demonstration on the Capitol steps and gave a lengthy television interview protesting the increasing influence of multinational corporations in Alaska. Ms. Haley's termination was held to be unconstitutional.

The Haley case is far different from this case. However, Mr. Irwin is in a specifically political and partisan position, whereas Ms. Haley's position was specifically non-partisan. If Ms. Haley's rights are going to be protected in a non-partisan position, Mr. Irwin should not be found to have violated a statute by issuing press releases on a matter of legislative interest while serving in what is a partisan position.

Other cases in other contexts also support Mr. Irwin's position. For example, a women voters association was found not to have engaged in partisan political activity so as to lose its tax exempt status when it denied a minority party candidate for president the opportunity to appear in televised presidential primary election debates. Fulani v. League of Women Voters Educ. Fund, 882 F.2d 621 (C.A.2, N.Y. 1989) Activities of court-appointed employees in judge's retention election campaign did not constitute "partisan political activity" because judicial elections are non-partisan. In re Cicchetti, 697 A.2d 297, 314-315 (Pa.Ct.Jud.Disc. 1997) The phrase "partisan political purposes" does not include advocating adoption of a constitutional amendment, or passage of bond issue or tax levy. State ex rel. Corrigan v. Cleveland-Cliffs Iron Co., 157 N.E.2d 331 (Ohio 1959). "Partisan political reasons" means reasons solely based

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on an affiliation with a political party or candidate. Mastriano v. F.A.A., 714 F.2d 1152 (C.A. Fed 1983) Wearing a black armband to work to express opinions on the Viet Nam War and "Moratorium Day" is a political activity, but not a partisan political activity. Peale v. United States, 325 F.Supp. 193 (D.C.N.D. Ill. 1971) On the other hand, for a very expansive definition of partisan relating to the legislative open meetings act, see State ex rel. Lynch v. Conta, 239 N.W.2d 313 (Wis. 1976)

The foregoing cases demonstrate the difficulty of defining the term "partisan political activities" in the context which Mr. Irwin is being charged. He is in a partisan and political position. It is his responsibility to support the Senate Majority in matters of legislative concern. By working at the direction and supporting the Senate majority in legislative matters, he necessarily supports their political beliefs and programs.

If a practical and working definition were to be adopted, it would not proscribe any actions which had a legislative purpose, or involved legislative concerns. A partisan political act would be an act which does not have a legislative purpose or involve legislative concerns, but is an act performed for the benefit of a political party or a political campaign. (See Mastriano case, cited above)

Mr. Irwin believes that the purpose of the language used and the decision to use the words "partisan political activity" was to prevent the legislators or staff from using their offices and positions to further outside political entities, such as the Republican or Democratic Parties. He believes that AS 24.60.030(a)(2) if he or she uses public funds, facilities, equipment, services, or another government asset or resource for involvement in, support of or in opposition to outside partisan political activity, which has no legislative purpose or does not rise to the level

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of legislative interest.

However, unfortunately, there is no definition in the statute, and this absence makes the statute constitutionally void for vagueness.

In addition to the foregoing, there are other sections of AS 24.60.030(a)(2) which, at least by analogy and statutory construction, protect Mr. Irwin. First, the statute prohibits use for "nonlegislative purposes". This clearly implies that uses for "legislative purposes" are allowed. Mr. Irwin's issuance of the press releases was clearly for legislative purposes. Second, even if the use were personal, personal uses are allowed if the use does not interfere with the performance of public duties and the cost or value related to the use is nominal. Here, there is no claim that the issuance of the press releases interfered with Mr. Irwin's other public duties, and the cost or value of a little computer and telephone time is nominal. <sup>1</sup>

For this reason, the charge against Mr. Irwin should be dismissed.

**(3) The charge should be dismissed as a sanction against complainant, Tammy Troyer, for violating the letter and spirit of the confidentiality provisions of the Alaska Ethics Act and the Constitutionally guaranteed right of privacy of the accused individuals, by signing the complaints on television against several persons against whom she brought charges.**

The charges brought by Tammy Troyer, executive director of the Alaska Democratic Party, were initially publicized by her through signing the complaints on television. This was obviously done for political reasons in support of the Democratic candidate for governor, and probably in retaliation for various complaints filed with the APOC against Democrat election practices in the 2002 elections. Anyone with a degree of common sense can clearly see that the complaint is not motivated by anything that Mr. Irwin did, or any particular desire for clean

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<sup>1</sup> This Committee has already determined that the use of public resources was de minimus.

government in Alaska.

In addition, Ms. Troyer and the Democrats made a big media event out of these complaints. Notwithstanding that the first word printed at the top of the form in bold print with all capital letters is "**CONFIDENTIAL**", the complaints were widely publicized by Ms. Troyer. The applicable Alaska statutes require that these complaints be confidential. Article I, Section 22, of the Constitution of Alaska, states that "The right of the people to privacy is recognized and shall not be infringed."

This Committee itself commented on this matter in its order dated November 14, 2002, as follows:

[t]he Senate Subcommittee notes that the Complainant signed this complaint on television and as a result the complaint was made public at the time of filing. The complaint form specifically indicates an ethics complaint is confidential. The subcommittee acknowledges its lack of jurisdiction over the general public as to the requirement of confidentiality in filing complaints; however, the subject of the complaint deserves the right of protection of confidentiality while the subcommittee is investigating the issue. The subcommittee strongly supports the confidential nature of ethics complaints and discourages any action, such as occurred in this matter, that violates the confidentiality of those named in the complaint. (emphasis added)

Everyone knows about the "exclusionary rule." That is, when police officers violate the Constitutional rights of criminal defendants, the evidence obtained as a result of these violations is excluded, even though it may result in the prosecutors not being able to prove the case. Since this Committee has no jurisdiction over the general public, but does have jurisdiction over the complaint itself, there is only one way that this Committee may follow its own observations above. The only way that this Committee can discourage televised complaints made for political purposes is by dismissing those complaints. This should be done, both as a meaningful sanction against Tammy Troyer, and also to discourage this type of conduct in the future.

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If a complaint is to be filed in the future, it must be filed confidentially, and this Committee should send a clear message that this is the case. If this Committee does not do so, it will become inundated with publicized and politically motivated complaints, in the same manner that APOC has become inundated. Don't reward Ms. Troyer's politically-motivated behavior by prosecuting Mr. Irwin. Dismiss Ms. Troyer's complaint, and send the message that this type of blatant violation in filing a complaint will not be tolerated.

**(4) The role of Brent Cole as both a prosecutor and advisor to the Board is a denial of Mr. Irwin's Constitutional right to due process of law.**

It is undisputed that an attorney should not act as an advocate before an administrative agency, and also act as advisor to the agency on the same matter. The Alaska Supreme Court discussed this principle as it applied to attorney discipline in Stigall v. Anchorage Municipal Police and Fire Retirement Board, 718 P.2d 943, 945-946 (Alaska 1986) and Matter of Robson, 575 P.2d 771, 774 (Alaska 1978). In Robson, the Court held that "to assure both the fact and appearance of impartiality in the Disciplinary Board's decisional functions, counsel associated with either the prosecution or defense should not be present during deliberations." 575 P.2d at 775 In Stigall, the Court approved the participation of the attorney in the administrative proceedings because she had only drafted interrogatories for the Board's use. The Court observed that the drafting of interrogatories does not present the threat to the fact of appearance of impartiality in the board's function that was present in Robson. 718 P.2d 943

Mr. Cole provided legal advice to the Board relating to the scope of examination of the complainant, Tammy Troyer. (Exhibit U) This legal advice directly impacts the Committee's decision making process, and in fact focuses the Committee's decision on a hotly disputed issue in a particular direction. The issue of the permissible scope of the examination of Tammy

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Troyer will arise again in the hearing. The fact or appearance of impropriety arises when Mr. Cole, as prosecutor, advocates (or does not advocate) a position on a subject on which he has already provided independent legal advice to the Committee as to how it should be decided.

Today, the situation has gotten even worse. In this amended exhibit list, exhibit list, final witness list, and response to motion to release, Marston & Cole, P.C. identifies itself as the attorney for the complaining witness, Tammy Troyer. Even district attorneys, when prosecuting crimes, are attorneys for government and not attorneys for the victims who file the complaints. So, not only has Mr. Cole acted as the prosecutor in this matter and given independent advice to the Committee, he is now acting as partisan advocate and attorney for the complaining witness. <sup>2</sup>

This conflict of interest and appearance of impropriety is now getting so blatant that this prosecution of Mr. Irwin must be stopped and the charges dismissed.

### CONCLUSION

The matters set forth in this memorandum demonstrate that this prosecution should not continue. The applicable statute is void for vagueness, the complaining witness knowingly violated statutory and constitutional protections of the accused when filing the complaint for political purposes on television, and the prosecution is clearly tainted by conflicts of interest and appearance of impropriety. In addition, Mr. Erwin did not violate the statute.

Accordingly, for these reasons, Mr. Irwin moves that the hearing officer direct that this

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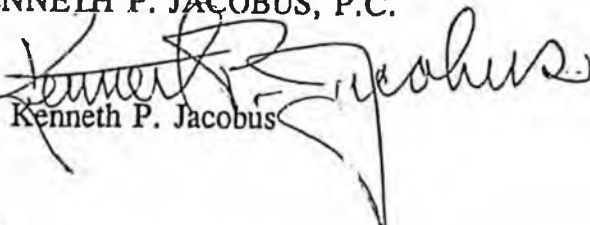
<sup>2</sup> A good example of this are the attempts today to subpoena Mr. Irwin's personnel records. This is simply an act by Ms. Troyer, through Mr. Cole, her attorney, which serves no purpose. Mr. Irwin admits that he works for the State, and has already disclosed his leave slip and explained his activities for the days in question.

case be dismissed immediately, without a hearing. There is no public interest in carrying this matter forward any farther, and this prosecution should be terminated now.

DATED this 7th day of January, 2003.

KENNETH P. JACOBUS, P.C.

By



Kenneth P. Jacobus

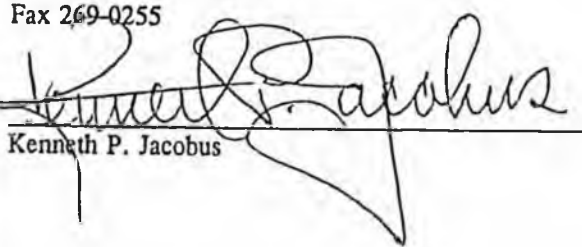
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of January, 2003, true and correct copies of this Prehearing Memorandum and Motion for Immediate Dismissal were faxed to:

John Treptow (Original for hearing record will be delivered later)  
Dorsey and Whitney, LLP  
1031 West 4th Avenue, Suite 600  
Anchorage Alaska 99501  
Fax 276-4152

Brent Cole  
Marston and Cole  
745 West 4th Avenue, Suite 200  
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Ted Popely  
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1 MS. McCOY: Right.

2 MR. JACOBUS: And that's.....

3 MS. McCOY: And the only reason that we're here, it really  
4 isn't because it was partisan, it's because he tried to hold a  
5 meeting that was partisan in a State office building.

6 MR. JACOBUS: Well, it wasn't he tried to hold the  
7 meeting, he was directed.....

8 MS. McCOY: He.....

9 MR. JACOBUS: .....to hold the meeting and he publicized  
10 it.....

11 MS. McCOY: He did a press conference.....

12 MR. JACOBUS: .....and that's all.

13 MS. McCOY: .....he has testified it was his decision. He  
14 made the decision countermanding others that specifically  
15 requested it to be in Republican headquarters, that's the whole  
16 guts of the situation. We, historically have decided if a  
17 legislator or anyone coming under the Ethics Code tries to do  
18 something that is a violation of the Ethics Code, they've in  
19 essence done it.

20 MR. JACOBUS: Well, I don't think.....

21 MS. McCOY: It doesn't matter that it didn't happen. And  
22 the bottom line is we didn't do any sanctions because the  
23 meeting didn't take place. Basically we were trying to send a  
24 message that this isn't ethical, this is a violation of the  
25 code, it didn't happen so we're not offering any sanctions, it

1 gets the message out, next time people will consider that and  
2 do it differently.

3 MR. JACOBUS: I don't think that accurately characterized  
4 Mr. Irwin's testimony. Mr. Irwin believed it was a matter of  
5 legislative concern, therefore, said you should do it at the  
6 LIO.

7 MS. McCOY: The fact that he believed it doesn't make it  
8 right or wrong. You can believe something sincerely and still  
9 not be correct, right?

10 MR. JACOBUS: There are people that believe the Earth is  
11 flat, I think.....

12 MS. McCOY: Exactly. That doesn't -- I mean so the fact  
13 that he believed it really.....

14 MR. WALKER: I guess the issue for me comes down to, if  
15 that particular language in that statute is applicable and do  
16 you have a change of position on that, Mr. Treptow?

17 HEARING OFFICER: I do not.

18 MR. WALKER: You know was he working within -- I mean the  
19 evidence that I've heard is that this is part of what they do.

20 MS. McCOY: But it wasn't scheduling the press conference  
21 that was the problem, it was where he was going to hold it. So  
22 it really doesn't matter. I mean I don't have a problem with  
23 arguing (h) as part of his job, I don't have a problem with  
24 arguing that his job is partisan. Just like 99.9tenths percent  
25 of it.

1 Irwin did, but the ramifications go to all of what the  
2 Legislature does, I think his testimony is very important.

3 MR. COOK: Do you want to reconsider or do you want to  
4 leave it?

5 MR. THOMAS: But it's not testimony.

6 MS. McCOY: No, I.....

7 MR. THOMAS: He's just going to make a statement.

SENATOR TORGERSON: Right.

MS. McCOY: Apparently the motion will fail. But this is  
my thinking. We heard his argument prior to making our  
probable cause finding so I don't know that he would present  
anything new or different than we've already heard before. Mr.  
Irwin does have an attorney now, I can't see any real advantage  
in having another one speak in his behalf. And it's comparable  
to our Committee using legislative attorney, we have to hire  
outside of attorney because of conflict of interest with using  
legislative staff. So I guess I'm viewing it in the same  
manner with Mr. Popely continuing. We found probable cause,  
Mr. Irwin took issue with that probable cause, that was his  
choice and at that point then he takes the responsibility for  
-- legal representation.

22 SENATOR TORGERSON: Not necessarily.

23 MS. McCOY: Well.....

24 SENATOR TORGERSON: It's your opinion that.....

25 MS. McCOY: Exactly.

1 accommodate him and just put in his testimony through his  
2 statement, but I am hoping that, and I told him this, that his  
3 testimony is going to take about 15 to 20 minutes. So I guess  
4 my question, Mr. Wright, is, can you be available at any time  
5 this afternoon, any other time, understanding your schedule?

6 MR. WRIGHT: It depends -- it all depends on the time.  
7 Again, I'm in the process of trying to get a house together,  
8 get an office together, let me know what time and I can see if  
9 I can make it available. I'm not going to be free all  
10 afternoon, no.

11 SENATOR TORGERSON: Is tomorrow a better day?

12 MR. COLE: Is tomorrow morning a better day?

13 MR. WRIGHT: Well, I mean, no time is really good right  
14 now but tomorrow morning's probably better as long as it's not  
15 real early.

16 MS. MEHNER: If we wait until tomorrow to start taking  
17 witnesses then.....

18 MR. THOMAS: Why don't we just go ahead and take it.

19 MS. McCOY: Okay. Why don't we just take it, he's on the  
20 line, we can -- it's only 15 minutes. If we discuss and  
21 deliberate and decide to dismiss, it's no harm, no foul. If we  
22 don't, then we've already got him and he's taken care of.

23 MR. THOMAS: I second that.

24 MR. COOK: Could we take a five minute -- is he available  
25 for us to have a five minute break?

1 MR. WRIGHT: Yes, go right ahead.  
2 MS. McCOY: Thank you so much, Mr. Wright.  
3 MR. COOK: And does he want to stay on the line or is he  
4 going to call back?  
5 MR. WRIGHT: I'll just put you on hold and have you on the  
6 speaker, when you get ready just holler.  
7 MS. McCOY: Is that satisfactory with everyone else? I  
8 mean we kind of.....  
9 MS. MEHNER: I don't want to wait until tomorrow  
10 morning.....  
11 MS. McCOY: .....jumped in on this.  
12 MS. MEHNER: .....to start taking testimony.  
13 MR. COOK: We'll take a five minute break.....  
14 MS. McCOY: Five minute break and then we'll.....  
15 MR. COOK: .....and then take his testimony.  
16 MS. McCOY: .....do his testimony.  
17 MR. JACOBUS: Well, we'd prefer -- we'd object to doing it  
18 that way but if the Committee rules that way, I mean we do it.  
19 HEARING OFFICER: Okay. The objection's overruled subject  
20 to appeal to the Committee since the Committee's already  
21 decided.  
22 MS. McCOY: Okay, thanks.  
23 HEARING OFFICER: We'll take a five minute break and then  
24 take Mr. Wright's testimony.  
25 HEARING OFFICER: We're back on the record in Complaint

1 are we going to have testimony on everyone of these?

2 MR. JACOBUS: Well, the former is the case. Mr. Irwin  
3 will testify that these are past legislative press releases,  
4 where he got them and that's it. And they're -- the press  
5 releases, most of them are one page, some are two pages,  
there's a legislative memorandum which I think is probably a  
half a dozen pages. We're not talking about a large number of  
documents.

MS. McCOY: I don't know that the press releases  
themselves are so much in question as to the location. So what  
bearing would these other press releases have?

MS. MEHNER: But that may -- we may find out when we read  
them.

MS. McCOY: But we made our probable cause.....

MS. MEHNER: They're similar.....

MS. McCOY: .....ruling based on the code so it's like if  
they were doing it wrong before, it's time to stop it, so.....

MR. WALKER: The real issue is whether or not they're  
relevant to the issue before us? I know that Mr. Jacobus'  
position is that they're relevant because they show this is the  
21 standard operating practice if I understand his argument  
22 correctly.

23 I need a refresher on my short brain memory here, the  
24 officers, what was your reason behind making the recommendation  
25 that we not allow this evidence to be admitted?

March 4, 2003

To: House and Senate Judiciary Committee Members

From: Shirley A. McCoy, Public Member Select Com. Leg. Ethics

Re: Confirmation Hearing for Select Committee on Legislative Ethics Members

As you are aware, my confirmation hearing on February 24<sup>th</sup> was to be continued on the 25<sup>th</sup>. Due to scheduling problems I was asked to come back the following Wednesday, (March 5<sup>th</sup>). On the morning of the Feb. 26<sup>th</sup> Ms. Anderson called me. She stated she had been asked to inform me that I should not waste any more of my time coming in, as my name was not going to be moved forward.

Based on the questions that were put forth by Representative McGuire, at my hearing, I have to believe this decision is based on the results of the public hearing requested by Ron Irwin. That being the case there are a few areas I feel I need to address.

1. Questions Regarding Statements I Made: I have gone over and over in my mind any statement I might have made regarding "hanging Mr. Irwin" and I can only say that I can not think of **any circumstance** that would have caused me to make such a statement. I know from the beginning my thinking, and I feel that of the committee as a whole, was that the complaint was improperly motivated and that Mr., Irwin did not set out intentionally to violate the Ethics Code. Accordingly, the recorded documents will support my desire to comply with the code while at the same time **recommending no sanctions be imposed**. Are these the actions of one wishing to "HANG" someone? During our investigation and follow up testimony by Mr. Irwin, he refused to answer any question without written documentation in front of him. Maybe I should have used the same approach during my original hearing before this committee. I requested but have not received any documentation with proof of this statement. Further, no other committee member recalls my making such a statement.
2. Lily White Ethics: During my hearing, comments were made to the effect that it was your desire to have "Lily White Ethics". So why is it that every time we try to apply that same principal we end up on trial ourselves? I have served on this committee for 9 years. I have only been required to appear before the Judiciary Committee twice. Each time following a public hearing. Our Ethics Committee office also receives a notice of eviction after each public hearing. I have yet to see any legislator show up for the public hearing unless they are directly involved in the case, yet you pass continue to question the process and our actions with regards to it.
3. The Process: As a whole is a good one. Due to the prompt action taken by our staff many times would be complaints are not filed and possible complaints are avoided. Sounds like a system that is working to me. It's true you may have some areas you want to review and possibly consider changing. However, this should be carefully considered. I would suggest anyone wanting to make substantial changes consider first sitting as a legislative member on the committee to gain first hand knowledge.

#### COMPLAINT S02-02 ISSUES

1. Legislative Council Meeting: On January 28<sup>th</sup>
  - During the meeting to discuss whether or not to adopt the NONE sanctions of the Ethics Committee, the Comm. Chair, Senator Taylor, allowed considerable discussion of issues regarding Mr. Irwin's hearing.
  - Former Senator Torgerson's input: Former Senator John Torgerson, the only member of the Ethics Committee that disagreed with the decision, was "on line" and

answered questions regarding the Committee's decision and commented on his "dissenting opinion". While I was the one that suggested and argued Senator Torgerson be given this right, I feel it is completely prejudiced to have "only" that member's view and comments. Due to the statements made in this meeting rumors have run rampant. Many are misstatements, incorrect statements and statements that are completely untrue.

- **Bizarre Results & Wasteful Exercise:** Sen. Taylor's statements are completely unfounded. The Ethics Committee made each decision based on hours of discussion and review of the current code, which we are required to follow.
  - **Prosecutor's Participation:** Statements made by Senator Taylor, indicating that the Prosecutor went into our Executive Session is completely untrue. The committee doesn't have a "relationship" with the prosecutor any more than they had a relationship with the hearing officer appointed.
2. **Mr. Popely Representing Mr. Irwin:** We posed this question to LAA to protect Mr. Popely and ourselves. Had Mr. Irwin been willing to schedule the hearing at a later date we would have had time to address this issue. Additionally, Mr. Popely refused to share the advice he received from LAA legal on the same question. However, he did pass this information to Mr. Torgerson in the midst of the public hearing. Perhaps you would be better served to consider the legality of this action.
  3. **Senator Torgerson's Opinion/Comments:** Differed from the other members from the start. Senator Torgerson violated the Ethics code, during the public meeting of the Legislative Council, when he breached the confidentiality of other legislators mentioned in the complaint, who had been dismissed. During Mr. Irwin's hearing he acted more as an attorney for the subject than as a member of the committee, which brings me to the next area.....
  4. **Partisan Political Activity:** This is the term we were given to work with. It suggests activity dealing with a particular party that is not legislative, or that is campaign related. You suggested we use "common sense". I believe we did. We are not the "bad guys". We work to improve your public image, to make you accountable for your actions, and serve as a means of caution for future actions that might result in a complaint. The action taken in S02-02 does not any way limit legislators, as Mr. Torgerson's example indicated.
  5. **Suggestions:** Clarify the above definition if you must, but you should also consider the ramifications this may create. You might also want to consider exempting your press secretaries, as the very nature of their job seems to compromise the definition of "partisan activities" in questions. Allow the committee to refuse to hear any complaint that is made public, by the person filing it, before it is filed with the committee or before the committee has taken action on it.

**CONFIRM.**

**HEARING:**

**VIOLENT**

**CRIMES**

**COMP.**

**BOARD**

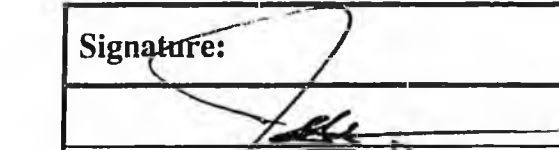

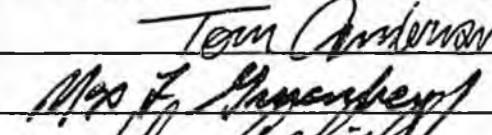
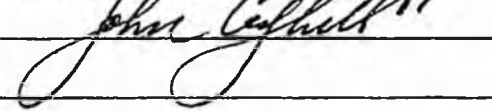
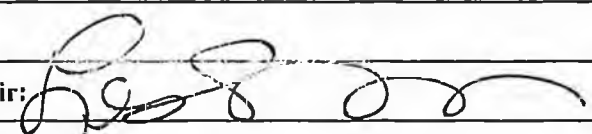
# CONFIRMATION COMMITTEE REPORT

Action date: March 7, 2003

In accordance with AS 39.05.080, the Judiciary Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**Violent Crimes Compensation Board**  
LeRoy Barker - Anchorage  
Appointed: 02/19/2003      Term Expires: 03/01/2005

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	HOLLY SAMUELS
	MCCUIRK ANDERSON
	Stenberg
	Coghill
Chair: 	
Chair:	

Please return to the Chief Clerk's office.

ROBERTSON, MONAGLE & EASTAUGH

HPD / VCC / 103

ATTORNEYS AT LAW

Juneau • Anchorage • Washington

**PERSONAL RECORD OF  
LEROY J. BARKER**

1400 W. Benson Boulevard  
Suite 315

Anchorage, Alaska 99503

Phone: 907-277-6693

Fax: 907-279-1959

E-Mail: [ljbarker@romea.com](mailto:ljbarker@romea.com)

BOARDS & COMMISSIONS

FEB 07 2003

EDUCATION

- 1952-56 University of Southern California. Graduated, Bachelor of Science in Business Administration, June, 1956.
- 1958-61 University of California at Berkeley, School of Law. Graduated, Bachelor of Laws, June 1961.

BAR ASSOCIATIONS

Ninth Judicial Circuit Court - admitted to practice, 1962  
California Bar - admitted to practice, 1962 (inactive)  
Alaska Bar - admitted to practice, 1963

United States District Court, District of Alaska - admitted to practice, 1963  
United States Supreme Court - admitted to practice, 1987

EXPERIENCE

1974 to Present Presently in private practice in Anchorage as a director in Robertson, Monagle & Eastaugh, Anchorage, Alaska.

Substantial experience in construction litigation, professional liability (including architects and engineers), product liability, and general commercial litigation.

1970-74 Practiced law with Robison, McCaskey, Strachan & Hoge, Anchorage, Alaska; engaged in general practice of law.

# ROBERTSON, MONAGLE & EASTAUGH

ATTORNEYS AT LAW

Juneau • Anchorage • Washington

- 1964-1970. Assistant District Attorney in both Alaska and California; extensive litigation experience; numerous felony cases including several high profile murder and fraud cases.
- 1961-1964 Department of Law, State of Alaska. Worked in Juneau, Ketchikan, and Anchorage as an Assistant Attorney General and Assistant District Attorney; represented the Department of Public Works and Highways; participated in various civil cases involving these two departments.
- 1956-58 U.S. Navy, LTJG, Legal Officer, San Diego Group, Pacific Reserve Fleet; graduated with distinction from Naval Justice School, Newport, Rhode Island.

## PROFESSIONAL ACTIVITIES

1. Member (and former state chair) of the public contract section of the American Bar Association.
2. Experience as a discovery master for the State Superior Court and the Federal District Court.
3. Member, Board of Governors, Alaska Bar Association, 1974 -1977.
4. Alaska Bar Association Professionalism Award 1990.
5. Fellow (and past state chair) American College of Trial Lawyers, 1990 to date.
6. Lawyer representative, United States Court of Appeals for the Ninth Circuit 1986 - 1988.

## CONFIRMATION COMMITTEE REPORT

Action date: March 5, 2003

In accordance with AS 39.05.080, the Judiciary Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

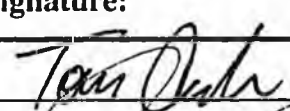
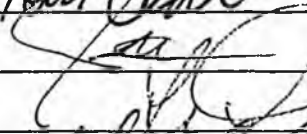
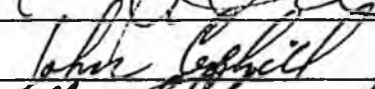
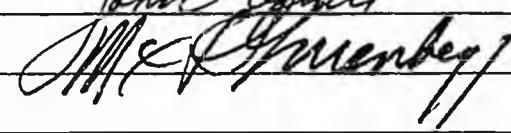
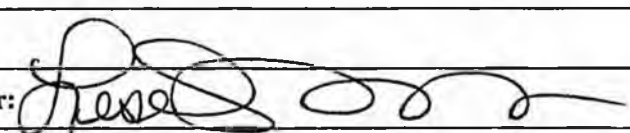
### Violent Crimes Compensation Board

Gerad G. Godfrey - Valdez

Appointed: 02/19/2003

Term Expires: 03/01/2004

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	ANDERSON
	HOLM
	Coghill
	Greenberg
Chair: 	McGuire
Chair:	

Please return to the Chief Clerk's office.

# Gerad G. Godfrey

P.O. Box 1254  
Valdez, AK 99686  
(907) 835-2329

**OBJECTIVE:** To obtain a position on the State of Alaska Violent Crimes Compensation Board.

**EDUCATION:** Bachelor's of Science Degree - University of Great Falls, Great Falls, MT  
Criminal Justice Major, with Counseling Psychology Minor  
Financed 100% of College Education Expenses

## WORK EXPERIENCE:

- Aug. 2001 – Present      **Doyon Universal Services, Valdez, AK**
- Provide patrol security for the Marine Terminal and pipeline access points
  - Process incoming dispatch services/control room functions
  - Monitor personnel shift changes
- Nov. 1998 – Aug. 2001      **Kelly Services, Ft. Richardson Army Base, Anchorage, AK**
- Provided audio/visual technical support for military trainers
  - Design and implement floor plans for conferences and seminars
  - Maintained inventory of essential facility materials
- Sept. 1998 – Nov. 1998      **Alaska Department of Public Safety, Sitka, AK**
- Training Academy for the position of Fish & Wildlife Trooper
- Oct. 1997 – Sept. 1998      **Guardsmark, Inc., Anchorage, AK**
- Interviewed, screened, and hired applicants for security positions
  - Staffed supervisors' man-power shortages at various contract posts
  - Accounted for staff's billable working hours
- April 1997 – Aug. 1997      **Total Nutrition & Fitness, Great Falls, MT**
- Managed supplement retail/tanning business
  - Advised patrons concerning nutrition and fitness programs
- May 1996 – April 1997      **Nana-Marriott, Prudhoe Bay, AK**
- Preparation cook, kitchen maintenance, and supply stocker
  - Also worked these positions seasonally during three years of college
- June 1981 – Aug. 1992      **Commercial Salmon Fishing, seasonally in waters around Kodiak, AK**
- Fished aboard F/V's Millenium, Armageddon, Jenna, and Miss Valery
  - Experienced in operating the skiff, deck boss, and deck hand
- ACTIVITIES:** Member – Oversight Committee Taskforce of APD 911 system review



Official Business

# Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216  
Juneau, AK 99801-1182  
Phone: (907) 465-3725  
Fax: (907) 465-5334

## MEMORANDUM

Date: February 10, 2004

To: Representative McGuire, Chair  
Judiciary Committee

From: Suzi Lowell *me*  
Chief Clerk

Subject: Governor's Appointments

Speaker Kott referred the following Governor's appointments to the Judiciary Committee:

**Board of Governors of the Alaska Bar**  
Mr. Joseph N. Faulhaber of Fairbanks  
Appointed: 7/29/2003  
Term Expires: 3/1/2005

**Violent Crimes Compensation Board**  
Dr. David G. Ingraham of Anchorage  
Appointed: 7/16/2003  
Term Expires: 3/1/2006

The resumes and committee reports are attached for your use.

Attachments as noted

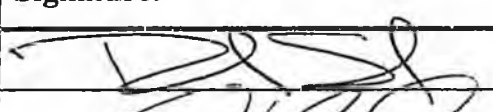

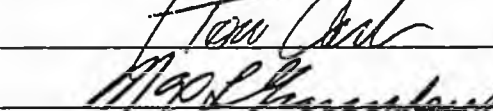
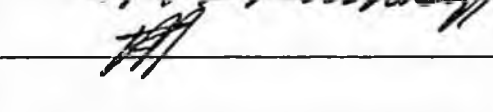
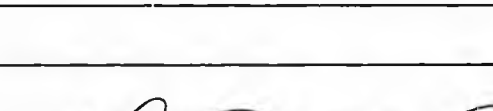
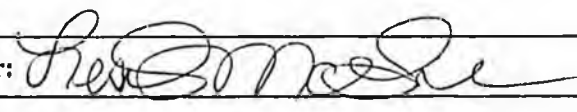
# CONFIRMATION COMMITTEE REPORT

Action date: March 3, 2004

In accordance with AS 39.05.080, the Judiciary Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**Violent Crimes Compensation Board**  
Dr. David G. Ingraham of Anchorage  
Appointed: 7/16/2003  
Term Expires: 3/1/2006

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	SAMUELS
	Sara
	HOLM
	ANDERSON
	Gruening
Chair: 	McBain
Chair:	

Please return to the Chief Clerk's office.

**RESUME FOR DAVID INGRAHAM MD**

David Ingraham  
2526 Arlington Drive  
Anchorage AK 99517

DOB 09/14/1953  
Married

Undergraduate:  
Bucknell University 1971 – 1975 BS Biology

Graduate:  
Hershey Medical Ctr 1975 – 1979 Medical Doctorate

Residency:  
Family Practice Residency, Bayfront Medical Center,  
St. Petersburg, Florida 1979 – 1982

Work History:  
General Practitioner Kananak Hospital, Dillingham AK  
1982 – 1987

Emergency Physician, CVPH Hospital, Plattsburgh NY,  
1988- 1990

Emergency Physician, PAMC Hospital, Anchorage AK,  
1990-present

Additional Duties:  
Alaska State Medical Director of EMS  
Medical Director PAMC Emergency Department  
First Vice President Medical Staff PAMC

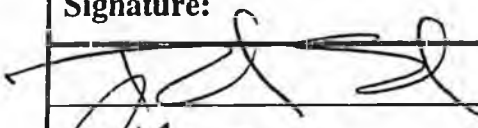
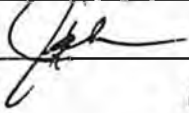
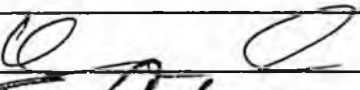
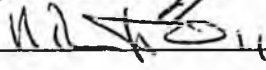

## CONFIRMATION COMMITTEE REPORT

Action date: May 3, 2004

In accordance with AS 39.05.080, the Judiciary Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**Violent Crimes Compensation Board**  
 Mr. Gerad Godfrey - Valdez  
 Appointed: 2/19/2003      Reappointed: 4/6/2004  
 Term Expires: 3/1/2007

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	SAMUELS
	HOLM
	GARA
Tom Anderson	ANDERSON
Wesley Gumbert	GUMBERT
	99
Chair: 	McClure
Chair:	

Please return to the Chief Clerk's office.

APP/VCC/003

January 31, 2003

Dear Ms. Kristie Leaf,

I would like to express my interest in applying for a position on the State of Alaska Violent Crimes Compensation Board, in order to represent the average citizen.

Based upon recent events, having lost my father and nearly losing my mother during the commission of a violent crime, I have unique insight and empathy for those who are experiencing a similar loss. Additionally, I studied Criminal Justice in college and was raised in and around the law enforcement community my entire life.

I have witnessed first-hand, having lived in both urban and rural communities around Alaska, the effects that violent crimes have on individuals and society. My selection to this committee will offer a critical, yet compassionate, eye to the tragedies that befall the victim(s) and/or affected family members.

Thank you for this opportunity to serve the State of Alaska.

Sincerely,

Gerad G. Godfrey  
305 River Drive  
P.O. Box 1254  
Valdez, AK 99686  
Home phone # (907) 835-2329  
Work phone # (907) 834-6480  
Cell phone # (907) 529-6154  
E-mail address: [GodfreyG@alveska-pipeline.com](mailto:GodfreyG@alveska-pipeline.com)

GGG/dh

# Gerad G. Godfrey

P.O. Box 1254  
Valdez, AK 99686  
(907) 835-2329

**OBJECTIVE:** To obtain a position on the State of Alaska Violent Crimes Compensation Board.

**EDUCATION:** Bachelor's of Science Degree - University of Great Falls, Great Falls, MT  
Criminal Justice Major, with Counseling Psychology Minor  
Financed 100% of College Education Expenses

## WORK EXPERIENCE:

Aug. 2001 – Present **Doyon Universal Services, Valdez, AK**  
- Provide patrol security for the Marine Terminal and pipeline access points  
- Process incoming dispatch services/control room functions  
- Monitor personnel shift changes

Nov. 1998 – Aug. 2001 **Kelly Services, Ft. Richardson Army Base, Anchorage, AK**  
- Provided audio/visual technical support for military trainers  
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- Maintained inventory of essential facility materials

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- Training Academy for the position of Fish & Wildlife Trooper

Oct. 1997 – Sept. 1998 **Guardsmark, Inc., Anchorage, AK**  
- Interviewed, screened, and hired applicants for security positions  
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- Accounted for staff's billable working hours

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- Advised patrons concerning nutrition and fitness programs

May 1996 – April 1997 **Nana-Marriott, Prudhoe Bay, AK**  
- Preparation cook, kitchen maintenance, and supply stocker  
- Also worked these positions seasonally during three years of college

June 1981 – Aug. 1992 **Commercial Salmon Fishing, seasonally in waters around Kodiak, AK**  
- Fished aboard F/V's Millenium, Armageddon, Jenna, and Miss Valery  
- Experienced in operating the skiff, deck boss, and deck hand

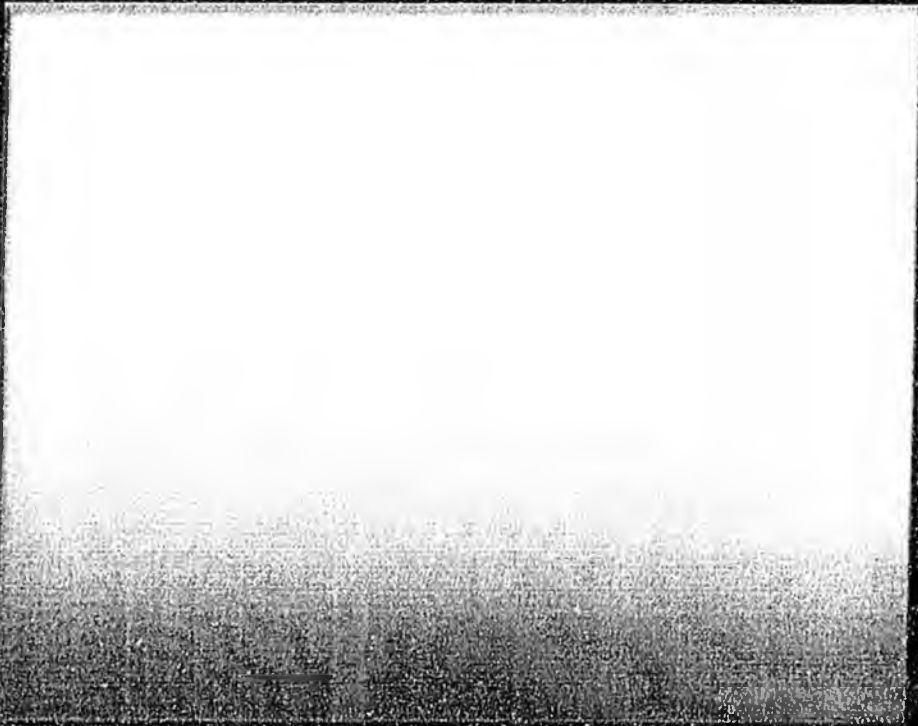
**ACTIVITIES:** Member – Oversight Committee Taskforce of APD 911 system review



State of Alaska  
Department of Public Safety

# Violent Crimes Compensation Board

Helping Innocent Victims Pick Up the Pieces — A Good Place to Start



If you have any questions,  
please feel free to call us at:  
1-800-764-3040 Toll Free or  
465-3040 in Juneau

Send mail to [susan\\_browne@dps.state.ak.us](mailto:susan_browne@dps.state.ak.us) with questions or comments about this web site.  
Copyright © 2002 Violent Crimes Compensation Board  
Last updated December, 2002

☛ Victim Information

☛ Application for Compensation

☛ ANNUAL REPORTS

- \* 2000
- \* 2001
- \* 2002

☛ Alaska Statute 18.67

☛ Appeals Process

☛ Regulations

☛ Alaska Office of Victims Rights

☛ Mental Health Treatment

- Policy
- Forms (pdf)

☛ Powerpoint Training

- The Red Cross Approach
- Victim Assistance Program Training  
1 2 3 4
- Other Training

New!

DOC. Community  
Corrections Victim Service  
Unit



Official Business

# Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216  
Juneau, AK 99801-1182  
Phone: (907) 465-3725  
Fax: (907) 465-5334

## MEMORANDUM

Date: February 19, 2003

To: Representative McGuire, Chair  
Judiciary Committee

From: Suzi Lowell *SL*  
Chief Clerk

Subject: Governor's Appointments

Speaker Kott referred the following Governor's appointments to the Judiciary Committee:

### **Judicial Council**

Bill Gordon - Fairbanks

Appointed: 05/18/2003 Term Expires: 05/18/2009

### **Violent Crimes Compensation Board**

LeRoy Barker - Anchorage

Appointed: 02/19/2003 Term Expires: 03/01/2005

Gerad G. Godfrey - Valdez

Appointed: 02/19/2003 Term Expires: 03/01/2004

The resumes and committee reports are attached for your use.

Attachments as noted

**OVERVIEW:**

**ALASKA**

**COURT**

**SYSTEM**

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# PROFILE OF THE ALASKA COURT SYSTEM

July 1, 2001 - June 30, 2002

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## INTRODUCTION

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 separate court systems.

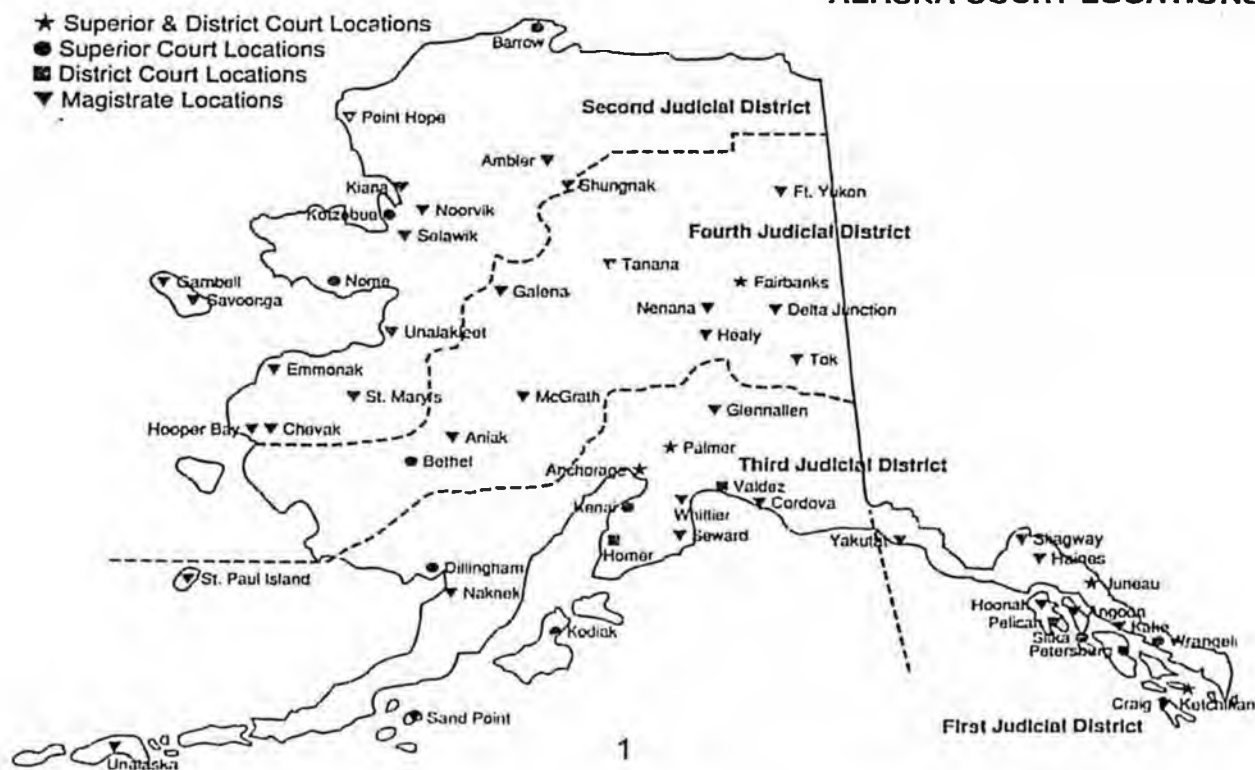
The four levels of courts in the Alaska Court System are the supreme court, the court of appeals, the superior court and the district court. The supreme court and court of appeals are appellate courts, while the superior and district courts are trial courts. Jurisdiction and responsibilities of each level of court are set out in Title 22 of the Alaska Statutes.

The supreme court and the superior court were established in the Alaska Constitution. In 1959, the legislature created a district court for each judicial district and granted power to the supreme court to increase or decrease the number of district court judges. In 1980, the legislature created a court of appeals.

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.

Rules governing the administration of all courts and the rules of practice and procedure for civil and criminal cases are promulgated by the supreme court.

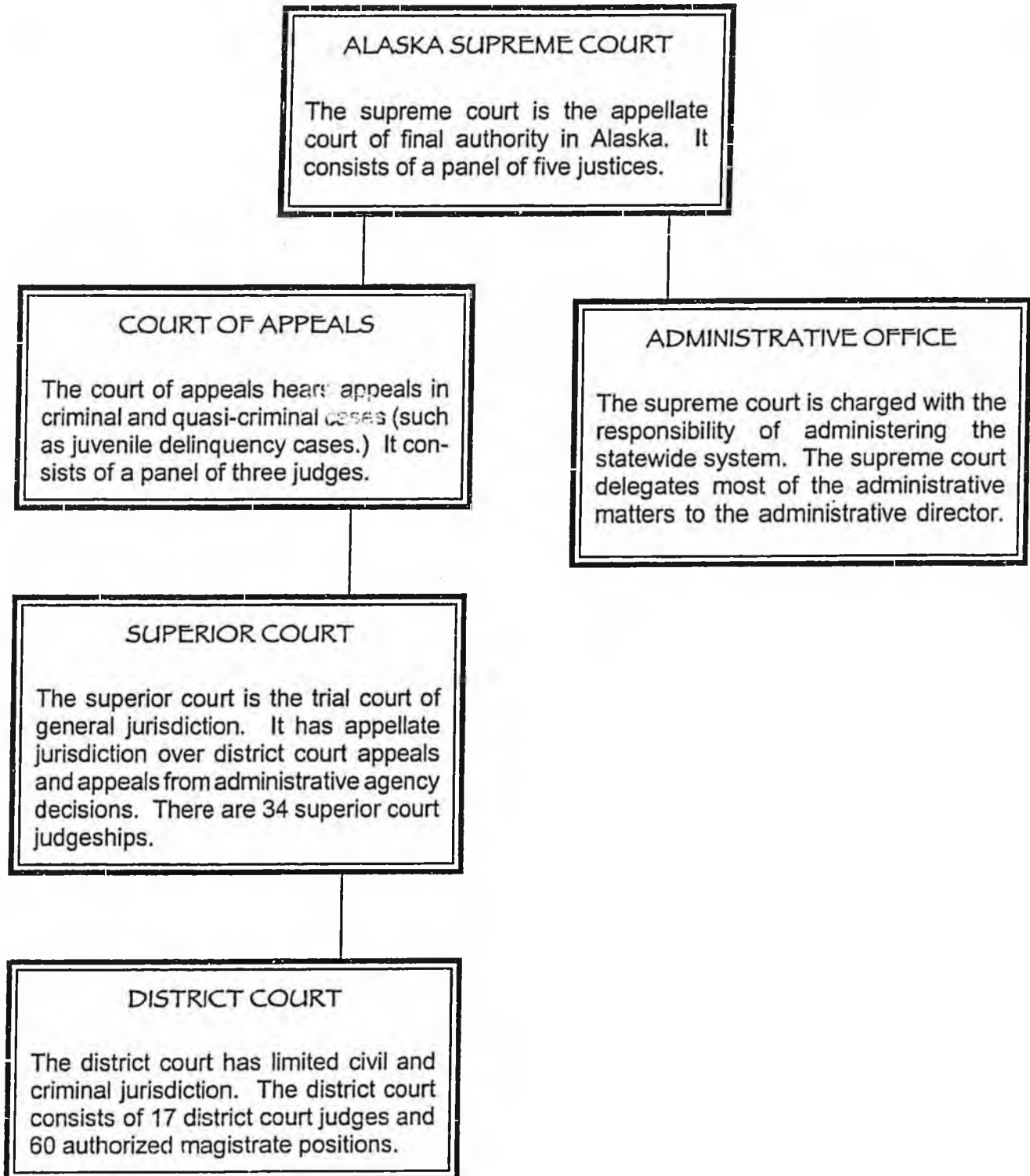
## ALASKA COURT LOCATIONS



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## ALASKA COURT SYSTEM ORGANIZATION

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ALASKA COURT SYSTEM  
(Information as of June 30, 2002)

Fiscal Year:	July 1 - June 30										
Geographical Area Served:	586,413 square miles										
Number of Judges:	<table border="0" style="margin-left: 20px;"> <tr><td style="text-align: right;">5</td><td>supreme court judges</td></tr> <tr><td style="text-align: right;">3</td><td>court of appeals judges</td></tr> <tr><td style="text-align: right;">34</td><td>superior court judges</td></tr> <tr><td style="text-align: right;">17</td><td>district court judges</td></tr> <tr><td style="text-align: right;">60</td><td>magistrates</td></tr> </table>	5	supreme court judges	3	court of appeals judges	34	superior court judges	17	district court judges	60	magistrates
5	supreme court judges										
3	court of appeals judges										
34	superior court judges										
17	district court judges										
60	magistrates										
Number of Court Locations:	<table border="0" style="margin-left: 20px;"> <tr><td style="text-align: right;">16*</td><td>combined superior and district court</td></tr> <tr><td style="text-align: right;">42</td><td>district courts only (judge and/or magistrate)</td></tr> </table>	16*	combined superior and district court	42	district courts only (judge and/or magistrate)						
16*	combined superior and district court										
42	district courts only (judge and/or magistrate)										
Number of Authorized Positions:	<table border="0" style="margin-left: 20px;"> <tr><td style="text-align: right;">668</td><td>permanent full-time</td></tr> <tr><td style="text-align: right;">50</td><td>permanent part-time</td></tr> <tr><td style="text-align: right;">21</td><td>non-permanent</td></tr> <tr><td style="text-align: right;">739</td><td>total</td></tr> </table>	668	permanent full-time	50	permanent part-time	21	non-permanent	739	total		
668	permanent full-time										
50	permanent part-time										
21	non-permanent										
739	total										

\*Includes three locations without resident superior court judges: Wrangell, Petersburg and Valdez.

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

Anchorage	219
Fairbanks	81
Juneau	32
Palmer	25
Kenai	23

OVERVIEW:  
DEPT. OF  
CORREC-  
TIONS

Email Message from Commissioner Tandeske

February 5, 2003

Members of the Alaska Department of Public Safety:

It is with great pleasure that I return to the department.

First, let me say that I am honored to have been chosen by Governor Murkowski to head what I have long considered to be the finest, most professional agency in the state.

For those of you who do not know me, I would like to let you know a little about myself and how I intend to lead your department. As many of you know I grew up in this agency. I spent nearly 26-years as a Trooper and retired a few years ago as a Major and Deputy Director of the Troopers. Over the course of my career as a Trooper, I worked closely with all of the other functions in the department at one time or another. As a result, I have a solid understanding and, more importantly, a tremendous respect for the services that each and every one of you provide to the citizens of this state.

Your job has become more and more complex over the years. The demand for the services you provide has steadily risen while at the same time resources have become more scarce. As this has occurred, you have been able to tighten your belts and meet the needs in spite of the challenges. We are at a point where there is little belt left to tighten yet the demands continue to march upward. This means that in order to survive as a viable entity we must rethink how we approach our mission and be adaptable to change.

While I intend to bring about positive, constructive change, I also intend to do it in a careful and thoughtful manner that will have the least impact on you as you continue to provide public service. Some of the changes may be painful, some welcome. My job will be to insure that any and all changes are necessary, purposeful and serve to move the department forward to meet the rapidly changing challenges we face.

At the core of my leadership philosophy are a few basic principles that I will live by and I will expect every employee of this department to live by. Let me start with the three that we see every day in our offices and on our vehicles - loyalty, integrity and courage.

The internal health of this agency is reflected every day by the public face of the agency - how the people we serve view us and the job we are doing for them. I expect every employee of this department to conduct the daily business of the department, both internal and public, in a manner that reflects loyalty to the ideals and laws we live by, with integrity that is beyond reproach and with the courage to do what is right in the face of adversity.

Professionalism - One of my personal goals is to instill a sense of pride and professionalism in every corner of this agency. I will demand that every aspect of the department's business be conducted in a professional manner and done so with a sense of pride in knowing that every action you take, every contact you make and every service you provide reflects positively on you

and on your department. The people we serve may not always agree with us but they will always consider us to be professional.

Fairness - I strongly believe in fair and equal treatment for employees and for the citizenry we serve. No person shall be given better or worse treatment due to any kind of status or condition. All business, whether internal or external, shall be conducted in a fair and honest manner. All decision-making processes shall be conducted in a fair and impartial manner and shall be closely scrutinized and regularly challenged to insure that they are clearly defensible.

Accountability - I will ensure and enforce strict accountability at every level. At the highest level we are all accountable to the people of this State. It is my charge to insure that accountability throughout all levels of this agency and I intend to do just that. Every employee of this agency must understand what their responsibilities are and how those responsibilities fit into the overall mission of this agency.

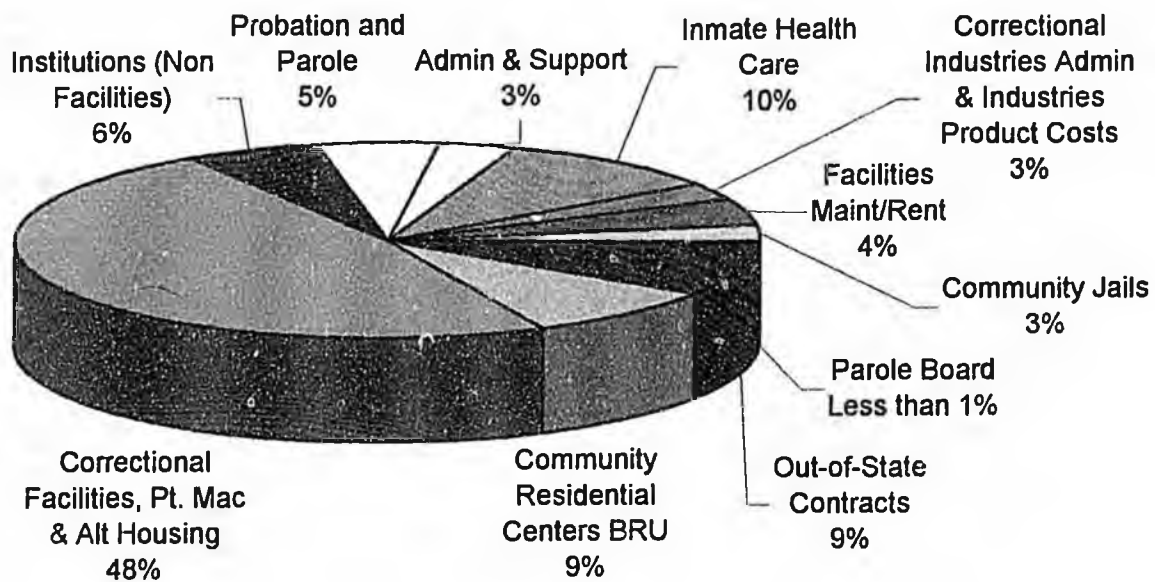
I intend to be actively involved in the day-to-day activities of this agency. I have a keen interest in what you do and how you do it. My interest stems from two points - a need to insure that this agency is carrying out its appointed mission and a need to insure that we are doing things in the best and most efficient manner possible given the resources we have.

My first days as Commissioner have been largely focused on administrative matters and getting up to speed on budget, performance measures and legislative issues. It is my desire to have a deputy commissioner named and in place in a matter of days. I will do my very best to visit employees throughout the state as soon as feasible. In the interim, I ask for your patience given the timing of my appointment in relation to the legislative session.

I shall continually strive to secure additional resources for you at every opportunity. I strongly believe in what you do and why you do it. I will do my best to serve you and represent you in an exemplary manner and to uphold the proud traditions you have worked so hard to defend. I consider all of you as part of a family that I am extremely proud to once again be associated with.

Bill Tandeske  
Commissioner

## Department of Corrections Fiscal Year 2003 Management Plan



### **Administration & Operations BRU:**

<i>Correctional Facilities, Pt. MacKenzie Farm &amp; Alt Housing</i>	\$87,093.0
<i>Institutions (Non Facilities)</i>	\$10,363.5
<i>Probation and Parole</i>	\$9,621.4
<i>Admin &amp; Support</i>	\$5,906.8
<i>Inmate Health Care</i>	\$18,125.7
<i>Correctional Industries Admin &amp; Industries Product Costs</i>	\$5,113.8
<i>Facilities Maintenance/Rent</i>	\$7,871.8
<i>Community Jails</i>	\$4,918.7
<i>Parole Board</i>	\$531.2
<i>Out-of-State Contracts</i>	\$15,683.4

**Community Residential Centers BRU:** \$15,532.9

**Department Total** \$180,762.2

### **Fund Sources**

<i>Federal Funds</i>	\$3,445.6
<i>General Funds</i>	\$154,796.7
<i>Other</i>	\$22,519.9

**Total** \$180,762.2

**ALASKA LEGISLATURE  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE**

**DEPARTMENT OF CORRECTIONS OVERVIEW**

February 12, 2003

**Management Team**

Marc Antrim – Commissioner  
Don Stolworthy – Deputy Commissioner  
Portia Parker – Assistant Commissioner  
Lei Tupou – Special Assistant  
Jerry Burnett – Director, Division of Administrative Services  
Mike Addington – Director, Division of Institutions  
Teri Moss – Director, Division of Community Corrections

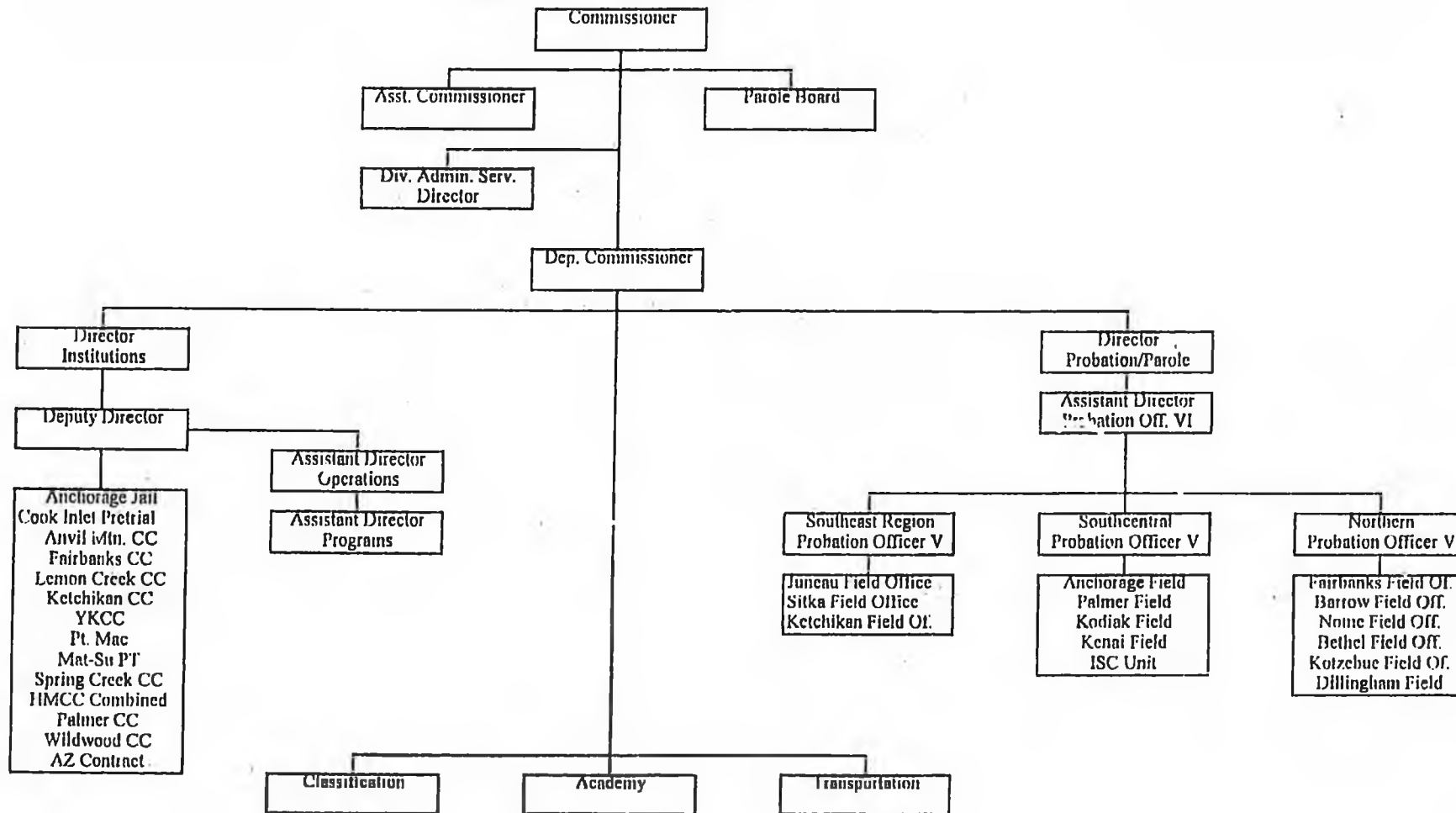
Governor's Office Contact: Frank Homan, Special Staff Assistant

**Highlights**

- 1474 Permanent Full-Time staff, 3 Permanent Part-Time staff (including 790 Correctional Officers and 164 Adult Probation Officers.)
- 12 Correctional Facilities (2908 beds total)
- 1 Prison Farm (Pt. MacKenzie, 78 beds)
- 1 Out-of-State Prison (Florence Correctional Center, contracted for 626 beds)
- 15 Local Community Jails (153 beds total)  
(Bristol Bay Borough, Cordova, Craig, Dillingham, Haines, Homer, Kodiak, Kotzebue, North Slope Borough, Petersburg, Seward, Sitka, Unalaska, Valdez, Wrangell.)
- 13 Regional Adult Probation Offices
- 7 Community Residential Centers (Contracts for 631 Regular Beds, 102 per diem beds)

**Organization Chart Discussion**

ALASKA DEPARTMENT OF CORRECTIONS  
ORGANIZATIONAL OVERVIEW



## **Inmate Programs**

- Adult Basic Education
- General Education Diploma
- Youth Offender Program – Spring Creek Correctional Center
- Substance Abuse
- Sex Offender Treatment
  - Highland Mountain Treatment Program
  - Lemon Creek Education Program
- Anger Management/Batterer's Program
- Vocational/Technical
- Arts/Crafts

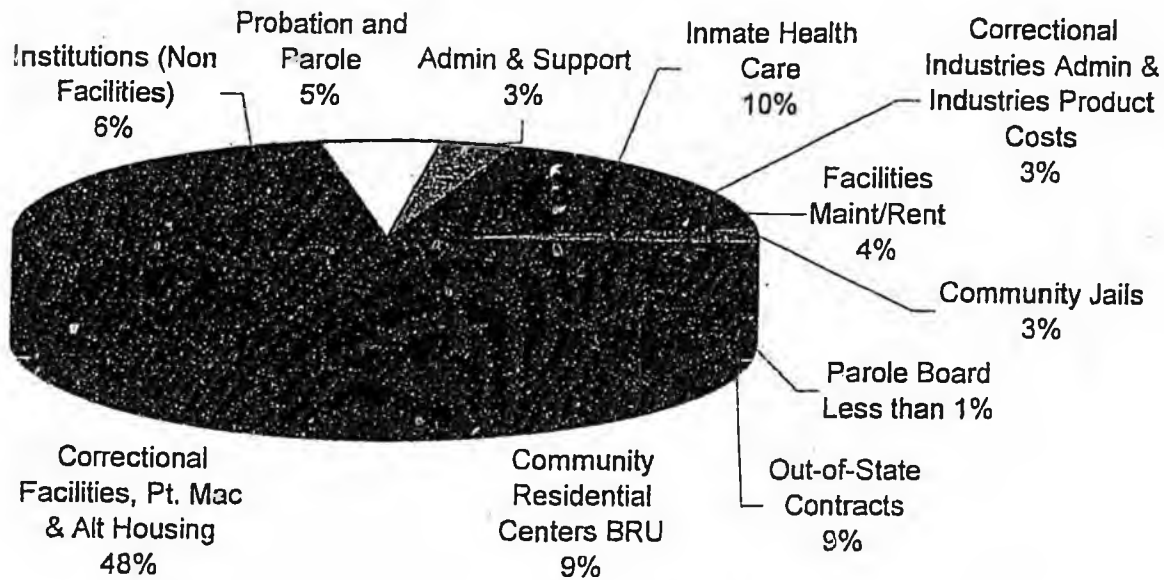
## **Probation Officer Caseloads**

The American Correctional Association recommends a caseload of 70-75 with no pre-sentence reports, and 60-65 cases with 1-2 pre-sentence reports per month. Specialized caseloads should be 35-50.

<b>Field Offices</b>	<b>Regular Case Load</b>
<b>Northern Region</b>	
Fairbanks	71
Barrow	73
Nome	100
Bethel	84
Kotzebue	88
<b>Southcentral Region</b>	
Anchorage	93
Palmer	77
Kenai	82
Dillingham	76
Kodiak	85
Inter-State Compact	---
<b>Southeast Region</b>	
Juneau	66
Sitka	36
Ketchikan	66

## **Budget Information Attachment**

**Department of Corrections  
Fiscal Year 2003 Management Plan**



**Administration & Operations BRU:**

<i>Correctional Facilities, Pt. MacKenzie Farm &amp; Alt Housing</i>	\$87,093.0
<i>Institutions (Non Facilities)</i>	\$10,363.5
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**Community Residential Centers BRU:** \$15,532.9

**Department Total** \$180,762.2

**Fund Sources**

<i>Federal Funds</i>	\$3,445.6
<i>General Funds</i>	\$154,796.7
<i>Other</i>	\$22,519.9

**Total** \$180,762.2

**Department of Corrections**  
**Overview of State Correctional Institutions, Prisoner Capacity, and Staffing**

Correctional Center	Year Built (Main Building)	Combined Square Footage (All Areas)	Maximum Capacity	Emergency Capacity	Staff C.O.s/Total	Ration COs to Emergency Cap
Anchorage Jail	2002	200,000	388	416	85/138	1 / 4.9
Anvil Mountain	1984	33,475	102	104	27/39	1 / 3.86
Cook Inlet	1981	95,801	397	403	91/117	1 / 4.43
Combined Hiland Mountain	1972	141,349	225	233	69/93	1 / 3.38
Fairbanks	1965	88,650	200	211	65/88	1 / 3.25
Ketchikan	1981	15,167	52	58	28/36	1 / 2.08
Lemori Creek	1967	85,328	164	170	57/78	1 / 2.99
Matanuska-Susitna	1985	22,384	82	85	27/35	1 / 3.15
Palmer	1981	136,764	383	390	71/102	1 / 5.50
Spring Creek	1985	189,787	466	486	147/191	1 / 3.31
Wildwood	1953	174,307	361	368	71/101	1 / 5.19
Yukon-Kuskokwim	1983	25,320	88	92	28/40	1 / 3.29
<b>Total</b>		<b>1,208,332</b>	<b>2,908</b>	<b>3,016</b>	<b>766/1058</b>	<b>1 / 3.94</b>

DEPARTMENT OF CORRECTIONS

	FY 2003 Mgt Plan	Vacant PCN's as of 2/2/2003
Adult Probation Officer I	12	1
Adult Probation Officer II	111	9
Adult Probation Officer III	33	3
Adult Probation Officer IV	2	0
Adult Probation Officer V	5	1
Adult Probation Officer VI	1	0
<b>TOTAL</b>	<b>164</b>	<b>14</b>

Correctional Officer I	104	3
Correctional Officer II	566	64
Correctional Officer III	118	4
Correctional Officer IV	4	3
<b>TOTAL</b>	<b>792</b>	<b>74</b>

Nurse II	30	8
Nurse II Psych	6	2
Nurse III	9	1
Nurse III Psych	1	1
Nurse IV Psych	1	0
<b>TOTAL</b>	<b>47</b>	<b>12</b>

DEPARTMENT OF CORRECTIONS  
Fiscal Year 2003 COST OF CARE  
(Based on Fiscal Year 2002 Actuals)

**BILLING RATE CALCULATION**

ANNUAL TOTAL MANDAYS 1,040,831

**INDIVIDUAL INSTITUTION RATES**

Institutions	Total Cost	Mandays	Inst. Cost	Inmate Programs	Inmate Hlth.Care	Div.of Admin.& Support Cost	Statewide Direct Cost	Total
Anchorage Jail	\$ 4,207,448.53	26,755	\$ 157.26	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 193.51
Anvil Mt.CC	\$ 3,827,124.93	36,430	\$ 105.06	\$ 4.43	\$ 16.98	\$ 4.44	\$ 10.50	\$ 141.30
Cook Inlet	\$ 9,521,144.63	149,163	\$ 63.83	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 100.08
Fairbanks CC	\$ 6,843,374.90	76,109	\$ 89.92	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 126.16
Hiland Mt.CC	\$ 7,142,287.06	105,991	\$ 67.39	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 103.63
Ketchikan CC	\$ 2,759,922.38	20,515	\$ 134.53	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 170.78
Lemon Creek	\$ 5,827,761.36	61,080	\$ 95.41	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 131.66
Mat-Su Pre-Trial	\$ 2,699,075.64	30,309	\$ 88.79	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 125.04
Palmer CC	\$ 8,207,261.58	143,570	\$ 57.17	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 93.41
Sixth Avenue	\$ 3,419,265.19	31,339	\$ 109.11	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 145.36
Spring Creek	\$ 13,586,189.51	188,030	\$ 72.26	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 108.50
Wildwood CC	\$ 8,134,816.59	130,178	\$ 62.49	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 98.74
YKCC	\$ 3,868,924.76	35,373	\$ 109.37	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 145.62
Tents	\$ 165,372.83	5,901	\$ 28.03	\$ 4.43	\$ 16.88	\$ 4.44	\$ 10.50	\$ 84.27
<b>Totals</b>	<b>\$80,209,969.89</b>	<b>1,040,831</b>	<b>\$ 77.06</b>	<b>\$ 4.43</b>	<b>\$ 16.88</b>	<b>\$ 4.44</b>	<b>\$ 10.50</b>	<b>\$ 113.31</b>

COMPONENT	TOTAL EXPENSES	LESS REIMB	ADJUSTED COSTS	BILLING RATE
<b>INSTITUTIONS</b>	<b>\$ 80,278,687.89</b>			
Institutions	\$ 80,113,315.06			
Less: DHSS RSA Youth Meals		\$ (68,718.00)		
Alternative Housing	\$ 165,372.83		\$ 80,209,969.89	\$ 77.06
<b>INMATE PROGRAMS</b>	<b>\$ 4,609,357.59</b>		<b>\$ 4,609,357.59</b>	<b>\$ 4.43</b>
Inmate Programs	\$ 3,420,352.87			
White Blson	\$ 50,000.00			
ACI Administration	\$ 1,139,004.72			
<b>INMATE HEALTH CARE</b>	<b>\$ 17,571,477.44</b>		<b>\$ 17,571,477.44</b>	<b>\$ 16.88</b>
<b>ADMIN &amp; SUPPORT</b>	<b>\$ 4,615,630.87</b>	<b>\$ -</b>	<b>\$ 4,615,630.87</b>	<b>\$ 4.44</b>
% for Institution Operations	\$ 4,615,630.87			
<b>STATEWIDE DIRECT COSTS</b>	<b>\$ 11,065,350.54</b>	<b>\$ -</b>		
Institutions Director's Office	\$ 969,879.34			
Equipment & Bldg. Depreciation	\$ 7,807,705.89			
Facility Planning - CIP	\$ 286,954.84			
Transportation & Classification	\$ 1,991,010.37			
Less: DPS RSA Transport		\$ (140,000.00)	\$ 10,925,350.54	\$ 10.50
<b>BILLING RATE</b>	<b>\$ 118,140,504.33</b>	<b>\$ (208,718.00)</b>	<b>\$ 117,931,786.33</b>	<b>\$ 113.31</b>