

ALASKA LEGISLATURE COMMITTEE FILES

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III. The Myth of Access to Justice and the Creation of the Access to Civil Justice Task Force

The United States of America was founded on the principle of equal justice for all. This concept is embodied in the Equal Protection Clause of the United States Constitution, which declares that no State may "deny to any person within its jurisdiction the equal protection of the laws."² The Due Process Clause of the United States Constitution complements this concept by providing that no person may "be deprived of life, liberty or property without the due process of law."³ These principles are set out in the Bill of Rights, which summarizes the rights and liberties of the people of the United States and the principles of Constitutional law deemed to be fundamental. Indeed, "Equal Justice Under Law" is so much the cornerstone of the United States' legal system that the phrase is memorialized in stone on the facade of the United States Supreme Court building as a reminder to all who enter.

Despite these proclamations, the unfortunate reality for the poor and the disenfranchised in the United States is that the promise behind the words "equal justice for all" has not been fully realized. Over the past few years, the federal and state governments have curtailed the benefits accorded the poor. Although the reasons for doing so are described as necessary for budgetary purposes or to help the poor get off welfare, the reality is that there are fewer government benefits than are needed. Agencies who assist the poor are being asked to do more with less, and organizations defending the rights of the poor are seeing their funding restricted while at the same time being told that they cannot provide certain kinds of services to those most in need of them.

In response, a number of states have re-examined the legal needs of the poor and those of moderate means and recommended ways to fulfill the promises made by the founders of this country to guarantee to all citizens equal access to justice.⁴ This report encompasses Alaska's initiation into this process.

On November 25, 1997, the Alaska Supreme Court issued a resolution entitled "The Creation of a Statewide Task Force on Access to Civil Justice" which stated:

WHEREAS, recent precipitous funding declines for legal services to the poor have triggered a crisis in the access to justice; and

WHEREAS, the demand for civil legal services by those who cannot afford them is growing dramatically; and

² United States Constitution, Amendment XIV, Section 1.

³ United States Constitution, Amendment V.

⁴ See, "And Justice for All - Fulfilling the Promise of Access to Civil Justice in California", State Bar of California, 1996; "Report of the Joint Legal Services Access and Funding Committee", State of Minnesota, 1995.

WHEREAS, there exists a substantial gap between these legal needs and the resources available to meet them; and

WHEREAS, this lack of legal representation impedes access to justice, a subject in which the judiciary has a special responsibility;

NOW, THEREFORE, IT IS RESOLVED by the Alaska Supreme Court, that there should be established a statewide Access to Justice Task Force comprised of judges, bar leaders, legal services providers, and community leaders to investigate, plan and recommend methods to increase the delivery of civil legal assistance and improve access to justice for the people of Alaska.

This resolution responded to the growing unmet legal needs of low-income Alaskans, spurred in part by the massive closures of Alaska Legal Services' offices throughout the state, and by the increased Congressional restrictions on the type of cases Alaska Legal Services is permitted to handle. The resolution recognizes the large and ever-growing gap between the need for legal services and the resources available to meet those needs, and also the impact on the poor, the community and the judicial system as a result of the lack of civil legal representation.

The effect of this resolution was the creation of a task force whose mission was two-fold: 1) to identify the need for legal services by low-income and moderate-income⁵ Alaskans and 2) to suggest recommendations to meet those needs. The Task Force, chaired by Justice Dana Fabe, included representatives from as many parts of the community as possible, including legislators, judges, attorneys, court officials, university officials, business leaders, and legal services providers. (A complete list of the Task Force members is attached as Appendix A). After the formation of the Task Force, a Steering Committee was created to coordinate and review the Task Force activities, and to issue a final set of recommendations to the Alaska Supreme Court. (A list of the Steering Committee members is attached as Appendix B). The Steering Committee in turn created six subcommittees, charged with conducting the initial fact-finding and creation of recommendations addressing particular areas of concern. Membership on the subcommittees was made up of Task Force members, and attorneys and non-attorneys from the community who might have a special interest in and could provide a variety of perspectives relevant to a particular subcommittee. The subcommittees are as follows:

- **Non-Alaska Legal Services Eligible** (comprised of two subcommittees): These subcommittees focused on the needs of persons whose income is above the poverty level, but who cannot afford to hire private attorneys to handle their legal needs, as well as those who are excluded from representation

⁵ Moderate-income Alaskans are those who are not below the poverty level but who nonetheless do not have the money to pursue their legal causes with the assistance of a hired attorney.

- by Alaska Legal Services because of Congressional restrictions.
- **Alaska Legal Services:** This subcommittee explored the current status of Alaska Legal Services, with an emphasis on developing new service methods and securing new funding sources to support the organization.
 - **Pro Bono:** This subcommittee focused on ways of encouraging members of the Alaska Bar Association to donate attorney services to persons who cannot afford to hire attorneys to represent them.
 - **Alternative Dispute Resolution:** This subcommittee focused on ways in which alternative dispute resolution methods, such as mediation and arbitration, can address civil justice needs.
 - **Community Legal Support and Education:** This subcommittee focused on defining and meeting community needs for law-related education and legal support.
 - **Pro Se Litigants:** This subcommittee focused on the needs of persons who represent themselves in legal matters.

Each subcommittee met on its own over a period of several months, and presented to the Steering Committee specific findings as to the needs of that particular group or in that area and recommendations addressing those needs. For almost one year, the Steering Committee met on a monthly basis to review the findings and recommendations and voted on which of these recommendations to forward to the Task Force at large for review. The Task Force met for two days at the end of February 1999, and reviewed and prioritized the recommendations.

Although the mission of this Task Force is complete, the hope is that the momentum gained through the work of its members can be sustained into the future to put into place some or all of the recommendations made in this report. It will only be then that the words "equal access to justice" will be a reality for Alaskans.

IV. The Legal Needs of the Poor, Alaska's Poverty Population and the Provision of Legal Services in Alaska

A. The Legal Needs of the Poor

A number of studies have been done over a period of twenty years that examine the needs of the poor. Although they all offer insight into the situations faced by those at or near the poverty level, anyone with experience with these populations understands that people who live in poverty have legal issues that revolve around the basic necessities of life - food, shelter, safety, finances and medical care. Moreover, these issues often are precipitated by and become interrelated with other more personal and emotional ones such as divorce, custody, child support, ill health or loss of a job. A crisis brought on by the loss of income, can turn rapidly into one involving housing, resulting in an eviction perhaps, in turn creating a need for public benefits and subsidized housing.⁶

Legal and social services providers are also keenly aware that people living in poverty face an additional hurdle: the increasingly complex set of rules and regulations governing an ever-decreasing number of public benefits. It has become harder and harder to understand the requirements for various government programs, and harder still to determine whether the particular government agency involved is doing what it should be, when it should be. This means that people who deserve benefits don't get them, and don't know or are afraid to challenge the government bureaucracy involved. For individuals living in poverty, having the assistance of an attorney means the difference between having the basic necessities of life or going without.⁷

In order to better understand the kinds of situations faced by those living at or near the poverty level, the American Bar Association conducted a Comprehensive Legal Needs Study in 1993.⁸ The survey focused on low- and moderate-income households.⁹ Low-income was defined as households with income below the 125% level of the federal poverty guidelines (the bottom 5th of all households based on income). Moderate-income was defined as above the 125% level but below \$60,000 (representing the middle 3/5th of all households based on income). The purpose of the study was five fold:

⁶ Report of the Joint Legal Services Access and Funding Committee, p. 6, December 31, 1995, provided the basis for this information.

⁷ *Id.*

⁸ American Bar Association, *Legal Needs and Civil Justice - A Survey of Americans, Major Findings of the Comprehensive Legal Needs Study, 1994.* (Hereinafter, *Legal Needs Study*).

⁹ This survey was conducted only in the contiguous United States, and therefore excluded Alaska and Hawaii, and other US territories. The survey focused on households and so excluded those not living in a household setting, i.e. the homeless, those in institutions, the military, jail, nursing homes, hospitals etc. The surveys were conducted in Spanish or English only. Moreover, certain subgroups such as Native Americans or migrants may have been missed due to their small percentages in the population. p.7.

1. to learn about the nature and number of situations households face that raise legal issues;
2. to see what steps people take in dealing with those situations;
3. to ascertain what kinds of legal services are provided regarding needs brought to the legal system;
4. to assess the public awareness of the legal services available; and
5. to gauge the reactions of those who have had contact with the civil justice system.

The study found that of the approximately 3,000 households contacted, about 50% faced a situation that raised a legal issue in the previous calendar year (1992). This included new legal needs¹⁰ and ones continuing from before 1992. Legal Needs Study, p.3. Moreover, if someone in the household had one legal need, there was an almost even chance that they would also be dealing with another. Id. Factors such as a respondent's geographical location, urban or rural residence, or race, did not result in any significant difference in terms of them reporting more than one need. Households headed by individuals over the age of 65 reported substantially fewer legal needs as did households of the profoundly poor - those with income under \$10,000. Legal Needs Study, p.4.

Households included in the Legal Needs Study were also asked about the kinds of legal needs they experienced. There were 67 specific situations that they were asked about, which in turn were grouped into 17 general categories. Legal Needs Study, p.4. The responses from both the low- and moderate-income households were remarkably similar: personal finance and consumer issues, and matters regarding housing and real property were mentioned most often as the areas in which they experienced a legal need. Legal Needs Study, p.5. Moderate-income households reported that community and regional matters, employment related issues and family/domestic matters followed in terms of areas presenting legal needs. Legal Needs Study, p.6. Low-income households noted community and regional matters, and family/domestic issues presented the next greatest number of legal needs. Id.

In examining the steps that people took to deal with their legal needs the survey found that both groups mentioned as a first response that they would deal with the matter on their own. Legal Needs Study, p.11. For low-income households, the next most frequent response was to take no action at all. Id. For moderate-income households the next most frequent response was to turn to the civil justice system - this included contacting a lawyer (in private practice or from a legal services program), mediator, arbitrator, or an official hearing body such as a court. Id. The least likely course of action for both groups was to turn to a non-legal third party (service-providing agency, professionals - accountants, realtors, community organization or regulatory agency). It is critical to note that

¹⁰ In this study, "legal needs" were referred to as "specific situations members of households were dealing with that raised legal issues - whether or not they were recognized as legal or taken to some part of the civil justice system." Legal Needs Study, p.2.

nearly 3/4 of all legal needs of low-income and 2/3 of all legal needs of moderate-income households were NOT taken to the civil justice system. Legal Needs Study, p.12. There was no action taken at all in more than 1/3 of all low-income and 1/4 of all moderate-income cases. Id.

The Legal Needs Study questioned respondents about why they brought so few of their legal needs to the civil justice system. Low-income households noted they believed that turning to the legal system would not help and that it would cost too much. Moderate-income households stated they felt that the situation was not really a problem, that they could handle it on their own and that a lawyer's involvement would not help. Moderate-income households also noted that they did not know how to find a lawyer. Legal Needs Study, p.16.

The information presented in the Legal Needs Study is significant for Alaska despite the fact that the state was not included in the survey. There has been no comparable study conducted in the state, and the responses given by low- and moderate-income households in the lower 48 are thus as reliable a guide as exists to estimate the legal needs of Alaska's poor. It is safe to assume that Alaska's poor and near poor are likely to face the same number of legal needs as other Americans. Applying the Legal Needs Study results to Alaska means that with over 66,000 poor people in the state, (not including those that fall in the near-poor category), almost 33,000 (or 50%) will have a legal need in any given year. Given the limited financial resources of Alaska Legal Services, and the lack of other service providers, it is clear that reasonable access to legal services is going to be problematic, at best, for these households.

The Alaska Legal Services Subcommittee of this Task Force conducted a brief informal survey of five state superior court judges to obtain their opinion on the impact of restricted legal services on their courtrooms and litigants. The judges were unanimous in their opinion that the number of pro se litigants has increased over the past couple of years. Moreover, they all found that the effect of this increase has meant a corresponding increase in time spent on cases involving pro se litigants.

The judges noted that this jump in the number of pro se litigants has had an effect on others in their courtroom as well as beyond the courtroom. First, attorneys feel the impact due to judges postponing attention to more complex civil cases. Second, attorneys representing a client against a pro se litigant find themselves returning over and over to court due to the pro se litigant's lack of understanding of the legal process. Third, a judge frequently must assume either the role of mediator, or at other times attorney, for each of the unrepresented individuals, thereby putting the judge in an inappropriate position. Lastly, the community as a whole is impacted by the backlog created by the spillover from pro se cases, particularly in the area of domestic relations.

The effect on the judicial system as a whole is more insidious in that

everyone desires a legal system that reaches the correct result most of the time, and where the result is not dependent on money. Pro se litigants however, are severely disadvantaged by their inability to afford counsel because they are unable to assert their rights effectively due to their lack of knowledge about pertinent defenses and rights. One judge noted that this could have tragic results not just for the particular individuals or family involved, but also for all of us.

An additional area of concern stemming from the increase of pro se litigants focuses on those who do not speak English. There are significant numbers of non-English speaking individuals throughout the state. At least five different and distinct native languages are spoken in Alaska. Moreover, there are significant groups of Spanish speaking individuals, and large groups of Filipinos and Russians. These individuals face an increased burden when appearing in court due to their lack of familiarity with the English language, the lack of available translators, and the dearth of informational brochures and pamphlets in languages other than English.

The size and scope of the Legal Needs Study made it possible to gather information about the legal needs of low- and moderate-income Americans on an unprecedented scale. Combining this information with the growing local awareness of the numbers and problems of unrepresented litigants presents an opportunity to focus attention and efforts in Alaska in such a way as to assist those most in need.

B. Alaska's Poor

There are over 620,000 people in the State of Alaska.¹¹ Of this figure, approximately 66,558 live in poverty. The federal government defines poverty according to "the cost of food to families of different sizes on a nationwide basis."¹² For Alaskans, the poverty level is set at 125% of the federal poverty guidelines since the cost of food is approximately 25% greater than elsewhere in the country.

The figures above do not give an accurate picture of the financial conditions of the population as they are based on the nationwide poverty rate and not the 125% rate. AET, p.5. The difference between the two rates represents an additional 20,000 individuals living in poverty. (At the national rate only 47,906 individuals live in poverty in the state, whereas at the 125% rate, the figure jumps to over 66,000). Complicating the definition of poverty in Alaska is the fact that there are substantial differences in the costs of living across the

¹¹ Alaska Population Overview: 1998 Estimates, Alaska Department of Labor, Research and Analysis Section, June 1999.

¹² Alaska Economic Trends, July 1992, p.4. (Hereinafter, AET). This report was based on information from the 1990 Census.

state. In Anchorage, for example, the cost of living is probably closer to the average in the lower 48, but in the more remote areas of the state it is markedly higher. AET, p.4.¹³ Furthermore, the subsistence lifestyles of individuals in certain parts of the state adds to the confusion in defining poverty in Alaska and complicates calculating the cost of living for those different areas.

Despite these complications and variances the census report did yield some clear information about the level of poverty within particular areas and households in the state. For instance, the highest rates of poverty occurred in areas of the state that are predominantly Native and rural. AET, p.5. In contrast, 33% of all Alaskan poor people live in Anchorage, the state's largest city, although they only represent 10% of the city's total population. Id.

The census report and a following study also revealed that individuals under 25 or over 75 tend to live in poverty, and that the age group with the highest rate of poverty is among 18-24 year olds, and children under 5 in families. AET, p.5. In terms of household composition, the highest rate of poverty occurs in single parent families headed by women. (Almost 25% of these women live in poverty in Alaska). AET, p.5-6. Forty-five percent of all female-headed native households are at or below the 100% poverty line; 47% of white female-headed households are below the poverty line and 54% of black female-headed households are below the poverty line.

Despite the issues noted regarding the difficulty in defining the poverty level of Alaskans, these figures cannot mask the fact that Alaska has a large number of individuals living in poverty. Moreover, some of the problems described by the study, for example the remoteness and isolation of certain communities, are the very same ones that make the delivery of services to assist the poor so complicated and expensive.

C. Overview of Alaska Legal Services

The core of the civil legal services system in Alaska is Alaska Legal Services. It is the largest and most comprehensive provider of free civil legal assistance to low-income Alaskans. The program operates central offices in Anchorage and regional offices in Barrow, Bethel, Dillingham, Fairbanks, Juneau, Ketchikan and Nome, and serves a poverty population of approximately 66,558¹⁴ within a geographic area of 570,833 square miles. The urban poverty level population of approximately 32,714 Alaskans resides in or near the three major cities of Anchorage, Fairbanks and Juneau. The rural poverty population of approximately 33,844 resides in small, outlying communities and in 203

¹³ See also, Alaska Economic Trends, The Cost of Living - Measuring it for Alaska, June 1999, p. 3-16, particularly pages 8-11.

¹⁴ This figure is based on the 1990 census, which is the last year for which complete figures are available.

remote and isolated villages scattered throughout this immense geographic region.

Alaska Legal Services was founded in 1966 and began operating in 1967. It was formed during President Johnson's administration with a grant from the federal Office of Economic Opportunity. In the ensuing decade, federal funding for Alaska Legal Services increased and then became stable after the passage in 1974 of the Legal Services Corporation Act that provided then (and now) a system for funding and overseeing all the legal services programs nationwide.¹⁵

The mission of Alaska Legal Services since its formation has been to ensure fairness and equity by providing legal assistance to low-income Alaskans throughout the state. Its goal is to provide high quality legal services to the poor to enable them to obtain the basic necessities of life, such as food, safety, housing and medical care; obtain effective access to courts and administrative agencies; and to assert and enforce the legal rights of the poor in these forums.

Alaska Legal Services handles cases involving family law issues (divorce, custody, adoption, child or spouse abuse, child support), landlord/tenant, public entitlements, health, probate (wills or estates), and consumer issues. Native American clients are additionally represented in cases involving hunting and fishing issues, Indian child welfare (ICWA) and tribal jurisdiction. Alaska Legal Services advocates for its clients in both legal and administrative arenas. The agency does not handle any criminal cases, or any cases that are fee generating. It is also restricted from handling a variety of cases due to legislative restrictions imposed by Congress.¹⁶ Alaska Legal Services has always been restricted to representing individuals whose household income does not exceed the federal poverty guidelines.¹⁷

Alaska Legal Services provides a variety of legal services in the areas listed above. First and foremost, Alaska Legal Services represents clients in court or before an administrative agency. Second, it provides counsel and advice services where a client is given limited legal assistance (short of actual representation in court or before an agency) and information about how to handle their case on their own. Third, Alaska Legal Services offers a wide range of clinics and informational brochures on topics such as divorce, custody, preparing an answer in court cases, bankruptcy, landlord/tenant issues, and how to prepare a power of attorney, among others. In some cases, these clinics and brochures are held and prepared in conjunction with the Alaska Pro Bono Program and other non-profit agencies.

¹⁵ The Legal Services Corporation (LSC) is a private, non-profit corporation funded by Congress to provide free civil legal services to the poor. It distributes the funding it receives from Congress to the various legal services programs in the country.

¹⁶ Additional information regarding the newest restrictions imposed on Alaska Legal Services by congressional legislation appears in section E.

¹⁷ For 1999, the maximum poverty income for a single individual is \$12,900/yr. \$1,075/mo., \$248.08/wk; for a family of four, the income limit is \$26,000/yr., \$2,175/mo., \$501.92/wk.

The Alaska Pro Bono Program (APBP) works hand in hand with Alaska Legal Services, accepting clients that have been screened by Alaska Legal Services' staff and who meet Alaska Legal Services' income and case-type restrictions. The APBP refers these cases to private attorneys who have agreed to take cases at no charge to the client. Alaska Legal Services essentially remains co-counsel in these cases, providing assistance and mentoring as needed to the private attorney handling the case.

Over the course of the past few years, as funding for Alaska Legal Services has decreased, emphasis on referring cases to the Pro Bono Program has increased. Since referrals to the Pro Bono Program depend in large part on intake at Alaska Legal Services, the Pro Bono Program has faced limitations too on its number of referrals. Additionally, although Alaska Legal Services is the primary provider of civil legal services, referrals to and connections with other organizations providing legal and other assistance has increased.

In 1998, Alaska Legal Services assisted over 4400 people. Of those people, 82.6% were between the ages of 18 and 59; 17.1% were over the age of 60 and .3% were under the age of 18. Alaska Legal Services represented a variety of ethnic groups due to the diversity of the state's population: 57% of the 4,400 individuals were Caucasian, 33% Native American, 5% Black, 3% Hispanic and 2% Asian/Pacific Islanders. Two out of three Alaska Legal Services clients in 1998 were women. The Pro Bono program separately assisted an additional 1340 individuals in 1998. Of those individuals, 900 included clinic attendees and over 400 were provided full service representation.

D. Other Providers of Legal and Social Services

As noted above, Alaska Legal Services is the most comprehensive provider of civil legal services in Alaska. However, there are a number of other organizations throughout the state that provide more specialized legal and social assistance to individuals belonging to a particular subsection of the population. Several of these organizations are described below.

Catholic Social Services - The Immigration and Refugee Services Program (IRSP) at Catholic Social Services is the only agency in Alaska that is federally accredited with the Board of Immigration Appeals to provide immigration legal assistance to low-income immigrants. IRSP has three main priorities: 1, immigrants fleeing political persecution, 2. victims of domestic violence, 3. and family reunification. The IRSP serves the entire state of Alaska out of its Anchorage office. Current staffing includes three attorneys, one paralegal, one refugee resettlement assistant and one administrative assistant. Demand for IRSP's services has increased due to radical changes in the Immigration and Nationality Act: in fiscal year 1999, IRSP served 6,200 clients,

the majority of whom speak little or no English.

Alaska Native Justice Center – The Alaska Native Justice Center (ANJC) was formed in 1993 as a non-profit corporation with a statewide focus and mission to specifically meet the growing, unmet needs of the Alaska Native community in relation to the state's justice system – both civil and criminal. ANJC remains the only organization whose purpose is to advocate for those involved in the system either as defendants or as victims. ANJC works in four specific areas to implement change: advocacy, outreach, education and innovation (such as the Rural Youth Courts, a restorative justice project). In FY 1999 ANJC provided services to approximately 1,200 clients seeking services for legal assistance or referrals in a variety of areas including bankruptcy, contracts, employment, landlord/tenant, and wills and estates. ANJC's professional staff includes a President/Chief Executive Officer, Program Manager and an Administrative Assistant.

Abused Women's Aid in Crisis, Inc - This organization was founded in 1977. AWAIC's goal is to diminish the effects of domestic violence on the lives of women and children by providing a variety of support including recreational, educational, and counseling services in a safe, secure, empowering environment. Its ultimate vision is the elimination of domestic violence in Alaska's communities. AWAIC currently operates a twenty-four hour, 52-bed shelter for women and children made homeless by domestic violence. Other programs feature non-residential services including women's groups, a Male Awareness/Women's Awareness batter's intervention program, a program helping women transition out of the shelter, a children's program dedicated to helping children witnesses/victims of domestic violence, and a twenty-four hour domestic violence hotline. (272-0100). In FY 1999, AWAIC programs provided services to 1,669 people, 55.5% were female, 45.5% male. Of that total, 20% were children, 36% were 18-29, 43% 30-65, and .2% were over the age of 65. (.8% did not give age information).

Disability Law Center of Alaska - This is a private not-for-profit organization established in 1977 under federal law to protect the human and civil rights of Alaskans with disabilities. Legally based advocacy is used to assist individuals who are discriminated against based on their disability. The organization has offices in Anchorage, Bethel, Fairbanks and Juneau. The Disability Law Center receives approximately 3,000 complaints every year, of which 300 become clients. Using a variety of interventions, staff is able to resolve 90-95% of client problems without resorting to litigation. The majority of the organization's funding comes from federal and state grants.

E. Crisis at Alaska Legal Services - Funding and Congressional Restrictions

At its peak, Alaska Legal Services had 14 offices, a staff of 97 and a total budget of over \$2.8 million. In the mid-1980's, Alaska Legal Services suffered from the first of several funding cuts. Funding from the state of Alaska fell by more than 50% from \$1.2 million in 1985, to \$475,000 in 1986 and 1987. Federal funding too, was slashed. Staff positions were correspondingly reduced from 97 to approximately 55. In the early 1990's Alaska Legal Services suffered another round of funding cuts from both the state and federal governments, resulting in a further reduction of staff. By 1996, state funding fell to only \$150,000 and the number of staff retained was 32 with only 5 offices remaining open.

Current (1999) staffing for Alaska Legal Services in 8 offices throughout the state includes 20 attorneys, five paralegals, one financial professional, one administrative professional, a development director, a pro bono coordinator, and support staff (for a total of 40 staff). Of the 40 staff, 6 are working on a part-time basis primarily due to budget constraints that do not permit full staffing in all offices. The total 1999 budget is approximately what it was 15 years ago (\$2.8 million). Moreover, Alaska Legal Services has had to expand its sources of funding instead of relying primarily on federal and state funds. For example, in 1998, funding came from the umbrella Legal Services Corporation¹⁸, four separate federal grants, four separate state grants, and 8 additional sources including local borough governments, tribes, the Alaska Bar Foundation, and a statewide fundraising campaign.

In addition to the drastic reduction in funding, Congress increased the legislative restrictions on the type of cases that legal services organizations are permitted to handle. The initial restrictions imposed on legal services providers were in the areas of abortion rights, selective service and on public boycotts and demonstrations. In the past few years, however, Congress has increased the restrictions on all legal services organizations receiving Legal Services Corporation funding. See generally 45 C.F.R. sec. 1610-1643. However, it is critical to note that the restrictions apply to the use of non-LSC funds as well. Alaska Legal Services is now also restricted from the following activities: 1, participating as counsel in a class action lawsuit; 2, initiating legal representation or participating in "litigation, lobbying, or rule making, involving an effort to reform a Federal or State welfare system" (except to comment on public rule making or respond to a written request for information or testimony); 3, engaging in legislative or administrative advocacy (with the same exception); 4, claiming or collecting attorney fees under a statute or court rule allowing them to the prevailing party (such as Alaska's Civil Rule 82); 5, representing aliens (except for certain narrow categories of lawful aliens and except in certain domestic violence cases); 6, participating in litigation on behalf of incarcerated persons; 7, defending a public housing tenant in eviction proceedings involving an allegation of the use of illegal drugs; 8, advocating or opposing any redistricting plan,

¹⁸ A substantial portion of the funds received by Alaska Legal Services from the Legal Services Corporation is the Native American Grant.

through litigation or otherwise.¹⁹

The effect on Alaska Legal Services of these new restrictions was two-fold. First, the obvious result was having to turn away numerous individuals who previously could have been assisted by Alaska Legal Services, but now could not. Second, was the additional financial impact particularly felt by Alaska Legal Services due to the restriction on the collection of attorney fees in cases where Alaska Legal Services was the prevailing party. Alaska is one of the few states where the prevailing party in a lawsuit is awarded their costs and attorney fees. Alaska Legal Services traditionally relied heavily on this Civil Rule as a source of funding.

The impact on low-income Alaskans cannot be overstated. There are fewer attorneys than ever to serve a low-income population of over 66,000. In 1980, there was one Alaska Legal Services attorney per 1,233 persons living at or below the poverty line. By June 1996, that number was reduced to one Alaska Legal Services attorney per 3,700 persons living in poverty. Moreover, since the 1980's Alaska Legal Services has fewer offices in rural areas, which has forced a major shift in its service delivery. There are large groups of people who are no longer eligible to receive Alaska Legal Services assistance and no other organization in place that can fill the gap to meet these needs.

¹⁹ There are several other restrictions impacting LSC funding recipients. The ones listed focus on the kinds of clients and cases that can be accepted by an LSC funded program.

IV. Sub-Committee Findings and Task Force Approved Recommendations

A. Non-Alaska Legal Services Eligible Subcommittee²⁰ - Income and Legislation

Introduction: This subcommittee focused on the needs of persons whose income is above the federal poverty level, but who cannot afford to hire private attorneys to handle their legal needs. This includes two subcategories: the near poor (income from 125% of the federal poverty standard to \$27,000) and the moderate-income population (those with income between \$27,000 and \$45,000). The focus of this subcommittee was additionally on those who are not eligible for assistance from Alaska Legal Services by virtue of federal legislation (prohibition on Legal Services programs handling class actions, abortion rights cases, prisoner's rights cases, cases involving administrative rule-making etc).

Findings:

- There is extensive anecdotal evidence that a substantial portion of Alaska's population cannot afford legal services. It is difficult to accurately define this population due to the lack of income data, the wide variance in cost of living and availability of lawyers among Alaska communities, and the questionable usefulness of extrapolation from data from other states.
- There is enough information available from the latest census survey (completed in 1989), combined with information from California about the legal needs of the poor in that state, to permit some reasonable assumptions to be made. The household income data from 1989 illustrates the enormity of the problem of access to civil justice in Alaska. Of 190,000 Alaska households, 51,000 had incomes ranging from \$15,000 to \$35,000. This represents 27% of Alaska's population. Given the low but steady rate of inflation over the last nine years, this population group arguably includes both the near-poor and the moderate-income designations used in California and other states.
- Further complicating the issue of access to civil justice is the fact that another 28,000 households that are likely eligible for legal assistance from Alaska Legal Services, by virtue of their income being below the federal poverty guidelines, have seen the availability of such services decline dramatically with the cutbacks in that agency's mandate and budget. In sum, for nearly

²⁰ A separate subcommittee was created to address the needs of immigrants who are also not eligible for assistance from Alaska Legal Services due to recent federal legislation prohibiting Alaska Legal Services from providing assistance to them. A second separate set of findings and recommendations therefore have been prepared for the immigrant population.

80,000 Alaska households, or 42% of Alaska's families, reasonable access to legal services is at best problematic and is likely to be non-existent.

- California used a sophisticated analysis that concluded that that state's near-poor, a population of over two million, experienced approximately 0.9 legal incidents per year and generated over 800,000 unmet legal needs per year. In short, the total of unmet legal needs is approximately 40% of the total number of persons in the near poor population. Through conservative extrapolation, it is clear that each near-poor household is likely to experience at least several unmet legal needs over a five-year period.

Recommendation:

It is recommended that the Alaska Bar Association develop an Alaska "Modest Means Program" to provide low- and moderate-income Alaskans access to legal representation by attorneys who have agreed to charge a reduced hourly rate for their services. The program would impose no restrictions on the type of cases in which the volunteer lawyers would provide services, thereby offering assistance to those who would not be represented by Alaska Legal Services due to the nature of their case. Obviously, however, if there were no lawyers in a given location who have the skills to provide representation in a particular specialty, the Bar Association would not be able to make the referral.

This program would be similar to the Oregon State Bar Modest Means Program. Like the Oregon model, the Alaska Bar Association would administer this program. The Bar Association would be responsible for screening clients and referring them to members of the lawyer volunteer panel. Again, like Oregon, Alaska's screening criteria would be 200% of the federal poverty guidelines which would be approximately \$2,000 monthly for a single person, or \$4,200 for a family of four. These caps could be adjusted periodically depending on the numbers of applicants and available lawyers during specific time periods.

Private attorneys who participate in Oregon's Modest Means Program have agreed to charge reduced fees for legal work performed on behalf of clients referred through the program. In Oregon that rate is \$40.00 per hour, and in Orange County, California, \$80.00 per hour. It is recommended that Alaska should adopt a fee of \$50.00 or \$60.00 per hour with the lawyer able to charge an initial consultation fee of \$50.00. Whether or not the initial attorney is retained would be up to the potential client and that attorney after the first visit. Retainers could be charged, but they would be expected to be commensurate with the hourly rate. Case costs would be borne by the client.

The costs of such a program would be significant. The Bar Association (or some other entity) would have to process written application from applicants and make eligibility decisions. The process would then involve locating an attorney willing to take that type of case and making the referrals to the client.

As noted above, the most recent income data noted above indicated that 27% of Alaska's population had incomes ranging from \$15,000 to \$35,000. If one assumes that the percentage that could be labeled modest means is still approximately correct, then about one quarter of Alaska's families would be eligible for this program. Given the huge numbers, it is recommended that a pilot program be created in Anchorage in order to test the program and make necessary changes before going statewide.

Issues still to be discussed include the appropriateness of the Alaska Bar Association as the entity responsible for screening and referral, eligibility criteria for clients, whether to rely upon an initial fee from the client and/or the lawyer in order to defray costs of the program, and whether a pilot program is appropriate.

B. Non-Alaska Legal Services Subcommittee - Immigrants

Introduction: This subcommittee focused on that portion of Alaska's population that is not eligible for assistance from Alaska Legal Services due to their citizenship status. Currently, federal law prohibits Alaska Legal Services from providing services to anyone who is not a United States citizen or permanent lawful alien, except in very specific circumstances.

Findings:

- Large immigrant communities reside in Anchorage, Fairbanks, Delta Junction, Kodiak and Juneau. Many of these immigrants fled from political persecution in their country of origin. Approximately 500 Russian refugees reside in Delta Junction. Forty-five percent of the population in Kodiak is foreign born, including approximately 1000 people from El Salvador.
- There are two private law firms experienced in immigration law in Alaska. Both are located in Anchorage.
- Catholic Social Services is the only agency in Alaska that provides no cost or low cost legal assistance to immigrants. Currently three attorneys work with the program, although only one provides direct case representation in immigration legal proceedings. The program receives an average of six hundred phone calls each month for legal assistance.
- The Pro Bono Program at Alaska Legal Services has tried to provide pro bono legal assistance to immigrants by arranging pro bono immigration clinics in Anchorage, Kodiak and Juneau. The Immigration Clinic in Anchorage has been very successful and well attended. The clinic in Kodiak, however, was terminated due to the attorneys' lack of immigration expertise.

- On average, one-third of the immigrants attending deportation hearings are not represented by counsel. Catholic Social Services represents approximately one-third of the immigrants who are placed in deportation proceedings. The private bar represents the remaining one-third.
- Congress has enacted three significant legislative acts relating to immigrants since September 1996, which has made legal assistance to immigrants critical. In Alaska, the greatest need for legal assistance is for the following issues: 1) naturalization of the elderly, disabled and low-income immigrants who lost their eligibility to receive food stamps and are barred for five years from receiving public assistance if they arrived in the United States after 8/22/96; 2) political asylum for the hundreds of individuals who fled El Salvador and reside on Kodiak Island who are eligible for a one-time interview with an asylum officer to gain legal residency in the United States; and 3) political asylum for the individuals who are not from El Salvador.

Recommendations:

1. Creation of a Pro Bono Program for political asylum applicants. To facilitate the creation of such a program it is recommended that:

a. The Alaska Bar Association send a letter to attorneys who pass the Alaska Bar Exam each calendar year to inform them of the Pro Bono Asylum Project and determine if they are willing to provide pro bono services to immigrants seeking asylum.

b. The Alaska Bar Association sponsor an annual Political Asylum continuing legal education program which will be free to attorneys and translators willing to provide pro bono representation and services to immigrants seeking asylum.

c. A coordinator be hired to coordinate the pro bono program and to mentor pro bono attorneys. More experienced immigration practitioners should also be asked to serve as volunteers and mentors. The recommendation is that such a coordinator be placed at Catholic Social Services.

2. Creation of a Naturalization Project to work with the elderly and disabled immigrants. It is recommended that the coordinator of such a program also be placed at Catholic Social Services. Possible sources of funding for such a program include Commission on Aging and the Mental Health Authority Lands Trust.

C. Alaska Legal Services Subcommittee

Introduction: This subcommittee focused on the current status of Alaska Legal Services, with a particular emphasis on ideas for developing new service methods and funding sources to support the organization.

Findings:

- Low-income Alaskans have a great unmet need for access to the civil justice system. The only way to meet this need is by having more attorneys and support staff at Alaska Legal Services and therefore ultimately by increasing the funding for Alaska Legal Services.
- By creating this Task Force, the Alaska Supreme Court has recognized that judicial support of a system for providing equal access to justice for the poor and those of moderate means is warranted. This judicial support violates no canon of judicial ethics. Rather, it is an acknowledgment that the absence of legal advice and representation is detrimental to the general public.
- Promotion and protection of equal access to justice is the responsibility of all three branches of government, the organized bar, and the community.
- Federal, state, and local governments share the blame in failing to adequately fund programs that would assure all persons equal access to justice. Unfortunately, the private bar and donors have not been able to fill the gap.
- Alaska Legal Services, now in its 33rd year, is the only organization established and qualified to provide a fairly comprehensive range of civil legal services (subject to federal restrictions) to poor people statewide. Alaska Legal Services has gone from a high of 98 staff persons in 14 office locations, to a reduced staff of 37 with eight office locations, one of which is staffed only half time by a paralegal.
- The dramatic decrease in state and federal funding of Alaska Legal Services caused by Congressional and state legislative action has forced the closure of Alaska Legal Services' offices primarily in rural Alaska. These closures have denied essential services to the people in these areas who often lack local assistance for even the simplest of matters (for example: completing public benefits applications, small claims court forms, or responding to court papers). Urban residents in contrast have such assistance. Compounding the problem in rural areas is the fact that with the opening and closing of several rural Alaska Legal Services' offices in the past few years, many rural residents are no longer aware that Alaska Legal Services still exists and is available to help them with a legal problem.
- The lack of Alaska Legal Services staff throughout the state has resulted in increasing numbers of individuals becoming pro se litigants. Often they do

not adequately understand the laws that govern their case, nor the procedures to follow, and are unable to successfully present their cases. Their cases are often dismissed for technical reasons. Moreover, pro se litigants cause other problems, including major delays, which affect the entire court system.

- Alaska Legal Services has taken a number of steps to address the decline in funding including reducing overhead, staff, hours of various individual staff members, and benefits. At the same time, Alaska Legal Services continues to upgrade technologically to improve intake and client-handling procedures. Until only very recently, Alaska Legal Services was operating with a 10 year old telephone system and also only recently obtained modern, networked computers. The lack of newer technology limits the existing staff's efficiency and ability to serve a larger number of potential clients requesting assistance daily. The existing staff, committed to the cause of equal justice, cannot be asked to make further sacrifices, and cannot alone bear the burden of providing equal access to justice. An adequate number of attorneys must be available to effectively meet client needs.
- The new federal regulation that prevents legal services programs from collecting attorneys fees from the losing party in litigation (P.L. 104-134, sec. 504, 42 U.S.C. 2996e(d)(6)) has a particularly strong negative effect on Alaska Legal Services because of Alaska's Civil Rule 82, which provides for such fee awards. Alaska Legal Services had traditionally relied on this source of money as a significant supplement to dwindling government funding.
- The State of California created a Task Force similar to Alaska's to study the problem of equal access to justice. Its report, "And Justice for All – Fulfilling the Promise of Access to Civil Justice in California" (1996) has been of significant help to this subcommittee. The California report's "Summary of Findings, Recommendations, and Options Regarding Funding" (pages xxiv, xxv, xxvi) presents many points applicable here. See, especially, Findings 1,2,3,4,5,6,9,11,12. (Attached as Appendix C).

Recommendations:

1. Secure significant increased funding for Alaska Legal Services through traditional state and federal funding sources.
 - a. Get vocal support for adequate levels of funding for Alaska Legal Services from effective lobbying groups, such as the League of Women Voters.
 - b. Build a political constituency, and persuade Congress and the state Legislature to appropriate an adequate amount of money to maintain a system for providing Alaska Legal Services with adequate funding.

2. Secure additional funding for Alaska Legal Services from other sources.

a. Establish an Alaska Legal Services Foundation (ALSF) and an endowment fund.

b. Encourage attorneys to explain to their clients the need for funding equal access to justice and to work with their clients in including Alaska Legal Services or the ALSF in their charitable estate planning. Promote the idea of non-attorneys (as well as attorneys) making gifts to Alaska Legal Services or ALSF.

c. In addition to the traditional legislative appropriation, explore the "designated program receipts" approach to state funding (such as by means of a filing fee surcharge, as in Hawaii and some other states), so as not to violate the "dedicated fund" prohibition of art. IX, sec. 7, of the Alaska Constitution. Work with the Department of Law, the Department of Revenue, and the Court System in exploring this approach.

d. Work with Alaska's Congressional delegation to remove the federal statutory prohibition preventing the collection of attorney fees from the losing party in litigation, at least in Alaska where Civil Rule 82 provides for such fee awards.

3. Increase rural staff so local Alaska Legal Services offices can provide assistance and representation to rural Alaskans. Reopen rural Alaska Legal Services offices with attorneys on staff, focusing first on those communities with a superior court.

4. Coordinate with other service providers, particularly in rural areas where there already may be a network of providers or staff willing and able to establish an alliance with Alaska Legal Services. For example:

a. Adult Basic Education (ABE): this organization has an office in Nome and staff throughout a number of villages that, among other things, provides people with assistance in completing government and court forms. The ABE village staff has access to a telephone, fax, and computers, and the agency has already expressed an interest and willingness to coordinate services with Alaska Legal Services.

b. Alaska Network on Domestic Violence and Sexual Assault: Alaska Legal Services should work with the statewide DV network and its Legal Advocacy Project (LAP) in the "mentoring" program, to provide training to private attorneys and to develop a desk manual, including simplified forms. Alaska Legal Services and the LAP should also continue to coordinate efforts to secure additional funding for attorneys to provide legal representation for victims of domestic violence/sexual assault and to increase the pool of existing pro bono attorneys for these cases.

c. Local paralegals: Short of opening (or re-opening) rural offices, Alaska Legal Services should hire or contract with paralegals in rural Alaska who can be trained to do intake and screen clients for representation. The paralegals could conduct intake on a regular basis in their home community and make regular village trips for intake interviews. A local person regularly providing this service would become a visible and recognized link between Alaska Legal Services and the community, increasing access to the civil justice system.

5. Petition the Alaska Supreme Court for a rule change to permit Alaska Legal Services paralegals (under the supervision of an Alaska Legal Services attorney) to appear in court and before administrative agencies on behalf of clients in certain proceedings.

6. Coordinate a request to the American Bar Association regarding law student externships outside a school's geographical areas to permit law students to come to Alaska (a state with no law school) and work with Alaska Legal Services for their externships.

7. Consider developing a more coordinated initial entry into the court system by the creation of a "Citizens Advice Bureau" (CAB) or a similar organization. The CAB is an organization in the United Kingdom that provides "free, confidential, independent and impartial advice on every subject." CABs perform a "gateway" function with respect to legal services. See National Association of Citizens Advice Bureau, <http://www.nacab.org.uk>.

In Alaska, such an organization could:

a. assist people in solving individual problems that are now handled by Alaska Legal Services (such as benefits),

b. help people who are turned away by the ombudsman's office because their problems lack broader implications, or those who are turned away by both Alaska Legal Services and the ombudsman's offices because of lack of staff to handle the problem,

c. screen legal problems and send cases to lawyer referral, the pro bono program, Alaska Legal Services, private counsel, domestic violence programs etc., and

d. deal with some of the advocacy issues now left untended due to cuts in the consumer protection and ombudsman budgets and to federal limitations on the use of Alaska Legal Services money.

D. Pro Bono Services Subcommittee

Introduction: This subcommittee focused on encouraging members of the Alaska Bar Association to donate attorney services to persons who cannot afford to hire attorneys to represent them.

Findings:

- The Alaska Pro Bono Program (APBP) is currently the only fully staffed direct delivery model in Alaska. The APBP is part of Alaska Legal Services and closes more than 1200 cases each year. Of these, 30% are direct referrals to attorneys, and 70% are advice-only services provided through a variety of clinics. Under the operating procedures of the APBP, only cases accepted by an office of Alaska Legal Services may be referred to a volunteer attorney through the auspices of the APBP. When intake at Alaska Legal Services offices is reduced, the number of cases referred to the APBP is likewise reduced.
- About 960 Alaska attorneys participate in the program. These attorneys represent 43% of the active, in-state members of the Alaska Bar Association, but 59% of the "available" bar members (it does not include judges, legislators, Alaska Legal Services staff, lawclerks, Public Defenders, District Attorneys and others who might be prohibited from participating in the APBP by statute). At any one time, about 300 of these volunteers are available to accept a referral. However, the ability to refer a case is dependent on the volunteer's stated willingness to accept a case in a particular area of law. If, for example, a person needs assistance with a housing case, and none of the available attorneys have expressed a willingness to accept a housing referral, then it is unlikely that the person will receive help.
- Although several new pro bono programs have recently been started, they are of limited and/or local scope – handling a select type of case or serving a local population. They do not offer their volunteers cost reimbursement or malpractice coverage, nor do they ensure that an alternate attorney can be found if the volunteer attorney must withdraw.
- The current structure of the APBP does not allow it to accept cases on behalf of people where Alaska Legal Services either has a conflict of interest, or where Alaska Legal Services is prohibited from accepting cases due to restrictions placed on Alaska Legal Services funding by Congress.
- By recent estimates, the number of identified instances where a person was denied assistance at an office of Alaska Legal Services (and by extension to the APBP), by reason of conflict of interest ranged around 400 per year. Some of these situations may involve persons who would be eligible for an

attorney appointed through the "Flores"²¹ appointment process. Others are forced to seek volunteer or low-fee legal assistance on their own, or do without. There are no available statistics to adequately determine the number of people who never seek assistance through Alaska Legal Services because they are already aware of a conflict of interest.

- On October 22, 1998, the Alaska Bar Association adopted a resolution to serve as an ethical consideration which "Recognizes and supports the professional obligation of all attorneys to devote a reasonable amount of time to pro bono and other public service activities that serve those in need or improve the law, the legal system, or the legal profession." A proposal to adopt the American Bar Association's model Rule 6.1²² was introduced to the Alaska Bar Association at the annual business meeting in 1996. That proposal was referred for further consideration to the Alaska Rules of Professional Conduct Committee and is still pending.
- Most people seeking pro bono legal representation in a civil legal case must qualify for free legal assistance through Alaska Legal Services. With few exceptions, Alaska Legal Services may only represent people whose income falls at or below 125% of the published Federal Poverty Income Guidelines. While it is estimated that tens of thousands of Alaskans meet this needs-based test, it is also abundantly clear that many more thousands (the working poor) may not meet this extremely severe eligibility criteria, yet may require legal assistance which they cannot afford.
- The inability of people to afford legal representation has resulted in ever-increasing numbers of pro se litigants in state and federal courts, and has placed an increasing pressure on the bar to render public service by providing pro bono legal assistance.
- Some public-sector attorneys are prohibited by statute from performing "outside practice of law" and are therefore not able to represent individuals through the auspices of a pro bono program. However, many of these attorneys are not so restricted and their ability to provide legal assistance to the poor on their own time is limited only by the latitude given them by their supervisors.

Recommendations:

1. Law clerks should be allowed to participate as volunteers through the Alaska Pro Bono Program.

²¹ A "Flores" appointment refers to the right to a free court appointed attorney in a custody proceeding where the other party is represented by Alaska Legal Services, and the applicant would be financially eligible for the same service but for the fact that Alaska Legal Services is representing the opposing party.

²² A copy of the American Bar Association's model Rule 6.1 is attached at Appendix D.

2. Judges should find ways to encourage pro bono activities by being considerate of scheduling difficulties for pro bono attorneys, providing assistance in recruiting pro bono volunteers, and participating in programs and training.
3. The Alaska Bar Association should adopt the American Bar Association Model Rule 6.1.
4. The Alaska Bar Association should provide free or low-cost continuing legal education programs to pro bono attorneys in the areas of poverty law, provided that the attorney would then be obligated to take a pro bono case. (This has already been implemented).
5. The Alaska Bar Association should create a low-fee or moderate means panel of attorneys willing to assist those people who are over-income for assistance through the APBP, but still unable to retain an attorney.
6. The Alaska Bar Association should especially encourage public-sector attorneys to provide pro bono and public service assistance.
7. Alaska Legal Services in cooperation with the APBP should re-examine its internal definition of conflicts to allow for greater flexibility and more referrals to pro bono volunteers. The APBP should reconfigure its internal procedures to increase the referrals of "conflict cases."
8. Alaska Legal Services should broaden its internal case-intake procedures to allow for a greater number of and more varied referrals through the APBP.
9. The APBP should develop a mentoring program.
10. The APBP should discontinue the practice of automatically accepting a case back from a volunteer at mid-point.
11. Law firms should be encouraged to participate more fully in the APBP.
12. The APBP should broaden its referral procedures to allow for more varied referrals.
13. The APBP should coordinate with other existing pro bono projects and programs to insure that better and non-overlapping services are provided.
14. The APBP should adopt administrative procedures that would allow for attorneys to assist other pro bono attorneys by doing discrete tasks such as research.

15. The Alaska Bar Foundation should continue to fully fund the Alaska Pro Bono Program.

16. The Alaska Bar Foundation should continue to seek new ways of increasing IOLTA revenues.

E. Alternate Dispute Resolution Subcommittee

Introduction: This subcommittee focused on ways in which alternative dispute resolution (ADR) methods, such as mediation and arbitration, can address civil justice needs.

Findings:

- There exists a lack of statewide coordination of various groups', businesses' and individuals' efforts to increase ADR alternatives in Alaska. There is a need then to focus this energy and these efforts.
- There are currently no state or professional standards, guidelines or requirements in Alaska for the certification or regulation of mediators. There are several reasons for this:
 - Disputes in Alaska involve a variety of people, cultures, languages and backgrounds that make it difficult, if not impossible, to create a set or sets of requirements for defining a qualified mediator.
 - Similarly, the skills and talents of a successful mediator do not necessarily depend on traditional or objective predictors of competency. Formal education and testing do not, alone, adequately determine the competency of a good mediator. A person's reputation within a community, their background and culture, their familiarity with the context of a dispute, their language skills and their talents in facilitating a discussion are additional skills that are not easily certified.
 - Dispute resolution/conflict management processes come in many different forms that are mistakenly lumped together under the umbrella of mediation. Such processes include judicial and non-judicial settlement conferences, early neutral evaluations, and facilitative and evaluative mediations. These distinctions complicate the question of qualifications and certifications for those involved in providing these processes.
- There is little, if any, dialogue and education among and between the professionals who provide and those who can benefit from ADR processes.

- Although ADR processes seem like a perfect match for rural communities in Alaska, three problems exist in providing viable access to these communities:
 - lack of long-term stable ADR presence;
 - lack of adequate and reliable training for those interested in providing ADR; and
 - lack of funding.

- There are specific issues relating to the use of ADR in domestic relations cases due to:
 - the increasing complexity of domestic relations law;
 - the need to effectively recognize and handle large power imbalances, particularly in cases where physical and/or emotional abuse has occurred; and
 - the perceived division between lawyers and ADR providers about the risks and benefits of ADR in domestic relations cases.

Recommendations:

1. Appoint a standing statewide steering committee to evaluate and coordinate statewide ADR needs and make periodic recommendations to the Judicial Council for adoption.

a. The committee should include representatives from each of the entities most likely to be impacted by the committee's recommendations, including members representing ADSA, the Alaska Bar Association, the court system, tribal governments, the legislature, the business community, the educational community, the family law and ADR sections of the Alaska Bar and other stakeholder groups.

b. The initial scope of the committee's work should include discussion and the formulation of recommendations that address the issues and recommendations outlined in this report.

c. The Judicial Council should undertake an effort to seek technical assistance and expertise for the organization and structure of this committee.

2. The court system and/or the executive branch should undertake efforts to establish a statewide ADR Coordinator to serve as a resource for communities, groups and people in Alaska to use for establishing, accessing, or strengthening ADR alternatives.

3. Recommend against a comprehensive certification/evaluation program in favor of approaching the issues of qualifications in small, incremental steps, learning and reassessing as the field grows and changes.

4. Focus on a qualification program that is based as much as possible on criteria that accurately predicts successful performance and ethical practice. (For specific examples of this please refer to the Report to the Alaska Legislature: Alternative Dispute Resolution in the Alaska Court System, at 44, 47 December, 1997).
5. Avoid credentialing criteria that create roadblocks to training, learning and practicing mediation skills, instead focusing on developing a credentialing system that enables and encourages dialogue and learning about ADR opportunities and alternatives.
6. Evaluate existing professional certification programs and recommend specific programs for the State to formally recognize.
7. Consideration of a mandatory occupational state licensing or registration program for mediators to provide basic oversight and accountability as a way of addressing the concern of consumer protection.
8. Presentation on updates on ADR trends and progress at annual statewide judicial conference.
9. Encourage the court administration to research and apply for ADR training grants.
10. New admittees to the Alaska Bar should be required to take a mandatory CLE on ADR similar to the current new admittee mandatory ethics CLE requirement.
11. Every annual statewide Alaska Bar Convention should offer an ADR component.
12. Mediation and ADR processes should be explicitly excluded from the Alaska Bar rule defining the practice of law.
13. Support an ADR homepage/internet site for Alaska.
14. The court system should examine the feasibility of training magistrates to provide ADR/mediation training and resources.
15. Encourage rural communities and native corporations to explore joint ventures for establishing community based ADR. Joint ventures could be made up of representatives from the court system, native corporations, local businesses, school districts and municipalities.

16. Support and establish funding for providing effective access for trained and qualified urban mediators to go to rural communities to provide local ADR services by:

- a. funding an ADR staff member in a community;
- b. subsidizing a mediator's time and travel, on a sliding scale, based on participant's ability to pay;
- c. videoconferencing alternatives;
- d. establishing a network of willing mediators; and
- e. encouraging pro bono ADR services by the Bar and ADSA members.

17. Encourage the court system to establish in rural court libraries a pool of resources (videos, training booklets) on ADR for lay people to use.

18. Encourage a paradigm wherein lawyers refer clients to ADR and then review and advise the clients regarding the parties' written agreement.

19. Work with and through the Alaska Bar Association and the Alaska Network on Domestic Violence and Sexual Assault to provide training for mediators on domestic violence and on how to effectively screen out inappropriate cases involving domestic violence.

20. Increase education and training for ADR providers, attorney advocates, and the judiciary on the effectiveness of ADR in domestic relations cases.

21. Increase education and training for ADR providers, attorney advocates and the judiciary for screening, recognizing, and handling cases in which there has been domestic abuse.

22. Explore and pursue outside funding, resources and assistance for ADR training in domestic relations cases.

23. Obtain funding (through legislature or increased filing fees) to provide for a statewide ADR/mediation referral and education center.

F. Community Legal Support and Education Subcommittee

Introduction: This subcommittee focused on evaluating how public support of and education about the legal system and programs attendant on that legal system could improve access to justice.

Findings:²³

- For entirely legitimate reasons of funding, staffing, case control, and others, Alaska Legal Services' ability to match needy clients with lawyers willing to perform the services is constrained. Additionally, for similar reasons, the intake processes of Alaska Legal Services and other organizations generally are designed to function well for the organization, but are not customer oriented. Additional referrals to Alaska Legal Services and others resulting from heightened public awareness might not produce greater access to civil justice due to intake bottlenecks.
- The referral and intake problem is exacerbated by the multiplicity of programs that in theory are available to serve low-income clients or others with special needs. (Alaska Legal Services, pro se clinics, APBP, Alaska Bar Association Lawyer Referral Service, Alaska Native Justice Center, Catholic Social Services Immigration Program, Disability Law Center and private attorneys volunteering outside the formal APBP). Each of these service providers has different schedules, different locations and different rules for case intake, handling and referral. As a result, some clients can go or be sent from place to place without effectively being served.
- The problems some indigent clients bring are, in the final analysis, not really legal problems, or not problems best resolved by the justice system. They nevertheless consume valuable intake time of Alaska Legal Services and volunteer or reduced fee lawyers. Other problems may be legal in nature but could, with a reasonable level of education and support be handled by the individual pro se.
- The number of cases that could be assigned to volunteer lawyers could be substantially increased if more support and education were available to those volunteers. For example, even though family law, child custody, and social security benefits are among the areas most in need of free legal services, many lawyers will not volunteer to handle them because they feel they lack the specialized knowledge necessary to be effective. There are experienced lawyers at Alaska Legal Services, Office of Public Advocacy and in the private bar who are willing to provide informal guidance, prior research, briefs, and forms to volunteer lawyers, but there is currently no effective centralized mechanism to access this information.

²³ This subcommittee has made several simple recommendations, however, these are tempered by the following paradox: Even if the Task Force successfully increases public awareness of programs that provide access to civil justice for those who cannot otherwise afford it, at this time, those programs could not handle the increased workload that the increased access would generate. (See Pro Bono Services Subcommittee findings re: the provision of free legal services being dependent of the intake process at Alaska Legal Services for services provided both by Alaska Legal Services and the APBP).

- Rural access to legal services programs, and to information about them, is severely constrained by budget, communications capability, and other well-known factors. The Alaska Native Justice Center has a radio program that occasionally addresses legal issues, but legal education outreach to Bush Alaska remains very limited.
- It is obvious that public support of the need for access to civil justice, and of the social value of free legal services, has waned. It is also more difficult for the general public than for lawyers to accept the notion that increasing the amount of legal services for anyone (perhaps particularly the indigent) is a valuable public good. Yet meaningful political support to provide necessary funding (or to stem opposition) depends on adequate public support. The traditional method of speeches or articles written by members of the bar will be inadequate to build sustained public support. This needs to be done professionally and thoroughly, by means of a marketing strategy designed to work in the real world.
- The establishment of an innovative low-income legal access program for small businesses would help demonstrate to the business community the need for, and the benefits of, low-income legal access programs generally. Support in the business community would in turn help engender necessary political support for a broader range of low cost legal access services.

Recommendations:

1. A customer-oriented "One-Stop Shopping" intake and referral service for low-income clients with potential legal problems should be established. The use of paralegals and paralegal students could greatly enhance the services such a center could provide, and it would therefore be appropriate to attempt a coordinated externship program with the University of Alaska's Justice Center. Moreover, it is recommended that such a center be started as a pilot project under the auspices of the University. The program could be offered at an appropriate off-campus location in Anchorage and also at University sites in Fairbanks, Juneau and perhaps other locations. If successful, the program could be transferred to the Alaska Bar Association for continued operations.

The "One Stop Shopping" service would be charged with providing staff who:

- a. understand the program rules and guidelines for existing free or low-cost legal services providers;
- b. perform sufficient intake to determine if the case is truly legal in nature and merits resolution by the legal system; whether the case could be resolved on a pro se basis; if a lawyer is required, provide a referral to the appropriate program and advocate for acceptance of the case by the program;

- c. maintain and publicize an accurate schedule of pro se clinics provided by Alaska Legal Services and other organizations;
- d. maintain a library of forms and legal self-help literature in as many languages and formats as possible; and
- e. maintain and publicize an 800 number, e-mail access, and fax access for its services;
- f. perform its mission in a customer-oriented fashion.

Such a program could reduce burdens on existing organizations if properly supported by them by:

- a. administering the lawyer referral service currently managed by the Alaska Bar Association;
- b. administering intake for various legal services programs, thus freeing up program resources; and
- c. matching clients with volunteer lawyers who are not handling cases through the formal Pro Bono program.

It is estimated that the costs of such a program would run approximately \$200,000 per year. This cost could be mitigated by folding in the current Bar referral program, reducing intake costs of Alaska Legal Services and other programs (which might reduce costs or free up time for services in such programs), and by in-kind donations. Funding for forms, library, and pro se education may be available through grants and through the Court System. Initial inquiries regarding federal funding for such a pilot project have received a positive response so far.

2. Time efficient, user-friendly pro bono continuing legal education programs to train volunteer lawyers in specific subjects need to be implemented and strongly supported by the Alaska Bar Association. These could be offered tuition free, as these lawyers would be committing volunteer time to handling cases as well as to attending the programs. The proposed "One Stop Shopping" service could serve as a resource for materials and mentors for volunteer lawyers.

3. The Court System should implement a Community Education and Communication plan in cooperation with appropriate organizational agencies.

4. The University of Alaska Anchorage (UAA), UAA Small Business Development Center (UAASBDC), and the Alaska Bar Association should establish a small business low income legal access program called "Legal Line". This program would:

- a. Provide preliminary (up to one hour per every eight week period or other acceptable time range) telephone assessment on legal problems for small businesses that fall outside the areas served by Alaska Legal Services,

the Alaska Native Justice Center, and other agencies. For those needing further assessment as determined by the Legal Line, a list of attorneys willing to be referred would be provided. These attorneys would provide services at a discounted rate.

b. The clients of such a program would be small businesses or individuals that would pay for the program on a yearly sliding scale fee based on income. A program menu could be developed to give more services for a higher yearly fee. This could be promoted through Chamber of Commerce type organizations.

c. An attorney who is on staff through the UAASBDC and the Justice Center would provide oversight. Assistance would come from students who are in the paralegal program.

d. Statewide reach could be provided through the UAASBDC, UA Juneau, and UA Fairbanks.

Costs for such a program would be approximately \$150,000 with funding provided through client fees and grants from the Justice Department and Department of Commerce.

5. The University of Alaska Anchorage should develop a legal clinic at the UAA Justice Center to address the needs of clients that Alaska Legal Services cannot represent because of personnel limitations. The Justice Center could offer a part-time clinic supervised by an attorney in which Paralegal Certificate students would learn substantive legal work through the internship program. The Justice Center would modify the existing internship program slightly to allow students to do the second semester as an advanced legal placement in lieu of a law elective.

Such a program would require hiring additional personnel at the Justice Center, as well as arranging alternative office space, preferably in a more central and easier location (with better parking, for example). Another possibility might be to have the clinic travel to different locations such as Covenant House and Brother Francis Shelter. One half-time attorney and one paralegal/secretary could supervise and train the interns, who would conduct client interviews, conduct case investigations, assist with pro se paper filing, perform legal research and writing, draft pleadings and discovery requests for the attorney's review and other tasks as necessary.

This program could be mutually beneficial for the Justice Center and currently unserved clients. For example, it could be offered during after work and weekend hours. Many students are already employed and cannot afford placement in regular work hours, and many clients are at work when lawyers are available. The after hours aspect of the clinic would address both needs. Such a clinic would also augment the Justice Center's academic program by offering a superior internship experience for Paralegal Certificate students. The Justice Center has indicated a willingness to pursue such a program, and has prepared

preliminary outlines of a program structure and responsibilities for a supervising attorney.

The cost of such a program would be approximately \$100,000 per year.

G. Pro Se Litigants Subcommittee

Introduction: This subcommittee focused on the needs of persons who represent themselves in legal matters.

Findings:

- Pro se litigants face a number of hurdles when attempting to represent themselves in court including: a lack of knowledge and education about the legal issues involved, an inability to properly draft motions and follow court procedures as set forth in the Rules of Court, and failure to serve papers on the opposing party. Furthermore, pro se litigants make inappropriate telephone calls and have inappropriate contact with the court and judges' chambers, and take up extensive use of court time due to their lack of knowledge and their noncompliance with the basic court rules.
- Alaska Legal Services conducted a one-week informal survey of calls requesting assistance and found there were 163 Anchorage calls, and 52 rural calls. Of the 215 potential clients, 42 were interviewed and either given advice on how to handle their case or were accepted for representation; 88 were referred to Alaska Legal Services educational clinics, 70 were referred to the Lawyer Referral Service, and 15 were referred to other social services agencies. Of the 215 calls, about 100 were family related matters and 44 were landlord/tenant matters.
- Approximately 30% of the calls to the Alaska Native Justice Center are related to family law, child custody and child support issues.
- There is a lack of effective access to the court system for unrepresented litigants in family law matters. Even access to information about family law issues is limited with clinics sponsored by the Alaska Pro Bono Program existing as the main source of information for many litigants.
- Many victims of domestic violence remain in the home where the violence is occurring due to lack of resources, representation and understanding of family law.
- Individuals residing in rural areas lack access to the courts generally, but especially with regard to domestic violence issues.

- The United States District Court staffs an attorney position and created a handbook to assist pro se litigants in federal court. It appears that having an attorney and a handbook for these pro se litigants has been considerably helpful to the federal court in screening cases, setting out procedures in pro se cases, and managing them.

Recommendations:

1. Creation of a Pro Se Litigants Handbook for state courts.
2. Creation of statewide step-by-step packets with sample forms for various proceedings (e.g. will packets, probate forms, Petition for Protective Order/Domestic Violence, Power of Attorney, Divorce, Custody and Child Support Modification Packets). The packets can be available for distribution in various appropriate locations such as hospitals, medical facilities, libraries, funeral homes, churches, school campuses, Alaska Legal Services, Alaska Native Justice Center, and other non-profit organizations, and would be periodically updated as necessary.
3. Creation and presentation of educational courses for medical personnel on the process and procedures for filing domestic violence petitions.
4. Creation and presentation of educational and informational television ads with different weekly topics in the rural areas on RATNET and other statewide networks.
5. Offer Alaska Pro Bono Program's clinics twice monthly, with an evening class scheduled for those working during the day. Additionally, the APBP clinics should be available statewide on video or audiotapes for a minimal cost at local video stores, public libraries, tribal council offices, or local grocery stores.
6. Creation of simple "Request" and "Complaint" forms for Pro Se litigants requesting civil relief in the state courts.
7. Extend the Alaska Court System's business hours to allow for after hours filing, hearings and research.
8. Review and develop shorter time frames for child support modification and dissolution hearings.
9. Implement uniform statewide procedures and rules to allow parties to file domestic violence petitions by facsimile.

10. Expand the Alaska Court System's website to include: a) general legal education and information and, b) commonly used court forms that may be downloaded and printed.

11. Create and educate a statewide network of magistrates, village councils, social workers etc. to assist in disseminating information to Pro Se litigants.

12. Create a 1 or 2 year statewide Program Developer position for the Alaska Court System. The Program Developer will educate the court staff on the needs of Pro Se litigants and assist in implementing changes to meet these needs. The person filling this position will also act as a liaison between the Implementation Task Force (responsible for implementing the recommendations agreed upon by this Task Force), and Court staff. Additionally, the Program Developer will research the feasibility of creating a state Pro Se Management position and a state Pro Se Litigants' Attorney position.

13. Re-examine the process for creating court forms with the goal of creating forms that are in simple English and easy to use.

H. Fundraising and Public Relations Recommendations

Introduction: This subcommittee was put together by Alaska Legal Services' development director and served only as an adjunct committee to the Access to Civil Justice Task Force. The subcommittee examined ways that Alaska Legal Services could broaden its fundraising and public relations efforts with the view that any recommendation proposed by this subcommittee would be specifically geared towards Alaska Legal Services.

Recommendations:

1. Develop locally driven, annual Private Bar Campaigns in each of the Judicial Districts to serve as the primary fundraising vehicles within the bar. Recruit the most influential and well-respected leaders from the legal community to lead peer-to-peer and firm-to-firm solicitations similar to Capital Campaigns held in other philanthropic areas.

2. Create a comprehensive statewide, public education program to build a much stronger cadre of constituents who understand the importance of legal services for the poor and are willing to be vocal about its funding. Possible public education options include:

- a. Speakers Bureau
- b. Agency newsletter
- c. Public forums

- d. Public service announcements
- e. Poster Campaign
- f. Editorial support in newspapers

3. Pursue new ways to reaffirm the state of Alaska's responsibility for funding legal services including the following:

a. Establish a subcommittee within each Private Bar Campaign Leadership Committee whose primary task is to educate state legislators on the importance of legal services. Emphasize how the profession has responded as a whole and how increased appropriation would complement these efforts. These subcommittees would be responsible for developing a "lobbying" plan.

b. Create stronger collaborative efforts with the Court System, the Alaska Bar Association, and local bar associations to increase state funding.

4. Continue to maintain and build upon successful efforts of receiving monies in local municipalities and boroughs.

5. Increase the number of grant applications submitted to private, corporate, and national foundations. Continue to research those foundations that are increasingly giving funds to legal services.

6. Increase the number of grants submitted that are collaboratively written with other social service agencies that work on the same issues as Alaska Legal Services.

7. Establish a designated fund/endowment with a local community foundation that will professionally manage the funds and disburse fund proceeds to Alaska Legal Services after a minimum balance is established.

8. Establish a "Planned Giving Committee" to prepare Alaska Legal Services to accept funds from wills and bequests, charitable trusts and annuities, life insurance policies, as well as real estate, securities, and other non-traditional giving vehicles.

9. Create a "Major Gifts Committee" to identify and solicit large individual gifts for Alaska Legal Services.

10. Develop an annual Alaska Legal Services special event to broaden community awareness and gain additional monies for Alaska Legal Services.

11. Bring together leaders from within the Alaska Native Community to combine efforts and implement an annual fundraising campaign specifically in support of legal services work with this constituency.

Appendix A - Task Force Members

Chair - Justice Dana Fabe

<u>Member</u>	<u>Representing</u>
Senator Al Adams	State Senate
Lynn Allingham	IOLTA Commission
Danny Bolden	Alaska Legal Services Eligible Clients
Magistrate Harry Branson	Federal Courts
Robin Bronen	Non-Alaska Legal Services Eligible Clients
David Bundy	Alaska Bar Association
David Call	Fairbanks Attorneys
Michele Christensen	Alaska Native Justice Center
Stephanie Cole	Alaska Court System
Joan Connors	Municipality of Anchorage Ombudsman
Jim Decker	Corporate Attorneys
Jane Demmert	Alaska Commission on Aging
Dawn Dillard	Alaska Legal Services - Rural clients
Susanne DiPietro	Alaska Judicial Council
Nancy Gordon	Governor's Appointee
Carol Heyman	Business Community
Robert Hickerson	Alaska Legal Services
Rep. Reggie Joule	Alaska State House
Mark Krolloff	Corporate Attorneys
Brant McGee	Public Sector Attorneys
Allison Mendel	Private Attorneys
Jim Minnery	Alaska Legal Services Fundraising
Art Peterson	Alaska Legal Services Board of Directors
Judge John Reese	State Trial Courts
Lisa Rieger	University of Alaska Justice Center
Mark Rindner	Pro Bono Services
Kari Robinson	Alaska Network on Domestic Violence and Sexual Assault
Marcia Rom	Alaska Legal Services - Urban clients
Diane Smith	Federal Pro Se clients
Bryan Timbers	Second Judicial District Attorneys
Jim Valcarce	Bethel Attorneys
Diane Vallentine	Alaska Bar Association
Maria-Elena Walsh	Pro Bono Program
Donna Willard	American Bar Association
Lach Zemp	First Judicial District Attorneys

Also: members of the Alaska Pro Bono Services Committee and the Alaska Board of Governors not previously named, presiding judges not previously named, other task force subcommittee members not previously named, and serving as volunteer staff: Deborah O'Regan, Nancy Shaw.

Appendix B - Task Force Steering Committee Members

Sen. Al Adams
Danny Bolden
Magistrate Harry Branson
Robin Bronen
David Bundy
David Call
Michele Christensen
Stephanie Cole
Dawn Dillard
Susanne DiPietro
Nancy Gordon
Carol Heyman
Robert Hickerson
Mark Kroloff
Brant McGee
Art Peterson
Lisa Rieger
Mark Rindner
Marcia Rom
Bryan Timbers
Jim Valcarce
Maria-Elena Walsh
Lach Zemp

State Senate
Alaska Legal Services Eligible Clients
Federal Courts
Non-Alaska Legal Services Eligible Clients
Alaska Bar Association
Fairbanks Attorneys
Alaska Native Justice Center
Court System
Alaska Legal Services - Rural Clients
Alaska Judicial Council
Governor's Appointee
Business Community
Alaska Legal Services
Corporate Attorneys
Public Sector Attorneys
Alaska Legal Services Board of Directors
University of Alaska Justice Center
Pro Bono Services
Alaska Legal Services - Urban Clients
Second Judicial District Attorneys
Bethel Attorneys
Pro Bono Program
First Judicial District Attorneys

Sec. 37.05.146. Definition of program receipts and non-general fund program receipts.

(a) In AS 37.05.142 - 37.05.146 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other state money received by a state agency in connection with the performance of its functions. Unless otherwise provided in this section, program receipts are accounted for within, and appropriated from, the general fund of the state.

(b) The program receipts listed in this subsection are accounted for separately, and appropriations from these program receipts are not made from the unrestricted general fund:

(1) federal receipts;

(2) University of Alaska receipts (AS 14.40.491);

(3) designated program receipts; in this paragraph, "designated program receipts" means money received by the state from a source other than the state or federal government that is restricted to a specific use by the terms of a gift, grant, bequest, or contract;

(4) receipts of or from the trust established by AS 37.14.400 - 37.14.450, except reimbursements described in AS 37.14.410;

(5) receipts of the Alaska Fire Standards Council for which a taxpayer is allowed a credit under AS 21.89.075.

(c) The program receipts of the following are accounted for separately, and appropriations from these program receipts are not made from the unrestricted general fund:

(1) highway working capital fund (AS 44.68.210);

(2) *[Repealed, Sec. 10 ch 58 SLA 2006]*.

(3) loan funds;

(4) international airport revenue fund (AS 37.15.430);

(5) corporate receipts earned or managed by a public corporation of the state;

(6) fish and game fund (AS 16.05.100);

(7) school fund (AS 43.50.140);

(8) training and building fund (AS 23.20.130);

- (9) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and former AS 39.37);
- (10) permanent fund (art. IX, sec. 15, Alaska Constitution);
- (11) public school trust fund (AS 37.14.110);
- (12) second injury fund (AS 23.30.040);
- (13) fishermen's fund (AS 23.35.060);
- (14) FICA administration fund (AS 39.30.050);
- (15) receipts of the employee benefits program established under AS 39.30.150 - 39.30.180;
- (16) receipts of the deferred compensation program established under AS 39.45;
- (17) clean air protection fund (AS 46.14.260);
- (18) receipts of the group insurance programs established under AS 39.30.090;
- (19) mental health trust fund (AS 37.14.031);
- (20) Alaska children's trust (AS 37.14.200);
- (21) commercial fisheries test fishing operations (AS 16.05.050(a)(14));
- (22) Regulatory Commission of Alaska under AS 42.05 and AS 42.06;
- (23) Alaska Oil and Gas Conservation Commission under AS 31.05;
- (24) receipts of the Department of Commerce, Community, and Economic Development under AS 08.01.065 and from fines and penalties collected in licensing and disciplinary actions for occupations under AS 08.01.010;
- (25) receipts from the seafood marketing assessment under AS 16.51.120 - 16.51.170, and receipts of the Alaska Seafood Marketing Institute;
- (26) the administrative cost charge under AS 44.33.113 for the state's role in the federal community development quota program;
- (27) dive fishery management assessment receipts (AS 43.76.150), salmon fishery assessment receipts (AS 43.76.220), and permit buy-back assessment receipts (AS 43.76.300);

- (28) process service fees collected by the Department of Public Safety;
- (29) Alaska Commercial Fisheries Entry Commission under AS 16.05.490, 16.05.530, and AS 16.43;
- (30) receipts of the Alaska Vocational Technical Center;
- (31) Alaska Pioneers' Home and Alaska Veterans' Home care and support receipts under AS 47.55.030;
- (32) receipts of the Department of Transportation and Public Facilities from tolls charged for use of the Whittier Tunnel;
- (33) receipts of the Department of Commerce, Community, and Economic Development, division of insurance, from license fees and fees for services;
- (34) receipts of the Department of Commerce, Community, and Economic Development from its functions relating to banking, securities, and corporations;
- (35) receipts of the Department of Corrections from the electronic prisoner monitoring program under AS 33.30.065 (d);
- (36) receipts of the Department of Corrections from the operation of community residential centers;
- (37) receipts of the Alaska Police Standards Council;
- (38) receipts of the Department of Public Safety from fees for fire and life safety plan checks under AS 18.70.080 (b);
- (39) receipts of the Department of Transportation and Public Facilities from the measurement standards and commercial vehicle enforcement program;
- (40) receipts of the Department of Education and Early Development for teacher certification under AS 14.20.020;
- (41) receipts of the Professional Teaching Practices Commission from professional certification fees;
- (42) receipts of the Department of Health and Social Services, Bureau of Vital Statistics;
- (43) receipts of the Department of Corrections from the inmate telephone system;
- (44) receipts of the Department of Public Safety from the Alaska automated fingerprint system under AS 44.41.025 (b);

(45) receipts of the Department of Administration from the boat registration program under AS 05.25.096 ;

(46) state land disposal program (AS 38.04.022);

(47) shore fisheries development lease program account (AS 38.05.082(f));

(48) timber receipts account (AS 38.05.110);

(49) workers' safety and compensation administration account (AS 23.05.067);

(50) receipts of fees for recording and related services of the Department of Natural Resources (AS 40.17.030 (a)(10), 40.17.070; AS 44.37.025(b), 44.37.027(c); AS 45.29.303 (b), 45.29.525, and 45.29.619(b));

(51) receipts described in AS 46.03.482 (b)(1) and (2) received under the commercial passenger vessel environmental compliance program;

(52) receipts of the Department of Commerce, Community, and Economic Development for fees for business licenses and license endorsements under AS 43.70;

(53) receipts of fees for certain inspections deposited under AS 05.20.060, AS 18.60.360, 18.60.395, 18.60.800, and AS 18.62.030 in the building safety account created under AS 44.31.025 ;

(54) passenger facility charges collected at state-owned and operated airports under Federal Aviation Administration guidelines;

(55) money received by the Department of Environmental Conservation from the inspection of food under AS 17.20;

(56) fees received by the Department of Natural Resources under AS 41.21.026 for the use of state park system facilities;

(57) application and renewal fees received by the Department of Public Safety under AS 18.65.400 - 18.65.490 for licenses for security guards and security guard agencies;

(58) fees received by the Department of Public Safety under AS 18.65.700 - 18.65.790 for the issuance, renewal, and replacement of permits to carry concealed handguns;

(59) monetary recoveries by the Department of Health and Social Services of Medicaid expenditures from recipients, third parties, and providers under AS 47;

(60) the state's share of overpayments collected by the Department of Health and Social Services under AS 47.05.080 ;

(61) income received by the Department of Health and Social Services from a state or federal agency for children in foster care under AS 47.14.100;

(62) fees received by the Department of Health and Social Services under AS 44.29.022 for nursing and planning services provided at health centers;

(63) fees received by the Department of Health and Social Services under AS 44.29.022 for genetic screening clinics and specialty clinics;

(64) fees received by the Department of Health and Social Services under AS 18.08.080 for the certification of emergency medical technicians, emergency medical dispatchers, and emergency medical technician instructors;

(65) fees collected by the Department of Health and Social Services under AS 44.29.022 from the certification of x-ray machines;

(66) fees collected under AS 44.29.022 by the Department of Health and Social Services under the Alcohol Safety Action Program;

(67) fees received by the Department of Health and Social Services under AS 47.32;

(68) charges, rentals, and fees for airport or air navigation facility contracts, leases, and other arrangements under AS 02.15.020 and 02.15.090;

(69) fees for utility facility permits under AS 02.15.102, encroachment permits under AS 02.15.106, utility right-of-way permits under AS 19.25.010, and utility facility permits under AS 35.10.210;

(70) recoveries of repair costs for damage to highway fixtures;

(71) the state's share of child support collections for reimbursement of the cost of the Alaska temporary assistance program as provided under AS 25.27.120, 25.27.130, and AS 47.27.040;

(72) vehicle registration fees collected under AS 28.10.421 and other fees and charges collected under AS 28.10.441;

(73) fees for drivers' licenses, drivers' permits, renewals, and driver skills tests collected under AS 28.15.271;

(74) user fees and other fees collected by the Department of Education and Early Development under AS 14.57.010;

(75) student tuition and other fees related to schools that are operated by the state and collected under AS 14.07.030;

(76) receipts of fees for registration and renewal of registration for the sale of business opportunities under AS 45.66.040 ;

(77) emission control permit receipts account (AS 46.14.265);

(78) workers' compensation benefits guaranty fund (AS 23.30.082);

(79) receipts of the Department of Environmental Conservation from the registration of pesticides and broadcast chemicals and the licensing of pesticide applicators under AS 44.46.025 ;

(80) [See delayed repeal note]. the Alaska senior care fund (AS 47.45.360);

(81) proceeds from prison employment, including deductions from prisoner wages for the cost of confinement under AS 33.30.201 (b) and forfeited wages under AS 33.30.201 (e).

the delay between the initial trial and the separate proceeding to determine the amount of punitive damages.

(f) Except as provided in (g) and (h) of this section, an award of punitive damages may not exceed the greater of

- (1) three times the amount of compensatory damages awarded to the plaintiff in the action; or
- (2) the sum of \$500,000.

(g) Except as provided in (h) of this section, if the fact finder determines that the conduct proven under (b) of this section was motivated by financial gain and the adverse consequences of the conduct were actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greatest of

- (1) four times the amount of compensatory damages awarded to the plaintiff in the action;
- (2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct; or
- (3) the sum of \$7,000,000.

(h) Notwithstanding any other provision of law, in an action against an employer to recover damages for an unlawful employment practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the court or jury may not exceed

- (1) \$200,000 if the employer has less than 100 employees in this state;
- (2) \$300,000 if the employer has 100 or more but less than 200 employees in this state;
- (3) \$400,000 if the employer has 200 or more but less than 500 employees in this state; and
- (4) \$500,000 if the employer has 500 or more employees in this state.

(i) Subsection (h) of this section may not be construed to allow an award of punitive damages against the state or a person immune under another provision of law. In (h) of this section, "employees" means persons employed in each of 20 or more calendar weeks in the current or preceding calendar year.

(j) If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

(k) In a civil action in which an employer is determined to be vicariously liable for the act or omission of an employee, punitive damages may not be awarded against the employer under principles of vicarious liability unless (1) the employer or the employer's managerial agent (A) authorized the act or omission and the manner in which the act was performed or omission occurred; or (B) ratified or approved the act or omission after the act or omission occurred; or (2) the employee (A) was unfit to perform the act or avoid the omission and the employer or the employer's managerial agent acted recklessly in employing or retaining the employee; or (B) was employed in a managerial capacity and was acting within the scope of employment. In this subsection, "managerial agent" means a management

LEGAL SERVICES

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Mail Stop 3101


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

MEMORANDUM

December 28, 2006

SUBJECT: Comments on draft bill creating civil legal services fund
(Work Order No. 25-LS0349\A)

TO: Representative Jay Ramras
Attn: Jane Pierson

FROM: Dennis C. Bailey 
Legislative Counsel

This memorandum accompanies a copy of the final version of the bill you requested for pre-filing. In sec. 1, I changed (81) to (82) because AS 37.05.146(c) was renumbered in 2006.

Although the bill is in final form, please note the following issues that you may want to address either in a new final version, a sponsor substitute, or during the committee process.

The phrase in the draft bill to "less the costs of collection, if any, incurred by the state" was apparently added to the House Judiciary Committee Substitute during the 2005 session. See CSHB 175(JUD), see also House Judiciary Committee Minutes, March 4, 2005. Under my reading of the minutes, when the committee adopted this phrase, it contemplated a situation where a punitive damages judgment was in place and the plaintiff had collected its judgment, but the state would be required to incur collection costs to enforce its share of the punitive damages judgment. The costs of collection would be deducted from the state's 50 percent share of the punitive damages before the amount is deposited in the fund created by the bill.

Including the phrase in AS 37.05.590 creates a potential conflict with AS 09.17.020(j), which does not have a reference to a deduction for collection costs. One might argue that the state's costs of collection are implied under AS 09.17.020(j), i.e., the state receives the net amount of the state's share of the punitive damages award without a specific reduction from the award for attorneys' fees and costs, and costs of collection. Conversely, one might argue that the costs are intended to be deducted by AS 37.05.590 but not by AS 09.17.020(j), since the cost deduction is mentioned in one but not the other.

It would be preferable to make the references consistent either by amending AS 09.17.020(j) to add similar language for collection of costs, or, in keeping with the limitation of the content of the bill draft, by deleting the reference from the draft bill so

Representative Jay Ramras

December 28, 2006

Page 2

the fund would receive whatever amount AS 09.17.020(j) allows without a specific reference to deductions for the cost of collection.

If I may be of further assistance, please advise.

DCB:ljw

06-405.ljw

Enclosure

SB

78

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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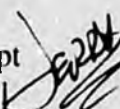
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 30, 2007

SUBJECT: Penalty for Window Tinting -- CSSB 78(JUD)
(Work Order No. 25-LS0526\C)

TO: Senator Hollis French

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have requested that the penalty for installing illegal window tinting as proscribed in this bill be the same as the penalty for driving a vehicle with illegal window tinting. Driving a vehicle with improper window tinting is proscribed by 13 AAC 04.223, a regulation. Violation of a regulation adopted by the department under AS 28 is an infraction punishable by a fine of not more than \$300. AS 28.90.010(c), CSSB 78(JUD) makes installation of improper window tinting an infraction. An infraction under AS 28 is punishable by a fine of not more than \$300.

GPL:ljw
07-179.ljw

25-LS0526\C
Luckhaupt
3/30/07

CS FOR SENATE BILL NO. 78(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR FRENCH

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the installation of window tinting in automobiles."**

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

3 *** Section 1.** AS 28.35 is amended by adding new sections to article 3 to read:

4 **Sec. 28.35.271. Installation of window tinting.** (a) A person commits the
5 crime of improper installation of window tinting if the person in this state installs
6 window tinting on a motor vehicle

7 (1) on portions of vehicle windows not permitted by the department; or

8 (2) that does not allow the level of light transmittance required by the
9 department by regulation.

10 (b) In this section, "light transmittance" means the ratio, expressed as a
11 percentage, of the amount of total light that is allowed to pass through a window,
12 including glazing, to the amount of total light falling on the window.

13 (c) Improper installation of window tinting is an infraction.



of Fairbanks, Inc.
2550 South Cushman Street
Fairbanks, Alaska 99701

Phone (907) 456-8400

Fax (907) 456-8406

March 21, 2007

Dear Senator French,

Thank you again for the call this morning. I am eager to help in any way I can.

We would like to see a law allowing 35% window film on the front doors of all vehicles, and 20% film on the rear windows of passenger cars. The 20% limit on the rear windows (back doors, quarter glasses, and rear glass) would be somewhat lighter than what owners of SUVs already have to their benefit right from the factory. These limits are exactly what the states of Montana and Idaho operate under.

I spoke with one of our Auto Trim Design colleagues in Helena, Montana about their laws and the penalties imposed to both the owner of the vehicle and the shop that did the work. Their law provides for a moving violation to the owner of the vehicle with a \$500 fine, and a \$500 fine for the business that installs the illegal film. I think these guidelines would be appropriate, especially making film that is in excess of state law a moving violation.

Alaska's current law has it set as an equipment violation; the only penalty to the owner of the vehicle is that you have to remove the film. A change to a moving violation that would have a real impact on the vehicle owner would certainly encourage compliance. It would be an easy sell to be able to say, "This tint is legal, anything darker could result in a big fine for you and us." This would discourage those who are intent on having their windows be too dark, especially if we can offer them a legal alternative.

Window tint is a product that enhances the safety, comfort, and appearance of a vehicle. Those benefits can be realized without blacking out the glass, an obvious concern for law enforcement. The limits I stated above will achieve that goal, and are effectively doing so in other states. These limits are what we have imposed on our ourselves at Auto Trim Design of Fairbanks for over 10 years.

I have spoken extensively with Rob Hill, the owner of Auto Start Alaska in Anchorage about this issue. His company probably does the most volume of window film in the Anchorage area, and he is in complete agreement with these limits.

Thanks again for the time you are spending on this issue; I know we can all come to an equitable agreement that benefits all Alaskans.

Sincerely,



Andrew Felt
(907) 388-2577
andrewf@autotrimdesignalaska.com



of Fairbanks, Inc.
2550 South Cushman
Fairbanks, Alaska 99701
Phone (907) 456-8400 Fax (907) 456-8406

Fax

To: Senator French	From: Andrew Felt
Fax: 907-465-6595	Email:
Phone:	Pages: 3
Re: SB 78	Date: March 21, 2007

Urgent For Review Please Comment Please Reply Please Recycle

Senator French,

Here is our statement regarding what we would like to see for window tint laws.

Thanks for all you are doing to help.

Andrew Felt