

Libby Bakalar

From: Libby Bakalar
Sent: Wednesday, October 2, 2019 2:33 PM
To: lawregulationscomments (LAW sponsored)
Cc: Bahr, Maria Pia L (LAW)
Subject: Re: Public Comment on Proposed Regulations of the Department of Law

Thanks Maria--here is a slightly amended version of my comments, which you can just add on top of my first draft. Obviously, I also posted this to my blog as I think this is a serious matter of public interest. I miss working with you and hope you are well.

To Whom it May Concern:

I am submitting the following public comment in response to the regulations project initiated by the Department of Law and [noticed](#) on Alaska's Online Public Notice System on October 1, 2019, by Deputy Attorney General Treg Taylor. According to the public notice, the comment period is open until November 4, 2019. Also according to the notice, the proposed regulation changes are as follows:

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

The statutory basis for these regulations is cited as the Executive Branch Ethics Act (AS 39.52.010-960). I have reviewed the full regulations, which are available online in PDF [here](#). However, for your convenience, the full changes are as follows:

9 AAC 52.140 is amended by adding new subsections to read:

(f) If a person brings a complaint alleging a violation under AS 39.52.110 - 39.52.190 or this chapter by the governor or the lieutenant governor, the Department of Law may provide legal representation to the governor or lieutenant governor to defend against the complaint if the attorney general makes a written determination, in the attorney general's sole discretion, that the representation is in the public interest. (Emphasis added).

(g) If a person brings a complaint alleging a violation under AS 39.52.110 - 39.52.190 or this chapter by the attorney general, the Department of Law may provide legal

representation to the attorney general to defend against the complaint if the governor makes a written determination, in the governor's sole discretion, that the representation is in the public interest. (Emphasis added).

9 AAC 52.160 is amended by adding a new subsection to read:

(h) Notwithstanding (a) - (g) of this section, information received by the Department of Law and the attorney general related to the defense of a complaint alleged under 9 AAC 52.140(f) and (g) is confidential.

I am concerned that the adoption of these regulations will encourage corruption, malfeasance, lack of transparency, and an erosion of public trust in the Office of the Attorney General, the Department of Law, and the Governor's Office.

In enacting the Executive Branch Ethics Act, the Legislature declared that "high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state" and that the purpose of the Act is to "discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities." Furthermore, "a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest." See AS 39.52.010(a).

The foregoing regulations are, at best, inconsistent with these statutory goals.

They permit both the Attorney General and the Governor to unilaterally decide "in their sole discretion" when to expend the time and resources of public attorneys (i.e. Assistant Attorneys General) to defend themselves against Ethics Act Complaints, if the targets of the complaints simply make written statements certifying to each other that doing so is "in the public interest." Worse yet, they can then keep all the information related to these complaints hidden from public view.

The conflict of interest and lack of transparency here should be obvious. These regulations allow the target of an Ethics Act complaint to use their own public employees to shield them from such complaints at their say-so.

The effect of these changes is that when a member of the public makes an Ethics Act complaint against the Governor, the Lieutenant Governor, or the Attorney General, these individuals can decide by executive fiat to expend public resources to defend what may be their own misconduct.

This is not a proper use of Department of Law labor.

While the Attorney General is "the legal advisor for the governor and other state officers," the enumerated statutory duties for that office make clear that this role is not intended to include using Department of Law attorneys as the personal defense team of the Governor, Lieutenant

Governor, and/or the Attorney General in these individuals "sole discretion" and based on their subjective determination of what constitutes "the public interest," if and when faced with an Ethics Act complaint.

The Attorney General's duties include the defense of the state and federal constitutions; representing the state in civil actions; bringing and prosecuting all cases involving violation of state law; drafting legal instruments for the state; and providing legal opinions to the governor, legislature, and other state offices. See AS 44.23.020.

Nothing in these statutes suggests that Department of Law resources should be deployed to defend three specific high-level state appointees against their own potential violations of the Ethics Act with the stroke of a pen, under some meaningless and subjective rubber-stamp standard.

While in some cases it may be appropriate for the Department of Law to defend these individuals from an Ethics Act complaint, allowing the Attorney General and the Governor to unilaterally determine when that can occur--in their "sole discretion"--and when doing so is in "the public interest" is rife with conflict.

That is because under the regulations, the same people who would make "written determinations" to gift themselves the personal legal services of state attorneys are also the targets of the complaints. The fact that the Governor and Attorney General may "cross-certify" for each other does little to resolve this obvious conflict.

The regulations also place Department of Law attorneys in the awkward position of being forced, at risk of dismissal from their jobs, to engage in representation that is potentially inconsistent with state law and/or the Alaska Bar Rules of Professional Conduct.

These regulations violate the spirit if not the letter of the Alaska Executive Branch Ethics Act. I encourage the Department of Law not to adopt them.

Sincerely,

Elizabeth M. Bakalar
Juneau, Alaska
October 1, 2019

Libby Bakalar
Attorney at Law




libbybakalar.com

On Wed, Oct 2, 2019 at 2:31 PM lawregulationscomments (LAW sponsored)

<law.regulations.comments@alaska.gov> wrote:

Libby,

I just want you to know I received your email. Thanks for sending your comments to the proposed regulation changes. Pursuant to AS 44.62.213(b), we will aggregate similar questions and comments and make Law's responses publicly available. We plan to post the answers online on the Alaska Online Public Notice System in a timely fashion. I will try to get comments sent back to you directly as well.

Best regards,

Maria

From: Libby Bakalar <BOI>

Sent: Wednesday, October 02, 2019 1:51 PM

To: lawregulationscomments (LAW sponsored) <law.regulations.comments@alaska.gov>

Cc: Bahr, Maria Pia L (LAW) <maria.bahr@alaska.gov>

Subject: Public Comment on Proposed Regulations of the Department of Law

To Whom it May Concern:

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(g) If a person brings a complaint alleging a violation under AS 39.52.110 -

39.52.190 or this chapter by the attorney general, the Department of Law may provide legal representation to the attorney general to defend against the complaint if the governor makes a written determination, in the governor's sole discretion, that the representation is in the public interest. (Emphasis added).

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I am concerned that the adoption of these regulations will encourage corruption, malfeasance, lack of transparency, and an erosion of public trust in the Office of the Attorney General, the Department of Law, and the Governor's Office.

In enacting the Executive Branch Ethics Act, the Legislature declared that "high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state" and that the purpose of the Act is to "discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities." Furthermore, "a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest." See AS 39.52.010(a).

The foregoing regulations are, at best, inconsistent with these statutory goals.

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The conflict of interest and lack of transparency here should be obvious. These regulations allow the target of an Ethics Act complaint to use their own public employees to shield them from Ethics Act complaints.

The effect of these changes is that when a member of the public makes an Ethics Act complaint against the Governor, the Lieutenant Governor, or the Attorney General, these individuals can decide by executive fiat to expend public resources to defend what may be their own misconduct.

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intended to include using the Department of Law attorneys as the personal defense team of the Governor, Lieutenant Governor, and/or the Attorney General in these individuals "sole discretion" and based on their subjective determination of what constitutes "the public interest," if and when faced with an Ethics Act complaint.

The Attorney General's duties include the defense of the state and federal constitutions; representing the state in civil actions; bringing and prosecuting all cases involving violation of state law; drafting legal instruments for the state; and providing legal opinions to the governor, legislature, and other state offices. See AS 44.23.020.

Nothing in these statutes suggests that Department of Law resources should be deployed to defend high-level state employees against their own potential violations of the Ethics Act with the stroke of a pen, under some meaningless and subjective rubber-stamp standard.

While in some cases it may be appropriate for the Department of Law to defend these individuals from an Ethics Act complaint, allowing the Attorney General and the Governor to unilaterally determine when that can occur--in their "sole discretion"--and when doing so is in "the public interest" is rife with conflict. That is because under the regulations, *the same people who would make "written determinations" to gift themselves the personal legal services of state attorneys are also the targets of the complaints.* The fact that the Governor and Attorney General may "cross-certify" for each other does little to resolve this obvious conflict.

The regulations also place Department of Law attorneys in the awkward position of being forced, at risk of dismissal, to engage in representation that is potentially inconsistent with state law and/or the Alaska Bar Rules of Professional Conduct.

These regulations violate the spirit if not the letter of the Alaska Executive Branch Ethics Act. I encourage the Department of Law not to adopt them.

Sincerely,

Elizabeth M. Bakalar
Juneau, Alaska
October 1, 2019

Libby Bakalar
Attorney at Law

BOI

BOI

libbybakalar.com

Jim OToole

From: Jim OToole
Sent: Wednesday, October 2, 2019 8:50 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed new regulation re AK Attorney General and ethics complaints

Please allow me to be among the first to oppose this.

What the Governor is asking is for him and his successors to be given carte blanche to violate any ethical aspect of his/her office and then have the person he/she appointed as Attorney General to act as defense counsel in the case, more than likely, with the power to dismiss the allegations outright.

At a time when Alaskans throughout the state are being told(not asked to) that we have to deal with less revenue and the problems associated with this Governor's view of what the state should be, he is suggesting that he can do whatever he wants, ethically, and not have any personal financial responsibility for it. He wants a state employee to give up whatever he/she is doing to defend the Governor at a time when other state employees are losing their jobs and/or seeing their hours and income cut.

This proposal relaxes any restraint any Governor might have regarding ethical behavior, knowing it isn't going to cost him/her a dime and needs to be quashed and placed in the proper receptacle, preferably that fancy trash can in the Governor's office.

I can't believe the arrogance of Governor Dunleavy, to ask for state financed assistance when he does something stupid or just simply unethical when he is telling other state employees and citizens that they have to suck it up and deal with the huge cuts his budget has brought us.

If you see him before I do, please tell him I said this.

Thank you,

Jim O'Toole
7624 Hennings Way
Anchorage, Ak 99504

BOI

Margo Waring

From: Margo Waring
Sent: Saturday, October 5, 2019 8:21 AM
To: lawregulationscomments (LAW sponsored)
Subject: proposed regulation amendment Executive Branch Ethics Act

Gov. Mike Dunleavy and Attorney General Kevin Clarkson have proposed an amendment to the state ethics rules to allow a governor and attorney general to approve free state legal help for each other in case of an ethics act complaint and that state attorneys should provide a free defense with state money. The governor decides if his/her appointed AG deserves this benefit; and the AG returns the favor for the Governor and Lt. Governor. This is a situation ripe for conspiracy and conflict of interest.

Ethics complaints are confidential, therefore such a decision to provide free state attorney time to a few elected officials would be done behind closed doors.

Such legal assistance would become an unwarranted special benefit and might lead to less attention to the provisions of the Executive Branch Ethics Act by these three elected officials. The Executive Branch Ethics Act is designed to keep politics out of ethics investigations. This proposal would bring politics into ethics investigations. This proposed regulation should be withdrawn.

Sincerely,
Margo Waring
11380 N. Douglas Hwy.
Juneau, AK 99801

Cherime MacFarlane

From: Cherime MacFarlane
Sent: Saturday, October 5, 2019 5:21 PM
To: lawregulationscomments (LAW sponsored)
Subject: Let the Lt. governor and govenor

Hire a lawyer like everyone else. This is ludicrous.
Sent from [Mail](#) for Windows 10

Peter Bangs

From: Peter Bangs
Sent: Sunday, October 6, 2019 9:53 AM
To: lawregulationscomments (LAW sponsored)
Subject: Comments on proposed changes in 9 AAC 52

I am submitting my comments regarding the proposed changes to 9 AAC 52.140 & 9 AAC 52.160 relating to the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960).

I do not think it is appropriate for an appointed position (Attorney General) to decide whether defending the Gov/Lt Gov against an ethics complaint is in the state's best interest. The AG has an inherent conflict of interest in that he/she has to decide whether or not the state will pay legal expenses for their boss! This is completely unreasonable.

If the regulatory change proposed a more robust and fair process for avoiding the conflict of interest, I would be more open to supporting the change. For example, if the determination was made by an independent judiciary panel, completed isolated from executive branch (including Attorney General) oversight. Even if this were the case, this should be a proposed change in statute that goes through the legislature, not a change in regulations.

Furthermore, I believe it is misleading to characterize this proposed change as having zero costs in FY21 or subsequent years. I know Dept of Law has absorbed their fair share of budget cuts in recent years and it is unreasonable to assume they have lawyers with idle time on their hands to absorb this additional workload. I find it hard to believe that Dept of Law couldn't look at the number of ethics complaints made in recent years and then provide some rough estimates of the costs based on estimated hours multiplied by average salaries/benefits for the appropriate level of attorney. I'm sure these estimates would be far more accurate than a cost estimate of zero.

To recap, I do not support the proposed regulatory changes.

Peter Bangs
4257 Marion Dr
Juneau, AK 99801

Eric Treider

From: Eric Treider
Sent: Monday, October 7, 2019 2:52 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed amendments to ethics regulations

TO: Department of Law, State of Alaska

I strongly oppose the proposed changes to regulations 9 AAC 52.140 and 9 AAC 52.160.

Government works best when there are checks and balances. Allowing an Attorney General to certify that it's in the public interest to defend his supervisor, the Governor, and vice versa, is very foolish and incestuous.

The odds of an Attorney General refusing to help defend the Governor are about as high as the odds of a ConocoPhillips-employed legislator supporting higher oil taxes.

The unparalleled success of the current Recall Dunleavy campaign is a direct response to this Governor's disregard for ethics and the rule of law. Providing new regulations which would compel the State to defend the Governor's future malfeasance and corruption will only encourage him to double down on his unethical behavior.

The fact that he has requested these changes in regulations signifies to me that he wishes to act in an even more cavalier fashion and he'd prefer that the citizens of Alaska assume the responsibility for defending him if he pushes the envelope too far.

And why would we insert a provision for confidentiality in an ethics law? If there are allegations of malfeasance or corruption, the citizens have a right to know. This is the same kind of thinking that has guided legislators to write provisions into law that conceal oil companies' profits and production tax credits. The public has a right to know these things!

Ethics laws are supposed to insure transparency and honesty. The proposed changes will hinder transparency and it will remove incentives for the Governor, Lt. Governor and Attorney General to act honorably and in the public interest.

And I do have a question that I would like answered. Who requested the proposed amendments?

Eric Treider
PO Box 3565
Soldotna, Alaska 99669
Phone:

General, Attorney (LAW sponsored)

From: General, Attorney (LAW sponsored)
Sent: Monday, October 7, 2019 9:08 AM
To: lawregulationscomments (LAW sponsored)
Subject: FW: 9 AAC 52.140, 110, 160, 190

From: Paul <[redacted] BOI >
Sent: Monday, October 7, 2019 8:20 AM
To: General, Attorney (LAW sponsored) <attorney.general@alaska.gov>
Subject: 9 AAC 52.140, 110, 160, 190

Dear Sir,

Please forward my objections to appropriate State divisions.

I, Paul Frost, Do Not agree with or support the proposed changes to the above referenced regulations to defend current or future unethical behavior by any State of Alaska appointee votee, or employee.

I pray for the governor and his minions just about everyday, but..., I'm starting to believe you all need to be impeached and tried for treason.

Paul F.

Sent from my Samsung Galaxy smartphone.

General, Attorney (LAW sponsored)

From: General, Attorney (LAW sponsored)
Sent: Monday, October 7, 2019 9:09 AM
To: lawregulationscomments (LAW sponsored)
Subject: FW: 9 AAC 52 140, 110, 160, 190

From: Paul <BOI>
Sent: Monday, October 7, 2019 8:28 AM
To: General, Attorney (LAW sponsored) <attorney.general@alaska.gov>
Subject: 9 AAC 52 140, 110, 160, 190

State of Alaska Governor
Attorney General;

We are now in the Ninth Circle, the Circle of Traitors. Traitors to country! Traitors to fellow man! Traitors to GOD! You, sirs, are charged with betrayin' the principles of all three!

Paul F.

Sent from my Samsung Galaxy smartphone.

Douglas Mertz

From: Douglas Mertz
Sent: Monday, October 7, 2019 12:33 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comments on proposed new regulations
Attachments: 20191005 comments on EBEA change..docx

October 7, 2019

The following are comments on the proposed changes to the regulations of the Alaska Department of Law dealing with the Executive Branch Ethics Act, AS 39.52.010 et seq. [EBEA], by allowing the governor and attorney general to use public funds to defend themselves against ethics complaints.

I am a former assistant attorney general who was responsible for EBEA cases during my time with the Department of Law. Among other things, I filed the first formal complaint against a state employee under the EBEA. After I left the Department of Law, I accepted several contracts from the State Personnel Board, under AS 39.52.310(c), to act in the place of the attorney general to investigate ethics complaints against the governor, lieutenant governor, or attorney general. Under this provision I was empowered to investigate and subpoena those officials and their staff, to make decisions regarding the ethical propriety of those officials' actions, and if necessary to initiate formal complaints against them. I carried out those duties and made reports to the Personnel Board.

With this background, I make the following comments:

1. The proposed regulation is not within the Department of Law's authority to promulgate. Agencies have legal authority to adopt regulations to "implement, interpret, make specific or otherwise carry out the provisions of [a] statute". However, "a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute." [AS 44.62.030, the Alaska Administrative Procedures Act; Chevron U.S.A v. LeResche, 663 P.2d 923, 930-932.] In this instance, the proposed regulation does not make the statutory provisions more clear or specific or otherwise assist in implementing them. Moreover, they are at odds with the statutory structure that has existed and functioned successfully for decades; there is no "necessity" for this additional provision. The drafters of this proposal are simply trying to change the statutory process, enacted into law by the legislature, by means of a regulation, which is not within their statutory authority. The governor and attorney general may not unilaterally change a statute.

2. The proposed regulation would substantially alter the statutory process. Under current law, an ethics complaint an executive branch employee is referred to the attorney general for investigation. But if the complaint is against the governor, lieutenant governor, or attorney general, the matter is referred to a retained special counsel who acts in place of the attorney general. AS 39.52.310(c). The legislature provided that the special counsel would have all the powers given to the attorney general under the EBEA, including the power to investigate, subpoena documents and witnesses, and initiate a formal complaint for hearing. But this proposal would profoundly alter this procedure by granting to the governor and attorney general the authority to spend public funds in response to the state's own investigation and accusations. It may be that in some circumstances the legislature may wish enact a provision to subsidize a defense for state employees accused under the EBEA,

but it has never made that choice during the decades in which the EBEA has existed. It is undeniable that such a change would fundamentally alter the EBEA process; it is a matter for the legislature to enact by statute, not something for the Department of law to create independently through a regulation.

3. The Department of Law has not even cited legal authority for the regulation. The Administrative Procedures Act, AS 44.62.190(d), requires a department proposing a new regulation to provide a paragraph of “reasons” for the proposed action; but the “reasons” paragraph in the formal notice simply has blanks where the reasons or authority should be, except for one: “development of program standards.” There is no way in which a substantive change, potentially requiring substantial state expenditures and changing the existing statutory process for who represents the complainant and the respondent, can be characterized as “development of program standards.” If that phrase could be used as the sole justification for substantive changes in the law through regulations, then any change of substance, even if it alters the existing statutory process, would be permissible. The intent of the legislature must govern and the policies and purposes of the statute should not be defeated, *Mech. Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004).

4. This is a legislative matter, not a regulation matter. We also note that the proposed regulation runs directly contrary to the clear intent of the current statutory scheme, that politics be kept out of administration of the EBEA. The process calls for an independent investigation and determination of potential violations of the code of ethics by the governor and attorney general. But this proposal would create a new exception, for only for two state officials but none others, who would be empowered, by a confidential order, to spend unlimited amounts of public funds, without a specific appropriation, to counter the efforts of the duly appointed independent counsel. Such a profound change in the underlying assumption by the legislature, that politics should be kept out of the process, cannot be justified by one executive branch department making a new regulation. That is clearly not the legislative intention.

We recommend that this regulation be withdrawn. If the Governor wishes to pursue the change, he should submit it to the Alaska Legislature as recommended legislation. That is the only valid way to achieve what the governor and attorney general want.

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We recommend that this regulation be withdrawn. If the Governor wishes to pursue the change, he should submit it to the Alaska Legislature as recommended legislation. That is the only valid way to achieve what the governor and attorney general want.

Brian Sonesen

From: Brian Sonesen
Sent: Thursday, October 10, 2019 1:50 PM
To: lawregulationscomments (LAW sponsored)
Subject: NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LAW

I do not support the use of tax payer fund for the department of law to defend the governor of Alaska against ethic violations.

if the governor does not want to be sued for ethic violations, stop doing unethical actions.

How is the department of law suppose to be objective when reviewing ethic violations and defend the governor at the same time?

why would he side against the governor when he is directly employed by the taxpayers and installed by the governor.

Mr. Sonesen
Juneau AK.

Talia Eames

From: Talia Eames
Sent: Friday, October 11, 2019 11:37 AM
To: lawregulationscomments (LAW sponsored)
Subject: AG Legal Defense of Executive Branch

I would like to speak out AGAINST this proposed change. I don't believe that taxpayers should have to foot the bill for legal defense of the governor against his constituents. Alaska is already understaffed and underfunded- increasing the workload on the AG does not benefit the state and is ethically immoral.

Thank you,

Talia Eames

BOI

Rich Sewell

From: Rich Sewell
Sent: Sunday, October 13, 2019 4:53 PM
To: lawregulationscomments (LAW sponsored)
Cc:
Subject: Proposed Changes In the Regulations of the Dept of Law, 9 AAC 52.140 and 9 AAC 52.160

October 13, 2019

Maria Bahr

1031 W. 4th Ave, Ste 200 by email to: law.regulations.comments@alaska.gov

Anchorage, Alaska 99501

Re: Proposed changes to 9 AAC 52.140

and 9 AAC 52.160

Dear Ms. Bahr,

I object to the proposed changes to the above cited regulations dealing with the Executive Branch Ethics Act because it subverts the intent of the Act. Additionally, I have three questions that I would like to have answered.

1. While the Executive Branch Ethics Act applies to all employees in the Executive Branch, the proposed regulations would uniquely single out and only apply to the Governor, Lieutenant Governor, and Attorney General. Why would it only apply to these three positions?
2. Furthermore, why should these changes not apply to **all** employees in the Executive Branch?
3. The proposed new subsection under 9 AAC 52.160 would address confidentiality. Given that the Executive Branch Ethics Act applies to all public employees doing public business and public funding, I would like to know why there should be any confidentiality at all?

Sincerely,

Richard Sewell

3056 Glacier St

Anchorage Alaska 99503

General, Attorney (LAW sponsored)

From: General, Attorney (LAW sponsored)
Sent: Monday, October 14, 2019 9:26 AM
To: lawregulationscomments (LAW sponsored)
Subject: FW: DOL to take on this function in regards to ethics complaints,

-----Original Message-----

From: Ray Cammisa <BOI>
Sent: Saturday, October 12, 2019 7:39 AM
To: General, Attorney (LAW sponsored) <attorney.general@alaska.gov>
Subject: DOL to take on this function in regards to ethics complaints,

State money or the office of the attorney general should NOT be used to defend the Governor Or any elected official against ethics complaints. Your position is to defend the State of Alaska and the people of the State not the Governor.

Raymond Cammisa
17615 Lacey Dr
Eagle River Ak.99577

Lavelle Perin

From: Lavelle Perin
Sent: Monday, October 14, 2019 10:28 AM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics Complaints Change Comment

Sent from [Mail](#) for Windows 10

Allowing the Governor to cover for the Attorney General and the Attorney General to cover for the Governor is wrong, wrong, wrong. Ethics complaints by their nature are one of the very, very few opportunities for Alaska citizens to rein in the governor and/or the Attorney General. When you have a governor that hand-picks his Attorney General, there is obviously a quid pro quo going on. We are seeing it nationally and dramatically here in Alaska. The Governor is defying and trying to take power from the Legislature already, using his hand-picked Attorney General to back him up. Thanks to hand picked cronies, this is a sad time for America and Democracy. Of course expecting the Attorney General's office to diminish it's own power to protect itself in today's climate is probably a pipe dream, but hope for democracy is still springing forth in my heart. Lavelle Perin

Anna Brawley

From: Anna Brawley
Sent: Monday, October 14, 2019 9:46 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comment on regulation changes in 9 AAC 52, dealing with Executive Branch Ethics Act

To whom it may concern:

This comment is in response to the proposed changes to regulations published in 9 AAC 52, regarding use of state resources to defend the Governor, Lt. Governor or Attorney General in certain situations including an ethics complaint.

I strongly oppose this regulation, and believe its intent as well as its effect is contrary to the purpose of having ethics laws for public officials. I also question the purpose of these changes and to what potential situations they may apply, whether they be current ethics complaints or anticipation of future complaints. In either case, the mere fact that this was brought forward and specifically written for three executive branch positions is suspect: the administration should provide clear justification for why this regulation change is needed.

Others have commented and are better qualified to comment on the legal aspects of this regulation, although I do generally support the objections published to date. Considered from a policy perspective, the regulation is equally ill advised: if the purpose of having state attorneys and legal resources is to counsel and represent the interests of the state, then the client is the State of Alaska--meaning, the government entity and by extension, the interests of all Alaskans, as well as our collective resources, assets, environment, infrastructure, etc. The elected, appointed and hired individuals who collectively do the work of the State are each given an important charge: to perform the work of the state, on behalf of the rest of us who directly or indirectly selected these individuals to serve. The public resources with which they are entrusted are by definition not intended for private use: just as a person could not utilize (without separately paying) their employer's accountant to do their personal taxes, public resources such as state attorneys should surely not be used to defend possible wrongdoing of an elected official brought up as an ethics complaint. Furthermore, the suggestion to allow the Governor, Lt. Governor or Attorney General to make the determination whether defense against an ethics violation--again, using state resources--is *in the best interests of the state* and therefore merits using those resources, is bad policy that disrespects the importance of maintaining ethical behavior in elected office. Not only should state resources not be used in this way in defense of any of these elected positions for allegations of ethics violations, but to allow these three positions--which are typically represented by the same party and are key leadership in an administration--to grant use of state resources for each other's cases, is to undermine the basic concept that public office is to serve the public, and not for personal gain and self-enrichment. This administration seems more than most to struggle grasping this concept, but this quiet attempt to re-write the rules in anticipation of future (or current?) ethics complaints is suspicious at best. Why this rule change? Why now? Why these three positions specifically, and not department commissioners for example?

For an administration that makes such a show about reducing regulations, it is curious to take the time to update this regulation (with the time-cost, of course, of repealing or changing any other regulation which is problematic, which they would claim is almost all of them). For an administration that claims to want an "Honest, Balanced Budget" and unilaterally cuts relatively small or cost-neutral programs with no

documented analysis of impacts, it is curious that 1) they have hired an extremely expensive law firm for another case, above rates of other available private sector counsel in the state; and 2) they are considering allowing use of state staff resources for defense of other future or possibly current cases, which has the time-cost effect of removing resources away from other important legal functions, such as I suppose drafting public notices and language to change or remove all those problematic regulations. And, I suppose, state resources must be freed up to cover the cost of all the lawsuits and responses to ethics complaints!

To reiterate: I strongly oppose this regulation change.

Sincerely,
Anna Brawley
Anchorage resident

Rich Sewell

From: Rich Sewell
Sent: Tuesday, October 15, 2019 9:49 PM
To: lawregulationscomments (LAW sponsored)
Subject: Fwd: Comments, Law File #2019200667, ADDITIONAL REGULATION NOTICE INFORMATION

Dear Ms. Bahr law.regulations.comments@alaska.gov

Regarding proposed regulation changes in 9 AAC 52, the "Additional Regulation Notice Information" states there will be no additional costs in FY 2021, nor in subsequent years. I think this is very implausible.

How did the Department of Law calculate and determine these fiscal estimate?

Sincerely
Richard Sewell
3056 Glacier St
Anchorage Alaska 99508

Christy Everett

From: Christy Everett
Sent: Sunday, October 20, 2019 12:06 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed changes to 9 AAC 52.140 and 9 AAC 52.160

Dear Ms. Bahr,

As a 32 year Alaskan resident, I am strongly opposed to the proposed changes to the regulations governing ethics complaints in 9 AAC 52.140 and 9 AAC 52.160. These regulations would make it possible for the attorney general to authorize state attorneys to provide state-funded legal defense to the governor at his/her sole discretion, with no checks or balances and no reimbursement to the state if the charges are found to be valid. They also allow the governor to authorize the same thing for the attorney general. In addition, "information relating to the defense" of charges to any of these parties would be confidential.

State funds should not be used to defend against valid ethics complaints. This is not in the best interests of the state or the citizens. At a minimum, if the use of state attorneys is authorized for defense of ethics violations, such authorization should require concurrence from someone in the legislative or judicial branches, and reimbursement to the state if the complaint is found to be valid. Allowing all information relating to the defense of ethics complaints against the highest officials in the state is also not in the public interest. Alaskans have a right to know if these officials are acting in an unethical manner.

Please do not adopt these regulations. These changes are substantial, and would promote corruption and misuse of public funds.

Sincerely,

Christine Everett
2308 Robinson Circle
North Pole, AK 99705

BOI

Cindy Lelake

From: Cindy Lelake
Sent: Sunday, October 20, 2019 4:14 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed changes

I believe the proposed regulations changes create a very real potential for conflicts of interest. The proposed changes should be summarily rejected.

Cindy Lelake
Anchorage

Barry Santana

From: Barry Santana
Sent: Monday, October 21, 2019 7:57 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Ethics Executive Order

This is beyond belief! Why should the state provide free legal assistance to 3 people in the executive branch of government for potential ethics violation? I adamantly oppose this idea.

Barry Santana
Wasilla, AK 99623

Jill Reese

From: Jill Reese
Sent: Monday, October 21, 2019 10:09 AM
To: lawregulationscomments (LAW sponsored)
Subject: Comment on proposed regulation RE AG representing Governor et al

I do not support this effort.

robert vernon

From: robert vernon
Sent: Monday, October 21, 2019 11:58 AM
To: lawregulationscomments (LAW sponsored)
Subject: Hey, is the hand-out line for free legal help?

I need some too!

When I'm teaching kids I might go beyond the law getting an obstreperous student to do what I say (to protect other students).

Yet I have to pay for my defense although it all came from the job.

Why should someone over me who is clearly outside the law get this free legal defense?

abrogate me also,

R G Vernon

Sent from my iPhone

From: BOI
Sent: Tuesday, October 22, 2019 1:20 PM
To: Bahr, Maria Pia L (LAW)
Cc: Josephson, Andrew L (LEG); Gray-Jackson, Elvi (LEG); rep.matt.claman@akleg.gov; Hughes, Shelley (LEG); Fields, Zack (LEG); rep.jonathan.kreiss-tomkins@akleg.gov; Coghill, John (LEG); andrewk@ktoo.org; atreinen@ktuu.com; jbrooks@adn.com; bbohrer@ap.org; mthiessen@ap.org; dermatmcole@gmail.com; tsabo@ktuu.com; smaguire@ktuu.com; nherz@alaskapublic.org; jeremy@ktoo.org
Subject: ????? Proposed Changes in the regulations of DOL/Ethics ?????

Dear Ms. Bahr,

Please consider the questions below as they pertain to the proposed changes to regulations by the Department of Law. Media reports have stated the following statements:

In an emailed response to questions, Department of Law spokesperson Cori Mills wrote that the proposal resulted from a review for addressing ethics complaints several months ago....

*Mills also wrote that the change would help lessen the risk the complaint process **"is used to harass or becomes predatory."***

<https://www.alaskapublic.org/2019/10/09/rule-change-would-allow-attorney-general-to-represent-governor-in-ethics-complaints/>

*Finally, the Department of Law says that the new regulation will **mitigate the risk that complaints are used to "harass or becomes predatory,"** something Claman dismissed as being part of the job.*

<https://www.ktuu.com/content/news/Critics-raise-concern-about-new-proposed-regulation-from-the-Department-of-Law-562107381.html>

*As to what prompted the new regulation, Mills' statement said in part, "In addition to streamlining the ethics complaint process, this proposed change would also help to **mitigate the risk that the ethics complaint process is used to harass or becomes predatory."***

<https://www.adn.com/politics/2019/10/04/new-rule-could-put-state-on-defense-when-an-alaska-governor-is-accused-of-an-ethics-violation/>

1. Is there evidence that the complaint process was **used to harass or became predatory?**
2. Could you please provide instances where the complaint process was **used to harass or became predatory?**
3. Could you please provide specifics and define how the complaint process could be **used to harass or becomes predatory?**
4. Could you please specifically explain exactly how the proposed regulations would **mitigate the risk that complaints are used to "harass or becomes predatory?"**

Your time and attention to this very important issue and the above questions are appreciated.

Sincerely,
Andrée McLeod

Adam Grove

From: Adam Grove
Sent: Saturday, October 26, 2019 7:25 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comments re: The Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)

This proposed change is simply a terrible idea. The current regulations allow the governor, lieutenant governor, and attorney general to be reimbursed if legal claims against them are found to be invalid . The State should not be paying for this kind of legal work. It is inappropriate and sets a very bad precedent. I see no need for this change to state law unless these three folks are planning to commit ethical violations and don't want to pay to defend themselves when someone finds out. Please do not make these changes. Now, more than ever, we need good provisions in place to protect the integrity of our government.

Thank you,

Adam Grove
4701 E 145th Ave
Anchorage AK 99516

Lavelle Perin

From: Lavelle Perin
Sent: Tuesday, October 29, 2019 11:24 AM
To: lawregulationscomments (LAW sponsored)
Subject: Re: Ethics Complaints Change Comment

So, what does this new subsection say? A guess? Perhaps it says that any ethics complaints will be held confidential? {lease supply the exact wording of the new subsection.

On 10/29/2019 10:48 AM, lawregulationscomments (LAW sponsored) wrote:

Thank you for submitting comments and questions regarding proposed changes to the ethics regulations. Pursuant to AS 44.62.213(b), the Department of Law has aggregated similar questions and Law's responses are available here:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=195927>

From: Lavelle Perin <BOI >
Sent: Monday, October 14, 2019 10:28 AM
To: lawregulationscomments (LAW sponsored) <law.regulations.comments@alaska.gov>
Subject: Ethics Complaints Change Comment

Sent from [Mail](#) for Windows 10

Allowing the Governor to cover for the Attorney General and the Attorney General to cover for the Governor is wrong, wrong, wrong. Ethics complaints by their nature are one of the very, very few opportunities for Alaska citizens to rein in the governor and/or the Attorney General. When you have a governor that hand-picks his Attorney General, there is obviously a quid pro quo going on. We are seeing it nationally and dramatically here in Alaska. The Governor is defying and trying to take power from the Legislature already, using his hand-picked Attorney General to back him up. Thanks to hand picked cronies, this is a sad time for America and Democracy. Of course expecting the Attorney General's office to diminish it's own power to protect itself in today's climate is probably a pipe dream, but hope for democracy is still springing forth in my heart. Lavelle Perin

Mary Corcoran

From: Mary Corcoran
Sent: Tuesday, October 29, 2019 2:56 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comments: changes in 9 AAC 52 of the AAC

I oppose adopting changes to regulations 9 AAC 52.140 and 9 AAC 52.160 proposed by the Department of Law.

1. The public's assets should not be used to defend the governor, lieutenant governor or attorney general when they have been accused of ethics violations. Individuals in these positions need to be responsible for their actions and their consequences. If those individuals have violated ethics law, it is not the state's responsibility to pay their bill.
2. Given the logic of this change, why restrict it to these positions. Why not every State and Local position, whether appointed or elected? Doing any of this in the "public interest" is nothing less than subjective and at worst—a ripoff of public funds.
3. Because the AG is appointed by the governor, the AG could be put in a compromising situation to determine whether or not his/her boss should receive public assets to defend him/herself. The AG is the AG for the State not others' personal lawyer. This could clearly be a conflict of interest.
4. We cannot know if confidentiality is warranted as laid out in 9 AAC 52.160 amended by adding subsection h. The public has the right to know if there is a violation or not and the details that support such a judgment. These individuals serve the public—not themselves or their interests.
5. These changes seem contrary to the legislature's intent. That alone should be reason to reject them. It should be up to our elected legislators to sanction these changes. The cost of such a defense does cost the state money especially if it's outsourced to a Washington DC discount lawyer. No guarantees here.

Finally I urge the Department NOT to adopt these changes as they are ripe for abuse and undermining confidence in the integrity of any of the involved individuals.

Mary Corcoran
Delta Junction, AK 99737

Arthur Abel

From: Arthur Abel
Sent: Wednesday, October 30, 2019 9:59 AM
To: lawregulationscomments (LAW sponsored); Vance, Sarah (LEG)
Subject: Purposed changes in ethics regulation.

Maria Bahr,

I hope I am contacting the right person on this issue. I wish to make a public comment that I am opposed to the following regulation change. I believe this regulation change will make it easier for elected representatives to potentially commit unethical behavior and get the State to foot the bill. Having representatives pay there own legal fees encourages ethical behavior and encourages reasonable conflict resolution if people disagree on what is ethical.

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

Best Regards,
Arthur Abel

BOI

CONFIDENTIALITY NOTICE: The content of this e-mail is confidential and intended for the recipient only. If you have received this e-mail in error please delete it immediately.

Sonja Kawasaki

From: Sonja Kawasaki
Sent: Wednesday, October 30, 2019 4:18 PM
To: lawregulationscomments (LAW sponsored)
Cc: Josephson, Andrew L (LEG); Rep. Gabrielle LeDoux; Sen. Bill Wielechowski
Subject: Opposition to AG Clarkson's Proposed Regulations - Department of Law Attorneys to Defend Ethics Violations of Governor, Lt. Governor, & AG
Attachments: Letter to AG Clarkson re Oppose Regulations LAW Defend Ethics Violations Governor_Lt. Governor_AG.pdf; Legislative Legal Memo - AG Proposed Regulations LAW Defend Ethics Violations Gov_Lt. Gov_AG.pdf

Attached are a letter and legal memo I have just sent to Attorney General Clarkson from three state lawmakers who oppose adoption of the proposed regulations which would permit Department of Law attorneys to defend the Governor, Lt. Governor, and Attorney General against allegations of violations of the Executive Branch Ethics Act.

As the letter notes, the legislators wish to file this letter and the referenced memo as their formal comments to the regulations during the public comment period which ends November 4.

Please feel free to contact me with questions.

Regards,
Sonja Kawasaki

SONJA KAWASAKI, P.E., J.D.
CHIEF OF STAFF
OFFICE OF SENATOR BILL WIELECHOWSKI
State Capitol, Room 9
Juneau, AK 99801
907-465-2435



SONJA KAWASAKI, P.E., J.D.

CHIEF OF STAFF

OFFICE OF SENATOR BILL WIELECHOWSKI

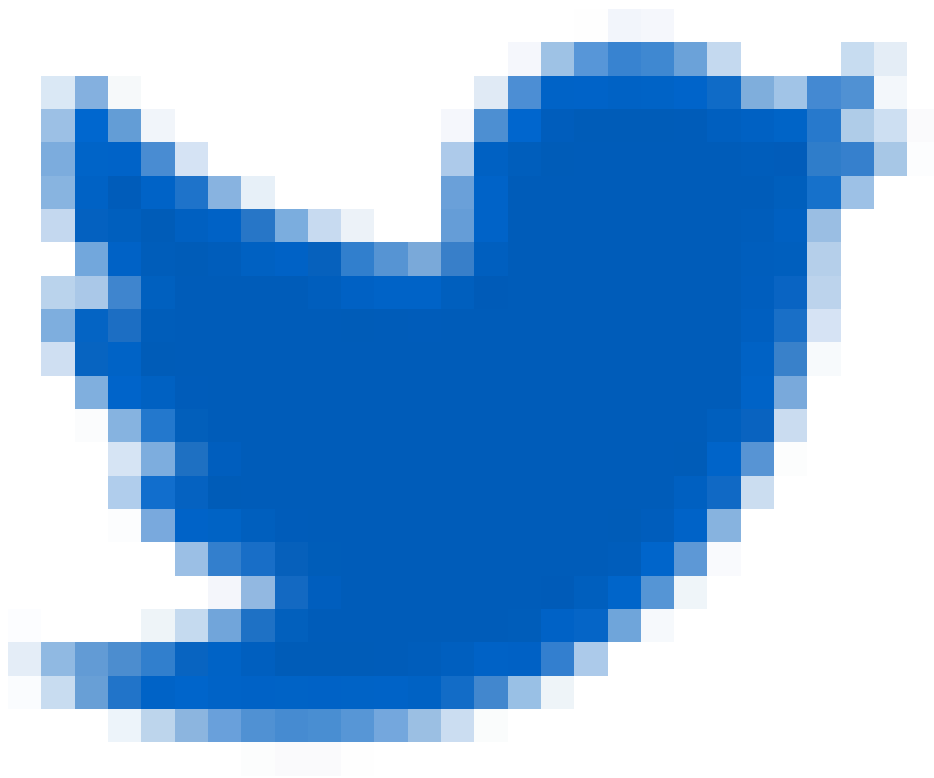
State Capitol, Room 9

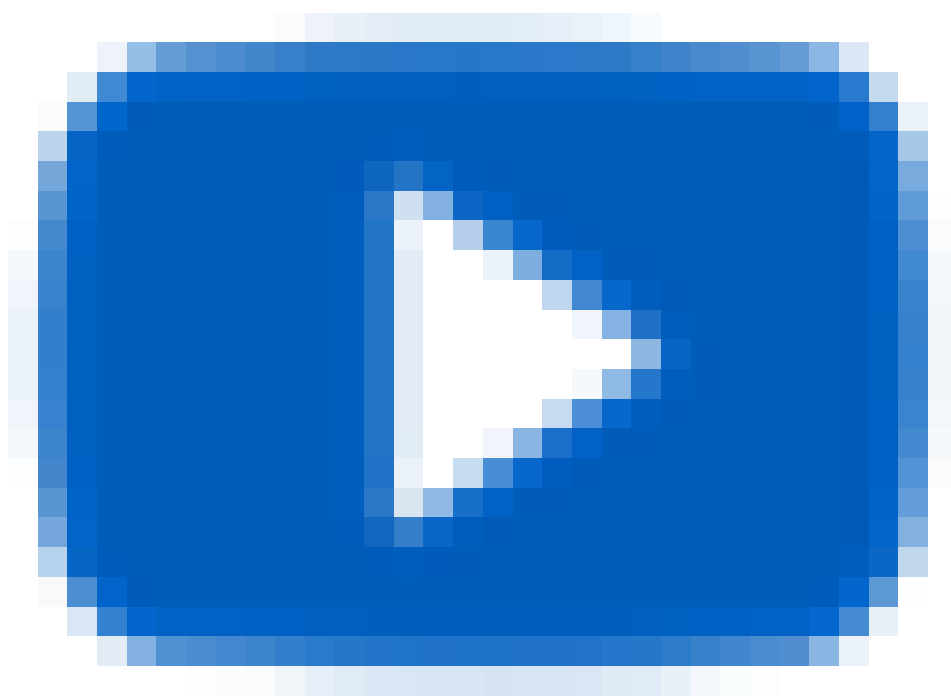
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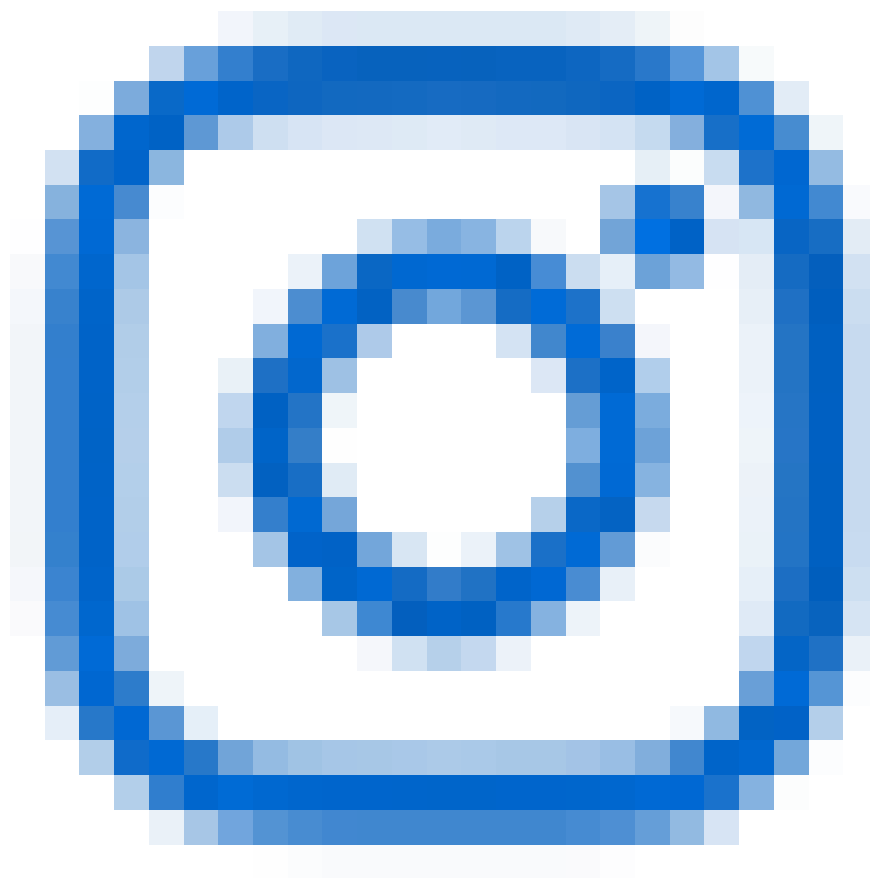
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Juneau, Alaska 99801-1182
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Corrected memo: October 21, 2019, moved Assistant Attorney General Steven Slotnick quote from page 3 to page 2 and edited paragraph.

MEMORANDUM

October 17, 2019

SUBJECT: Executive Branch Ethics Act — proposed regulations
(Work Order No. 31-LS1206)

TO: Senator Bill Wielechowski
Attn: Nate Graham

FROM: Daniel C. Wayne
Legislative Counsel



You have asked two questions pertaining to recently proposed regulations, which are addressed below. On October 1, 2019, the Department of Law (department) posted notice of three proposed regulations relating to the Executive Branch Ethics Act (the Act), and invited public comment during a 30-day period before they are adopted. The proposed regulations read:

9 AAC 52.140 is amended by adding new subsections to read:

(f) If a person brings a complaint alleging a violation under AS 39.52.110-39.52.190 or this chapter by the governor or the lieutenant governor, the Department of Law may provide legal representation to the governor or lieutenant governor to defend against the complaint if the attorney general makes a written determination, in the attorney general's sole discretion, that the representation is in the public interest.

(g) If a person brings a complaint alleging a violation under AS 39.52.110-39.52.190 or this chapter by the attorney general, the Department of Law may provide legal representation to the attorney general to defend against the complaint if the governor makes a written determination, in the governor's sole discretion, that the representation is in the public interest. (Eff. 4/24/94, Register 130; 12/22/2010, Register 196; am __/__/__, Register __)

Authority: AS 39.52.310 AS 39.52.330 AS 39.52.950 AS 39.52.320
AS 39.52.350

9 AAC 52.160 is amended by adding a new subsection to read:

(h) Notwithstanding (a) - (g) of this section, information received by the Department of Law and the attorney general related to the defense of a complaint alleged under 9 AAC 52.140(f) and (g) is confidential.

(Eff. 4/24/94, Register 130; am __/__/__, Register __)
Authority: AS 39.52.340 AS 39.52.420 AS 39.52.950

(1) Do the proposed regulations raise issues under the Constitution of the State of Alaska?

The following three constitutional issues are raised by the proposed regulations.

(A) Public purpose required.

Article IX, sec. 6 of the Alaska Constitution states that no "appropriation of public money [may be] made, or public property transferred . . . except for a public purpose."¹ The proposed use of state resources to defend the governor, the lieutenant governor, and the attorney general against ethics complaints, regardless of the outcome, under the Act would confer a private benefit on those three public officers.²

The benefit conferred under the proposed regulations is unprecedented. In a 1994 informal opinion from the Office of the Attorney General, Assistant Attorney General Steven Slotnick concluded:

[A]n expense incurred in defense of an Ethics Act complaint, or any penalty levied as a result of that complaint, is the responsibility of the public officer who was the subject of the complaint. The State will not provide a defense or indemnification for actions under the Executive Branch Ethics Act.³

In 2009, Governor Sarah Palin was the subject of several ethics complaints, some of which were dismissed. In a letter to Governor Palin's chief of staff, Attorney General Dan Sullivan acknowledged that the state apparently had never defended or covered the legal expenses of an accused public officer in an Ethics Act proceeding.⁴ He

¹ See also 1994 *Inf. op. Att'y Gen.* (Jan. 1; 663-94-0147).

² The financial value of the benefit would be substantial, as it saves the cost of hiring a lawyer. Moreover, the intrinsic value of a defense provided by the Department of Law in a complaint proceeding under the Act, considering that the duties of the Department of Law have traditionally included interpreting and administering the Act and assisting and advising the personnel board during complaint proceedings, would be more than nominal.

³ 1994 *Inf. Alaska Op. Atty. Gen.* at *2 (June 3, 663-94-0289)

⁴ 2009 *Op. Alaska Att'y Gen.* at *6 (August 5).

recommended then that the state reimburse private legal expenses incurred by a public officer who *successfully* defends against an ethics complaint.⁵ He explained as follows:

Public service should not subject public officers, who are assumed by law to be acting ethically, to personal financial liabilities when ethics proceedings confirm that they acted appropriately. Therefore, in examining whether the state may defend or pay the legal expenses for public officers in ethics proceedings, *the critical question is whether there is an approach that ensures that a public purpose is advanced while at the same time encouraging compliance with the Ethics Act by public officers.*^[6]

Subsequently the attorney general adopted regulations 9 AAC 52.040(c) and (d), allowing the state to pay, and a public officer to receive, reimbursement of private legal expenses in ethics complaints, in some instances, if the public officer is exonerated.

The proposed regulations authorize a state funded defense by the Department of Law — before a finding of the validity of the complaint and in the "sole discretion" of the attorney general — rather than authorizing reimbursement for defense expenses after a finding of no violation of the law as proposed in 2009 and allowed by 9 AAC 52.040(c) and (d).

According to the Act, "compliance with a code of ethics is an individual responsibility."⁷ If a court were to find that using state resources to shield one or more of the three public officers from the potential consequences of a complaint under the Act has a public purpose, the court may also find that purpose is outweighed by the public purpose of the Act itself, because otherwise, as discussed further elsewhere in this memorandum, the proposed regulations would significantly undermine the goals of the Act.⁸ In considering

⁵ As noted later in this memorandum, the letter advises against having the Department of Law directly defend public officers who are subject to ethics complaints.

⁶2009 *Op. Alaska Att'y Gen.* at *6 (August 5) (emphasis added).

⁷ AS 39.52.010(a)(7).

⁸ The purpose of the Act is discernible from AS 39.52.010(a), which reads:

Sec. 39.52.010. Declaration of policy. (a) It is declared that

(1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;

(2) a code of ethics for the guidance of public officers will

(A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;

whether it serves a public purpose to relieve the three public officers from the burdens associated with defending against frivolous ethics complaints, for example, a court may note that the legislature has already addressed that purpose with provisions throughout the Act that require or allow complaints with insufficient merit to be dismissed, at multiple stages of the complaint procedure.⁹

(B) Separation of powers.

The power to enact and change the law of the state is a legislative power.¹⁰ The separation of powers doctrine is implied in the Constitution of the State of Alaska,¹¹ and it precludes any exercise of the legislative power of state government by the executive branch of government, except as provided by the Constitution of the State of Alaska.¹² To the

-
- (B) improve standards of public service; and
 - (C) promote and strengthen the faith and confidence of the people of this state in their public officers;
 - (3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;
 - (4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
 - (5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
 - (6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
 - (7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

⁹ See, AS 39.52.320 and 39.52.370.

¹⁰ Article II, sec. 1, Constitution of the State of Alaska: "The legislative power of the State is vested in a legislature"

¹¹ *Bradner v. Hammond*, 553 P.2d 1, 4 - 5 (Alaska 1976) (separation of powers doctrine implied in state's constitution).

¹² *Id.* The Attorney General has no power to declare a law unconstitutional. In *O'Callaghan v. Coghill*, 888 P.2d 1302 (Alaska 1995), the Alaska Supreme Court noted:

extent that the Constitution of the State of Alaska does provide for the exercise of a legislative power by the executive branch, that power will be narrowly construed. "[T]he separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision."¹³

Article III, sec. 1 of the Constitution of the State of Alaska vests the executive power of the state in the governor, and the governor's authority to exercise that power is further described in art. III, sec. 16 of the Constitution of the State of Alaska.¹⁴ Those constitutionally created executive powers do not include the power to adopt regulations without legislative authority. The power of the executive branch to adopt regulations is delegated to the executive by the legislature through enactment of legislation, either explicitly, as in AS 39.52.950, or implicitly.

Significantly, AS 39.52.950 expressly limits the attorney general's regulatory authority. It reads:

Sec. 39.52.950. Regulations. The attorney general may adopt regulations under the Administrative Procedure Act *necessary* to interpret and implement this chapter. (Emphasis added).

In addition, the *Drafting Manual for Administrative Regulations, (the Manual)* published by the State of Alaska, Department of Law, similarly limits the attorney general's regulatory authority. The Alaska Supreme Court has held that "[A]gency action taken in the absence of *necessary* regulations will be invalid."¹⁵ The Alaska Supreme Court has

For an attorney general to stipulate that an act of the legislature is unconstitutional is a clear confusion of the three branches of government; it is the judicial branch, not the executive, that may reject legislation. . . . An attorney general can have no authority to be the binding determiner that legislation is unconstitutional.

¹³ *Id.* at 7.

¹⁴

SECTION 16. Governor's Authority. The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

¹⁵ *U.S. Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140, 142 (Alaska 1971) (Emphasis added).

said that the use of *the Manual* is required in formulating administrative regulations.¹⁶ According to *the Manual*, "[T]he APA and case law require that a regulation be "consistent with the statute," "reasonable," and "reasonably necessary." It is unlikely that a court would find the proposed regulations "necessary to interpret and implement" the Act. First, nothing like the representation allowed by the regulations has ever existed in connection with Act, which has been interpreted and implemented for decades. Second, it is virtually indiscernible how the statutes cited by the Department of Law as authority for the proposed regulations allow, create a perceived need for, or suggest that state resources may or should be used to provide or pay for defending a public officer in an ethics complaint under the Act. There are only two references in the Act to representation. Under AS 39.52.340(b) the subject of an ethics complaint has the right to contact an attorney if they choose. Under AS 39.52.360(d) the subject of an ethics complaint may (or may not) be represented by counsel. It is not likely a court would find that adoption of the proposed regulations is necessary to interpret and implement these two provisions. Therefore, they may find that the regulations are invalid.

According to *the Manual*,

When an agency adopts a regulation, it is acting in place of the legislature, usually by virtue of the legislature's general delegation of that power in a specified area. A regulation cannot waive or disregard a statutory requirement.^[17]

And,

to determine whether a regulation conflicts with statute, the court will use a reasonable and common-sense construction consonant with the objective of the legislature. The intent of the legislature must govern and the policies and purposes of the statute should not be defeated.^[18]

The proposed regulations do not meet these requirements. AS 39.52 does not contain a single provision that explicitly or implicitly authorizes the department to adopt the regulations it has proposed. The absence of a provision that prohibits adoption of a regulation does not imply a delegation of authority to adopt one; a delegation that broad would be unconstitutional, even if it were explicit. According to one past attorney general, "delegations of legislative authority are only permissible where the legislature establishes an 'intelligible principle' to guide and confine administrative decision

¹⁶ *The Manual*, page 101, (2018), citing *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, 1181 n.7 (Alaska 1977).

¹⁷ *The Manual*, page 101, (2018), citing *E.g., Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227, 1229 (Alaska 2003), and *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983).

¹⁸ *The Manual*, page 103, (2018) citing *Mech. Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004).

making."¹⁹ A statute allowing adoption of any regulation not otherwise prohibited by that statute, or an interpretation of a statute that reaches a similar conclusion, does not meet that requirement. The legislature has in fact provided guidance, including AS 39.52.010, AS 39.52.110, and AS 39.52.950, to inform decision making by the attorney general with respect to regulations.

In considering how much deference to give to an interpretation of law by the attorney general that the Act authorizes the proposed regulations, a court may also take the Department of Law's past practice into account. The Alaska Supreme Court has stated that "if agency interpretation is neither consistent nor longstanding, the degree of deference it deserves is substantially diminished."²⁰ In this instance, the proposed regulations are inconsistent with the Department of Law's longstanding interpretation and practice as reflected in the Sullivan attorney general opinion, discussed above.

(C) Equal protection.

The regulations raise a constitutional issue under the equal protection clause in art. I, sec. 1 of the Constitution of the State of Alaska. The Alaska Supreme Court has said, "[I]n considering state equal protection claims based on the denial of an important right we ordinarily must decide first whether similarly situated groups are being treated differently."²¹ Whether two entities are similarly situated is generally a question of fact.²² The governor, lieutenant governor, and the attorney general are three of many public officers who are subject to the Act.²³ Since the Act first became law, all public officers faced with ethics complaints have had to rely on their own private resources to defend against the complaints.

The proposed regulations would allow the state to provide, and the governor, lieutenant governor, and the attorney general to receive, state resources for the purpose of defending against ethics complaints; however, all other public officers would not be eligible for that benefit. If facts show that the remaining public officers are at a lesser risk of ethics complaints by virtue of the offices they hold, irrespective of their individual conduct, a

¹⁹ *The Honorable Frank Rue*, 1995 WL 848549, at *5, citing *State v. Fairbanks North Star Borough*, 736 P.2d at 1143.

²⁰ *Totemoff v. State*, 905 P.2d 954, 968 (Alaska, 1995) (citing *Bowen v. American Hosp. Ass'n*, 476 U.S. 610, 646 n. 34, 106 S. Ct. 2101, 2122 n. 34).

²¹ *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 966 (Alaska, 2005) (internal footnotes omitted).

²² *Id.* at 967.

²³ Under AS 39.52.960(21), public officers covered by the Act include all employees and officers in the exempt, partially exempt, or classified service in the executive branch.

court may determine they are not similarly situated as the governor, lieutenant governor, and attorney general. The Court has said:

[I]n "clear cases" we have sometimes applied "in shorthand the analysis traditionally used in our equal protection jurisprudence." If it is clear that two classes are not similarly situated, this conclusion "necessarily implies that the different legal treatment of the two classes is justified by the differences between the two classes."^[24]

However, because individual conduct with respect to the Act may determine the number and type of ethics complaints against a public officer, regardless of whether they are elected, appointed, or hired based on merit, a court may not be able to distinguish the governor, lieutenant governor, and attorney general from the remaining public officers covered by the Act, for purposes of an equal protection analysis.

The Alaska Supreme Court applies a sliding scale in reviewing challenges under the equal protection clause and is more protective of the right than federal courts are. At a minimum, the state must provide a rational justification for treating similarly situated individuals differently.²⁵

In *Malabed v. North Slope Borough*, the Court summarized the equal protection test as follows:

[T]he Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment. To implement Alaska's more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, we determine the weight of the individual interest impaired by the classification; second, we examine the importance of the purposes underlying the government's action; and third, we evaluate the means employed to further those goals to determine the closeness of the means-to-end fit. An appropriation that cannot be justified under this minimum standard would likely violate the equal protection clause of the Alaska Constitution.^[26]

²⁴ *Id.* (internal footnotes omitted).

²⁵ See *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

²⁶ *Malabed v. North Slope Borough*, 70 P.3d 416, 420 - 421 (Alaska 2003).

Under this test, as the importance of the individual rights affected increases, so does the burden on the state to show that the state's goal justifies the intrusion on the individual's interests in equal treatment and that the state's goal is rationally related to the means chosen to achieve the goal. A person's interest may be accorded a low level of protection from discrimination under the state equal protection clause, if the court determines that the discrimination implicates only an economic interest.²⁷ However, a court would probably find that the interest of the remaining public officers covered by the Act is not purely economic because, from the governor down to public officers at the lowest level of government, a public officer's personal and professional reputations are both on the line when an ethics complaint is filed against that officer. If the court finds the interest at stake for the public officers denied free representation by the state is not purely economic, the state's burden under the second and third parts of the three-part sliding scale equal protection test increases.

(2) Does the Act permit representation of the Governor, the Lieutenant Governor, or the Attorney General as proposed by the pending regulations?

"When a regulation conflicts with a statute, the regulation must yield."²⁸ As discussed in (A) - (D), below, the proposed regulations conflict with several statutes and, as discussed more specifically in (E) below, they may also raise significant ethical conflicts of interest.

(A) The proposed regulations conflict with the Act's prohibitions on favoritism and self-enrichment.

The proposed regulations conflict with AS 39.52.010(a)(5), which reads, "in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism." As noted elsewhere in this memorandum, the proposed regulations would provide a significant benefit — free representation by the agency that interprets and administers the Act in concert with the personnel board, the body responsible for determining the outcome of ethics complaints — to only three of the many public officers who are covered by the Act. This may or may not violate the equal protection clause of the Constitution of the State of Alaska, but it clearly constitutes favoritism.²⁹

²⁷ See *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

²⁸ *The Manual*, page 112, (2018), citing *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004).

²⁹ "Favoritism" is not defined by the Act. When interpreting a statute in the absence of a statutory definition for a term, a court gives the term its commonly understood definition, and may rely on a dictionary. *Alaskans for Efficient Government, Inc. v. Knowles*, 91 P.3d 273, 276 n. 4 (Alaska 2004), quoting *2A Norman J. Singer, Sutherland Statutory Construction* sec. 47.28 (6th ed. 2000). According to *Webster's New World Dictionary of the American Language, Second College Edition*, "favoritism" means "the showing of more kindness and indulgence to some person or persons than to others."

The proposed regulations conflict with AS 39.52.120(b)(3), which provides that a public officer may not "use state time, property, equipment, or other facilities to benefit personal or financial interests." Authorizing the use of state time for the defense of a public officer in an ethics complaint proceeding, or using state time for defense of that public officer, would be contrary to this rule.

The proposed regulations conflict with AS 39.52.120(b)(4), which provides that a public officer may not take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest. The proposed regulations would at the very least shield the governor, the Lt. governor and the attorney general from public scrutiny in connection with an ethics complaint, regardless of the outcome. They would also give the attorney general sole discretion over whether state resources can be used to defend the governor against an ethics complaint, and vice versa. It would be surprising if a governor or attorney general, when deciding how to exercise that discretion, did not give some weight to how their decision might affect a similar calculation by their counterpart, if in the future their discretion-exercising roles are reversed.

The attorney general serves at the pleasure of the governor, and depends on the governor's good will for employment. And because the attorney general is a political appointee of the governor's and the governor's top legal advisor, the governor has a vested personal interest in the attorney general's success; an attorney general whose reputation is damaged by a successful ethics complaint may weaken the governor's chances of being reelected or, increase the chances that a governor is recalled by the electorate. In exercising the sole discretion described in the proposed regulations, the governor and the attorney general would each be faced with a choice between taking or withholding official action that will affect a matter in which they have a personal interest.

The proposed regulations conflict with AS 39.52.120(b)(5), which provides that a public officer may not "attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time." A decision under the proposed regulations that the department of law will provide a defense of the governor, Lt. governor, or attorney general amounts would be contrary to this rule. Regardless of whether some aspect of the decision may or may not advance a public purpose, it is beyond debate that a public officer who receives a free defense in an ethics complaint matter, while shielded from public scrutiny behind a cloak of confidentiality made impenetrable by a regulation that only applies to them, is in receipt of a substantial private benefit.³⁰

³⁰ For purposes of the Act, "benefit" is defined under AS 39.52.960(3), as follows:

(3) "benefit" means anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to

(B) The proposed regulations may conflict with a prohibition on the use of state assets or resources for a partisan political purpose.

The proposed regulations may conflict with AS 39.52.120(b)(6), which provides that a public officer may not "use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes." Under AS 39.52.120(b)(6), "for partisan political purposes"

- (A) means having the intent to differentially benefit or harm a
 - (i) candidate or potential candidate for elective office; or
 - (ii) political party or group;
- (B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

The proposed regulations provide a free legal defense for only three of the thousands of public officers who are subject to the Act. Because those three hold political positions (two are elected, and one of those two appoints the third), and most of the public officers excluded by the regulations do not, the proposal that they receive a free defense presumably has to do with a concern that they may be more vulnerable to politically-motivated attacks in the form of meritless ethics complaints. If so, the purpose of the regulations is political, and, depending on applicable facts, using or authorizing the use of state services to defend a public officer who is a candidate or potential candidate for public office may constitute a partisan political use of state resources contrary to this ethics rule.

(C) The proposed regulations conflict with statutes that make ethics complaint proceedings public.

The proposed regulations also conflict with AS 39.52.335, AS 39.52.340(a), and AS 39.52.350(a), which provide that records of an ethics complaint hearing are public, at certain stages of the complaint procedure. While confidentiality aids investigation and resolution of complaints, "the state can protect its interest in the integrity of Ethics Act investigations by creating careful internal procedures."³¹ The proposed regulations would shroud ethics complaint hearings with secrecy when the subject of the complaint is the governor, Lt. governor, or attorney general, but not when other public officers are the subject of a complaint. Transparency in the hearing process may reassure the public that the Act is being applied fairly and without bias and favoritism, to all public officers; the absence of transparency may have the opposite effect on public perception. Because the proposed regulation regarding confidentiality conflicts with statutes enacted by the legislature, a reviewing court may determine that the proposed regulation regarding

pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value;

³¹ 2009 Op. Alaska Att'y Gen. *3 (August 5).

confidentiality is invalid.³²

(D) Unwarranted benefits or treatment and improper motivation.

Under AS 39.52.110(a), "[T]he legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust." Under AS 39.52.120(a), "a public officer may not . . . intentionally secure or grant unwarranted benefits or treatment for any person."³³ Under 9 AAC 52.040(a) and (b), "unwarranted benefits or treatment" as used in AS 39.52.120 includes:

(1) *a deviation from normal procedures for the award of a benefit, regardless of whether the procedures were established formally or informally, if the deviation is based on the improper motivation; and*

(2) *an award of a benefit if the person receiving the benefit was substantially less qualified, in light of the formal or informal standards set out for the award, than another person who was or reasonably should have been considered for the award if the award is based on an improper motivation.*

(b) *A public officer may not grant or secure an unwarranted benefit or treatment, regardless of whether the result is in the best interest of the state. (Emphasis added).*

The proposed regulations seem to create an exception allowing an otherwise prohibited use of state resources when the attorney general or the governor, in their "sole discretion," determine the use would be in the public interest. The legislature did not create a "public interest" exception in the Act, or grant authority for the attorney general to adopt a regulation creating one. Past attorneys general may have recognized this when they adopted and enforced 9 AAC 52.040(b), prohibiting unwarranted benefits or treatment.

Similarly, 9 AAC 52.020 provides that:

A public officer may not take or withhold official action on a matter if the action is based on an improper motivation.

Adoption of a the proposed regulations allowing the attorney general or the governor, in their sole discretion, to require the department of law to represent an elected or politically appointed public officer in an ethics complaint under the Act allows the taking or

³² As noted above, "[I]f a regulation conflicts with a statute, the regulation must yield." *The Manual*, page 112, (2018), citing *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004).

³³ AS 39.52.120(a).

withholding of official action that in each instance would beg the question, "was it based on an improper motivation?"

(E) Ethical conflicts of interest.³⁴

As former Attorney General Dan Sullivan advised:

[H]aving the Department of Law directly defend public officers against ethics complaints could present conflict-of-interest challenges because of the attorney general's role in interpreting, enforcing, and prosecuting violations of the Ethics Act.

...

It could also create difficulties under the Alaska Rules of Professional Conduct because of the conflicting obligations of the state attorneys and their supervisors.^[35]

AS 44.23.020(a) states: "The attorney general is the legal advisor of the governor and other state officers." A court would probably find that this role is limited to advising the governor and state officers in their official capacity, not as individuals. The public may perceive that a person representing or authorizing representation of the governor, the Lt. governor, or the attorney general in an ethics complaint puts the represented person under an obligation to the person providing or authorizing the representation. Conversely, it may seem to the public that a person in a position to provide or authorize the representation may not be able to refuse to provide or authorize it, because of their professional or political relationship with the person who is the subject of the complaint. This runs counter to the purposes of the Act set forth in AS 39.52.010 and cited elsewhere in this memo. There is also a conflict between the statutory duties of the attorney general and assistant attorney general, and the new duties imposed on them by the proposed regulations. For example, under AS 39.52.310(a) the attorney general may initiate an ethics complaint against the governor or Lt. governor, and, under AS 39.52.335(a), is required to forward complaints to the personnel board. This conflicts with the power, under the proposed regulations, to decide whether the governor or Lt. governor may be defended by the Department of Law.

Beyond being the legal advisor to the governor and other state officers in their official capacities, the attorney general has other statutory duties, including duties under

³⁴ Ethical conflicts of interest under the Alaska Rules of Professional Conduct (ARPC) are outside the scope of this memo. However, defending ethics complaints under the proposed regulations may create a conflict of interest under the ARCP 1.7 and 1.8, for an attorney general or assistant attorney general charged with providing that defense, because it requires that person, as a lawyer, to balance their duty to one client (the State of Alaska) and another client (the governor, the Lt. governor, or the attorney general).

³⁵ 2009 *Op. Alaska Att'y Gen.* at *7 (August 5) (footnote omitted).

AS 44.23.020(b),³⁶ but those duties do not include a duty to defend matters, like ethics complaints, that are prosecuted by the state; in fact, they include the opposite. The attorney general has a statutory duty to "represent the state in all civil actions in which the state is a party,"³⁷ and the duty to "prosecute all cases involving violation of state law."³⁸ A violation of the Act is a violation of state law, and the Act explicitly requires, in hearings to determine the outcome of ethics complaints under the Act, that "the attorney general shall present the charges before the hearing officer."³⁹ At the hearing, the attorney general has the additional burden of demonstrating by a preponderance of the evidence that the subject of the accusation has, by act or omission, violated the Act.⁴⁰

Because of these statutory requirements, an attorney general or assistant attorney general who elects or is directed to defend a public officer in an ethics proceeding under the Act would have a conflict of interest. Moreover, the regulations create a situation where the governor, attorney general, and assistant attorneys general are all likely to have to weigh the potential personal consequences—on themselves and on each other—of authorizing or not authorizing the representation, or undertaking or refusing to undertake the representation. That may be especially difficult to weigh objectively and professionally, with the best interests of the state in mind, when the personal goodwill of a supervisor or appointing authority is at stake.

Finally, the entire Department of Law may be in a legally and ethically untenable predicament if the proposed regulations are adopted. As noted by former Attorney General Dan Sullivan regarding whether the Department of Law should defend the governor, Lt. governor or attorney general in ethics complaints:

. . . the role of the attorney general and Department of Law is to interpret, implement, and enforce the Act, with the goal of promoting the Act's purposes.

³⁶ The attorney general also has an ongoing duty, under AS 44.23.020(h), to review federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions that may be in conflict with and that may preempt state law, and submit a report to the legislature on or before January 15th of each year. Although U.S. Supreme Court decisions are not on this list of items requiring review, it is reasonable to assume that the attorney general would review relevant federal court decisions and render advice regarding their effect on laws in Alaska.

³⁷ AS 44.23.020(b)(3).

³⁸ AS 44.23.020(b)(5).

³⁹ AS 39.52.360(b).

⁴⁰ AS 39.52.360(c).

Senator Bill Wielechowski
October 17, 2019
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...

Defending individual officers against ethics complaints would therefore create an *unacceptable conflict* between the Department of Law's duty to provide them zealous representation and its general duty to promote the purposes of the Ethics Act in interpreting, implementing, and enforcing the Act.⁴¹

If I may be of further assistance, please advise.

DCW:mjt
19-334.mjt

⁴¹ 2009 *Op. Alaska Att'y Gen.* at *8 (August 5) (emphasis added).

ALASKA STATE LEGISLATURE



October 30, 2019

The Honorable Kevin G. Clarkson
Alaska Attorney General
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501

Dear Attorney General Clarkson,

The legislature and the public received notice on October 1 of proposed regulations that would enable a substantial departure from Alaska's existing framework of executive branch ethics policies. The regulation promulgation would authorize state-employed attorneys to defend the governor, lieutenant governor, and attorney general against allegations of personal violations of the Alaska Executive Branch Ethics Act and further, would shield information received by the Department of Law about those complaints from public disclosure without qualification. In the instance of legal defense of the governor or lieutenant governor, the attorney general would determine whether—in the attorney general's *sole discretion*—use of the state resources toward the personal representation would serve the public interest; for defense of the attorney general, the governor would be given the *sole discretion* for that determination.

We oppose adoption of these regulations and urge you to immediately reverse course in this regard.

Our nonpartisan Legislative Legal Division has produced a comprehensive memo detailing many likely defects with the planned regulation changes. We include that memo as an attachment to this letter. As our attorneys indicate, these regulations appear to violate multiple principles of constitutional law and contravene decisions of the Alaska Supreme Court; would conflict with governing statutory provisions of the Executive Branch Ethics Act in both substance and application; and could result in Department of Law attorneys' violations of their professional ethical obligations.

The proposed regulations seem to deviate from the scope of the law so significantly as to overstep the legislative branch's lawmaking authority—in violation of well-established constitutional principles of separation of powers.

Our legal counsel's thorough legal analysis appears sound. Moreover, as the memo now explains the legal concerns over the propriety of the proposed regulations, we encourage your thoughtful

consideration of its content to avoid embroiling the State in foreseeable, protracted, and costly litigation on the matter.

Notably, 9 AAC 52.040 already appears to allow *all* executive branch employees to seek reimbursement of reasonable expenses of *private representation* incurred for a *successful* defense of an Ethics Act violation, or even pre-payment with a promise to repay if not exonerated. Should those regulations be insufficient for the needs perceived, we invite an attempted amendment of the law through the legitimate avenues available to the executive branch—such as requesting the introduction of actual legislation that would be subject to a methodical process providing for legislative review and increased public scrutiny.

We ask you to end this rule-making pursuit. This letter constitutes each signee's formal opposition to your proposed regulations before the November 4 comment deadline; a copy of the letter will be sent by electronic mail to law.regulations.comments@alaska.gov as provided in the online public notice.

Sincerely,



Senator Bill Wielechowski



Representative Andy Josephson



Representative Gabrielle LeDoux

Attachment: As stated

Albert Bowling

From: Albert Bowling
Sent: Thursday, October 31, 2019 10:36 AM
To: lawregulationscomments (LAW sponsored)
Subject: Dept. of Law proposed rule change

Attn: Maria Bahr

I question the necessity of the proposed rule change allowing Alaska's Department of Law to represent the governor and attorney general in any ethics violation. Where is the needs-assessment identifying necessity? I haven't seen one. There should be some essential missing benefit the state would gain due to the change, but that appears to be lacking. The only people benefiting are the governor, his lieutenant, and the attorney general. Why only these three? Why not the head of every department? That's because it's intended to benefit ONLY the chief and his innermost circle of power. This is an outstanding example of how powerful people use their influence to scheme the system i.e. fix the system so it works for them. This is really one of the finest examples of how-not-to run a government. Why doesn't Dunleavy attempt this change through the legislature instead of by decree? The obvious answer is because that body is extremely unlikely to back the change because of the obvious implications of impropriety.

Any state employee charged with an ethics violation, should provide their own defense. It's the man occupying the position who committed the violation, not the state. From what I've seen coming from this administration so far, there could be a lot of ethics violations. I guess their thinking is so what...we'll fix it so the state pays the bill. There should be vigorous opposition to this rule change.

Albert Bowling, 7009 Cape Lisburne Loop,
Anchorage, Alaska 99504, phone

General, Attorney (LAW sponsored)

From: General, Attorney (LAW sponsored)
Sent: Thursday, October 31, 2019 11:24 AM
To: lawregulationscomments (LAW sponsored)
Cc: Bahr, Maria Pia L (LAW)
Subject: FW: comments

From: Thomas Imboden <[redacted] BOI >
Sent: Thursday, October 31, 2019 11:19 AM
To: General, Attorney (LAW sponsored) <attorney.general@alaska.gov>
Subject: comments

Throughout the short history of Alaska, as a state, the state has not paid the legal fees of the governor, et al. Precedence has been that politicians pay for their own legal fees. The state government, the people, are not responsible for the legal fees of some or all of the politicians within the state. If the governor, Lt. governor and/or attorney general find their responsibilities too onerous then they should feel free to resign forthwith. Another alternative is to purchase malpractice insurance, which I'm sure they can use to their advantage. We do not need political hacks with their fingers in the public treasury.

Thomas Imboden

--
Thomas R. Imboden
P.O. Box 214
Gustavus, AK 99826

[redacted] BOI
[redacted] BOI

George Gress

From: George Gress
Sent: Friday, November 1, 2019 7:04 AM
To: lawregulationscomments (LAW sponsored)
Subject: 9 AAC 52.140

We object to the proposal to change the Alaska code dealing with ethics. Having the Department of Law represent the governor in situations involving ethics could become cronyism. Since the Department of Law is under the umbrella of state government, which is headed by the governor, the department could be put under pressure and undue influence—take a look at what's happening on the federal level. Interesting that Dunleavy wants government out of almost all things Alaskan but wants governmental protection for himself and his buddies in cases involving ethics.

Val Horner

From: Val Horner
Sent: Friday, November 1, 2019 11:43 AM
To: lawregulationscomments (LAW sponsored)
Subject: proposed changes to 9AAC52.140 &9AAC52160

I am opposed to the changes proposed by Alaska's Dept of Law.

The proposed changes are not in the best interests of the Alaskan public. I understand that there is a question of constitutionality of the changes and that is an issue for me. Our state government at all levels should be working within the defines of the Constitution, not changing statutes to circumvent it.

I also am against having the State coffers pay to defend any member of the Executive Branch if they are accused of unethical or illegal behaviors. Both are serious charges, and these changes give a blank check to the Executive Branch in defense of charges they could in fact be guilty. As an Alaskan, I believe it is wrong to use State money to mount a defense. Additionally, if the charges are from an individual seeking justice then with the potentially unlimited funds of the department of Law it is unlikely that the individual could afford to accuse a member of the Executive Branch of any wrong doing.

The estimated cost is "zero" dollars. That would mean that charges are never brought therefore the Statute never used. If charges are never brought, then the Statute doesn't need to be changed. If a member of the Executive Branch is charged with a violation, then the time and focused effort to provide a defense WILL cost the State money. The cost could be in the millions, depending on the charges. It isn't that it won't cost anything, the truth is that the cost is a major unknown.

The Statute is working now as it was intended to work. I am strongly opposed to making changes. It appears to be a self-serving change with a risk of many unintended consequences.

Valerie A Horner (undeclared party affiliation)
Alaska Resident & voter
4999 Steelhead St
Juneau, AK 99801

Bob Horner

From: Bob Horner
Sent: Friday, November 1, 2019 12:31 PM
To: lawregulationscomments (LAW sponsored)
Subject: 9AAC52.140 & 9AAC52160

I oppose the proposed changes to these Statutes. The issues the changes propose to fix are non issues, based on the proposed cost of zero. That means to me that there isn't an anticipated need, therefore no cost.

I don't agree with giving the Executive branch a big blank check to defend itself against any complaint. This could be an ethical violation or an illegal activity, and various forms of misconduct. It doesn't exclude felonies committed, which means that the governor, Lt gov, etc, would be above the law with a limitless budget for legal fees. This protects the politician not Alaskans. It is not in the best interests of the Alaskan public.

A limitless ability to defend against charges that have merit is wrong on many levels.

I say NO to the proposed changes.

Bob Horner
Juneau, Alaska

Sent from [Mail](#) for Windows 10

Craig Tuten

From: Craig Tuten
Sent: Friday, November 1, 2019 12:38 PM
To: lawregulationscomments (LAW sponsored)
Subject: Regulatory change to 9 AAC 52

AAG Bahr:

This will serve as my public comment regarding the proposed regulation changes affecting interpretation of the Executive Branch Ethics Act.

I am opposed to the changes as proposed. Restricting an ethics-related defense by the attorney general to only three members of the executive branch would violate the Equal Protection Clause of the Alaska Constitution.

Further, said changes would constitute an illegal use of public funds for a private benefit.

Please do not institute these regulatory changes. Such substantive changes of law must directly involve the legislature and, in all likelihood, Alaska voters.

Sincerely,
Craig Tuten
3661 Burl Ct.
Anchorage, AK 99504

BOI

Leanna P

From: Leanna P
Sent: Friday, November 1, 2019 4:08 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed changes in the regulations in the department of law

To whom it may concern-

I am writing to express my concerns regarding the department of Law's regulations. I oppose these changes as I believe having the department of Law represent the governor, Lt governor or attorney general in an ethics complaint could create conflicts of interest and financially benefit the governor, Lt governor and attorney general. Additionally, I am concerned about the proposed confidentiality provisions. Alaskans have a right to know when elected and appointed officials are behaving unethically. I am also concerned with the fact that this proposal would benefit only those three positions.

As legislative Counsel Daniel Wayne notes in his October 17 memo, there are numerous problems with these proposed changes and they should NOT be accepted.

Leanna Williams
404 Haines Ave
Fairbanks, AK 99701

BOI

Sent from my iPhone

Donna Phillips

From: Donna Phillips
Sent: Friday, November 1, 2019 5:46 PM
To: lawregulationscomments (LAW sponsored)
Subject: Maria Bahr-public comment

I **do not support** giving special privileges to the governor and want to **keep the ethics complaint process fair and transparent.**

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

I am opposed to the change in this regulation.

Regards,
Donna Phillips
Girdwood, AK

Paloma Hawn

From: Paloma Hawn
Sent: Friday, November 1, 2019 11:21 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comment on 9 AAC 52.140

Hello-

I am concerned at the lack of information included in this posting.

Do other states have this rule in place?

What studies have been done regarding the potential costs to the state for defending the officials? How would that impact taxes? Would this fund be subject to cuts if budget is tight?

How will the AG decide when to defend the officials, or when it is a legitimate complaint?

How will the public be notified of the complaints?

I realize that I have missed the window to expect a response to my questions, however as an avid reader of the news and listener to local news radio, for me to miss the posting seems like real lack of information was provided to the public. It would seem unethical, and irresponsible, to approve the rule change without further clarification to the public.

Thank you.

forest forest

From: forest forest
Sent: Saturday, November 2, 2019 5:39 AM
To: lawregulationscomments (LAW sponsored)
Subject: Dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)

Greetings,

I have just reviewed the public notice for the proposed rule change to enable the department of law to defend the executive branch against ethics complaints.

I completely disagree with this rule change as:

- 1) this will allow the executive branch to engage in suspect ethical behavior knowing full well that the people of Alaska will be paying their defense costs.
- 2) This will be a conflict of interest for the department of law as it will put the department in a position to potentially seek loopholes in existing laws it is meant to uphold in the defense of alleged executive wrong doing.
- 3) A thorough, accurate, in-depth cost analysis of the proposed rule change has not been provided. The \$0 dollar cost does not seem to be by any means realistic, especially if the defense of the executive branch is prioritized over the departments responsibility to serve justice to and for Alaskans on a day to day basis.
- 4) It has not been shown that this rule change is necessary. It has never been necessary, why is it suddenly necessary now?

StevePolkowski

From: StevePolkowski
Sent: Saturday, November 2, 2019 6:27 AM
To: lawregulationscomments (LAW sponsored)
Subject: Rule change to allow AG to defend governor in ethics cases

I do not approve of the proposed rule change that would allow the AG to defend the governor in ethics violation cases.

The governor should be so far from ethics violations so that this rule change is not necessary.

I disapprove spending state money on that.

Marsha Romaine

From: Marsha Romaine
Sent: Saturday, November 2, 2019 8:31 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposal to adopt regulation changes in 9 AAC 52 of Alaska Administrative Code

ABSOLUTELY NOT! I am against this change. It sounds sneaky. What is Gov Dunleavy planning to do that requires the Attorney General to defend him and that it remain confidential?

AND the Attorney General decides on charges brought against the Attorney General???

NO NO NO

Dishonest, sneaky, and suggests any of the 3 individuals protected are up to something.

I oppose strenuously. This is a clear conflict of interest

Thank you,

Marsha A Romaine

Brief Description: The Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960), including:

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

Sent from my iPhone

Marsha Romaine

From: Marsha Romaine
Sent: Saturday, November 2, 2019 8:49 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Regulation Changes in 9 AAC 52

ABSOLUTELY NOT!

This sounds sneaky. What is Gov Dunleavy planning that requires this change? The Attorney General is for the State of Alaska not for a select few elected individuals. And doesn't the governor appoint the AG - he's appointing his own lawyer.

And the attorney general defends himself??? No.

This is clearly a conflict of interest. Raises suspicion. I am not comfortable with this proposed change at all.

For what reason is this being proposed at this time?

NO

Sincerely,

Marsha A Romaine

11738 Galloway Loop, Eagle River AK 99577.

Brief Description: The Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960), including:

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

Sent from my iPhone

Rebecca Siegel

From: Rebecca Siegel
Sent: Saturday, November 2, 2019 10:12 AM
To: lawregulationscomments (LAW sponsored)
Subject: Comment on proposed changes in the regulations of the department of law

To whom it may concern:

I oppose the proposed regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960), including **9 AAC 52.140** and **9 AAC 52.160**.

I am concerned that these changes would use public dollars for the personal and financial benefit of the governor by allowing the Attorney General to defend the governor against ethics complains. They will also make the process less transparent to the people of Alaska.

Sincerely,
Rebecca Siegel
2 High School Rd
Brevig Mission AK
99785

Christy McMurren

From: Christy McMurren
Sent: Saturday, November 2, 2019 10:14 AM
To: lawregulationscomments (LAW sponsored)
Subject: change in regulations for legal defense of gov

I'm writing in opposition to the change in regulations that would allow the State of AK to pay for legal defense for the gov, It gov and att gen. Looks like this has been discussed before and has been debunked as a slippery slope to more corruption. Really, if the gov, etc. have nothing to lose and no skin in the game, they would do whatever they want and let the people pay for their defense. If it was such a big deal, why haven't we heard about the undue burden before. NO, NO and NO

Christy McMurren
Anchorage

Jamin Agosti

From: Jamin Agosti
Sent: Saturday, November 2, 2019 10:51 AM
To: lawregulationscomments (LAW sponsored)
Subject: Public Comment on changes to Executive Branch Ethics Act

The state should not be paying for or providing public employees to provide for legal defense against ethics complaints. This is bad public policy, creates additional ethical conflicts, reduces incentives to avoid ethics violations, and transfers funds and employee time away from core activities in an already limited-resource government.

Brief Description: The Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)

Bonnie Honkola

From: Bonnie Honkola
Sent: Saturday, November 2, 2019 11:07 AM
To: lawregulationscomments (LAW sponsored)
Subject: CHANGES TO DoL Regulations

I submit as a lifelong Alaskan concerned about the ethics of these changes to the DoL Regulations.

Do not allow the administration to change regulations so that the attorney general can defend the governor using state resources against ethics complaints.

Do not let the governor use state resources to make the proposed changes and make the process less transparent to the PEOPLE OF ALASKA.

THANK YOU

Bonnie Honkola
PO Box 3358
Palmer, AK 99645

Jack Reakoff

From: Jack Reakoff
Sent: Saturday, November 2, 2019 11:33 AM
To: lawregulationscomments (LAW sponsored)
Subject: Appose Changes to the Department of Law Regulations

Brief Description: The Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960), including:

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

My public Comment regarding the proposed above change in regulation to the State of Alaska Department of Law/ Attorney General :

I am a life long Alaskan of 62 years. I am a registered voter and hold great interest in the affairs of this great state of Alaska.

I distinctly appose this proposed change to the administrative code dealing with the Executive Branch Act. This change would be in direct conflict with the act itself.

There would be a compleat conflict of interest if this regulation change is adopted. This proposal claims zero cost which is not true. The law Department would be allocating personal and fiscal resources to defend possible ethics violations of the excessive branch. Legal defense is labor intensive and expensive. Pro bono defense for ethic violations of the governor, lieutenant governor, and attorney general of Alaska is very inappropriate. This regulatory change would at a minimum encourage ethics abuse by the excessive branch, or the public to believe there is no transparency and open abuse of ethics in the executive branch. Burdening the public with ethic defense costs that maybe in the hundreds of thousands annually is not in the best interest of the people of Alaska.

Jack Reakoff ...Wiseman Village,

--

Jack Reakoff
Wiseman, Alaska

BOI

From: BOI
Sent: Saturday, November 2, 2019 12:06 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Change to Exec. Branch Ethics Act

Your proposed change to allow the Dept. of Law to represent members of the Executive Branch when accused of ethics violations is a very bad idea.

It's the kind of proposal one would expect to see in a third world country or some weak system struggling to keep particular executives in power. It is, in fact, embarrassing that any democratic system would propose such a thing; unless, of course, the goal is to minimize the democratic nature of the system. The best way to avoid ethical conflict is to behave ethically. An introductory lesson or two in the concept of "the appearance of conflict" would likely be beneficial as well.

You folks need to communicate more with individuals outside of your group of anti-government extremists before you act.

Tom Nelson
Anchorage

From: Fran <[redacted] BOI >
Sent: Saturday, November 2, 2019 12:36 PM
To: lawregulationscomments (LAW sponsored)
Subject: 9AAC 52.140 & 9AAC52.160

As I read the proposed regulations changes, it appears the Attorney General is loyal to the governor, not the Alaskan people. Also, the only way to ensure a fair government of the people is to be transparent. Because of these ideals, I am emphatically opposed to the suggested changes.

Open and transparent government for the Alaskan people is essential and ethical.

Sent from my iPhone

Bill And Debby Tennyson

From: Bill And Debby Tennyson
Sent: Saturday, November 2, 2019 1:12 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics regulations proposed changes comment

I understand that the Dunleavy administration wants to change Department of Law (DoL) regulations so that the attorney general can defend the governor against ethics complaints and at the same time make the whole process more confidential for the governor, and less transparent to the people of Alaska.

I am totally opposed to this regulation change!

I do not support giving special privileges to the governor and want to keep the ethics complaint process fair and transparent.

Deborah Tennyson
7481 Clairborne Cir
Anchorage, AK 99592

BOI

Sent from my iPad

Pat Race

From: Pat Race
Sent: Saturday, November 2, 2019 1:22 PM
To: lawregulationscomments (LAW sponsored)
Subject: Public Comment 9 AAC 52.140

I was disappointed to see an embattled administration propose this backdoor policy change which would provide them with a shield to legitimate legal challenges.

I say "legitimate" because a protection is already in place against frivolous complaints, attorney fees can be reimbursed. So this is clearly only about shielding the Governor from legitimate complaints. Of which there are many.

This policy change provides no public benefit or public purpose. It is a change meant to provide the Governor with free legal representation, a benefit solely for the Governor and to their pocketbook.

In fact, this policy change could put state attorneys to work against the public interest and force them into a conflict of interests as they work to defend the Governor against legitimate public challenges.

The Attorney General is appointed by the governor which already creates some complicated situations, we should not further complicate matters by placing the Attorney General in the fraught position of defending their employer's interests against the public's legitimate concerns.

Thank you for your time,
Pat Race
Juneau

Gale B. Foode

From: Gale B. Foode
Sent: Saturday, November 2, 2019 2:29 PM
To: lawregulationscomments (LAW sponsored)
Subject: Immediately decline to adopt ACC 52.140 administrative code/ executive branch ethics proposed changes by Clarkson and Dunleavy regulations

Gail Foode / Alaskan Registered Voter #

Sent from my iPad

Joe Banta

From: Joe Banta
Sent: Saturday, November 2, 2019 3:15 PM
To: lawregulationscomments (LAW sponsored)
Subject: Regulation changes in 9 AAC 52 of the Alaska Administrative Code

I am opposed to the Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960), including:

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

These changes are inappropriate and will burden the State of Alaska and its citizens, such as myself, with the cost and responsibilities of the Governor and the Attorney General.

In addition, it is not legal for the Governor and AG to make such a regulatory change.

In summary, I am strongly opposed to these proposed changes as they would be expensive to both myself and the State of Alaska.

Sincerely, Joe Banta

Sent from my iPhone

Chuck Berray

From: Chuck Berray
Sent: Saturday, November 2, 2019 4:15 PM
To: lawregulationscomments (LAW sponsored)
Subject: Oppose 9 AAC 52.140

I write in opposition to the AG attempting to rewrite 9 AAC52.140 that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

This opens the door to defending certain members against ethics complaints using public monies and creates the potential for conflicts of interest.

Charles Berray
17015 Nickleen St.
Anchorage, AK. 99516

Mike Garner

From: Mike Garner
Sent: Saturday, November 2, 2019 5:00 PM
To: lawregulationscomments (LAW sponsored)
Subject: regulation changes

9-ACC 52.140 proposed changed - please immediately halt.
9-ACC 52.160 proposed changed please immediately stop.

We need to Shut this expensive & unethical black drain hole down now!
Both of these are not acceptable. Please do not allow these changes!

Regards,
Michael Garner
P.O. Box 873305
2538 E. Coles Road
Wasilla, Alaska 99654
Voter in the State of Alaska since 1972

Me

From: Me
Sent: Saturday, November 2, 2019 6:03 PM
To: lawregulationscomments (LAW sponsored)
Subject: Public comment: Proposed regulation change

I believe it is inappropriate for the state to provide free legal services to three state-employed individuals in ethics cases. The proposed change would create a conflict in mission for the department of justice. It would not be cost-free because resources would be pulled away from prosecuting criminals. It would benefit only three people.

Thank you,
Jen Huvar
Anchorage

Sent from my iPhone

Daniel Lyew

From: Daniel Lyew
Sent: Saturday, November 2, 2019 6:18 PM
To: lawregulationscomments (LAW sponsored)
Subject: Do not enact the PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LAW

To whom it may concern,

I am writing to express concern regarding the proposed changes in the Department of Law regulations, i.e., the changes that would allow the Department to defend the Governor, Lt. Governor, and the Attorney General from ethics complaints.

Such a change, I believe, confuses the Department of Law's mission. The aim of the department is to defend and further the law of the State -- and most emphatically *not* to defend individuals, or benefit individuals, be they the highest agents of the State. Moreover, such defenses are liable to create insuperable conflicts of interest. Dan Sullivan, in a 2009 opinion, has compellingly argued that,

having the Department of Law directly defend public officers against ethics complaints could present conflict-of-interest challenges because of the attorney general's role in interpreting, enforcing, and prosecuting violations of the Ethics Act. If the Department of Law directly defended public officers in Ethics Act proceedings, the result would be that—for ethics complaints against most public officers—the defense counsel and the lawyer investigating and prosecuting the complaint would be in the same department and be supervised by the same attorney general and, perhaps the same deputy attorney general

In other words, the same Department cannot cleanly pursue the mission of prosecuting violations of the Ethics Act while also defending individuals from those same prosecutions.

I urge that these changes not be enacted.

Respectfully,
Daniel E. Lyew

Steve Behnke

From: Steve Behnke
Sent: Saturday, November 2, 2019 7:10 PM
To: lawregulationscomments (LAW sponsored)
Subject: I'm opposed to the proposed changes to 9-ACC 52.XXX

Dear Sirs,

I'm strongly opposed to the proposed changes to 9-ACC 52.140 and 9-ACC 52.160.

These changes to the regulations governing the Executive Branch Ethics Act on their face create an appearance of conflict of interest. A potential breach of the Ethics act should not be viewed as an official administrative act to be defended by the State. These regulations look like an attempt to circumvent the intent of the Ethics act to hold state employees accountable. The proposal also pretends that this would not have a cost. Clearly it would take state employee time or funding to defend ethics complaints.

Please do not adopt these changes.

Sincerely,

Steve Behnke
4545 Thane Rd.
Juneau, AK 99801

Mike Garner

From: Mike Garner
Sent: Saturday, November 2, 2019 7:43 PM
To: lawregulationscomments (LAW sponsored)
Subject: Fwd: regulation changes

Begin forwarded message:

From: Mike Garner <[redacted] BOI >
Subject: regulation changes
Date: November 2, 2019 at 4:59:50 PM AKDT
To: Law.regulations.comments@alaska.gov

9-ACC 52.140 proposed changed - please immediately halt.
9-ACC 52.160 proposed changed please immediately stop.

We need to Shut this expensive & unethical black drain hole down now!
Both of these are not acceptable. Please do not allow these changes!

Regards,
Michael Garner
P.O. Box 873305
2538 E. Coles Road
Wasilla, Alaska 99654
Voter in the State of Alaska since 1972

Voter ID# [redacted] AS15.07.195/BOI

Jacqueline Fowler

From: Jacqueline Fowler
Sent: Saturday, November 2, 2019 7:44 PM
To: lawregulationscomments (LAW sponsored)
Subject: Opposed 9-ACC 52.140 9-ACC 52.160

I oppose

9-ACC 52.140 proposed changed - please immediately halt.
9-ACC 52.160 proposed changed please immediately stop.

Jacqueline

Chole Smith

From: Chole Smith
Sent: Saturday, November 2, 2019 8:16 PM
To: lawregulationscomments (LAW sponsored)
Subject: 9 AAC 52.140

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

Mike Dunleavy, and Mark Begich have both withheld "Royalties" from Alaskan Citizens. (Budget Deficit) etc.

I do not agree with this, it sounds like the government doesn't want to be to blame for the PFD shenanigans, Insider deals/ trading as it pertains to oil prices, profit margins, and inaccessible reserves.

Barb Jewell

From: Barb Jewell
Sent: Saturday, November 2, 2019 8:48 PM
To: lawregulationscomments (LAW sponsored)
Subject: Regulations regarding Attorney General and Dept of Law handling ethics cases involving Governor and other public officials

The Attorney General should not provide legal assistance to elected officials regarding ethics violations. This is a potential conflict of interest and inappropriate use of public resources. The contention that it would not involve additional costs dodges the fact that public resources would be redirected away from other activities for and needs of the public.

Sent from my iPhone

Ann Griswold

From: Ann Griswold
Sent: Saturday, November 2, 2019 10:43 PM
To: lawregulationscomments (LAW sponsored)
Subject: 9 AAC 52.040 Executive Ethics Act

Concerning: 9 AAC 52.040 Executive Ethics Act

I am writing to ask that changes to the executive ethics act NOT be made. I am concerned that having the attorney general represent the Governor will create a conflict of interest and it's own ethic issues.

Since the Governor will be reimbursed if there are no ethic violations found, there is no reason to change this. It greatly concerns me that the Governor would seek such a change.

Thank you,
Ann Griswold

114 Knutson Drive
Sitka, AK 99835

BOI

Sent from my iPhone

Kathleen Neumaier

From: Kathleen Neumaier
Sent: Saturday, November 2, 2019 11:13 PM
To: lawregulationscomments (LAW sponsored)
Subject: Conflict of interest

Please do not allow dunleavy and Clarkston to get away with conflict of interest and get free legal aid like they are attempting to do. Do not allow them to destroy our democracy and create a socialist government where they would get away with not governing for and by the people
Ms. Katheen S. Neumaier, M.Ed

Sent from my iPhone

Joe Durrenberger

From: Joe Durrenberger
Sent: Sunday, November 3, 2019 7:36 AM
To: lawregulationscomments (LAW sponsored)
Subject: public comment on proposed rule change to 9AAC 52.140

The proposed rule change to 9 AAC 52.140 that adds new subsections (f), (g) and (h) that are inappropriate and unnecessary. The changes would implement actions that lack transparency, create potential conflicts of interest and would not serve the public interest.

I strongly oppose these changes.

Joe Durrenberger
Fairbanks, Alaska 99709

Cheryl & Mark Lovegreen

From: Cheryl & Mark Lovegreen
Sent: Sunday, November 3, 2019 10:18 AM
To: lawregulationscomments (LAW sponsored)
Subject: Comments on proposed changes to 9 AAC 52

On the proposal to change 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960):

The Alaskan public has the right to file ethics complaints about any public servant, including the attorney general and other top officials. If the state pays for defense of all filings, that creates opportunities for graft and corruption. This change should NOT be approved, and the current rules should be upheld.

Cheryl

Jen Funk Weber

From: Jen Funk Weber
Sent: Sunday, November 3, 2019 11:34 AM
To: lawregulationscomments (LAW sponsored)
Subject: I oppose proposed alterations of the Executive Branch Ethics Act

To whom it may concern:

I strongly oppose the proposed changes to the Executive Branch Ethics Act, **9 AAC 52.140** and **9 AAC 52.160**. They would allow the governor, lt. gov., and/or attorney general to deny and bury complaints and violations, as well as use public resources for personal purposes. I DO NOT want my tax dollars used in this way.

The mere suggestion of these changes reveals an intention to undermine "justice for all."

Jennifer Weber
35232 W Pinochle Ln
Sutton, AK 99674

Gail

From: Gail
Sent: Sunday, November 3, 2019 3:14 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics problem

This letter is to state that having the AG defend the Governor and Lieutenant Governor and vice versa is a clear violation of ethics and the Alaska Constitution. Legal problems need to be dealt with outside this closed political circle.

Gail Davidson
3638 Rosie Creek Road
Fairbanks, AK 99709

Peace to All.

Nicole Misarti

From: Nicole Misarti
Sent: Sunday, November 3, 2019 3:15 PM
To: lawregulationscomments (LAW sponsored)
Subject: re: Ethics rules and public money to defend top officials

The proposal to change ethics rules is unconstitutional and a conflict of interest. It is an unlawful public benefit to top officials and violates the Executive Branch Ethics Act.

And yes, I live here in Alaska,
Nicole Misarti
1571 Pickering Drive
Fairbanks AK 99709

Paula Sayler

From: Paula Sayler
Sent: Sunday, November 3, 2019 3:28 PM
To: lawregulationscomments (LAW sponsored)
Subject: Opposition to Rule Change on Law Dept.'s handling of ethics complaints

To whom it may concern,

I am voicing my opposition to rule changes allowing Alaska's Dept. of Law to represent the Governor, Attorney General, and Lt. Governor in ethics complaints. This is a conflict with the state constitution and statute.

Paula Sayler, Anchorage resident, 99508

Linda Raemaeker

From: Linda Raemaeker
Sent: Sunday, November 3, 2019 3:28 PM
To: lawregulationscomments (LAW sponsored)
Subject: Law regulations proposed changes

As a resident I am opposed to the proposed ethics law regulation changes as I believe it violates the Ak Constitution and would be a conflict of interest.

Sincerely,

Linda Raemaeker
Soldotna, Ak

Sent from my iPhone

Kristine Benson

From: Kristine Benson
Sent: Sunday, November 3, 2019 3:30 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed rule for Dept of Law

The proposed new regulations that would allow the Department of Law to defend the Governor, Lt Governor and Attorney General in the case of ethics complaints are a terrible idea and should be withdrawn. They would create a conflict of interest, be unconstitutional, create an unethical situation and are not necessary.

Sincerely,
Kris Benson
Juneau, AK

Bradley Cruz

From: Bradley Cruz
Sent: Sunday, November 3, 2019 3:30 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposal for Legal support of Governor, Lt. Gov. and Atty. General

I oppose the proposal to have the Alaska Department of Law provide free legal service to Gov. Dunleavy, Lt. Gov. Mayer, or Atty General Clarkson for lawsuits or ethics inquiries brought about by their official actions when their official actions are illegal, unethical, or unconstitutional. Who should pay for such legal defense? Not the public, not the state treasury when the Governor is so arduously advancing the argument that the government is spending too much money and people should stop expecting government handouts and benefits.

Bradley Cruz
1964 Loussac Drive
Anchorage, AK

Betsy Brennan and Mike Wade

From: Betsy Brennan and Mike Wade
Sent: Sunday, November 3, 2019 3:30 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comment regarding regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)

11/3/19

Dear Department of Law,

I wanted to make a comment on the proposed regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960). This proposal is absurd. This would basically provide free legal assistance for ethics violations. This plan creates a conflict of interest and would possibly cost the State money, while taking away valuable time and manpower from case loads that the Department of Law should be dealing with. This regulation change should not be made and is a very bad idea.

Sincerely,

Elisabeth L Brennan

PO Box 1623

Nome, AK 99762

Mercy Unmeasured

From: Mercy Unmeasured
Sent: Sunday, November 3, 2019 3:32 PM
To: lawregulationscomments (LAW sponsored)
Subject: Concerned about VIOLATIONS There

Please Mr. Dunleavy DON'T violate the constitution and statute ANYMORE. I don't appreciate OR support Dunleavy, Meyer, and Clarkson directly violating the Executive Branch Ethics Act. You all are in your offices due to us, "The PEOPLE". I know you might not care right now, However TRUTH WILL Prevail.

Sincerely,
Wanda Smith

Anne

From: Anne
Sent: Sunday, November 3, 2019 3:37 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics rule changes

Dear Sirs/Madams,

Please DO NOT change the ethics rules to allow our state money to defend an ethics complaint against a government official. This would be wrong, illegal and unethical. We need to spend that money on education, infrastructure, law enforcement, ferries and public needs.

Thank you,
Anne Yoshino. MD
Willow, Alaska 99688

Sent from my iPad

Mary

From: Mary
Sent: Sunday, November 3, 2019 3:41 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposal to allow Governor, Lt. Governor, and Attorney General to use Department of Law as personal attorneys if ethics complaints are lodged.

Please DO NOT allow these changes proposed by AG Clarkson. It is self-serving and unconstitutional. I do not support these proposed changes.

Mary Calmes
853 Smallwood Tr
Fairbanks, AK 99712
Sent from my iPhone

Melanie Lindholm

From: Melanie Lindholm
Sent: Sunday, November 3, 2019 3:42 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed changes to 9 AAC 52

Dear Department of Law,

I'm writing in regard to the proposed changes to 9 AAC 52 of the Alaska Administrative Code dealing with the Executive Branch Ethics Act. The proposed changes would allow the Attorney General to defend the governor against ethics complaints using public dollars. This would make the process more confidential for the governor, but less transparency to the people of Alaska. This change is also unconstitutional on multiple accounts and serves no purpose to the public. I do NOT support giving special privileges to the governor. I want to keep the ethics complaint process fair and transparent.

Thank you,

Melanie Lindholm
923 Bennett Road
Fairbanks, AK 99712

Sent from [Mail](#) for Windows 10

Jackie and Edward Debevec

From: Jackie and Edward Debevec
Sent: Sunday, November 3, 2019 3:47 PM
To: lawregulationscomments (LAW sponsored)
Subject: Against proposal for new regulations

I am totally against the new proposed regulations that would allow Gov Dunleavy, Lt Gov Kevin Meyer, and AG Kevin Clarkson to use the Dept of Law as their personal lawyers if an ethics complaint is filed against them. This is against the AK Constitution and is a big conflict of interest and is in direct violation of the Executive Branch Ethics Act.

Please do not let these new regulations go through.

Thank you,

Jacqueline Debevec
3662 Hardluck Drive
Fairbanks, AK 99709

Batty Roy

From: Batty Roy
Sent: Sunday, November 3, 2019 3:52 PM
To: lawregulationscomments (LAW sponsored)
Subject: Rules Change Department of Law

To whom it may concern:

It is unconscionable at this time to make any changes to the Alaska Department of Law. The current Governor is corrupt and the entire Alaskan republican party is questionable as to where their loyalties lie. Outside interest are currently vying to get control of Alaska's rich assets with no interest or foresight to the consequences of their actions.

As an Alaskan I am deeply disturbed that the current regime is pursuing these actions.

Sincerely,

Carmen Bydalek

99517

BOI

From: BOI
Sent: Sunday, November 3, 2019 3:57 PM
To: lawregulationscomments (LAW sponsored)
Subject: using public money to defend top state officials from ethics complaints

As just a constituent, not a lawyer or anyone connected to the creation or execution of the law, I find it mind boggling that a proposal to change ethics laws to effectively shield our top political officials from questionable actions has been introduced and is even being considered. The whole reason that an independent counsel is chosen by the Personnel Board is to avoid any conflicts of interest.

I strongly disagree with the proposed changes and see it as self-serving end-around of our laws and constitution.

Hal Gage

BOI

halgage.com

Don I Gray

From: Don I Gray
Sent: Sunday, November 3, 2019 4:04 PM
To: lawregulationscomments (LAW sponsored)
Subject: Recall petition is needed. This governor is not competent!

Sirs and madams,

A Recall Dunleavy petition is needed. This governor is not competent!

Please advance the process.

Yours truly,

Don I Gray

Alaskan registered voter

Sent by Don's iPhone

Ben Muse

From: Ben Muse
Sent: Sunday, November 3, 2019 4:05 PM
To: lawregulationscomments (LAW sponsored)
Subject: Opposed to ethics regulation changes at 9 AAC 52.140 and 9 AAC 52.160

To whom it may concern,

I would like to express my opposition to the proposals to change state ethics regulations at 9 AAC 52.140 and at 9 AAC 52.160.

These changes would allow the Department of Law to defend the Governor, Lt. Governor, and Attorney General against ethics complaints at state expense under certain circumstances.

They would also make information about the defense against an ethics complaint confidential.

These changes are a bad idea.

The Department of Law and the Attorney General have one client, the people of Alaska. The Attorney General is not the governor's personal lawyer. Treating him as the governor's personal lawyer, and the lawyer for the people of Alaska creates opportunities for conflicts of interest.

The regulations include the qualifier that the Attorney General or Governor must determine that the defense is in the public interest. This is an easy requirement to wordsmith and bypass.

I also note that the analysis of the regulation says it will create no operating or capital costs for the state.

If this regulation is used to pay the expenses of defending someone against an ethics charge it will create costs for the people of Alaska. Given budget constraints, these costs mean that some other state task will be eliminated or delayed.

Sincerely,

Ben Muse
Juneau
November 3, 2019

William Huber

From: William Huber
Sent: Sunday, November 3, 2019 4:05 PM
To: lawregulationscomments (LAW sponsored)
Subject: Self serving proposal

This self serving proposal for the Governor violate the constitution and statute, and i don't support them. We need to stop this now. The Governor needs to be held accountable for his own decisions and not have the state's lawyer represent his failings. This is flat out wrong! Regards, Bill Huber, 8481 Berry Patch Drive, Anchorage AK

Sent from my iPhone

amjuics

From: amjuics
Sent: Sunday, November 3, 2019 4:10 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed use of Attorney General as personal attorney

This proposal clearly raises possible conflict of interest issues, since the AG is appointed by the governor. That fact alone should make it a non- starter. Furthermore, as a matter of good public policy, anything that creates even the appearance of conflict should be avoided so as not to undermine public trust.

Anne Jensen
Utqiagvik, AK

Sent from my iPhone

Lee Williams

From: Lee Williams
Sent: Sunday, November 3, 2019 4:10 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethic rule regulations

I don't believe that changing the regulations on ethics to have Attorney General represent the Governor is constitutional.

Lee Williams

Sent from my iPhone

Nicoli Bailey

From: Nicoli Bailey
Sent: Sunday, November 3, 2019 4:14 PM
To: lawregulationscomments (LAW sponsored)
Subject: commenting

on the ethics rules changes AG Clarkson is attempting to make. I vote no. Conflicts of interest. Very probable violation of the constitution and the statutes. Good lord, we are far better than this.

Nicoli Bailey

(no texts please)

Anchorage, Alaska

Finding beauty in a broken world is acknowledging that beauty leads us to our deepest and highest selves. It inspires us. We have an innate desire for grace. It's not that all our definitions of beauty are the same, but when you see a particular heron in the bend in the river, day after day, something in your soul stirs. We remember what it means to be human.

- Terry Tempest Williams

Marilyn Wheeless

From: Marilyn Wheeless
Sent: Sunday, November 3, 2019 4:17 PM
To: lawregulationscomments (LAW sponsored)
Subject: New regulation

This proposed 'regulation' violates the Constitution and Statute and I oppose it strongly. The Governor and his appointees need to perhaps not do things which would bring up ethics charges against them, frivolous or not...there, problem solved!

Marilyn Wheeless
Kenai, Alaska
Sent from my iPad

Margie Goodrich

From: Margie Goodrich
Sent: Sunday, November 3, 2019 4:19 PM
To: lawregulationscomments (LAW sponsored)
Subject: 9-ACC 52.140 proposed changed - please immediately halt. 9-ACC 52.160 proposed changed please immediately stop.

I do NOT agree that any politicians, especially the current ones should have free legal services for any reason. We dont get free legal advice. It gives them a free rein to do questionable things or bad things and have us pay for their representation from us. NO. I am a disabled vet., lifelong alaskan and a registered voter.

9-ACC 52.140 proposed changed - please immediately halt.
9-ACC 52.160 proposed changed please immediately stop.

Marjorie A. Goodrich
Eagle River

Nina Faust

From: Nina Faust
Sent: Sunday, November 3, 2019 4:24 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Ethics Rule Changes

P.O. Box 2994
Homer AK 99603

November 3, 2019

Re: Proposed Ethics Rule Changes

I do not support the proposed changes to ethics rules allowing public money to be spent on defending top state officials from ethics complaints. These changes likely violate the state constitution's public purposes clause, separation of powers, and equal protection. Allowing the attorney general, who serves at the governor's pleasure, to defend the governor, Lt. governor, or attorney general if the attorney general determines it is in the public's interest is very questionable since the attorney general has to answer to the governor. This is a set up to not serve the public interest. The whole proposal is a bad idea and should not be enacted.

Sincerely,

Nina Faust

Kyra S.

From: Kyra S.
Sent: Sunday, November 3, 2019 4:26 PM
To: lawregulationscomments (LAW sponsored); Sen. Mia Costello; Rasmussen, Sara (LEG)
Subject: Change to Executive Ethics Act regulations

I'm writing to comment on the proposed regulation change affecting the Executive Branch Ethics Act, under Department of Law file number 2019200667 (the notice of the proposed rule change is found here: <http://notice.alaska.gov/195656>). This proposed change is an extraordinarily bad idea and I strongly oppose it. It is itself a massive breach of ethics that would serve absolutely no public purpose and would only put state resources toward Gov. Dunleavy's personal, partisan interests. The rule change would violate three different constitutional clauses (separation of powers, the equal protection clause, and the requirement for the appropriation of public dollars to serve a public purpose), as well as several Alaska statutes prohibiting favoritism and self-enrichment, the use of state funds for personal/financial gain, the requirement of state officials to serve for the personal benefit of another, and the use of state funds for partisan purposes. A public officer--especially one in the state's highest public office, who is supposed to answer to Alaskans and represent our interests--getting free defense in an ethics complaint is absolutely receiving a massive private benefit. The fact that any such ethics complaint would likely be brought by some of the Alaskans he's supposed to work for, and that confidentiality rules would then shield the case from scrutiny by the very Alaska public he represents, makes this proposed rule change even more disturbing. There are no good-faith justifications for this rule change aside from the governor's administration wanting to protect personal and partisan interests.

Kyra Sherwood
Anchorage, 99502

BOI



Virus-free. www.avast.com

Carol Montgomery

From: Carol Montgomery
Sent: Sunday, November 3, 2019 4:32 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics regulations

To whom it may concern:

I am strongly opposed to new regulations that would allow the Governor, Lt. Governor and Attorney General to use the Department of Law as their personal lawyers if an ethics complaint is filed against them. This is a blatant conflict of interest and is in direct violation of the Executive Branch Ethics Act!

Sincerely,
Carol Montgomery
4542 N. Slumber Dr.
Palmer, AK 99645

Mary Olson

From: Mary Olson
Sent: Sunday, November 3, 2019 4:35 PM
To: lawregulationscomments (LAW sponsored)
Subject: Public Comment on :State payment defending ethic violators

The Department of Law should not act as personal lawyers when an ethics complaint is filed against the governor or Lt. Gov.

This is in direct violation of the Executive Branch Ethics Act by providing an unlawful public benefit to people in those positions.

Sincerely,

Mary Olson
1150 Golden Hills Drive
Palmer AK 99645

Alexander Bergman

From: Alexander Bergman
Sent: Sunday, November 3, 2019 4:41 PM
To: lawregulationscomments (LAW sponsored)
Subject: Re: Opposing proposed changes to 9 AC 52

Hello all,

I just wanted to take a moment to amplify the voice of Legislative Council Daniel Wayne and his memo regarding proposed changes to 9 AC 52. The Dunleavy administration has proven to be a problematic and authoritarian one, and enabling it or any other administration to martial considerable resistance to accountability for its actions is certainly not in the public interest. Mr. Wayne may not actually be Batman, but it sounds like he is just as committed to ethical integrity and transparency in our elected officials, and I strongly encourage you to follow his example and nip the proposed changes to 9 AC 52 in the bud. Meanwhile, thank you for all the work you do. Sincerely,

A

John Jensen

From: John Jensen
Sent: Sunday, November 3, 2019 4:59 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed change in ethics regulations

The proposed changes in ethics regulations in which high level state officials would be defended against frivolous filings appears to be unconstitutional and it also appears the there are already provisions, as there should be, to protect against such frivolous lawsuits. Then too, there could be big difficulties in determining what is "in the public interest." Please abandon the idea.

Lynne Ammu

From: Lynne Ammu
Sent: Sunday, November 3, 2019 5:09 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed new regulations

The proposed change is in direct violation of the Executive Branch Ethics Act, and the stated need for such is already covered by contingencies in place to handle frivolous complaints, where the object of the complaint can have their legal fees recouped.

Do not allow this conflict of interest and infraction of our state constitution and current statutes to be pushed through.

Lynne Ammu
Palmer, AK

Caroline Storm

From: Caroline Storm
Sent: Sunday, November 3, 2019 5:18 PM
To: lawregulationscomments (LAW sponsored)
Subject: Changes to Ethics Regulations

To whom it may concern,

I **vehemently oppose** the proposed change to the ethics rules that would allow public money to be spent defending the top state officials from ethics complaints.

I do **NOT** agree that the attorney general should have the power to defend the governor, lieutenant governor, or attorney general if the attorney general, deems that it is in the "public interest." The attorney general serves at the will of the Governor, so how is that not the "fox guarding the hen house"?

Thank you,
Caroline Storm
Anchorage
House District 24/Senate Seat L

Hope Meyn

From: Hope Meyn
Sent: Sunday, November 3, 2019 5:28 PM
To: lawregulationscomments (LAW sponsored)
Subject: Public Comment Re: DoL defense of Dunleave

Dear Maria Bahr,

I strongly oppose the proposed regulation change in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960).

As a born and raised Alaskan I have seen state leaders work tirelessly to represent Alaskan's and have seen others attempt to profit from corrupt practices and implement equally corrupt policies. As a registered nurse I see how Alaskan's work hard and struggle to make ends meet, pay their taxes, and contribute to our communities. No politician should be using those hard earned tax dollars for their personal legal defense.

Allowing for the Department of Labor (DoL) to defend the governor and lieutenant governor through the attorney general at taxpayer expense is clearly not in the public interest. The individual tax-paying citizen who files a complaint against the governor or lieutenant governor would be funding the very defense that they are prosecuting. This would provide an unjust advantage to the executive branch of our government at taxpayer expense, decreasing the ability of citizens to hold their own government accountable.

I urge you to oppose the proposed regulation change.

Sincerely,
Hope Meyn, RN CHPN

Shonti Elder

From: Shonti Elder
Sent: Sunday, November 3, 2019 6:07 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics law change

It's a terrible idea to change the current regulations concerning ethics. There are already safeguards in place to protect against frivolous lawsuits. This change would also put the attorney general in possibly conflicting roles as prosecutor and defender. Leave the ethics rules as they are!

Shonti Elder
3101 E Dannys Ave
Wasilla, AK 99654

BOI

Andi Flanagan

From: Andi Flanagan
Sent: Sunday, November 3, 2019 6:10 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics Farce

This is so totally out of line, you'd think this was Washington! All three of you should be arrested and thrown in the hoosegow! Why can you people just be Alaskans and NORMAL?

Katherine

From: Katherine
Sent: Sunday, November 3, 2019 6:33 PM
To: lawregulationscomments (LAW sponsored)
Subject: New ethics

Hello,

I am a third generation Alaskan mother, this new proposed law ethics change. I no way do I support the governor or his senior staff being able to use public money to defend themselves from ethics complaints. Your new to this, Alaskans aren't. This administration is acting like it's amateur hour.

Katherine Ellison

Sent from my iPhone

Sandee Hough

From: Sandee Hough
Sent: Sunday, November 3, 2019 6:48 PM
To: lawregulationscomments (LAW sponsored)
Subject: Changes to Ethic Regulations

I am against the proposed changes to the current ethics regulations which would allow public money to be spent to defend top State officials against ethics complaints. This is a serious conflict of interest for the AG to defend the top officials and himself. There needs to be a separation of power. This is unacceptable and against our Alaska Constitution.

Sincerely

Sandra Hough
Alaska Resident and Voter

Sent from my iPhone

Sent from my iPhone

Gretchen Keiser

From: Gretchen Keiser
Sent: Sunday, November 3, 2019 6:50 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Ethics Regulation Changes

Ms or Sir - I wholeheartedly disagree with the proposed changes to the regulations under the Executive Branch Ethics Act. I believe that there is no public benefit served by the Dept of Law serving as counsel to the AG, Lt Governor or Governor when an ethics complaint has been made about them. Why should Alaskans, in essence, pay their attorney fees when a complaint of unethical behavior is lodged and is found to be non-frivolous?

These proposed regulations are self-serving and totally unnecessary. They're unconstitutional.

Thank you,
Gretchen Keiser
3271 Nowell Ave
Juneau, AK 99801

Sent from my iPhone

Glen Fowler

From: Glen Fowler
Sent: Sunday, November 3, 2019 6:53 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics and Attorney General

No way any regulations should be changed and or altered to benefit the Go MB. verner and staff when ethics violations are in question. The AG request to divert legal resources for current ethic questions is nonsense and insulting. This

Sharon Waisanen

From: Sharon Waisanen
Sent: Sunday, November 3, 2019 7:06 PM
To: lawregulationscomments (LAW sponsored)
Subject: Executive Branch Ethics Act

DO NOT, I repeat, DO NOT, allow this attorney general to violate the Executive Branch Ethics Act.

Our government officials must be held accountable.

There is no reason on earth for Atty. Gen. Kevin Clarkson to violate the constitution and statute for the benefit of the governor and his minions.

We should not pay for their attorneys out of state money.

I smell a dead rat in this. And, if regulations are changed, we will only see increased money wasted by this governor.

Sharon Waisanen
44932 Eddy Hill Dr.
Soldotna, AK 99669

BOI

Tom Lohman

From: Tom Lohman
Sent: Sunday, November 3, 2019 7:14 PM
To: lawregulationscomments (LAW sponsored)
Subject: Executive Branch Ethics Act

I strongly oppose the proposal to change regulations relating to the Executive Branch Ethics Act to allow public money to be spent defending the top state officials from ethics complaints. I share the conclusion of the non-partisan Legislative Legal Services Office that the self-serving proposal is clearly unconstitutional and raises other legal concerns as well. It is simply wrong-headed and should be withdrawn.

Tom Lohman

4011 Winchester Loop
Anchorage, AK 99507

BOI

BOI

Heather Mildon

From: Heather Mildon
Sent: Sunday, November 3, 2019 7:39 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed changes

To Whom it May Concern:

I am writing to say NO to the proposed changes to rules governing ethics that would have the State of Alaska pay for legal defense fees for the Governor, AG, and Lt Governor.

It is my view that these rules violate the constitution and state statute, and I don't support them.

Please do not let them pass.

Thank you,

Heather Mildon

BOI

Sent from my iPhone

Virginia Olney

From: Virginia Olney
Sent: Sunday, November 3, 2019 7:42 PM
To: lawregulationscomments (LAW sponsored)
Subject: Changing ethics rules

Gov Dunleavy and his AG must be living in the alternate universe of Donald Trump after Dunleavy's visit recently. Changing ethics rules to make unlawful behavior easier will run afoul of our AK Constitution which has been hailed as one of the best nationwide. Dunleavy has been on a collision course with the residents of our great state whom he has vowed to serve and we are rising up to oust him. This ethics rule change proposal will be just another good reason to continue that fight. I am on the record as completely outraged and opposed.

Alaska resident and voter, Virginia Olney, Sitke, Alaska

Mary Bristol

From: Mary Bristol
Sent: Sunday, November 3, 2019 7:56 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics regulations

To whom it may concern,

I would like to express my opposition to the proposals to change state ethics regulations at 9 AAC 52.140 and at 9 AAC 52.160.

These changes are not in the best interest of the people of Alaska.

The Department of Law and the Attorney General have one client, the people of Alaska.

Sincerely,

Mary Bristol
Anchorage

November 3, 2019
Sent from my iPhone

Sue May

From: Sue May
Sent: Sunday, November 3, 2019 7:59 PM
To: lawregulationscomments (LAW sponsored)
Subject: 9 AAC 52.140 and 9 AAC 52.160

Gentlemen:

I would like to add my voice to those who strongly protest the above-referenced proposed regulations that would allow the defense at public expense of ethics violations by the Alaska Governor, Lt. Governor or Attorney General. These officials serve the people of Alaska, they are paid by the people of Alaska, and if the occupants of the offices in question commit ethics violations serious enough for legal complaints, they need to answer to the people. The same citizenry should not pay for their defense, since a violation of ethics is a personal violation committed by an individual, and the responsibility for defense of claimed violations should be borne by the individuals in question.

The intent of personal responsibility for ethical violations seems to make it desirable for the occupant of public office to conduct the business of that office in as ethical manner as possible. Failure to do so falls on the individual in question and it is the public who holds that person responsible.

Furthermore, there should be no secrecy about ethics complaints (outside of normal personnel matters). It is the public's business when an official violates ethical standards and there must be full transparency.

I have been a registered voter in Alaska for 24 years. Our office holders have not always operated at the highest ethical plane, and it is important that they shoulder the burden of striving to do so.

Respectfully,
Sue Ellen May
19509 S. Montague Loop
Eagle River, AK 99577

Connie Ozer

From: Connie Ozer
Sent: Sunday, November 3, 2019 8:00 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics violations

I don't agree with the proposed regulations concerning the defense of the Attorney General, the Governor and the Lt Governor should an ethics charge be brought against any one of them. The proposed regulations violate the constitution and the statues. They are ill-conceived and should not be made into law.

Connie Ozer
7060 Northwood St., Apt. 319
Anchorage, AK 99502

Carol Gales

From: Carol Gales
Sent: Sunday, November 3, 2019 8:52 PM
To: lawregulationscomments (LAW sponsored)
Subject: Say NO to rule change

I strongly object to the proposed change to ethics rules that would allow the Alaska attorney general, governor, and lieutenant governor to use the state's Department of Law as their personal lawyers in the event an ethics complaint is filed against them.

There are serious constitutional and legal questions about this proposal, which appears to violate the public purpose clause in the constitution, the separation of powers, and equal protection.

The proposal creates a clear conflict of interest for the attorney general, who is appointed by the governor and could easily be motivated to have the law department defend the governor—even when the defense would *not* be in the public interest—merely to protect his or her job as attorney general. Please, let's not give an unlawful public benefit to these officials by approving this rule change.

Please keep our state government as ethical as possible. Alaska people deserve this. Please say NO to this proposed rule change.

Thank you.

Carol Gales
P.O. Box 333
Nome, AK 99762

Vince Kelly

From: Vince Kelly
Sent: Sunday, November 3, 2019 9:06 PM
To: lawregulationscomments (LAW sponsored)
Subject: regulations governing ethics complaints

I would like to register my opposition to any changes to current regulations concerning legal fees for the Governor, lieutenant governor and attorney general. Any changes to current regulations are unnecessary.

Neil V. Kelly
Valdez

Bruce Jamieson

From: Bruce Jamieson
Sent: Sunday, November 3, 2019 9:17 PM
To: Representative.Ben.Carpenter@akleg.gov; Eastman, David C (LEG); Representative.Sharon.Jackson@akleg.gov; Johnson, Delena (LEG); Johnston, Jennifer (LEG); Knopp, Gary A (LEG); Kopp, Charles M (LEG); Representative.Bart.LeBon@akleg.gov; Ledoux, Gabrielle R (LEG); Representative.Kelly.Merrick@akleg.gov; Neuman, Mark A (LEG); Pruitt, Lance (LEG); Representative.Sara.Rasmussen@akleg.gov; Rauscher, George (LEG); Representative.Josh.Revak@akleg.gov; Representative.Laddie.Shaw@akleg.gov; Stutes, Louise B (LEG); Sullivan-Leonard, Colleen (LEG); Representative.Dave.Talerico@akleg.gov; Thompson, Steve (LEG); Tilton, Cathy (LEG); Representative.Sarah.Vance@akleg.gov; Wilson, Tammie (LEG); Senator.Chris.Birch@akleg.gov; Bishop, Click (LEG); Coghill, John (LEG); Costello, Mia C (LEG); Giessel, Cathy (LEG); Hughes, Shelley (LEG); Micciche, Peter A (LEG); Senator.Lora.Reinbold@akleg.gov; Senator.Mike.Shower@akleg.gov; Stedman, Bert K (LEG); Stevens, Gary L (LEG); Von Imhof, Natasha A (LEG); Wilson, David S (LEG); Senator.scott.kawaski@akleg.gov; Representative.grier.hopkins@akleg.gov; Wool, Adam L (LEG); lawregulationscomments (LAW sponsored)
Subject: AK Admin Code Changes

Dear Alaska Legislator:

I do not support the proposed change to the Alaska Administrative Code that would allow the Attorney General to represent the governor if ethics violations are lodged against him/her or the office. Please vote/rule against this change.

Sincerely,

Bruce Jamieson
4437 Jamieson Drive
Fairbanks, AK 99709

BOI

From: BOI
Sent: Sunday, November 3, 2019 9:19 PM
To: lawregulationscomments (LAW sponsored)
Subject: 9 AAC 52. et. seq.- Regulation change to allow the Dept. of Law to provide personal legal services to executives

Greetings,

This proposal to add/amend 9 AAC 52.140 and .160 needs to die.

The Dept. of Law is supposed to represent the State of Alaska's interests, not individuals accused of ethics violations. It clearly could put the Dept of Law in the situation of both prosecuting AND defending, a plain conflict of interest. The argument of streamlining the process is a sham, whether intentionally or inadvertent. Importantly, it appears to violate the public purpose clause of the Alaska Constitution. Have the proposers of this regulation change read it?

Kill this proposed regulation.

Gary Newman
Fairbanks, Alaska

Ann Jamieson

From: Ann Jamieson
Sent: Sunday, November 3, 2019 9:26 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Change to the Alaska Administrative Code

Sirs:

I do not support the proposed change to the Alaska Administrative Code to allow the Attorney General to represent the governor if ethics violations are lodged against him/her or the office. Please vote against this change.

Ann Jamieson
4437 Jamieson Drive
Fairbanks

Lin Davis

From: Lin Davis
Sent: Sunday, November 3, 2019 9:47 PM
To: lawregulationscomments (LAW sponsored)
Subject: Unbelievable!

AG Clarkson revamps ethics laws to self serve himself, the Governor and Lt Governor. Unconscionable and unconstitutional. Alaskans do not support this kind of undemocratic behavior. Thank you for registering my complaint.

Lin Davis
3099 Nowell
Juneau 99801

JSomers

From: JSomers
Sent: Sunday, November 3, 2019 9:50 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Ethics Rules Changes

As a longtime Alaska resident and voter, I am submitting my comment on the proposed ethics rules changes.

I will condense it to one sentence:

The proposal itself sounds like an ethics problem.

Thank you,
Jeanette Somers

Sent from my iPhone

Randi Sweet

From: Randi Sweet
Sent: Sunday, November 3, 2019 10:17 PM
To: lawregulationscomments (LAW sponsored)
Cc: Bahr, Maria Pia L (LAW)
Subject: Comments on Proposed Regulatory Changes to Alaska Executive Branch Ethics 9 AAC 52.140 and 9AAC 52.160
Attachments: Proposed Executive Branch Ethics Comments 2019.11.03.pdf

Please find attached comments on proposed regulatory changes. Please confirm receipt.

Thank you,

Renata "Randi" Baranowski-Sweet

3 November 2019

Ms. Maria Bahr
Assistant Attorney General
Via email
law.regulations.comments@alaska.gov
cc: maria.bahr@alaska.gov

RE: Comments on Proposed Regulatory Changes to Alaska Executive Branch Ethics 9 AAC 52.140 and 9AAC 52.160 - Do not implement proposed changes

Dear Assistant Attorney General Bahr:

Please find below comments on the proposed regulatory changes to the Alaska Administrative Code. Title 9. Chapter 52. Executive Branch Ethics.

Purpose: Ethics programs serve to provide supports to individuals in organizations to do the right thing, to avoid the appearance of or the actual conflict of interest. They also provide the accountability for setting and maintaining high standards of ethics.

Proposed regulatory changes are counter to the spirit and intent of the Alaska Constitution, the Alaska Statutes and Alaska Administrative Code and don't support ethical behavior.

In Article I – Declaration of Rights of the Alaska Constitution

§ 2. Source of Government **All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.**

In Article III – The Executive of the Alaska Constitution

§ 16. Governor's Authority **The governor shall be responsible for the faithful execution of the laws.** He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

Alaska Statute Chapter 39.52 Alaska Executive Branch Act, Section 39.52.010. Declaration of Policy includes:

(1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;

(4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;

9 Alaska Administrative Code 52.20 Improper Motivation

A public officer may not take or withhold official action on a matter if the action is based on an improper motivation.

The changes could inadvertently support collusion or coercion to obtain a thing of value among the governor, lieutenant governor and/or attorney general, and must not be implemented. The changes create a situation that at minimum appears to be a conflict of interest and at worst self-dealing.

The current process for investigating potential misconduct by the Governor, Lieutenant Governor or Attorney General includes the appointment of an independent counsel separate and distinct from the Department of Law. This independent counsel investigates the complaint of misconduct and provides a report to the Personnel Board. Once the issue is adjudicated by the Personnel Board, if there is a criminal matter, it is referred to the Department of Law which decides whether to prosecute. Since the independent counsel serves in the place of the Attorney General, in the case of complaints filed against the Governor, Lieutenant Governor or Attorney General, someone other than the Attorney General would determine whether to prosecute. If there is a public interest, the results of the investigation are disclosed to the public.

The current process is set up to eliminate conflicts of interest bypassing the Attorney General as an active participant in executive branch ethics complaints. **The proposed changes damage this separation. Because the Department of Law would be involved in the prosecution, if warranted, the Department of Law should not be involved in the defense of ethics complaints nor any associated criminal conduct.**

The proposed change which adds a confidentiality clause in 9AAC 52.160 further breaks the intent to separate the Attorney General from being involved in complaints dealing with the Governor, Lieutenant Governor and Attorney General by withholding information from the public.

RECOMMENDATIONS:

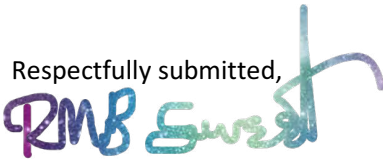
- Executive Ethics Personal Development.
 - Once a Governor, Lieutenant Governor have been elected and the Attorney General appointed all public officers should be trained in person by the Personnel Board Director, or an ethics expert, prior to assuming office. It is critical that these individuals understand the limits of their power and the need to incorporate ethics, doing the right thing, when making any decision. Of critical importance is behaving in a nonpartisan manner. Individuals may have held positions in which partisanship was an acceptable part of their former role and must receive clear guidance on Separation of Powers and parameters of their power, behavior and decision-making in their new role.
 - Once these individuals have received their personal development, the Governor must set the tone in their administration by holding a meeting on this subject with department heads, Governor's Office Staff and set the expectation for high standards of ethical behavior.

- An alternative to the proposed change could be for the legislature to fund a budget for legal services insurance policy for all executives (Governor, Lieutenant Governor, Attorney General,

members of the Cabinet) in state government under the Director of Personnel. In this way, a public officer could access legal services under the terms of coverage without any internal ethical complications. There may be some best/promising practices used by other states that could be helpful to the Administration and the Legislature to create an acceptable solution.

- From a risk management and personal development standpoint, if multiple complaints occur, an evaluation must be done to determine corrective action that needs to be taken to minimize negative impact on Alaskans, State of Alaska employees and budgets.
- More transparency not less as the proposed regulatory change indicates in 9 AAC 52.160. **For transparency's sake, matters concerning the Governor, Lieutenant Governor or Attorney General should always be disclosed to the public based on a presumptive determination of public interest.**

Respectfully submitted,



Renata "Randi" Baranowski-Sweet
PO Box 804
Seldovia, AK 99663-0804

Patricia Carlson

From: Patricia Carlson
Sent: Sunday, November 3, 2019 10:19 PM
To: lawregulationscomments (LAW sponsored)
Subject: new regulations

The Attorney General should not be able to provide free legal help the the Governor. This is a self-serving regulation that creates new conflicts of interest.

Please don't allow it.
Patricia Carlson
Fairbanks, AK 99709

Alaskan WhiteDragon

From: Alaskan WhiteDragon
Sent: Sunday, November 3, 2019 10:30 PM
To: lawregulationscomments (LAW sponsored)
Subject: Alaska ethics regulations

To whom it may concern,

I would like to express my opposition to the proposals to change state ethics regulations at 9 AAC 52.140 and at 9 AAC 52.160.

These changes would allow the Department of Law to defend the Governor, Lt. Governor, and Attorney General against ethics complaints at state expense under certain circumstances.

They would also make information about the defense against an ethics complaint confidential.

These changes are a bad idea.

The Department of Law and the Attorney General have one client, the people of Alaska. The Attorney General is not the governor's personal lawyer. Treating him as the governor's personal lawyer, and the lawyer for the people of Alaska creates opportunities for conflicts of interest.

The regulations include the qualifier that the Attorney General or Governor must determine that the defense is in the public interest. This is an easy requirement to wordsmith and bypass.

I also note that the analysis of the regulation says it will create no operating or capital costs for the state.

If this regulation is used to pay the expenses of defending someone against an ethics charge it will create costs for the people of Alaska. Given budget constraints, these costs mean that some other state task will be eliminated or delayed.

Sincerely,

Lesa Hollen, M.S.

TobyAllen

From: TobyAllen
Sent: Sunday, November 3, 2019 10:45 PM
To: lawregulationscomments (LAW sponsored)
Subject: New Ethics Bill

Please do not allow AG Clarkson's new ethics bill to see the light of day. This bill will not benefit the average Alaskan and will instead allow an inappropriate expenditure of our financial resources to illegally defend the Governor from citizenry who feel the Governor has acted against their best interests and have sued him to change his harmful policies. Do not support this proposal from AG Clarkson.

Art Allen
3528 Knik Ave
Anchorage 99517

Myra Munson

From: Myra Munson
Sent: Sunday, November 3, 2019 11:27 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics regulation

I am writing to oppose adoption of new Department of law regulations that would permit the department of law to represent the governor, Attorney General or others in ethics complaints. Adoption of these regulations will create inevitable conflicts of interest and undermine the responsibility of the attorney generals office to act only in the best interest of the state, and not of individuals who work for the state as either elected or appointed officials. Thank you for your consideration. Myra Munson, 142 Gastineau Ave, Juneau AK 99801. Cellphone: .

Sent from my iPhone

Marion Nelson

From: Marion Nelson
Sent: Sunday, November 3, 2019 11:45 PM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics-AG.

Legislative Legal Services, state attorneys whose job it is to offer non-partisan legal advice to all legislators. General Kevin Clarkson is attempting to change ethics rules to benefit himself, Gov. Dunleavy, and Lt. Gov. Kevin Meyer by proposing new regulations that would allow the three of them to use the Department of Law as their personal lawyers if an ethics complaint is filed against them.

Remember that an Attorney General is chosen by, and serves at the pleasure of the governor. So **if the governor does something legitimately unethical, the AG's job hangs in the balance too, because their continued employment depends on the governor's good will.** This creates personal incentive for the AG to do things that may not benefit the public interest.

These rules violate the constitution and statute, and I don't support them.

Marion Nelson
POB 3612, 99611

Su Chon

From: Su Chon
Sent: Sunday, November 3, 2019 11:55 PM
To: lawregulationscomments (LAW sponsored)
Subject: 9 AAC 52.140 Public Comment

To the Department of Law,

As a lifelong Alaskan with a deep love and pride for my state, I am writing to express my strong concern over the proposed changes to 9 AAC 52.140. Previous governors have hired private attorneys to defend themselves against ethics complaints and this would be asking the public to pay for legal representation for our current governor and those who will fill that seat in the future. Coming from a governor who ruthlessly cut the state budget, this is unconscionable. The funding used for legal representation could be used to help strengthen our state. This is also unconstitutional because it creates a conflict of interest between the Attorney General and the Governors office, and representations by the Attorney General would provide benefit to one person at the cost of tax payer dollars. Please, I urge you to reject this proposal. Thank you for your consideration.

Sincerely,

Su

Sharon Clawson

From: Sharon Clawson
Sent: Monday, November 4, 2019 12:03 AM
To: lawregulationscomments (LAW sponsored)
Subject: Opinion

I object to changing the law to provide paid attorney fees for ethics violations of the executive branch, until a court has deemed the accusation a frivolous one.

Sharon Clawson
Anchorage

Sent from my iPhone

Jim/Jean Ann Alter

From: Jim/Jean Ann Alter
Sent: Monday, November 4, 2019 12:04 AM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics Regulations.

Begin forwarded message:

?I am writing to oppose adoption of new Department of law regulations that would permit the department of law to represent the governor, Attorney General or others in ethics complaints. Adoption of these regulations creates inevitable conflicts of interest and undermines the responsibility of the attorney generals office to act in the best interest of the state, and not of individuals who work for the state as either elected or appointed officials.

Thank you for your consideration. Jean Ann Alter

319 Distin Ave. Juneau, Ak.

BOI

Sent from my iPhone

Sent from my iPhone

Kristin Mitchell

From: Kristin Mitchell
Sent: Monday, November 4, 2019 12:21 AM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics concern

I am writing to express concern about the proposal to provide taxpayer supported legal defense of the Governor, Lt Governor and AG of AK in the event of ethical violations.

This looks like a conflict of interest and an ethics violation to me

Kristin Mitchell

Kenai AK

Lorraine Jaeger-Kirsch

From: Lorraine Jaeger-Kirsch
Sent: Monday, November 4, 2019 2:24 AM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics concerns

I am writing as a constituent to express my concerns about ethics violations over the proposed changes within the department of law to defend the governor and attorney general. Voters have a constitutional right to file ethics complaints and making changes to this process is wrong. Please take heed to the people of Alaska whom voice concerns about due process. Thank you for your consideration.

Respectfully,
Lorraine Jaeger-kirsch

Sent from my iPhone

Connie

From: Connie
Sent: Monday, November 4, 2019 2:57 AM
To: lawregulationscomments (LAW sponsored)
Subject: Do not allow the change!

What the governor and attorney general are trying to do is against our state constitution. Do not allow it!

Connie Giddings, CRS
2056 Stanford Dr
Anchorage, AK 99508

BOI

Sent from my virtual office

Douglas A. Yates

From: Douglas A. Yates
Sent: Monday, November 4, 2019 4:22 AM
To: lawregulationscomments (LAW sponsored)
Subject: NO change to ethics rules!

Based on an informal pre-crime analysis, it's in the best interests of the state to maintain ethics regulations as they are written and understood.

I oppose any changes at this time. But if the AG and Governor would like to propose upgraded rules so as to provide greater clarity, transparency, and program funding to assure compliance, I look forward to such an initiative.

So, hands-off rules and procedures related to defense-related costs of ethics violations. The proposed changes creates an incentive to violate ethics rules. It's an inducement to escape costs associated with alleged wrongdoing. In a time of shrinking budgets, and growing distrust of government, this is not the time to reward the executive branch for poor or illegal performance.

Maintain present code, and its negative incentives, to help assure employee performance matches Alaskan's expectations.

Respectfully submitted:

Douglas Yates
Box 221
Ester, Alaska 99725

Dan K. Sadler

From: Dan K. Sadler
Sent: Monday, November 4, 2019 5:18 AM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics Rules

I am complaining about the Attorney General's belief that the rules can be changed to suit the Governor, Lt. Governor and himself in regard to ethics complaints.

You guys wanted the jobs, now you have them. So behave and do them well and don't be expecting the Alaska Public Treasury to bail you out when you misbehave.

Regulations that allow you three to use the State employed lawyers for your defense is absurd. If the action brought against you is frivolous, you will pay nothing anyway.

If you are guilty as claimed, you deserve whatever happens and you can defend yourselves.

Credo: Living Deliberately, One moment at time.

Dan K. Sadler

BOI
BOI Cell

Diana Carbonell

From: Diana Carbonell
Sent: Monday, November 4, 2019 5:31 AM
To: lawregulationscomments (LAW sponsored)
Subject: You've got to be kidding me!

Alaska already has a system to protect people from frivolous lawsuits by allowing defendants to recover their legal fees from the complainants. Carving out a perk for three state officials seems self serving and corrupt on it's face.

Sincerely,
Diana Carbonell

Sandra Loomis

From: Sandra Loomis
Sent: Monday, November 4, 2019 6:09 AM
To: lawregulationscomments (LAW sponsored)
Subject: proposed change to ethics rules that would allow public money to be spent defending the top state officials from ethics complaints.

proposed change to ethics rules that would allow public money to be spent defending the top state officials from ethics complaints.

These new proposed rules violate the constitution and statute, and I absolutely do not support them.

Sandra Loomis
PO Box 130
Talkeetna AK 99676

Stephen Hendricks

From: Stephen Hendricks
Sent: Monday, November 4, 2019 6:19 AM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics Rules comments

Dear Law Regulations comments rader,

Attorney General Kevin Clarkson is apparently attempting to change ethics rules to benefit himself, Gov. Dunleavy, and Lt. Gov. Kevin Meyer by proposing new regulations that would allow the three of them to use the Department of Law as their personal lawyers if an ethics complaint is filed against them.

This proposal provides an unlawful public benefit to Dunleavy, Meyer, and Clarkson and it is in direct violation of the Executive Branch Ethics Act. The Attorney General is chosen by, and serves at the pleasure of the governor. If the governor does something legitimately unethical, the AG's job hangs in the balance too, because their continued employment depends on the governor's good will. This creates personal incentive for the AG to do things that may not benefit the public interest.

This is unacceptable and Clarkson's new regulations ought to be sent directly to the circular file (garbage can). I can't begin to tell you how much this aggravates me but suffice it to say this attempt at covering their misguided butts is unadulterated BS!

Sincerely yours,
Stephen Hendricks

Robyn Cassidy

From: Robyn Cassidy
Sent: Monday, November 4, 2019 6:31 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed ethics violation regulations

I am writing to voice my opposition to proposed regulations allowing the Dept of Law to represent the AG, Lt. Governor and Governor on ethics charges. These rules violate the constitution and statute and I do not support them.

Robyn Cassidy

Sent from my iPhone

Kathleen Neumaier

From: Kathleen Neumaier
Sent: Monday, November 4, 2019 6:36 AM
To: lawregulationscomments (LAW sponsored)
Subject: Do not allow dunleavey and his cronies to violate ethic laws by covering for one another

Katheen Neumaier 715 Bentley drive Fairbanks 99701

Sent from my iPhone

Pamela Lloyd

From: Pamela Lloyd
Sent: Monday, November 4, 2019 6:49 AM
To: lawregulationscomments (LAW sponsored)
Subject: Executive Branch Ethics Act

I do not support changing rules that would violate the constitution and statute. Alaska needs to be a leader in integrity and ethical behavior. So try protecting Alaska instead of yourselves.

Pamela Lloyd
30238 White Spruce Ave
Sterling, AK 999672

BOI

Sent from my iPhone
Pamela Lloyd

Emma Kramer

From: Emma Kramer
Sent: Monday, November 4, 2019 6:59 AM
To: lawregulationscomments (LAW sponsored)
Cc:
Subject: My comments

Hello,

I am writing to convey my concern over the actions of the new Attorney General. It is imperative that our state leaders act in accordance with the state constitution. That is accepted by all and should be enforced. I am a registered independent voter, commercial fisherman, and parent of two. My husband and I have owned land in Girdwood for over 20 years, and are a proud part of our community. What is happening under Gov Dunleavy is a disgrace.

Thank you for your time
Emma Kramer

Sent from my iPhone

Carolyn Gove

From: Carolyn Gove
Sent: Monday, November 4, 2019 7:08 AM
To: lawregulationscomments (LAW sponsored)
Subject: Change in Ethics Rule

I am writing to voice my objection to the change in Ethics rule that would use public money to defend the Administration against any complaints. This violates the rights of the public.

Thank you.

Carolyn Gove

Victoria OConnell

From: Victoria OConnell
Sent: Monday, November 4, 2019 7:12 AM
To: lawregulationscomments (LAW sponsored)
Subject: No changes to 9 AAC 52.140

Dear Ms. Bahr,

I am commenting on proposed changes to 9AAC52.140. I strongly oppose this regulation change. It is clearly illegal and could provide an incentive for an attorney general to protect their job over the interests of the state. The AG works for the people but is appointed by the Governor so having them defend the Governor and the Lt Governor against Ethics Complaints is clearly a conflict of interest and deeply unethical. There is plenty of protections in current law against frivolous ethic complaints and if it is a serious complaint than the Governor and/or Lt Governor and AG should be getting their own lawyers for defense. Further, the premise that this change in regulation "costs nothing" is preposterous. If the AG is representing the Governor and/or the Lt Governor in these situations they are getting an unlawful public benefit. Obviously other work will have to be reprioritized or contracted out. It is not as if there is "free time" at the Attorney General's office. These types of shenanigans are why people are signing the recall petition for the Governor. We expect our Government to be run ethically, transparently, and within the law. Do not change the law to allow for misuse of public office.

Thank you,

Victoria O'Connell Curran
608 Etolin St
Sitka, AK 99835

BOI

From: BOI
Sent: Monday, November 4, 2019 7:31 AM
To: lawregulationscomments (LAW sponsored)
Cc: KIMBERLY MAXWELL
Subject: proposed changes to 9 AAC 52.140

I would like to express my opinion that the proposed changes to the administrative code are not necessary and more importantly would place employees of the Department of Law (DOL) in an untenable position.

These employees would be required to defend the very people that can fire them at will. This creates a situation ripe for abuse.

I think the proposed changes are a "solution looking for a problem" as to my knowledge there have not been cases where the current ethics violations process has become predatory or a mechanism for harassment of elected or appointed officials.

Steve McGroarty

Jim Wright

From: Jim Wright
Sent: Monday, November 4, 2019 7:31 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed regulation re ethics complaints

I oppose the pending proposed regulation regarding ethics complaints against the executive. The people of Alaska expect the Attorney General to serve the public interest rather than act as personal counsel for the Governor. There are problems with the current system in that regard. The pending proposal exacerbates concerns and in effect adopts and seeks to legitimize conflicts of interest. Therefore I oppose the proposal and ask that it be rejected.

Sent from my iPhone

Support

From: Support
Sent: Monday, November 4, 2019 7:40 AM
To: lawregulationscomments (LAW sponsored)
Subject: proposed ethics regulations

As an Alaskan citizen, I strongly oppose the proposed changes in the regulations of the Department of Law. An ethics violation is a very serious matter and should be a transparent process in the investigation of such charges. Under current regulations, the charged party of a frivolous accusation would be reimbursed for expenses in his/her defense.

If the proposed regulations are adopted, it would be difficult to unmask any corruption or other ethics violations.

Please do not adopt the proposed regulations.

Sincerely,
Laura Bonner
3101 E 112th Ave
Anchorage, AK 99516

Sue Signor

From: Sue Signor
Sent: Monday, November 4, 2019 8:05 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Change to ethics rule is unethical

This new self-serving proposal provides an unlawful public benefit to Dunleavy, Meyer, and Clarkson which is in direct violation of the Executive Branch Ethics Act.

This would be a violation of the separation of powers. This rules change should not be approved.thank you.
Sue Signor
Alaska resident since 1977.

Therese Thibodeau

From: Therese Thibodeau
Sent: Monday, November 4, 2019 8:20 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed changes to Dept of Law rules

As a lifelong Alaskan, I want to voice my concern over a proposed change in regulations that would allow Department of Law attorneys to act as the governor's personal attorney. This violates every ethic of impartiality that the department represents. Do not allow those changes to be implemented.

Thank you.

Therese Thibodeau
426 Gold St.
Juneau

Sent from my iPad

Steven Jacquier

From: Steven Jacquier
Sent: Monday, November 4, 2019 8:23 AM
To: lawregulationscomments (LAW sponsored)
Subject: Opposing Proposed Changes to Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)

The proposed changes to Executive Branch Ethics Act (AS 39.52.010 - 39.52.960) are directly counter to the best interests of Alaska. Pendulums do swing back; anyone associated with advancing such cynical Orwellian measures can expect their career to suffer in consequence.

Voter & Taxpayer,
Steven Jacquier
6801 Louise Court,
Anchorage, AK 99507

Nicole Harrell

From: Nicole Harrell
Sent: Monday, November 4, 2019 8:45 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed changes to ethics rules

Hello,

I am writing to express my opposition to the proposed changes to ethics rules regarding the department of law that would allow public money to be spent defending our top state officials from ethics complaints. The proposed changes are potential violations of the public purpose clause in the constitution; the separation of powers, and equal protection.

This proposed change creates a huge conflict of interest, since the attorney general serves at the pleasure of the governor, and he may feel the need to defend the governor from ethics complains even if that action does not serve the public interest.

Ethics complaints against the Governor, Lt. Governor and Attorney General should continue to be evaluated by independent counsel selected by the personnel board to avoid conflicts of interest, or the appearance of conflicts of interest, as they always have been.

Sincerely,

Nicole Harrell

Mary Ellen Ashton

From: Mary Ellen Ashton
Sent: Monday, November 4, 2019 8:54 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed changes to ethics rules

Kevin Clarkson's proposed changes which would allow Dunleavy, Clarkson, and Meyer to use the Department of Law as their personal attorneys violate the Alaska Constitution, the Executive Branch Ethics Act, and will create conflicts of interest.

I am opposed to Clarkson's proposed new regulations and agree with Legislative Legal Services memo.

MaryEllen Ashton
Sent from my iPad

Iura Leahu

From: Iura Leahu
Sent: Monday, November 4, 2019 8:54 AM
To: lawregulationscomments (LAW sponsored)
Subject: Re: Against illegal regulations

Hi,

I am a Juneau resident. I am writing to express my opposition to the changes proposed by Clarkson to allow the state Dept of Law represent itself and the governor and lieutenant governor and anyone in the executive branch against ethics complaints. These individuals should pay their attorneys to fight conflict of interest they set regulations for using their own money. It is in violation of AK Constitution! Conflict of interest written all over these new changes. Stop illegal regulations.

Iura Leahu

BOI

Carl Bostek

From: Carl Bostek
Sent: Monday, November 4, 2019 9:13 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed change to Ethics Act (AS 39.52.010 - 39.52.960), including:

BAD IDEA!!

The adoption of these regulations will encourage corruption, malfeasance, lack of transparency, and an erosion of public trust in the Office of the Attorney General, the Department of Law, and the Governor's Office

Chester Carl Bostek, Lt. COL. USAF (Ret.) Anchorage,AK

Sent from my iPhone

CYNTHIA HAWKINS

From: CYNTHIA HAWKINS
Sent: Monday, November 4, 2019 9:18 AM
To: lawregulationscomments (LAW sponsored)
Subject: DOL Rule Change

To whom it may concern,

I believe that the proposed rule change that would charge the DOL to protect the Gov. and his associates from Ethics charges will lead to corruption and abuse of office.

Cynthia Hawkins
5896 E. Atka Drive
Wasilla, Alaska 99654

Grace Lee

From: Grace Lee
Sent: Monday, November 4, 2019 9:22 AM
To: lawregulationscomments (LAW sponsored)
Subject: Comments re:changes to 9 AAC 52.140 & 160

Ms. Bahr,

I am writing in opposition to the proposed changes in the above-mentioned regulations that will allow the department of law to defend the governor, lieutenant governor and attorney general. As many other attorneys smarter than me have laid out, this is blatantly unconstitutional. This will trigger more litigation if passed, resulting in increased cost to the state and taxpayers - money we clearly don't have. Additionally, beyond the illegality of the rule, it simply is unfair.

Why does only the three most powerful of Alaska's public servants receive free legal representative from the DOL for ethics defense? To break this down, this means that when any of these employees are charged with an ethics complaint, taxpayer funds will go to their defense. They don't have to spend their considerable salary on ethics/defense attorneys that any other person would require. Not only that, they will compromise the integrity of the DOL. What happens if OSPA or the criminal sections of the DOL wants to file criminal charges based on these complaints? We have the DOL litigating against the DOL. What are the ethics of attorney-client confidentiality there? It creates an unnecessary moral and legal quagmire for the attorneys working at these agencies.

Passing this will be another blow to the constitution. It should not be passed.

Grace Lee

Laurie Radzinski

From: Laurie Radzinski
Sent: Monday, November 4, 2019 9:34 AM
To: lawregulationscomments (LAW sponsored)
Subject: Changes to Executive Ethics Act Regulations

To Whom It May Concern:

I disagree with the proposed changes to 9 AAC 52.140 and 9 AAC 52.160. They appear to create a conflict of interest by allowing the use of "sole discretion".

I also would like my email address added to the notification list of proposed regulation changes.

Sincerely,

Laurie Radzinski
Cooper Landing, Alaska

BOI

From: BOI
Sent: Monday, November 4, 2019 9:35 AM
To: lawregulationscomments (LAW sponsored)
Cc: Stutes, Louise B (LEG); Senator Gary Stevens; Editor - Kodiak Daily Mirror
Subject: Proposed changes to regulations 9 AAC 52.140 & 9 AAC 52.160 by AK Attorney General

To the Alaska Department of Law:

I am against the proposed changes at the Department of Law that would give the State Attorney General the ability and state funding to defend the governor, Lt. governor, or the attorney general against complaints alleging ethics violations. According to Libby Bakalar, former Alaska assistant attorney general, (and many other folks with legal training) these proposed regulation changes violate the spirit and intentions of the Ethics Act!

It is noteworthy that the Alaska Legislature's legal department (as well as 5 legislators with legal backgrounds) believe that this proposed action its self is a grievous violation of ethics.

Would not the attorney general's changing these regulations be a conflict of interest in its self? If these changes are implemented will the details of public complaints be declared confidential and be hidden from the Alaska public? It would appear that that could be the case. It is simply wrong!

The proposed change in the state Executive Branch Ethics Act, will allow those who are accused of violations of improprieties and or illegal acts to a) use state funding and employees to provide legal defense for the Governor, Attorney General or the Ast. A..G. b) They would control the review process for complaints. c) They would control any information on any complaint of impropriety from the public.

Conflict of interest charges have always been and should remain defended by the person involved; not by the State AG's staff or by the Governors appointees.

Why are these changes being proposed by the attorney general at this time of conflicts? Are they @ the request of the Governor? Why at this time of controversy? If passed how will staff not be faced with the risk of conflict or loosing their jobs by not achieving their boss's goals? Why are there no public hearings and only a quiet written notice? Is the validity of this proposed change to be judged only by the AG? This proposed action deserves the examination by the public, the Alaska House of Representatives and the Senate not by those who would possibly benefit by it.

Regardless of one's political affiliation, folks should review, on line, the recent commentaries in the Anchorage Daily News.

Just a reflection from a tide pool in Kodiak.

Patrick Holmes

Michael Alex

From: Michael Alex
Sent: Monday, November 4, 2019 9:48 AM
To: lawregulationscomments (LAW sponsored)
Subject: Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)

To those concerned,

The proposed changes are a terrible idea. They would make corruption so much easier, and catching it so much harder. This is not in the interest of Alaskans.

Sincerely,

Michael Alex

Tom Gregg

From: Tom Gregg
Sent: Monday, November 4, 2019 9:51 AM
To: lawregulationscomments (LAW sponsored)
Subject: Ethics Rules

Changing ethics rules for your personal gain is corrupt . The president is being impeached for abusing the power of his office for personal gain. It is strange that any of you would decide to do the same. Especially the attorney general of Alaska. But then the attorney general of the United States comes to mind who abused his power and knowingly lied to America that the president was exonerated on all counts. I'm sure by now he is feeling the heavy weight of that decision and realizing that the US Constitution and the Rule of Law in America is no match for opinions and white collar legal trickery. And so is Donald Trump.

dmccorkell

From: dmccorkell
Sent: Monday, November 4, 2019 9:56 AM
To: lawregulationscomments (LAW sponsored)
Subject: Executive Branch Ethics Act (proposal - Work Order no. 3I - LS1206)

I just wanted to voice my opinion that I do not support this proposal.

Thanks,
David R McCorkell
1383 W Minnetonka Drive
Wasilla, AK 99654
Mobile:

Sent from [Mail](#) for Windows 10

BOI

From: BOI
Sent: Monday, November 4, 2019 10:05 AM
To: lawregulationscomments (LAW sponsored)
Cc: Representative.Grier.Hopkins@akleg.gov; Coghill, John (LEG)
Subject: Proposed Regulations to the Executive Branch Ethics Act

On October 1, 2019, the Alaska Department of Law posted notice of three proposed regulations relating to the Executive Branch Ethics Act (the Act) and invited comment during a 30 day period. As a constituent, I would like to voice my objections as the proposed regulations would significantly undermine the goals of the Act. They would violate the public purpose clause in the State Constitution. And they create a conflict of interest regarding the State Attorney General role. Public money should only be spent in retrospect if, and only, if a public officer is exonerated.

We should keep the Act as it is. Ethics and ethics laws are important to all of us equally.

Regards,

Sarah Keller
169 Eagle Ridge Rd
Fairbanks AK 99712

Catherine Byrne

From: Catherine Byrne
Sent: Monday, November 4, 2019 10:06 AM
To: lawregulationscomments (LAW sponsored)
Subject: Public Comment on Proposed Ethics Law Change.
Importance: High

Dear Sir or Madam,

I write to object in the strongest possible terms to the proposed Ethics law change that would allow the Governor or other high level state officials accused of ethics violations to use state lawyers to defend themselves. It is beyond outrageous that we the taxpayers would be paying for the defense of corrupt politicians. This is egregiously wrong and must not be allowed to become law. I request that this proposed change be dropped immediately.

Regards,

Catherine Herron
5851 W. Beverly Lake Road
Wasilla, AK 99623

Craig Mishler

From: Craig Mishler
Sent: Monday, November 4, 2019 10:18 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed new rule

We are writing today to object to a proposed new regulation that would provide free legal counsel by the state to the sitting governor when ethics charges are brought forth against the governor. While some of these cases may be deemed "frivolous", who determines whether or not they indeed are frivolous or have merit? We do not think that the governor should be shielded by the state attorney general when his or her personal conduct comes into question. There is a clear conflict of interest here. The governor should defend himself or herself and not depend on public monies, lest the fox be left guarding the hen house.
--Craig and Barbara Mishler, 3910 McMahan Avenue, Anchorage, Alaska 99516.

Zachary Davies

From: Zachary Davies
Sent: Monday, November 4, 2019 10:25 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed regulation re: DOL representing Gov/Lt. Gov

Good morning,

I'm providing comments on the new regulations proposed by AG Clarkson that would allow the Dept of Law to provide legal representation to the governor, lieutenant governor, and AG if an ethics complaint is filed against them.

I oppose this proposed regulation.

First, because it's a drastic change to long-standing practice which has already been reviewed by at least two prior AG's.

Second, because it's unnecessary, as there are already provisions in place to assist and reimburse persons in these roles in appropriate circumstances.

Third, because it creates a glaring conflict of interest, as the AG serves at the pleasure of the governor.

Might there be some potential cost-savings by allowing in-house attorneys to defend these persons and avoiding the cost of reimbursing them for representation by private attorneys? Perhaps, but that financial argument is insufficient to outweigh the other concerns briefly described above. I oppose this regulation.

Thank you,
Zachary Davies

From: BOI
Sent: Monday, November 4, 2019 10:54 AM
To: lawregulationscomments (LAW sponsored)
Subject: Comment to proposed regulations changes to Ethic Act

To whom it may concern:

Please do NOT adopt the proposed regulations changes to the Alaska Executive Branch Ethics Act because of the following:

--- Nothing in the Executive Branch Ethics Act requires the governor, Lt. governor and attorney general to spend money to retain a lawyer when complaints are filed as there is no court room or judge involved. There is only a personnel board, whose members are appointed by the governor, and an independent investigator who looks into the complaint and mediates resolutions with concerned parties.

--- The proposed changes violate the citizen's rights of free speech.

--- The proposed changes potentially violate numerous clauses of the Alaska Constitution and include the public purpose, the separation of powers, and equal protection clauses.

--- The proposed changes clash with the AEBEA's prohibitions on gifts, favoritism, self-enrichment, use of state property and resources for personal benefit and financial interests, use of official actions for personal purposes, coercion of subordinates to perform services for private benefit of public officers, use of state resources for partisan political purposes, intentionally securing unwarranted benefits or treatment, among others.

--- The proposed changes are a solution looking for a problem. Reason given for these changes are to "...help to mitigate the risk that the ethics complaint process is used to harass or becomes predatory" but according to an Oct. 28 DOL memo, those risks are theoretical in nature.

--- The proposed changes are not in the public's best interests but are only in the best interests of the governor, Lt. governor and attorney as they provide ease, convenience and financial invulnerability to the governor, Lt. governor and attorney when complaints of official misconduct are filed. The Oct. 28 DOL memo states "... this process is currently expensive and time consuming for the subject of the complaint, even if the complaint is ultimately found baseless. While defending against one or two baseless complaints might be manageable and harassing, as the number of complaints increase, the process can quickly become unmanageable and predatory."

The most efficient, direct and right way to mitigate risks of complaints is for the governor, Lt. governor and attorney general to adhere to our ethics acts and avoid conflicts of interest, misconduct, and corrupt, self-dealing practices.

--- The proposed changes are at the expense of the public's rights to good, honest government.

Please, do not adopt these changes.

Andrée McLeod
Anchorage, Alaska

Claire Norton - Cruz

From: Claire Norton - Cruz
Sent: Monday, November 4, 2019 11:19 AM
To: lawregulationscomments (LAW sponsored)
Cc: representative.laddie.shaw@akleg.gov
Subject: Public comment on proposed rule change in Dept of Law

Hello,

I would like to express my opinion that this proposed rule change, allowing the SOA Dept of Law to defend administration officials against ethics complaints is a both wildly inappropriate and constitutionally dangerous. This an extremely "swampy" move that would allow administration officers to engage in corruption and then defend themselves using public dollars. I am firmly against this proposed rule change, and I think any citizen who cares about being able to hold public officials accountable for graft, corruption, or any other misdeeds that can form the subject of ethics complaints would agree that this is a slippery slope leading toward the kind of corruption seen in less-developed and in-name-only democracies. Alaska deserves better.

Thank you,

Claire Norton-Cruz
Registered voter, HD 26

kathy prentki

From: kathy prentki
Sent: Monday, November 4, 2019 11:27 AM
To: lawregulationscomments (LAW sponsored)
Subject: Executive Branch Ethics Act, Work Order LS1206

The proposed regulations under work order LS1206 create a clear conflict of interest, in that the officials determining if a complaint against the governor, lieutenant governor, or attorney general is warranted and should be defended by the state of Alaska, are those same three individuals in a power relationship. "Who shall watch the watchers?" The fact that only those three officials are protected in the new regulation creates them as a special class, where all other state officials must pay for their own defense against such complaints.

In addition, any such defense would clearly be at some cost to the state, even if provided by state employees. Any work done by state attorneys is a billable cost, and would also result in work delayed for other state needs.

I strongly object to adoption of these proposed regulations.

Kathleen Prentki
Anchorage

General, Attorney (LAW sponsored)

From: General, Attorney (LAW sponsored)
Sent: Monday, November 4, 2019 11:33 AM
To: lawregulationscomments (LAW sponsored); Bahr, Maria Pia L (LAW)
Subject: FW: Opposition to Rules change to have state fund defense of the Governor and Lt. Governor

-----Original Message-----

From: Toni <[redacted] BOI >
Sent: Saturday, November 2, 2019 9:48 AM
To: General, Attorney (LAW sponsored) <attorney.general@alaska.gov>
Subject: Opposition to Rules change to have state fund defense of the Governor and Lt. Governor

Dear Sir,

Please reconsider your decision for a rules change by the Alaska Department of Law that would allow the department to freely defend the governor, lieutenant governor and attorney general from ethics complaints. This change is very worrisome to me for the following reasons:

- 1) As proposed, there would be no way for the public to know that the state was defending an official from a complaint that would also be kept confidential.
- 2) Our state budget does not have any room to expand. We cannot afford this. Please hold the line in your department as other departments are being asked to d.
- 3) This is another battle between the legislative and executive branch that will defer energy to infighting vs solving what is a very serious budget problem.

We need to come together not keep fighting.

Note: If this is the wrong place to send this public comment, could you kindly send it to the correct place.

Sincerely,

Antonia Sparrow,
Citizen of Anchorage and Alaska

Sent from my iPad

Cathy Carrow

From: Cathy Carrow
Sent: Monday, November 4, 2019 11:43 AM
To: lawregulationscomments (LAW sponsored)
Subject: do NOT support rule change

Thank you for this opportunity to provide input. I do not support a proposed change to rules and regulations that would allow certain government officials to use the state Department of Law to provide their personal defense. The Department of Law should serve the citizens of Alaska, represent the state's interests, and defend our state constitution for the common good of all. Taxpayers, and the state, should not bear the burden of defending individuals from ethics complaints or other charges.

Please do not implement these proposed regulation changes; they don't appear to be constitutional or even legal.

Thank you for your time.
Catherine Carrow
Soldotna, AK

Sent from my iPhone

BOI

From: BOI
Sent: Monday, November 4, 2019 12:07 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comment on proposed changes to 9AAC52.140

Dear Ms. Bahr:

The proposed changes to 9 AAC 52.140 would provide an unlawful public benefit to the Governor, Lt. Governor and Attorney General of the the state of Alaska. The proposed changes would be in direct violation of the Executive Branch Ethics Act. If there is a concern regarding frivolous ethics complaints there already are contingencies in place to protect the executive branch of state government. I am strongly opposed to this proposed regulation change.

Thank you,

Deidra Holum
722 Park Avenue
Ketchikan, AK 99901

Renee Goentzel

From: Renee Goentzel
Sent: Monday, November 4, 2019 12:13 PM
To: lawregulationscomments (LAW sponsored)
Subject: Free legal assistance in ethics cases

This is self-serving political corruption with no identified need. I oppose this action.

Renée Goentzel

From: Marc Grober <BOI>
Sent: Monday, November 4, 2019 12:19 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed regulatory changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)
Attachments: Legislative-Legal-Memo-AG-Proposed-Regulations.pdf; 09-008_AN2009102807.pdf

As a member of the Alaska Bar since 1977, I am frankly horrified that our current Administration is seeking to have the State cover the expenses for the outrageously unethical behavior of its personnel.

--

"There are more things in heaven and earth, Horatio, Than are dreamt of in your philosophy. "

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LEGAL SERVICES

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Corrected memo: October 21, 2019, moved Assistant Attorney General Steven Slotnick quote from page 3 to page 2 and edited paragraph.

MEMORANDUM

October 17, 2019

SUBJECT: Executive Branch Ethics Act — proposed regulations
(Work Order No. 31-LS1206)

TO: Senator Bill Wielechowski
Attn: Nate Graham

FROM: Daniel C. Wayne
Legislative Counsel



You have asked two questions pertaining to recently proposed regulations, which are addressed below. On October 1, 2019, the Department of Law (department) posted notice of three proposed regulations relating to the Executive Branch Ethics Act (the Act), and invited public comment during a 30-day period before they are adopted. The proposed regulations read:

9 AAC 52.140 is amended by adding new subsections to read:

(f) If a person brings a complaint alleging a violation under AS 39.52.110-39.52.190 or this chapter by the governor or the lieutenant governor, the Department of Law may provide legal representation to the governor or lieutenant governor to defend against the complaint if the attorney general makes a written determination, in the attorney general's sole discretion, that the representation is in the public interest.

(g) If a person brings a complaint alleging a violation under AS 39.52.110-39.52.190 or this chapter by the attorney general, the Department of Law may provide legal representation to the attorney general to defend against the complaint if the governor makes a written determination, in the governor's sole discretion, that the representation is in the public interest. (Eff. 4/24/94, Register 130; 12/22/2010, Register 196; am __/__/__, Register __)

Authority: AS 39.52.310 AS 39.52.330 AS 39.52.950 AS 39.52.320 AS 39.52.350

9 AAC 52.160 is amended by adding a new subsection to read:

(h) Notwithstanding (a) - (g) of this section, information received by the Department of Law and the attorney general related to the defense of a complaint alleged under 9 AAC 52.140(f) and (g) is confidential.

(Eff. 4/24/94, Register 130; am __/__/__, Register __)
Authority: AS 39.52.340 AS 39.52.420 AS 39.52.950

(1) Do the proposed regulations raise issues under the Constitution of the State of Alaska?

The following three constitutional issues are raised by the proposed regulations.

(A) Public purpose required.

Article IX, sec. 6 of the Alaska Constitution states that no "appropriation of public money [may be] made, or public property transferred . . . except for a public purpose."¹ The proposed use of state resources to defend the governor, the lieutenant governor, and the attorney general against ethics complaints, regardless of the outcome, under the Act would confer a private benefit on those three public officers.²

The benefit conferred under the proposed regulations is unprecedented. In a 1994 informal opinion from the Office of the Attorney General, Assistant Attorney General Steven Slotnick concluded:

[A]n expense incurred in defense of an Ethics Act complaint, or any penalty levied as a result of that complaint, is the responsibility of the public officer who was the subject of the complaint. The State will not provide a defense or indemnification for actions under the Executive Branch Ethics Act.³

In 2009, Governor Sarah Palin was the subject of several ethics complaints, some of which were dismissed. In a letter to Governor Palin's chief of staff, Attorney General Dan Sullivan acknowledged that the state apparently had never defended or covered the legal expenses of an accused public officer in an Ethics Act proceeding.⁴ He

¹ See also 1994 *Inf. op. Att'y Gen.* (Jan. 1; 663-94-0147).

² The financial value of the benefit would be substantial, as it saves the cost of hiring a lawyer. Moreover, the intrinsic value of a defense provided by the Department of Law in a complaint proceeding under the Act, considering that the duties of the Department of Law have traditionally included interpreting and administering the Act and assisting and advising the personnel board during complaint proceedings, would be more than nominal.

³ 1994 *Inf. Alaska Op. Atty. Gen.* at *2 (June 3, 663-94-0289)

⁴ 2009 *Op. Alaska Att'y Gen.* at *6 (August 5).

recommended then that the state reimburse private legal expenses incurred by a public officer who *successfully* defends against an ethics complaint.⁵ He explained as follows:

Public service should not subject public officers, who are assumed by law to be acting ethically, to personal financial liabilities when ethics proceedings confirm that they acted appropriately. Therefore, in examining whether the state may defend or pay the legal expenses for public officers in ethics proceedings, *the critical question is whether there is an approach that ensures that a public purpose is advanced while at the same time encouraging compliance with the Ethics Act by public officers.*^[6]

Subsequently the attorney general adopted regulations 9 AAC 52.040(c) and (d), allowing the state to pay, and a public officer to receive, reimbursement of private legal expenses in ethics complaints, in some instances, if the public officer is exonerated.

The proposed regulations authorize a state funded defense by the Department of Law — before a finding of the validity of the complaint and in the "sole discretion" of the attorney general — rather than authorizing reimbursement for defense expenses after a finding of no violation of the law as proposed in 2009 and allowed by 9 AAC 52.040(c) and (d).

According to the Act, "compliance with a code of ethics is an individual responsibility."⁷ If a court were to find that using state resources to shield one or more of the three public officers from the potential consequences of a complaint under the Act has a public purpose, the court may also find that purpose is outweighed by the public purpose of the Act itself, because otherwise, as discussed further elsewhere in this memorandum, the proposed regulations would significantly undermine the goals of the Act.⁸ In considering

⁵ As noted later in this memorandum, the letter advises against having the Department of Law directly defend public officers who are subject to ethics complaints.

⁶2009 *Op. Alaska Att'y Gen.* at *6 (August 5) (emphasis added).

⁷ AS 39.52.010(a)(7).

⁸ The purpose of the Act is discernible from AS 39.52.010(a), which reads:

Sec. 39.52.010. Declaration of policy. (a) It is declared that

(1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;

(2) a code of ethics for the guidance of public officers will

(A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;

whether it serves a public purpose to relieve the three public officers from the burdens associated with defending against frivolous ethics complaints, for example, a court may note that the legislature has already addressed that purpose with provisions throughout the Act that require or allow complaints with insufficient merit to be dismissed, at multiple stages of the complaint procedure.⁹

(B) Separation of powers.

The power to enact and change the law of the state is a legislative power.¹⁰ The separation of powers doctrine is implied in the Constitution of the State of Alaska,¹¹ and it precludes any exercise of the legislative power of state government by the executive branch of government, except as provided by the Constitution of the State of Alaska.¹² To the

-
- (B) improve standards of public service; and
 - (C) promote and strengthen the faith and confidence of the people of this state in their public officers;
 - (3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;
 - (4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
 - (5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
 - (6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
 - (7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

⁹ See, AS 39.52.320 and 39.52.370.

¹⁰ Article II, sec. 1, Constitution of the State of Alaska: "The legislative power of the State is vested in a legislature"

¹¹ *Bradner v. Hammond*, 553 P.2d 1, 4 - 5 (Alaska 1976) (separation of powers doctrine implied in state's constitution).

¹² *Id.* The Attorney General has no power to declare a law unconstitutional. In *O'Callaghan v. Coghill*, 888 P.2d 1302 (Alaska 1995), the Alaska Supreme Court noted:

extent that the Constitution of the State of Alaska does provide for the exercise of a legislative power by the executive branch, that power will be narrowly construed. "[T]he separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision."¹³

Article III, sec. 1 of the Constitution of the State of Alaska vests the executive power of the state in the governor, and the governor's authority to exercise that power is further described in art. III, sec. 16 of the Constitution of the State of Alaska.¹⁴ Those constitutionally created executive powers do not include the power to adopt regulations without legislative authority. The power of the executive branch to adopt regulations is delegated to the executive by the legislature through enactment of legislation, either explicitly, as in AS 39.52.950, or implicitly.

Significantly, AS 39.52.950 expressly limits the attorney general's regulatory authority. It reads:

Sec. 39.52.950. Regulations. The attorney general may adopt regulations under the Administrative Procedure Act *necessary* to interpret and implement this chapter. (Emphasis added).

In addition, the *Drafting Manual for Administrative Regulations, (the Manual)* published by the State of Alaska, Department of Law, similarly limits the attorney general's regulatory authority. The Alaska Supreme Court has held that "[A]gency action taken in the absence of *necessary* regulations will be invalid."¹⁵ The Alaska Supreme Court has

For an attorney general to stipulate that an act of the legislature is unconstitutional is a clear confusion of the three branches of government; it is the judicial branch, not the executive, that may reject legislation. . . . An attorney general can have no authority to be the binding determiner that legislation is unconstitutional.

¹³ *Id.* at 7.

¹⁴

SECTION 16. Governor's Authority. The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

¹⁵ *U.S. Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140, 142 (Alaska 1971) (Emphasis added).

said that the use of *the Manual* is required in formulating administrative regulations.¹⁶ According to *the Manual*, "[T]he APA and case law require that a regulation be "consistent with the statute," "reasonable," and "reasonably necessary." It is unlikely that a court would find the proposed regulations "necessary to interpret and implement" the Act. First, nothing like the representation allowed by the regulations has ever existed in connection with Act, which has been interpreted and implemented for decades. Second, it is virtually indiscernible how the statutes cited by the Department of Law as authority for the proposed regulations allow, create a perceived need for, or suggest that state resources may or should be used to provide or pay for defending a public officer in an ethics complaint under the Act. There are only two references in the Act to representation. Under AS 39.52.340(b) the subject of an ethics complaint has the right to contact an attorney if they choose. Under AS 39.52.360(d) the subject of an ethics complaint may (or may not) be represented by counsel. It is not likely a court would find that adoption of the proposed regulations is necessary to interpret and implement these two provisions. Therefore, they may find that the regulations are invalid.

According to *the Manual*,

When an agency adopts a regulation, it is acting in place of the legislature, usually by virtue of the legislature's general delegation of that power in a specified area. A regulation cannot waive or disregard a statutory requirement.^[17]

And,

to determine whether a regulation conflicts with statute, the court will use a reasonable and common-sense construction consonant with the objective of the legislature. The intent of the legislature must govern and the policies and purposes of the statute should not be defeated.^[18]

The proposed regulations do not meet these requirements. AS 39.52 does not contain a single provision that explicitly or implicitly authorizes the department to adopt the regulations it has proposed. The absence of a provision that prohibits adoption of a regulation does not imply a delegation of authority to adopt one; a delegation that broad would be unconstitutional, even if it were explicit. According to one past attorney general, "delegations of legislative authority are only permissible where the legislature establishes an 'intelligible principle' to guide and confine administrative decision

¹⁶ *The Manual*, page 101, (2018), citing *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, 1181 n.7 (Alaska 1977).

¹⁷ *The Manual*, page 101, (2018), citing *E.g., Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227, 1229 (Alaska 2003), and *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983).

¹⁸ *The Manual*, page 103, (2018) citing *Mech. Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004).

making."¹⁹ A statute allowing adoption of any regulation not otherwise prohibited by that statute, or an interpretation of a statute that reaches a similar conclusion, does not meet that requirement. The legislature has in fact provided guidance, including AS 39.52.010, AS 39.52.110, and AS 39.52.950, to inform decision making by the attorney general with respect to regulations.

In considering how much deference to give to an interpretation of law by the attorney general that the Act authorizes the proposed regulations, a court may also take the Department of Law's past practice into account. The Alaska Supreme Court has stated that "if agency interpretation is neither consistent nor longstanding, the degree of deference it deserves is substantially diminished."²⁰ In this instance, the proposed regulations are inconsistent with the Department of Law's longstanding interpretation and practice as reflected in the Sullivan attorney general opinion, discussed above.

(C) Equal protection.

The regulations raise a constitutional issue under the equal protection clause in art. I, sec. 1 of the Constitution of the State of Alaska. The Alaska Supreme Court has said, "[I]n considering state equal protection claims based on the denial of an important right we ordinarily must decide first whether similarly situated groups are being treated differently."²¹ Whether two entities are similarly situated is generally a question of fact.²² The governor, lieutenant governor, and the attorney general are three of many public officers who are subject to the Act.²³ Since the Act first became law, all public officers faced with ethics complaints have had to rely on their own private resources to defend against the complaints.

The proposed regulations would allow the state to provide, and the governor, lieutenant governor, and the attorney general to receive, state resources for the purpose of defending against ethics complaints; however, all other public officers would not be eligible for that benefit. If facts show that the remaining public officers are at a lesser risk of ethics complaints by virtue of the offices they hold, irrespective of their individual conduct, a

¹⁹ *The Honorable Frank Rue*, 1995 WL 848549, at *5, citing *State v. Fairbanks North Star Borough*, 736 P.2d at 1143.

²⁰ *Totemoff v. State*, 905 P.2d 954, 968 (Alaska, 1995) (citing *Bowen v. American Hosp. Ass'n*, 476 U.S. 610, 646 n. 34, 106 S. Ct. 2101, 2122 n. 34).

²¹ *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 966 (Alaska, 2005) (internal footnotes omitted).

²² *Id.* at 967.

²³ Under AS 39.52.960(21), public officers covered by the Act include all employees and officers in the exempt, partially exempt, or classified service in the executive branch.

court may determine they are not similarly situated as the governor, lieutenant governor, and attorney general. The Court has said:

[I]n "clear cases" we have sometimes applied "in shorthand the analysis traditionally used in our equal protection jurisprudence." If it is clear that two classes are not similarly situated, this conclusion "necessarily implies that the different legal treatment of the two classes is justified by the differences between the two classes."^[24]

However, because individual conduct with respect to the Act may determine the number and type of ethics complaints against a public officer, regardless of whether they are elected, appointed, or hired based on merit, a court may not be able to distinguish the governor, lieutenant governor, and attorney general from the remaining public officers covered by the Act, for purposes of an equal protection analysis.

The Alaska Supreme Court applies a sliding scale in reviewing challenges under the equal protection clause and is more protective of the right than federal courts are. At a minimum, the state must provide a rational justification for treating similarly situated individuals differently.²⁵

In *Malabed v. North Slope Borough*, the Court summarized the equal protection test as follows:

[T]he Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment. To implement Alaska's more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, we determine the weight of the individual interest impaired by the classification; second, we examine the importance of the purposes underlying the government's action; and third, we evaluate the means employed to further those goals to determine the closeness of the means-to-end fit. An appropriation that cannot be justified under this minimum standard would likely violate the equal protection clause of the Alaska Constitution.^[26]

²⁴ *Id.* (internal footnotes omitted).

²⁵ See *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

²⁶ *Malabed v. North Slope Borough*, 70 P.3d 416, 420 - 421 (Alaska 2003).

Under this test, as the importance of the individual rights affected increases, so does the burden on the state to show that the state's goal justifies the intrusion on the individual's interests in equal treatment and that the state's goal is rationally related to the means chosen to achieve the goal. A person's interest may be accorded a low level of protection from discrimination under the state equal protection clause, if the court determines that the discrimination implicates only an economic interest.²⁷ However, a court would probably find that the interest of the remaining public officers covered by the Act is not purely economic because, from the governor down to public officers at the lowest level of government, a public officer's personal and professional reputations are both on the line when an ethics complaint is filed against that officer. If the court finds the interest at stake for the public officers denied free representation by the state is not purely economic, the state's burden under the second and third parts of the three-part sliding scale equal protection test increases.

(2) Does the Act permit representation of the Governor, the Lieutenant Governor, or the Attorney General as proposed by the pending regulations?

"When a regulation conflicts with a statute, the regulation must yield."²⁸ As discussed in (A) - (D), below, the proposed regulations conflict with several statutes and, as discussed more specifically in (E) below, they may also raise significant ethical conflicts of interest.

(A) The proposed regulations conflict with the Act's prohibitions on favoritism and self-enrichment.

The proposed regulations conflict with AS 39.52.010(a)(5), which reads, "in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism." As noted elsewhere in this memorandum, the proposed regulations would provide a significant benefit — free representation by the agency that interprets and administers the Act in concert with the personnel board, the body responsible for determining the outcome of ethics complaints — to only three of the many public officers who are covered by the Act. This may or may not violate the equal protection clause of the Constitution of the State of Alaska, but it clearly constitutes favoritism.²⁹

²⁷ See *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

²⁸ *The Manual*, page 112, (2018), citing *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004).

²⁹ "Favoritism" is not defined by the Act. When interpreting a statute in the absence of a statutory definition for a term, a court gives the term its commonly understood definition, and may rely on a dictionary. *Alaskans for Efficient Government, Inc. v. Knowles*, 91 P.3d 273, 276 n. 4 (Alaska 2004), quoting *2A Norman J. Singer, Sutherland Statutory Construction* sec. 47.28 (6th ed. 2000). According to *Webster's New World Dictionary of the American Language, Second College Edition*, "favoritism" means "the showing of more kindness and indulgence to some person or persons than to others."

The proposed regulations conflict with AS 39.52.120(b)(3), which provides that a public officer may not "use state time, property, equipment, or other facilities to benefit personal or financial interests." Authorizing the use of state time for the defense of a public officer in an ethics complaint proceeding, or using state time for defense of that public officer, would be contrary to this rule.

The proposed regulations conflict with AS 39.52.120(b)(4), which provides that a public officer may not take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest. The proposed regulations would at the very least shield the governor, the Lt. governor and the attorney general from public scrutiny in connection with an ethics complaint, regardless of the outcome. They would also give the attorney general sole discretion over whether state resources can be used to defend the governor against an ethics complaint, and vice versa. It would be surprising if a governor or attorney general, when deciding how to exercise that discretion, did not give some weight to how their decision might affect a similar calculation by their counterpart, if in the future their discretion-exercising roles are reversed.

The attorney general serves at the pleasure of the governor, and depends on the governor's good will for employment. And because the attorney general is a political appointee of the governor's and the governor's top legal advisor, the governor has a vested personal interest in the attorney general's success; an attorney general whose reputation is damaged by a successful ethics complaint may weaken the governor's chances of being reelected or, increase the chances that a governor is recalled by the electorate. In exercising the sole discretion described in the proposed regulations, the governor and the attorney general would each be faced with a choice between taking or withholding official action that will affect a matter in which they have a personal interest.

The proposed regulations conflict with AS 39.52.120(b)(5), which provides that a public officer may not "attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time." A decision under the proposed regulations that the department of law will provide a defense of the governor, Lt. governor, or attorney general amounts would be contrary to this rule. Regardless of whether some aspect of the decision may or may not advance a public purpose, it is beyond debate that a public officer who receives a free defense in an ethics complaint matter, while shielded from public scrutiny behind a cloak of confidentiality made impenetrable by a regulation that only applies to them, is in receipt of a substantial private benefit.³⁰

³⁰ For purposes of the Act, "benefit" is defined under AS 39.52.960(3), as follows:

(3) "benefit" means anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to

(B) The proposed regulations may conflict with a prohibition on the use of state assets or resources for a partisan political purpose.

The proposed regulations may conflict with AS 39.52.120(b)(6), which provides that a public officer may not "use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes." Under AS 39.52.120(b)(6), "for partisan political purposes"

- (A) means having the intent to differentially benefit or harm a
 - (i) candidate or potential candidate for elective office; or
 - (ii) political party or group;
- (B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

The proposed regulations provide a free legal defense for only three of the thousands of public officers who are subject to the Act. Because those three hold political positions (two are elected, and one of those two appoints the third), and most of the public officers excluded by the regulations do not, the proposal that they receive a free defense presumably has to do with a concern that they may be more vulnerable to politically-motivated attacks in the form of meritless ethics complaints. If so, the purpose of the regulations is political, and, depending on applicable facts, using or authorizing the use of state services to defend a public officer who is a candidate or potential candidate for public office may constitute a partisan political use of state resources contrary to this ethics rule.

(C) The proposed regulations conflict with statutes that make ethics complaint proceedings public.

The proposed regulations also conflict with AS 39.52.335, AS 39.52.340(a), and AS 39.52.350(a), which provide that records of an ethics complaint hearing are public, at certain stages of the complaint procedure. While confidentiality aids investigation and resolution of complaints, "the state can protect its interest in the integrity of Ethics Act investigations by creating careful internal procedures."³¹ The proposed regulations would shroud ethics complaint hearings with secrecy when the subject of the complaint is the governor, Lt. governor, or attorney general, but not when other public officers are the subject of a complaint. Transparency in the hearing process may reassure the public that the Act is being applied fairly and without bias and favoritism, to all public officers; the absence of transparency may have the opposite effect on public perception. Because the proposed regulation regarding confidentiality conflicts with statutes enacted by the legislature, a reviewing court may determine that the proposed regulation regarding

pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value;

³¹ 2009 Op. Alaska Att'y Gen. *3 (August 5).

confidentiality is invalid.³²

(D) Unwarranted benefits or treatment and improper motivation.

Under AS 39.52.110(a), "[T]he legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust." Under AS 39.52.120(a), "a public officer may not . . . intentionally secure or grant unwarranted benefits or treatment for any person."³³ Under 9 AAC 52.040(a) and (b), "unwarranted benefits or treatment" as used in AS 39.52.120 includes:

(1) *a deviation from normal procedures for the award of a benefit, regardless of whether the procedures were established formally or informally, if the deviation is based on the improper motivation; and*

(2) *an award of a benefit if the person receiving the benefit was substantially less qualified, in light of the formal or informal standards set out for the award, than another person who was or reasonably should have been considered for the award if the award is based on an improper motivation.*

(b) *A public officer may not grant or secure an unwarranted benefit or treatment, regardless of whether the result is in the best interest of the state. (Emphasis added).*

The proposed regulations seem to create an exception allowing an otherwise prohibited use of state resources when the attorney general or the governor, in their "sole discretion," determine the use would be in the public interest. The legislature did not create a "public interest" exception in the Act, or grant authority for the attorney general to adopt a regulation creating one. Past attorneys general may have recognized this when they adopted and enforced 9 AAC 52.040(b), prohibiting unwarranted benefits or treatment.

Similarly, 9 AAC 52.020 provides that:

A public officer may not take or withhold official action on a matter if the action is based on an improper motivation.

Adoption of a the proposed regulations allowing the attorney general or the governor, in their sole discretion, to require the department of law to represent an elected or politically appointed public officer in an ethics complaint under the Act allows the taking or

³² As noted above, "[I]f a regulation conflicts with a statute, the regulation must yield." *The Manual*, page 112, (2018), citing *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004).

³³ AS 39.52.120(a).

withholding of official action that in each instance would beg the question, "was it based on an improper motivation?"

(E) Ethical conflicts of interest.³⁴

As former Attorney General Dan Sullivan advised:

[H]aving the Department of Law directly defend public officers against ethics complaints could present conflict-of-interest challenges because of the attorney general's role in interpreting, enforcing, and prosecuting violations of the Ethics Act.

...

It could also create difficulties under the Alaska Rules of Professional Conduct because of the conflicting obligations of the state attorneys and their supervisors.^[35]

AS 44.23.020(a) states: "The attorney general is the legal advisor of the governor and other state officers." A court would probably find that this role is limited to advising the governor and state officers in their official capacity, not as individuals. The public may perceive that a person representing or authorizing representation of the governor, the Lt. governor, or the attorney general in an ethics complaint puts the represented person under an obligation to the person providing or authorizing the representation. Conversely, it may seem to the public that a person in a position to provide or authorize the representation may not be able to refuse to provide or authorize it, because of their professional or political relationship with the person who is the subject of the complaint. This runs counter to the purposes of the Act set forth in AS 39.52.010 and cited elsewhere in this memo. There is also a conflict between the statutory duties of the attorney general and assistant attorney general, and the new duties imposed on them by the proposed regulations. For example, under AS 39.52.310(a) the attorney general may initiate an ethics complaint against the governor or Lt. governor, and, under AS 39.52.335(a), is required to forward complaints to the personnel board. This conflicts with the power, under the proposed regulations, to decide whether the governor or Lt. governor may be defended by the Department of Law.

Beyond being the legal advisor to the governor and other state officers in their official capacities, the attorney general has other statutory duties, including duties under

³⁴ Ethical conflicts of interest under the Alaska Rules of Professional Conduct (ARPC) are outside the scope of this memo. However, defending ethics complaints under the proposed regulations may create a conflict of interest under the ARCP 1.7 and 1.8, for an attorney general or assistant attorney general charged with providing that defense, because it requires that person, as a lawyer, to balance their duty to one client (the State of Alaska) and another client (the governor, the Lt. governor, or the attorney general).

³⁵ 2009 *Op. Alaska Att'y Gen.* at *7 (August 5) (footnote omitted).

AS 44.23.020(b),³⁶ but those duties do not include a duty to defend matters, like ethics complaints, that are prosecuted by the state; in fact, they include the opposite. The attorney general has a statutory duty to "represent the state in all civil actions in which the state is a party,"³⁷ and the duty to "prosecute all cases involving violation of state law."³⁸ A violation of the Act is a violation of state law, and the Act explicitly requires, in hearings to determine the outcome of ethics complaints under the Act, that "the attorney general shall present the charges before the hearing officer."³⁹ At the hearing, the attorney general has the additional burden of demonstrating by a preponderance of the evidence that the subject of the accusation has, by act or omission, violated the Act.⁴⁰

Because of these statutory requirements, an attorney general or assistant attorney general who elects or is directed to defend a public officer in an ethics proceeding under the Act would have a conflict of interest. Moreover, the regulations create a situation where the governor, attorney general, and assistant attorneys general are all likely to have to weigh the potential personal consequences—on themselves and on each other—of authorizing or not authorizing the representation, or undertaking or refusing to undertake the representation. That may be especially difficult to weigh objectively and professionally, with the best interests of the state in mind, when the personal goodwill of a supervisor or appointing authority is at stake.

Finally, the entire Department of Law may be in a legally and ethically untenable predicament if the proposed regulations are adopted. As noted by former Attorney General Dan Sullivan regarding whether the Department of Law should defend the governor, Lt. governor or attorney general in ethics complaints:

. . . the role of the attorney general and Department of Law is to interpret, implement, and enforce the Act, with the goal of promoting the Act's purposes.

³⁶ The attorney general also has an ongoing duty, under AS 44.23.020(h), to review federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions that may be in conflict with and that may preempt state law, and submit a report to the legislature on or before January 15th of each year. Although U.S. Supreme Court decisions are not on this list of items requiring review, it is reasonable to assume that the attorney general would review relevant federal court decisions and render advice regarding their effect on laws in Alaska.

³⁷ AS 44.23.020(b)(3).

³⁸ AS 44.23.020(b)(5).

³⁹ AS 39.52.360(b).

⁴⁰ AS 39.52.360(c).

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Defending individual officers against ethics complaints would therefore create an *unacceptable conflict* between the Department of Law's duty to provide them zealous representation and its general duty to promote the purposes of the Ethics Act in interpreting, implementing, and enforcing the Act.⁴¹

If I may be of further assistance, please advise.

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19-334.mjt

⁴¹ 2009 *Op. Alaska Att'y Gen.* at *8 (August 5) (emphasis added).

DEPARTMENT OF LAW
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August 5, 2009

Mike Nizich
Chief of Staff, Office of the Governor
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Re: Analysis and Recommendations Concerning the Alaska
Executive Branch Ethics Act

Dear Mr. Nizich,

We provide this legal analysis in response to questions about how to best implement the Alaska Executive Branch Ethics Act's goals to encourage high moral and ethical conduct and to improve public service, with a particular focus on (1) effective ways in which to minimize the disruptive effects of breaches of confidentiality, and (2) whether and how the state may defend public officers charged with ethics violations.

I. Summary

These are important issues for the state. They require consideration of laws that promote ethical conduct for public officials, the balance between First Amendment rights and a fair process for those accused of ethics violations, and holding public officials accountable while also encouraging qualified citizens to serve in state government. Because these issues have broader implications for public policy, I am issuing this analysis and advice as an attorney general's opinion.

Our analysis, conclusions, and recommendations fall into two categories. First, the confidentiality of the Ethics Act investigative process can be better protected in the future. As drafted, the Act provides an unnecessary opportunity

for a complainant to publicize a confidential report at a sensitive stage of the process. In addition, it imposes no consequences for citizens who abuse the Act by filing frequent, frivolous complaints, or filing complaints in bad faith. With statutory amendments, the ethics procedures can be changed in a manner that protects both the public interest in holding public officials accountable and the integrity of the process. We do not, however, recommend amendments that would impose sanctions for a citizen's disclosure of an ethics complaint that he or she has filed.

Second, the state has a well-established general policy of either defending or reimbursing executive and judicial branch officials for their legal defense when they are accused of inappropriate conduct or wrongdoing. Underlying this general policy is the legal presumption that state officers carry out their duties ethically and responsibly and therefore should be defended by the state against allegations to the contrary. Reimbursing the reasonable expenses that exonerated public officers incur in successfully defending against ethics complaints is consistent with this policy and balances the state's interests in discouraging misconduct by public officers and encouraging public service.

Drawing on previous legal advice we have provided, we conclude that executive branch agencies have authority to pay or reimburse the legal expenses public officers incur in defending against ethics complaints, if four conditions are met: (1) the public officers are exonerated of violations of the Ethics Act or other wrongdoing; (2) the officers acted within the course and scope of their offices or employment; (3) the expenses incurred are reasonable; and (4) appropriate sources of funds are available to the agencies to pay the expenses. Where those four conditions exist, reimbursing officers for those expenses clearly serves a public purpose and the public interest.

II. Background – the Ethics Act Process

Under the Ethics Act, anyone—including the attorney general or a member of the public—may file a complaint against a public officer.¹ For most ethics complaints, the attorney general is responsible for investigating the allegations and,

¹ AS 39.52.310. “Public officers” include executive branch employees and officers, members of state boards and commissions, and state trustees. AS 39.52.960(20) and (21).

if appropriate, prosecuting the accused.² However, for ethics complaints against the governor, lieutenant governor, or attorney general, the attorney general is recused from involvement in the proceedings and the personnel board appoints independent counsel to act in place of the attorney general.³ The attorney general is also charged with adopting regulations “necessary to interpret and implement” the Ethics Act.⁴

An Ethics Act investigation often results in the dismissal or settlement of the complaint. When it does not, the attorney general or independent counsel issues a public accusation against the subject officer, followed by an evidentiary hearing before the personnel board to determine whether a violation occurred and what remedies are appropriate.⁵ In that hearing, the attorney general or independent counsel prosecutes the ethics charges against the public officer.⁶

A public officer accused of ethics violations is not required to have a lawyer represent him in ethics proceedings. But even a public officer who is confident he acted properly may decide that he does not want to handle the ethics complaint procedures on his own – especially given that the potential penalties include substantial fines, removal from office, or discharge from state employment.⁷ A wrongly accused public officer might worry that, without a lawyer representing him in the process, the attorney general or independent counsel might misconstrue the officer’s actions or misinterpret the Ethics Act. An accused public officer might also want a lawyer’s advice on how to respond to media inquiries about an ethics complaint if the complaint prematurely becomes public knowledge.

² AS 39.52.310 – 39.52.390.

³ AS 39.52.310(c).

⁴ AS 39.52.950.

⁵ AS 39.52.350 – 39.52.370.

⁶ AS 39.52.360(c).

⁷ *See* AS 39.52.410 – 39.52.460.

The Ethics Act designates as confidential an ethics complaint and all other documents and information regarding an ethics investigation unless (1) the accused waives confidentiality in writing or (2) the attorney general or independent counsel initiates formal proceedings by issuing a public accusation.⁸ The Act also provides other ways in which confidential information from the proceedings can be made public.⁹

III. Preventing Breaches of Confidentiality

Despite the Ethics Act's confidentiality provisions, over the past several months complaints against public officers regularly have been provided to the news media. In addition, a confidential recommendation by the personnel board's independent counsel recently was disclosed to the press, undermining the process by which ethics complaints are resolved. The Ethics Act does not grant the state authority to punish citizens who violate the confidentiality requirement, however, nor would that be advisable in many circumstances.¹⁰ We conclude that the appropriate manner to prevent disclosure of information that may be harmful to the process of ethics investigations and the subject of the complaint is to improve protections to the process and to implement safeguards to prevent abuse of the Ethics Act.

A. The State Can Take Steps to Protect the Integrity of the Process of Resolving an Ethics Act Complaint

Confidentiality is important to the process of investigating and resolving an ethics complaint. The investigation may involve sensitive information about personnel matters that should be protected from the public eye. Further,

⁸ AS 39.52.340(a), (c).

⁹ See, e.g., AS 39.52.335(c), (f)-(h).

¹⁰ The confidentiality provision is enforceable against state officers who are part of the process of evaluating, investigating, and deciding Ethics Act complaints. See, e.g., *Dixon v. Kirkpatrick*, 553 F.3d 1294, 1306 (10th Cir. 2009) (holding that disclosure by a clerical employee of information about an ongoing investigation by state veterinary board was a constitutionally sufficient basis for dismissal).

publicizing information may interfere with the investigator's ability to find witnesses willing to cooperate, invite retaliation, threaten the independence of the investigation, and prejudice the right of the subject to a fair process. The public does not have a right to access information about the evidence or course of an investigation as it proceeds.¹¹

The state can protect its interest in the integrity of Ethics Act investigations by creating "careful internal procedures to protect the confidentiality of [the] proceedings."¹² Thus we recommend improving Ethics Act procedures to prevent a breach of confidentiality that could prejudice the subject of a complaint and interfere with the state's ability to judiciously resolve ethics matters.

For example, the Ethics Act provides that when the attorney general finds probable cause to believe that a past action has violated, or an anticipated action would violate the Ethics Act, but determines that a hearing is unwarranted, he recommends corrective or preventive action in a confidential report. The Ethics Act currently requires the attorney general to provide copies of this confidential report to both the complainant and the accused officer. The accused officer who receives a report of recommended action from the attorney general may want to negotiate an alternative corrective action or settlement with the state. In this situation, giving the recommendations to the complainant is unnecessary. The complainant has no role in negotiations and should not be permitted to interfere

¹¹ The right of access to information is far narrower than the free speech right to publish information once it is received. *See First Amendment Coal. v. Judicial Inquiry and Review Bd.*, 784 F.2d 467, 472 (3rd Cir. 1986) ("[T]he right of publication is the broader of the two, and in most instances, publication may not be constitutionally prohibited even though access to the particular information may properly be denied.") (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)).

¹² *Providence Journal Co. v. Newton*, 723 F. Supp. 846, 857 (D.R.I. 1989) (citing *Landmark Comm'ns, Inc. v. Virginia*, 435 U.S. 829 (1978); *see also R.M. v. Supreme Court of N.J.*, 883 A.2d 369, 380 (N.J. 2005) (holding that state's interest in enabling disciplinary authorities to make a full and fair investigation can be more narrowly met by the use of subpoenas and the imposition of criminal sanctions for witness tampering, destruction of evidence, and attempts to unduly pressure officials)).

with or undermine discussions by publishing the report. This would compromise the proceedings at a critical stage. The complainant can be informed of the disposition of the case when the matter is resolved, corrective action is taken under AS 39.52.330, or an accusation is filed under AS 39.52.350. Thus, we recommend the Ethics Act be amended to eliminate the requirement that the attorney general serve the complainant with his predispositional recommendations, and to delay notification to the complainant until the matter is concluded.

B. The State Can Take Steps to Prevent Abuse of the Ethics Act

The Ethics Act process also could be changed to prevent another potential harm—abuse of the process. Some Alaskans have argued that the Ethics Act has been used inappropriately in some circumstances to politically damage the subject of the complaint.¹³ This opinion does not examine or decide whether or to what extent citizens may have abused the Ethics Act process in the past. We focus instead on statutory changes that could provide a disincentive to abuse the Act in the future.

Our first suggested addition to the Ethics Act is a provision that is simple and commonly used in other jurisdictions. We recommend giving the personnel board authority to order reimbursement of fees and costs from a person who has filed a complaint in bad faith. The reimbursement could extend both to the subject of the complaint, for attorney’s fees and costs of defending against the accusation, and to the state, for its actual costs associated with processing and investigating the complaint. The precise standard for ordering reimbursement is a policy decision beyond the scope of this opinion, but as a general matter the standard should not discourage speech protected by the First Amendment. A brief analysis of different standards used by other states follows.

Some state codes make knowingly false complaints subject to both reimbursement orders and criminal prosecution.¹⁴ Others have similar provisions

¹³ See, e.g., “Our View: Abuse of Ethics Complaints Turns Good Law Into Bad Politics,” Anchorage Daily News, May 3, 2009.

¹⁴ See, e.g., Ala. Code § 36-25-27(a)(4) (“Any person who knowingly makes or transmits a false report or complaint pursuant to this chapter shall, upon conviction, be guilty of a Class A misdemeanor and shall be liable for the actual legal expenses incurred by the respondent against whom the false report or

but without criminal penalties, whereby reimbursement is warranted when the complainant knew that he or she was falsely alleging misconduct or providing false information.¹⁵ In still other states, a less rigorous standard applies. Missouri law provides, for example, that “[a]ny person who submits a frivolous complaint shall be liable for actual and compensatory damages to the alleged violator for holding the alleged violator before the public in a false light.”¹⁶ The same statute defines “frivolous” to mean “a complaint clearly lacking any basis in fact or law.” An even looser standard would be to assess the subject’s attorney’s fees against the complainant whenever a subject is found not to have violated the Ethics Act, regardless of the complainant’s knowledge or intent. We have found no state that applies such a standard, however, most likely because it would discourage most ethics complaints and undermine an important element of ethics laws.

We also recommend consideration of another safeguard to discourage habitual complaint filers who use the Ethics Act process to harass executive branch employees. Statutory amendments could provide authority to the personnel board to decline to process further complaints filed by a person who has abused the Act in this way. Again, the precise parameters of this authority would be a policy

complaint was filed.”); *see also* 5 Ill. Comp. Stat. 430/50-5(d) (“Any person who intentionally makes a false report alleging a violation of any provision of this Act to an ethics commission, an inspector general, the State Police, a State’s Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor.”).

¹⁵ In West Virginia, for example, a person who files an ethics complaint in good faith “is immune from any civil liability that otherwise might result,” but a person who is found, by clear and convincing evidence, to have filed a complaint knowing that material statements are untrue can be ordered to reimburse both the subject and the ethics commission for costs and fees. W. Va. Code § 6B-2-4(u)(1)-(2); *see also* Fla. Stat. § 112.317(7) (giving ethics commission authority to require reimbursement of costs and fees “[i]n any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee ... with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this part.”).

¹⁶ Mo. Ann. Stat. § 105.957 (4).

matter. One model is the provision for “Multiple complaints by a single complainant” in the Rules for Judicial Council and Judicial Disability, which govern the United States Court of Appeals for the Ninth Circuit. These rules provide that a complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.¹⁷ The rule allows the complainant an opportunity to demonstrate why the judicial council should not limit the complainant’s right to file further complaints, and gives the council authority to prohibit, restrict, or impose conditions on the complainant’s future use of the procedure.¹⁸

We believe that these recommendations for changes to the Ethics Act maintain an appropriate balance between protecting the integrity of the process and encouraging responsible use of the Act to expose and correct unethical conduct. As discussed further below, we do not suggest any changes that might inhibit public discussion, debate, or criticism of the government.

C. The State Should Not Discourage Public Discourse on Government Actions

Creating safeguards to keep Ethics Act investigations confidential is categorically different than restricting citizens from speaking out about government conduct. Because public dialogue about government actions is speech at the core of the First Amendment, we do not recommend imposing sanctions on a citizen for disclosing information about an ethics complaint he or she has filed. Speech by a citizen charging government officials with breach of a code of official conduct is political speech accorded First Amendment protection. The United States Supreme Court has adhered to the bedrock principle that expression on public issues rests “on the highest rung of the hierarchy of First Amendment values,”¹⁹ and thus that “debate on public issues should be uninhibited, robust, and

¹⁷ U. S. Ct. of App. 9th Cir. Jud Miscon, Rule 10(a) (2008).

¹⁸ *Id.* West Virginia’s ethics act contains a similar provision, *see* W. Va. Code § 6B-2-4(u)(2)(C) (“[T]he commission may decline to process any further complaints by the complainant, the initiator of the investigation, or the informant.”).

¹⁹ *Carey v. Brown*, 447 U.S. 455, 467 (1979).

wide-open.”²⁰ The Supreme Court has also made clear that protected political speech goes far beyond intellectual argument about political theory; it includes vigorous debate about the qualifications and official conduct of public officials.²¹ Open discussion of official conduct is accorded the broadest protection available in our political system despite the fact “that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.”²²

Alaska’s Ethics Act does not inhibit this type of debate, because it does not impose penalties on individuals who are not engaged in the investigative or decision-making process. As we have considered ways to protect the confidentiality of the ethics investigations, we have been mindful that penalizing public discourse about the actions of government officials might threaten First Amendment rights. Courts have consistently found that confidentiality provisions applicable to ethics complaints restrict the content of speech.²³ Because they

²⁰ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); *see also Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.”).

²¹ *See, e.g., New York Times Co. v. Sullivan*, 376 U.S. at 268 (citing with approval *Beauharnais v. Illinois*, 343 U.S. 250 (1952) (“public men, are, as it were, public property” and “discussion cannot be denied and the right, as well as the duty, of criticism must not be stifled”)).

²² *Id.* at 270.

²³ “As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based.” *Turner Broad., Inc. v. FCC*, 512 U.S. 622, 643 (1994). Cases finding the confidentiality provisions of ethics laws to impose content-based restrictions include *Lind v. Grimmer*, 30 F.3d 1115, 1118 (9th Cir. 1994) (holding unconstitutional the confidentiality provision applicable to investigations conducted by Hawaii’s campaign spending commission); *Baugh v. Judicial Inquiry and Review Comm’n*, 907 F.2d 440, 444 (4th Cir. 1990) (finding that confidentiality requirement of Hawaii’s Judicial Inquiry and Review Commission was not content-neutral and remanding for further analysis under strict scrutiny); *Doe v. State of Florida Judicial Qualifications Comm’n*, 748 F. Supp. 1520, 1525 (S.D.

govern the content of speech, these restrictions will survive scrutiny only if narrowly drawn and necessary to serve a compelling state interest.²⁴ Courts generally have rejected states' interests in ethics code confidentiality provisions as insufficient to justify restrictions on citizens' speech.²⁵

IV. As a General Policy, the State Either Defends or Reimburses Public Officers for Their Legal Expenses When They are Accused of Inappropriate Conduct or Wrongdoing

The state routinely defends public officers against claims of inappropriate conduct or wrongdoing. For example, unless engaged in willful misconduct or gross negligence, the state defends public officers against claims that they violated others' constitutional rights while acting within the course and scope of their official duties.²⁶ Similarly, the Department of Law offers in-house legal

Fla. 1990) (invalidating confidentiality provision of Florida Constitution, applicable to complaints against judges); *Providence Journal Co. v. Newton*, 723 F. Supp. at 853 (invalidating confidentiality provision of Rhode Island Ethics Commission); *Doe v. Gonzalez*, 723 F. Supp. 690 (S.D. Fla. 1988) (finding confidentiality provision of Florida State Ethics Commission unconstitutional); *In re Warner*, ___ So.3d ___, 2009 WL 1025823 at *9 (La. 2009) (invalidating confidentiality requirement in attorney disciplinary proceedings).

²⁴ *Boos v. Barry*, 485 U.S. 312, 321 (1988).

²⁵ *See Lind v. Grimmer*, 30 F.3d at 1119-20; *Stilp v. Contino*, ___ F. Supp.2d ___, 2009 WL 1842087 at *6-11 (M.D. Pa. 2009); *Providence Journal Co. v. Newton*, 723 F. Supp. at 856-57; *S.D. v. Supreme Court of Florida*, 723 F. Supp. 690, 693-94 (S.D. Fla. 1988); *In re Warner*, 2009 WL 1025823 at *22-27; *R.M. v. Supreme Court of New Jersey*, 883 A.2d 369, 377-78 (N.J. 2005); *Doe v. Doe*, 127 S.W.3d 728, 736 (Tenn. 2004); *Petition of Brooks*, 678 A.2d 140, 144-45 (N.H. 1996).

²⁶ *See, e.g., Prentzel v. State, Dep't of Pub. Safety*, 169 P.3d 573, 577 (Alaska 2007). The Department of Law recently—and successfully—defended three Alaska State Troopers against claims under 42 U.S.C. § 1983, which provides, in part, that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

representation to its attorneys when complaints of professional misconduct are filed against them with the Alaska Bar Association.²⁷ The Department of Law represents its attorneys so long as the allegations of misconduct arise in the course and scope of their official duties and the attorneys did not engage in willful misconduct or gross negligence.²⁸

In some cases, when the Department of Law does not defend public officers against claims of inappropriate conduct, the state will instead reimburse them for the legal expenses they incur in successfully defending themselves. For example, if a Department of Law attorney hires private counsel to defend against professional misconduct claims before the Alaska Bar Association, the department may reimburse the attorney for costs and fees incurred if the attorney successfully defends against the claims and the claims arise out of the course and scope of the attorney's work with the department.²⁹ The state also reimburses Alaska judges and judicial officers for legal expenses they incur in disciplinary proceedings before the Alaska Commission on Judicial Conduct.³⁰ This commission serves a function for the judicial branch that is analogous to the personnel board's function for the executive branch under the Ethics Act.

be liable to the party injured in an action at law.” This statute therefore authorizes a person to bring a civil action for a public official's putative violation of the person's constitutional rights. The department also is defending former Governor Palin in a § 1983 action involving a clerical error in the Governor's Office that resulted in the failure to issue a proclamation.

²⁷ Memorandum from Attorney General Bruce Botelho at 2 (Nov. 8, 2002) (announcing the department's policy on reimbursement and defense of employees).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Letter of Agreement between the State of Alaska, Dep't of Admin., Div. of Risk Mgmt. and the Alaska Ct. Sys. at 2 (undated). The state also has agreed to reimburse state employees for legal defense of allegations of wrongdoing in occupational licensing investigations before the Board of Psychologists and the State Medical Board, if the employees are exonerated.

More generally, the Department of Law was recently asked whether a state agency may reimburse a public officer for legal expenses incurred in defending against a complaint that the officer violated the professional code of conduct covering his duties and responsibilities. We concluded that the agency could reimburse such legal expenses if: (1) a decision exonerates the officer of any violations of the law or any wrongdoing; (2) the officer acted within the course and scope of his office or employment; (3) the attorney's fees are reasonable; and (4) an appropriate source of funds is available for that purpose.³¹

As these examples show, the state adheres to a general policy of either defending or reimbursing public officers for their legal expenses when they are accused of inappropriate conduct or wrongdoing, particularly when such accusations are unfounded. Underlying this general policy is the legal presumption that state officers carry out their duties ethically and responsibly,³² and therefore should be defended by the state against allegations to the contrary.

V. May the State May Defend or Cover the Legal Expenses of Public Officers in Ethics Proceedings

Despite this widespread practice of defending or reimbursing public officials when accused of wrongdoing, the state apparently has never defended or covered the legal expenses of an accused officer in an Ethics Act proceeding. Alaska

³¹ Confidential Letter from Acting Attorney General Richard Svobodny (May 4, 2009).

³² See, e.g., *AT & T Alascom v. Orchitt*, 161 P.3d 1232, 1246 (Alaska 2007) (“[a]dministrative agency personnel are presumed to be honest”); *Earth Resources Co. v. State, Dep’t of Revenue*, 665 P.2d 960, 962 n.1 (Alaska 1983) (“agency personnel and procedures are presumed to be honest and impartial”).

statutes are silent on this issue with regard to ethics proceedings.³³ But existing law provides ample authority and guidance for covering these legal expenses without the need for statutory changes.

A. A Public Purpose is Critical

The state may not spend public money for public officers' defense in ethics matters unless doing so serves a public purpose and appropriations exist for the expenditures.³⁴ Defending officers accused of ethics violations or covering their legal expenses when they are exonerated clearly has a public purpose: citizens may be reluctant to serve in state government—or be inhibited in performing their

³³ We concluded in an informal 1994 opinion that defense or indemnification of public officers for expenses or penalties incurred in ethics proceedings was unavailable in part because a complaint under the Ethics Act is not a suit for money damages. 1994 Inf. Op. Att'y Gen. at 2 (June 3; 663-94-0289). To the extent that the informal 1994 opinion emphasizes that public officers are not legally entitled to defense and indemnification of fines levied against them in ethics proceedings, the reasoning of this informal opinion is sound, particularly for public officers found guilty of wrongdoing. To the extent that the opinion suggests that the state may not pay the legal expenses of exonerated public officers, it is inconsistent with the state's practice in other contexts and with the public interest. While ethics proceedings are not suits for money damages, ethics allegations usually arise out of public officers' performance of their official duties, and penalties for violating the Ethics Act may include monetary fines. *See AS 39.52.440 – 39.52.450*. Moreover, the potential damage to a public officer's reputation is a cost to the individual, and recent experience demonstrates that public officers may incur substantial legal expenses even with regard to meritless ethics complaints.

³⁴ *See Alaska Const. art. IX, § 6* (“No . . . appropriation of public money [shall be] made, or public property transferred, . . . except for a public purpose.”); *Alaska Const. art. IX, § 13* (“No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law.”); *see also AS 37.07.080(d)* (“A state agency may not increase the salaries of its employees . . . or expend money or incur obligations except in accordance with law and [a] properly approved operations plan.”).

official duties—if they must bear the cost of defending themselves against unfounded ethics charges related to their state duties.³⁵ Indeed, the Ethics Act itself underscores the importance of ensuring that the Act not only encourages “high moral and ethical standards among public officers in the executive branch,” but also “improve[s] standards of public service.”³⁶ Public service should not subject public officers, who are assumed by law to be acting ethically, to personal financial liabilities when ethics proceedings confirm that they acted appropriately. Therefore, in examining whether the state may defend or pay the legal expenses for public officers in ethics proceedings, the critical question is whether there is an approach that ensures that a public purpose is advanced while at the same time encouraging compliance with the Ethics Act by public officers. This question is examined in more detail below.

B. A Policy of Payment or Reimbursement After Exoneration Would Best Balance the Public Interest in Encouraging Public Service and Compliance with the Ethics Act

A policy allowing payment of legal expenses of exonerated public officers who hire private lawyers to defend them against ethics complaints would promote and “improve standards of public service”³⁷ while encouraging compliance with the Ethics Act. The public purpose for paying legal expenses is clearest for those

³⁵ See, e.g., *Snowden v. Anne Arundel County*, 456 A.2d 380, 385 (Md. 1983) (upholding an ordinance allowing reimbursement of fees and recognizing that reimbursement serves the public interest in encouraging the recruitment and retention of high-risk officers, maintaining morale, and providing necessary protection to those whose line of work exposes them to the financial burdens of defending baseless criminal charges); *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914, 916-17 (Fla. 1990) (holding that Florida common law requires publicly paid legal representation for public officials defending against litigation arising from their performance of official duties while serving a public purpose; the requirement’s purpose “is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently”) (citing *Nuzum v. Valdes*, 407 So. 2d 277 (Fla. Dist. Ct. 1981)).

³⁶ AS 39.52.010 (a)(1) and (a)(2)(B).

³⁷ AS 39.52.010(a)(2)(B).

who are exonerated.³⁸ As noted above, the reimbursement of legal fees for those who are exonerated in ethics matters also is consistent with the state's general practice in other contexts. Those situations, all of which concern professional ethics codes, involve issues very similar to Ethics Act matters. Such an approach also appears to be the common practice among the majority of state governments in the country.³⁹

The recent advice we provided to an executive branch agency on reimbursement of legal expenses in code-of-conduct proceedings offers an appropriate model for payment of legal expenses in Ethics Act matters. Based on that model, public officers may have expenses they incur in defending against ethics complaints covered if

(1) the officers are exonerated of any violation of the Ethics Act or other wrongdoing; (2) the officers acted within the course and scope of their offices or employment; (3) the expenses incurred were reasonable; and (4) there are appropriate sources of funds to pay the expenses.⁴⁰ As we stated in that opinion, "these conditions ensure that the spending will serve a public purpose."⁴¹

Although agencies could wait and reimburse public officers for their legal expenses once the ethics complaints against them are resolved, allowing state

³⁸ See *Snowden*, 456 A.2d at 385.

³⁹ See Letter from James McPherson, Executive Director of the National Association of Attorneys General 2 (July 31, 2009) ("In conclusion, the reimbursement for reasonable attorney's fees and costs incurred by state officials during the course of an investigation or adjudication of alleged ethics violations where those allegations were found unsubstantiated or unfounded appears to be a common practice among a majority of the states. Such common practice, while not specifically provided by any state statutory or regulatory scheme, is premised upon a broad interpretation of risk management programs, formal ethics programs, or sound public policy protecting state officials from frivolous lawsuits which could discourage citizens from engaging in public service or seeking elected office.").

⁴⁰ Confidential Letter from Acting Attorney General Richard Svobodny, *supra* n.31.

⁴¹ *Id.*

officers the option of having their legal expenses paid as they are incurred helps serve the public interest of not discouraging public service. Logistically, reimbursement may be simpler. But if public officers must shoulder the financial burden of legal expenses while they await resolution of unfounded complaints against them, qualified individuals may be reluctant to accept positions in state service and public officers may be inhibited in carrying out their duties. Public officers must agree, however, to repay any amounts they receive if they are not exonerated.⁴²

The Alaska Supreme Court has not addressed the issue of reimbursement, but other court decisions suggest that this approach strikes an appropriate balance between the public's interest in encouraging individuals to accept positions in state

⁴² Pursuant to AS 39.52.950, the Department of Law will soon promulgate regulations addressing procedures for payment of expenses incurred in Ethics Act proceedings.

service and its interest in holding public officials accountable and discouraging misconduct under the Ethics Act.⁴³

C. Conflict of Interest Issues Prevent the Department of Law from Directly Representing State Officials in Ethics Act Proceedings

Another possible approach would be to have the Department of Law defend public officers against ethics complaints. As noted above, the Department of Law regularly defends public officials when they are accused of wrongdoing under federal civil rights statutes. However, having the Department of Law directly defend public officers against ethics complaints could present conflict-of-interest

⁴³ See, e.g., *Guenzel-Handlos v. County of Lancaster*, 655 N.W.2d 384, 389-90 (Neb. 2003) (concluding that, absent specific legislative authorization, public bodies are not obligated to pay attorney's fees their officials incur in successfully defending against criminal charges arising out of performance of their official duties); *Triplett v. Town of Oxford*, 791 N.E.2d 310, 315-16 (Mass. 2003) (same); *Hart v. County of Sagadahoc*, 609 A.2d 282, 283-84 (Me. 1992) (concluding that the common law permits, but does not require, a public body to pay fees its officials incur in those circumstances); *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914, 916-17 (Fla. 1990) (recognizing a common law duty of a governmental body to pay attorney's fees that its officials incur in defending against litigation arising out of performance of their official duties while serving a public purpose); *Chavez v. City of Tampa*, 560 So.2d 1214, 1214-19 (Fla. Dist. Ct. App. 1990) (holding that, where a city council member received advice from the city attorney that voting on a matter involving her personal interest would be a conflict of interest but nonetheless voted on that matter to break a tie vote, she was not entitled by statute or common law to reimbursement of the legal expenses she incurred in successfully defending against related charges before the state ethics commission); *Ellison v. Reid*, 397 So. 2d 352, 354 (Fla. Dist. Ct. App. 1981) (upholding the use of public funds to pay attorney's fees that a county appraiser incurred in successfully defending against charges of official misconduct before the state ethics commission); *Bd. of Chosen Freeholders of Burlington v. Conda*, 396 A.2d 613, 615, 620 (N.J. Super. Ct. Law Div. 1978) (holding that a county had neither the duty nor the authority to reimburse a county surrogate for legal fees incurred in defending against disciplinary proceedings before an advisory committee on judicial conduct, where the proceedings led to censure of the surrogate as a judicial officer).

challenges because of the attorney general's role in interpreting, enforcing, and prosecuting violations of the Ethics Act. If the Department of Law directly defended public officers in Ethics Act proceedings, the result would be that—for ethics complaints against most public officers—the defense counsel and the lawyer investigating and prosecuting the complaint would be in the same department and be supervised by the same attorney general and, perhaps the same deputy attorney general. In essence, the attorney general, through attorneys in the Department of Law, would be both prosecuting and defending against the ethics complaints. That could not only create an appearance of impropriety, but could also prejudice the interests of the accused officers and diminish the officers' confidence in the representation they receive. It could also create difficulties under the Alaska Rules of Professional Conduct because of the conflicting obligations of the state attorneys and their supervisors.⁴⁴

Those conflict difficulties would not exist if the Department of Law represented only the governor, lieutenant governor, and attorney general against ethics complaints, because the attorney general is recused from investigating and prosecuting complaints against those three officers.⁴⁵ But Department of Law representation of even those three officers would still raise significant concerns.⁴⁶

⁴⁴ See Alaska R. Prof'l Conduct 1.7, 1.10 (providing that a lawyer should generally not represent a client if the representation of that client will be directly adverse to another client of that lawyer or the lawyer's firm). *But see* Alaska R. Prof'l Conduct 1.7 cmt. ("government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party.").

⁴⁵ AS 39.52.310(c).

⁴⁶ As a general rule, the Ethics Act makes clear that the attorney general has no role in the investigation and prosecution of an ethics complaint against the governor, lieutenant governor, or attorney general. In all other situations involving the Ethics Act, the role of the attorney general and Department of Law is to interpret, implement, and enforce the Act, with the goal of promoting the Act's purposes. But if the Department of Law were defending an individual officer against an ethics complaint, the goal would be different: to defend that officer zealously, regardless of the implications for the long-term implementation of the Ethics Act. For example, zealous representation of an accused officer might involve asserting that a provision of the Ethics Act is unconstitutional—an

Please contact me if we can be of further assistance with this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel S. Sullivan", with a long horizontal flourish extending to the right.

Daniel S. Sullivan
Attorney General

assertion that the Department of Law would likely resist in carrying out its general responsibility to implement and enforce the Ethics Act. Defending individual officers against ethics complaints would therefore create an unacceptable conflict between the Department of Law's duty to provide them zealous representation and its general duty to promote the purposes of the Ethics Act in interpreting, implementing, and enforcing the Act.

Joan Diamond

From: Joan Diamond
Sent: Monday, November 4, 2019 12:35 PM
To: lawregulationscomments (LAW sponsored)
Subject: No to regulations with a conflict of interest

I think that any use of the Department of law for personal complaints against Dunleavy, Meyer and anyone else who believes they have a right to public services for personal wrong doing is WRONG.

These regulations are unconstitutional and a conflict of interest. What is wrong with the Republican thinking?

Joan Diamond
Anchorage , Alaska
Sent from my iPhone

Karen Bendler

From: Karen Bendler
Sent: Monday, November 4, 2019 12:42 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed regulation regarding defense of ethics complaints

I am opposed to the proposed regulation. The Attorney General represents the State, not the Governor. If the Governor is charged with violating his ethical duties to the State, the Attorney General should not be able to defend him. This would be a clear conflict of interest. Moreover, allowing the AG to represent the Governor, as well as allowing the Governor to decide whether the Department of Law should represent the AG were he to be charged with an ethics violation, would surely fuel public mistrust in the entire process.

Kathleen Menke

From: Kathleen Menke
Sent: Monday, November 4, 2019 12:53 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comments on Proposed Changes to AG responsibility

No to proposed changes on AG responsibility..

AG is there to serve Alaskans..the public..

Proposed changes would eliminate all transparency, honesty, and justice..

Just no..to a self-serving administration..

Kathleen Menke, Haines

Kat McElroy

From: Kat McElroy
Sent: Monday, November 4, 2019 1:01 PM
To: lawregulationscomments (LAW sponsored)
Subject: Bad idea

No, no, no, no, no.
It is a fundamentally bad (wrong) idea.

Kat McElroy

From: Kat McElroy
Sent: Monday, November 4, 2019 1:06 PM
To: lawregulationscomments (LAW sponsored)
Subject: No, just say no

This new self-serving proposal would be an unlawful public benefit to Dunleavy, Meyer, and Clarkson which is in direct violation of the Executive Branch Ethics Act.

As a citizen, as a tax payer, as a public official myself, I say No, No Way, Do Not Allow This.

For gawd' s sake, what craziness is afoot?

Kat McElroy

411 East 7th Street

Nenana, AK 99760

BOI

Alan Davis

From: Alan Davis
Sent: Monday, November 4, 2019 1:13 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comment on proposal for Dept of Law to Defend Governor

I am adamantly AGAINST the proposal for the Dept. of Law to defend the Governor, Lt. Governor, and Attorney General against ethics complaint. It is contrary to the state constitution and a flagrant slap in the face of the citizens of the state. Office holders should be acting ethically and beyond reproach. When they flaunt the rules and don't understand that there is such a thing as ethical behavior, they should be responsible for their own legal expenses.

Alan Davis
716 Sixth Street
Juneau, Alaska

Jennie Hafele

From: Jennie Hafele
Sent: Monday, November 4, 2019 1:29 PM
To: lawregulationscomments (LAW sponsored)
Cc: Sen. Click Bishop; Kawasaki, Scott Jw (LEG); Sen. John Coghill; Hopkins, Grier (LEG); Lebon, Barton (LEG); Rep. David Talerico; Rep. Adam Wool; Rep. Steve Thompson; Rep. Tammie Wilson
Subject: Testimony: AAC Changes Ethics/Opposed
Attachments: AAC Ethics Comments_Taylor.pdf

Please enter into the record the attached written comments regarding the Department of Law's proposal to adopt regulation changes to 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960.

submitted via the Fairbanks Legislative Information Office.

Thank you,

Jennie Hafele

Fairbanks Legislative Information Office

1292 Sadler Way Suite 308

Fairbanks, Alaska 99701

Phone: 907-452-4448

Fax: 907-456-3346

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Click [HERE](#) to watch live streaming of the Alaska State Legislature

Click [HERE](#) to send your legislator a Public Opinion Message during session



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the

change regarding AAC

~~Committee on~~

Opposed to change!

~~Bill / Subject~~

~~Committee Name~~

9.52.160

~~Dated~~

11/4/2019

I am opposed to change the wording of the Alaska Administrative Code which proposes to use state funds to pay for ethics violations of the governor, lieutenant governor and the AG.

SIGNED:

Ingrid Taylor

Testifier

myself

Representing

Address / Phone Number

Beverly Richardson

From: Beverly Richardson
Sent: Monday, November 4, 2019 1:40 PM
To: lawregulationscomments (LAW sponsored)
Cc: Beverly Richardson
Subject: Opposed to change to regulation 9AAC52140

Attn: Ms. Bahr,

I am writing in opposition to the proposed regulation change to 9AAC52.140.

I am opposed this regulation change. This change would be illegal and is unethical.

It would create conflict of interest situations.

There are already protections in current law against frivolous ethic complaints.

Do not approve these changes to this regulation.

Thank you,

Beverly Richardson

141 Frederick Dr.

Petersburg, AK 99833

Lauren Attanas

From: Lauren Attanas
Sent: Monday, November 4, 2019 2:14 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed amendments to 9 AAC 52.140

To Whom It May Concern:

I am writing to express my concern with AG Clarkson's [proposed amendments](#) to 9 AAC 52.140. In short, they would create a situation in which certain members of the executive branch of government (the governor, lieutenant governor, and attorney general) receive the legal counsel through the Department of Law, were ethics complaints to be filed against them—privileges not extended to any other elected officials. These regulation changes violate the Alaska Constitution and the Executive Branch Ethics Act and should not be accepted.

The comments website directs readers to "...comment during the time allowed if your interests could be affected." I believe the interests of all Alaskans seeking to uphold our Constitution and the ethical obligations of the Executive Branch would be severely curtailed, were these changes to be adopted. Alaskans deserve an Executive Branch that behaves in an ethical manner and that is subjected to the full force of the law without special protections when it does not.

Thank you for your time.

Sincerely,

Lauren Attanas
4975 Kathys Lane
Fairbanks, AK 99709

Andrew Josephson

From: Andrew Josephson
Sent: Monday, November 4, 2019 2:16 PM
To: lawregulationscomments (LAW sponsored)
Subject: Executive Branch Ethics Act Proposed Regulations (Comment)

The following public comment is offered as to "Proposed Changes in the Regulations of the Department of Law" re: Executive Branch Ethics Act.

- 1) A written determination by the AG that legal defense should be provided to the Governor or Lt. Governor cannot be in "the public interest" without violating the express language of Title 39.
- 2) Nor can the Governor make a recommendation that the AG enjoy the protections of legal defense at no cost to himself or herself. Again, express portions of Title 39 would be violated.
- 3) Expansion of confidentiality under 9 AAC 52.160 is inconsistent with the intent of Title 39.
- 4) Provision of "free" counsel to three public officials amounts to a private benefit rather than a public purpose. Therefore, it is unconstitutional.
- 5) Provision of counsel to the three officers in question has consistently been found to be improper under the Executive Branch Ethics Act, by previous administrations.
- 6) The regulations proposed for adoption would have, necessarily, the net effect of causing these officers to "relax" relative to the question of their compliance with the Act, generally. The net result, likely, would be a greater likelihood that officers would violate the Act.
- 7) Former AG, Dan Sullivan, developed a pathway forward that would allow for recompense for officers who successfully defend an Ethics Act complaint. This was sufficient reform to protect officers who prevailed in Ethics Act complaint litigation.
- 8) Again, the proposed regulations run counter to Title 39, specifically, AS 39.52.010.
- 9) Meritless complaints can already, under existing law, be dismissed summarily until Title 39.
- 10) The proposed regulations have no linkage to any existing statutory authority. Quite the contrary. As a consequence, they amount to the enactment of law and therefore an encroachment on the legislative prerogative.
- 11) Further, the proposed regulations are not "necessary", a term of art required under AS 39.52.950 (Regulations) and the Drafting Manual for Administrative Regulations.
- 12) The APA and case law both require consistency between regulation and statutes. The opposite is true, here. The proposed regulations do not aid in the interpretation and implementation of State law.
- 13) As noted by one attorney reviewing the proposed regulations, "AS 39.52 does not contain a single provision that explicitly or implicitly authorizes the department to adopt the regulations it has proposed."
- 14) In *Totemoff* (905 P.2d 954), the Supreme Court held that, where a legal interpretation is proffered that runs counter to consistently held, previous, agency interpretation, the court's deference to some new and/or different set of regulations is far less deferential.
- 15) The proposed regulations are arbitrary and capricious. They serve to protect 3 government officers, and none others, even though Title 39 applies to hundreds of potentially exposed employees of the State.

16) The proposed regulations smack of favoritism, and therefore violate Title 39.

17) The proposed regulations also violate AS 39.52.120(b) which makes it illegal for an employee to benefit personally or financially from use of "state time, property, equipment, or other facilities..."

18) The proposed regulations create a quid pro quo, where one protected officer (the Governor) may seek protection from the AG (free counsel) in exchange for like treatment when needed.

19) The proposed regulations violate AS 39.52.120(b)(6), which prohibits use of state assets or resources for a partisan political purpose. The 3 beneficiaries of the new regulations are political officers. Two are elected and 1 of those 2 appoints, the third person. The new regulations create the appearance of protecting government officers from complaints that these officers (and they alone) deem are politically motivated, and therefore, can be seen to be colored with a political purpose.

20) The proposed regulations increase secrecy and confidentiality, but only for these 3 officers. Other public officials exposed to the requirements of Title 39 enjoy no such benefit. This is especially egregious and, again, is colored by a desire to derive some sort of political benefit.

21) Title 39 makes it plain that, any explanation offered by the administration in support of the regulations package that they are "in the best interests of the state", are defeated by Title 39 which note that no such justification can be made under Title 39. In other words, even if one were to opine that an Ethics Act complaint is frivolous or meritless, and interferes with official duties of the 3 principal offers, and that therefore these regulations are "in the best interests of the state", that proffer is defeated by Title 39 by its own express terms.

22) Title 39 has no public interest exception and authorizes no regulation creating one. See paragraph 21, above.

23) The regulations put the Department of Law into a conflicted situation where it may both prosecute and enforce Executive Branch Ethics Act violations, and defend them. This is untenable. It is believed that ARPC violations will occur and could result in AAGs needed to defend themselves from Bar complaints.

/s/

Andy Josephson

BOI

4859 Pavalof Street
Anchorage, Alaska 99507

BOI

David Athons

From: David Athons
Sent: Monday, November 4, 2019 2:45 PM
To: lawregulationscomments (LAW sponsored)
Subject: I am opposed to the proposed change in regulations.

I am opposed to the proposed change in regulations that would allow the Dept of Law to defend the Governor, the Lt. Governor and/or the Attorney General against ethic complaints. I find this to be a conflict of interest and likely is not Constitutional. Other provisions are in place to protect these individuals against frivolous lawsuits. This change is not needed.

Sincerely,

David Athons

36655 River Hills

Kenai, AK 99611

Steven M Cook

From: Steven M Cook
Sent: Monday, November 4, 2019 3:00 PM
To: lawregulationscomments (LAW sponsored)
Subject: Rule Change on legal representation

Dear Sir or Madam

State Attorney General Clarkson is not the Governor's personal lawyer. The State resources are not the Governor's personal property. The governor should not use public officials or public money to defend himself against the public. This is wrong. A rule change that benefits the governor and his political appointees with the State's money is wrong and you know it. How dare you.

Steven Cook

BOI

From: BOI
Sent: Monday, November 4, 2019 3:01 PM
To: lawregulationscomments (LAW sponsored)
Subject: ethics rules change

I am completely opposed to the proposed change in ethics rules that would allow the attorney general to represent the governor in ethics complaints. This creates a complete conflict of interest as clearly outlined in legal opinions delivered to your department. Moves such as these are why the recall movement has had such success in so short a time. This self-serving change of ethics rule will be just one more nail in the coffin of this administration. Do not support yet another move toward corruption.

Kathleen Swick
Anchorage voter

Sandy Harber

From: Sandy Harber
Sent: Monday, November 4, 2019 3:17 PM
To: lawregulationscomments (LAW sponsored)
Subject: PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LAW

To whom it may concern,

I object to the proposals to change state ethics regulations at 9 AAC 52.140 and at 9 AAC 52.160.

These changes would allow the Department of Law to defend the Governor, Lt. Governor, and Attorney General against ethics complaints at state expense under "certain circumstances."

They would also make information about the defense against an ethics complaint confidential.

As an Alaskan resident I employ of Law to support and maintain the law, not to defend individual accused of violating the law. The proposed changes would make the Department of Law (and possibly the AG) the personal attorney of the very person(s) who appointed him/her to the position. This could afford the governor and Lt Governor undue influence over what should be an unbiased process. This also is inappropriate because it forms the basis for conflicts of interest.

The Department of Law and the Attorney General's clients should be myself and my fellow Alaskans-- the people of Alaska. The Attorney General should not be the governor's personal lawyer.

Under the proposed regulations the Attorney General or Governor must determine that the defense is in the public interest. Again, this makes any investigation an incestuous process which can be easily be manipulated for the political purposes, not for the good of the state.

We are already in a precarious state due to the current budget deficits. Ferries are cancelled, roads are not being plowed, and citizens are doing without. Where will the monies to defend the governor come from? Surely everyone who has business experience can understand that this proposal insures that Alaskans will spend money with this change. The entire Department of Law and its resources could possibly be expended in defending corrupt employees rather than fulfilling the purposes for which the department has been designed:

"The attorney general serves as the legal advisor for the governor and other state officers, prosecutes all violations of state criminal law, and enforces the consumer protection and unfair trade practices laws."

Sincerely,

Sandra Harber

Soldotna, AK

Dianne Woodruff

From: Dianne Woodruff
Sent: Monday, November 4, 2019 3:29 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Department of Law Regulation Changes

Ladies and Gentlemen:

I strongly oppose the proposed changes to 9.AAC 52.140 and 9.AAC 52.160.

The primary purpose of the Department of Law and the attorney general's office is to protect the interests of the people of the state of Alaska.

It is easily foreseeable that there will be instances in which the public interest may not align with those of an individual governor, lieutenant governor, or attorney general. These changes stand to place honest members of the Department of Law in untenable conflict of interest positions, leave the public wondering in whose interests they are acting, and use public funds inappropriately.

If a governor, lieutenant governor, or attorney general makes it a point to act in ways that are clearly ethical, there should be very few ethics complaints to begin with.

Any complaints that are frivolous can be quickly weeded out through the current process in place, as we have seen done previously, generally without any need of counsel for the party named in the complaint.

When members of the public bring forth legitimate concerns, they should not be expected to pay, directly or indirectly, for the defense of the party that is the subject of the complaint. Aside from adding insult to injury, I can only imagine that facing the deep pockets of the state and feeling that the deck is stacked against justice will have a chilling effect on ordinary citizens who would otherwise take the time and energy required to be actively involved in their representation by bringing matters of behavior deserving attention forward to be addressed.

It hasn't been that long ago that our state had its reputation tarnished by corruption that we needed outside assistance to clean up. These changes will make it easier for the corrupt to act without fear of consequences, and harder for the public to find out about the corruption. We need to be moving forward away from that history, not toward a repeat of it.

For those who think government should run more like a private business, keep in mind that in the private sector, corporate counsel has the interests of the corporate shareholders at heart, not those of the CEO, CFO, or any other corporate officer. It simply is inappropriate for the fox, or those who answer to the fox, to be in charge of the hen house in either the private or governmental sectors.

Please do not implement these proposed changes.

Sincerely,

Dianne Woodruff

441 W. Lone Cub Dr.
Wasilla, AK 99654

BOI

Kate Quick

From: Kate Quick
Sent: Monday, November 4, 2019 3:35 PM
To: lawregulationscomments (LAW sponsored)
Subject: proposed changes to dept of law

Good afternoon. I've been an Alaskan for 18 years, or my entire adult life. I'm writing today to express my disapproval of the proposed changes to the department of law, which would allow state resources to be used to defend the state's Attorney General and Governor. This change would allow state dollars to be used to defend potentially illegal activities of our elected Governor and appointed Attorney General.

If they suffer from lawsuits against themselves while in office, they should have to use their own private dollars to defend themselves, just like all of us ordinary Alaskans would have to do. This change would be a disgrace to our state and its dwindling monetary resources.

Do not approve the use of Alaska's Department of Justice for the defense of our Governor or Attorney General.

Best,
Kate Quick
1555 N. Rader Dr.
Fairbanks, AK 99709

BOI

Bill Hill

From: Bill Hill
Sent: Monday, November 4, 2019 3:42 PM
To: lawregulationscomments (LAW sponsored)
Subject: In Opposition of Changes to Department of Law Regulation Changes

To Whom It May Concern:

Please consider this message in opposition to the proposed changes to the Department of Law by Attorney General Kevin Clarkson. This change provides the Governor, Lt. Governor and the AG an unlawful public benefit and introduces ethical issues in who our public servants are serving.

Please keep our administration and AG Clarkson from violating our constitution and keep the State of Alaska focused on serving the public interest, not special interests.

Chin'an,

William F. Hill
Resident, Voter

Rep. Matt Claman

From: Rep. Matt Claman
Sent: Monday, November 4, 2019 3:55 PM
To: lawregulationscomments (LAW sponsored)
Cc: Rep. Bryce Edgmon; Sen. Cathy Giessel; Kubitz, Elizabeth J (LEG)
Subject: Claman Comments and Objections to Proposed Changes in 9 AAC 52.040, 52.140, and 52.160
Attachments: 2019.11.04 Claman Comments and Objections to Proposed Changes in 9 AAC 52.040, 52.140, and 52.160.pdf; 2019.10.22 LLS Memorandum.pdf

Good afternoon,

Attached are comments and objections to the proposed changes in the regulations of the Department of Law.

Please let me know if you have any questions or concerns.

Sincerely,
Matt Claman

LEGAL SERVICES

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

(907) 465-2450
LAA.Legal@akleg.gov
120 4th Street, Room 3


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

MEMORANDUM

October 22, 2019

SUBJECT: Executive Branch Ethics Act — proposed regulations
(Work Order No. 31-LS1235)

TO: Representative Matt Claman
Lizzie Kubitz

FROM: Daniel C. Wayne 
Legislative Counsel

You have asked if there are legal or constitutional issues raised by three recently proposed regulations, which are addressed below. On October 1, 2019, the Department of Law (department) posted notice of three proposed regulations relating to the Executive Branch Ethics Act (the Act), and invited public comment during a 30-day period before they are adopted. The proposed regulations read:

9 AAC 52.140 is amended by adding new subsections to read:

(f) If a person brings a complaint alleging a violation under AS 39.52.110-39.52.190 or this chapter by the governor or the lieutenant governor, the Department of Law may provide legal representation to the governor or lieutenant governor to defend against the complaint if the attorney general makes a written determination, in the attorney general's sole discretion, that the representation is in the public interest.

(g) If a person brings a complaint alleging a violation under AS 39.52.110-39.52.190 or this chapter by the attorney general, the Department of Law may provide legal representation to the attorney general to defend against the complaint if the governor makes a written determination, in the governor's sole discretion, that the representation is in the public interest. (Eff. 4/24/94, Register 130; 12/22/2010, Register 196; am ___/___/___, Register ___)
Authority: AS 39.52.310 AS 39.52.330 AS 39.52.950 AS 39.52.320 AS 39.52.350

9 AAC 52.160 is amended by adding a new subsection to read:

(h) Notwithstanding (a) - (g) of this section, information received by the Department of Law and the attorney general related to the defense of a complaint alleged under 9 AAC 52.140(f) and (g) is confidential. (Eff. 4/24/94, Register 130; am ___/___/___, Register ___)
Authority: AS 39.52.340 AS 39.52.420 AS 39.52.950

(1) Do the proposed regulations raise issues under the Constitution of the State of Alaska?

The following three constitutional issues are raised by the proposed regulations.

(A) Public purpose required.

Article IX, sec. 6 of the Alaska Constitution states that no "appropriation of public money [may be] made, or public property transferred . . . except for a public purpose."¹ The proposed use of state resources to defend the governor, the lieutenant governor, and the attorney general against ethics complaints, regardless of the outcome, under the Act would confer a private benefit on those three public officers.²

The benefit conferred under the proposed regulations is unprecedented. In a 1994 informal opinion from the Office of the Attorney General, Assistant Attorney General Steven Slotnick concluded:

[A]n expense incurred in defense of an Ethics Act complaint, or any penalty levied as a result of that complaint, is the responsibility of the public officer who was the subject of the complaint. The State will not provide a defense or indemnification for actions under the Executive Branch Ethics Act.³

In 2009, Governor Sarah Palin was the subject of several ethics complaints, some of which were dismissed. In a letter to Governor Palin's chief of staff, Attorney General Dan Sullivan acknowledged that the state apparently had never defended or covered the legal expenses of an accused public officer in an Ethics Act proceeding.⁴ He recommended then that the state reimburse private legal expenses incurred by a public officer who *successfully* defends against an ethics complaint.⁵ He explained as follows:

¹ See also 1994 *Inf. op. Att'y Gen.* (Jan. 1; 663-94-0147).

² The financial value of the benefit would be substantial, as it saves the cost of hiring a lawyer. Moreover, the intrinsic value of a defense provided by the Department of Law in a complaint proceeding under the Act, considering that the duties of the Department of Law have traditionally included interpreting and administering the Act and assisting and advising the personnel board during complaint proceedings, would be more than nominal.

³ 1994 *Inf. Alaska Op. Atty. Gen.* at *2 (June 3, 663-94-0289)

⁴ 2009 *Op. Alaska Att'y Gen.* at *6 (August 5).

⁵ As noted later in this memorandum, the letter advises against having the Department of Law directly defend public officers who are subject to ethics complaints.

Public service should not subject public officers, who are assumed by law to be acting ethically, to personal financial liabilities when ethics proceedings confirm that they acted appropriately. Therefore, in examining whether the state may defend or pay the legal expenses for public officers in ethics proceedings, *the critical question is whether there is an approach that ensures that a public purpose is advanced while at the same time encouraging compliance with the Ethics Act by public officers.*^[6]

Subsequently the attorney general adopted regulations 9 AAC 52.040(c) and (d), allowing the state to pay, and a public officer to receive, reimbursement of private legal expenses in ethics complaints, in some instances, if the public officer is exonerated.

The proposed regulations authorize a state funded defense by the Department of Law — before a finding of the validity of the complaint and in the "sole discretion" of the attorney general — rather than authorizing reimbursement for defense expenses after a finding of no violation of the law as proposed in 2009 and allowed by 9 AAC 52.040(c) and (d).

According to the Act, "compliance with a code of ethics is an individual responsibility."⁷ If a court were to find that using state resources to shield one or more of the three public officers from the potential consequences of a complaint under the Act has a public purpose, the court may also find that purpose is outweighed by the public purpose of the Act itself, because otherwise, as discussed further elsewhere in this memorandum, the proposed regulations would significantly undermine the goals of the Act.⁸ In considering

⁶2009 Op. Alaska Att'y Gen. at *6 (August 5) (emphasis added).

⁷ AS 39.52.010(a)(7).

⁸ The purpose of the Act is discernible from AS 39.52.010(a), which reads:

Sec. 39.52.010. Declaration of policy. (a) It is declared that

(1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;

(2) a code of ethics for the guidance of public officers will

(A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;

(B) improve standards of public service; and

(C) promote and strengthen the faith and confidence of the people of this state in their public officers;

(3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;

whether it serves a public purpose to relieve the three public officers from the burdens associated with defending against frivolous ethics complaints, for example, a court may note that the legislature has already addressed that purpose with provisions throughout the Act that require or allow complaints with insufficient merit to be dismissed, at multiple stages of the complaint procedure.⁹

(B) Separation of powers.

The power to enact and change the law of the state is a legislative power.¹⁰ The separation of powers doctrine is implied in the Constitution of the State of Alaska,¹¹ and it precludes any exercise of the legislative power of state government by the executive branch of government, except as provided by the Constitution of the State of Alaska.¹² To the extent that the Constitution of the State of Alaska does provide for the exercise of a legislative power by the executive branch, that power will be narrowly construed. "[T]he

(4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;

(5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

⁹ See, AS 39.52.320 and 39.52.370.

¹⁰ Article II, sec. 1, Constitution of the State of Alaska: "The legislative power of the State is vested in a legislature"

¹¹ *Bradner v. Hammond*, 553 P.2d 1, 4 - 5 (Alaska 1976) (separation of powers doctrine implied in state's constitution).

¹² *Id.* The Attorney General has no power to declare a law unconstitutional. In *O'Callaghan v. Coghill*, 888 P.2d 1302 (Alaska 1995), the Alaska Supreme Court noted:

For an attorney general to stipulate that an act of the legislature is unconstitutional is a clear confusion of the three branches of government; it is the judicial branch, not the executive, that may reject legislation. . . . An attorney general can have no authority to be the binding determiner that legislation is unconstitutional.

separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision."¹³

Article III, sec. 1 of the Constitution of the State of Alaska vests the executive power of the state in the governor, and the governor's authority to exercise that power is further described in art. III, sec. 16 of the Constitution of the State of Alaska.¹⁴ Those constitutionally created executive powers do not include the power to adopt regulations without legislative authority. The power of the executive branch to adopt regulations is delegated to the executive by the legislature through enactment of legislation, either explicitly, as in AS 39.52.950, or implicitly.

Significantly, AS 39.52.950 expressly limits the attorney general's regulatory authority. It reads:

Sec. 39.52.950. Regulations. The attorney general may adopt regulations under the Administrative Procedure Act *necessary* to interpret and implement this chapter. (Emphasis added).

In addition, the *Drafting Manual for Administrative Regulations, (the Manual)* published by the State of Alaska, Department of Law, similarly limits the attorney general's regulatory authority. The Alaska Supreme Court has held that "[A]gency action taken in the absence of *necessary* regulations will be invalid."¹⁵ The Alaska Supreme Court has said that the use of *the Manual* is required in formulating administrative regulations.¹⁶ According to *the Manual*, "[T]he APA and case law require that a regulation be "consistent with the statute," "reasonable," and "reasonably necessary." It is unlikely that a court would find the proposed regulations "necessary to interpret and implement" the Act. First, nothing like the representation allowed by the regulations has ever existed in

¹³ *Id.* at 7.

¹⁴

SECTION 16. Governor's Authority. The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

¹⁵ *U.S. Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140, 142 (Alaska 1971) (Emphasis added).

¹⁶ *The Manual*, page 101, (2018), citing *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, 1181 n.7 (Alaska 1977).

connection with Act, which has been interpreted and implemented for decades. Second, it is virtually indiscernible how the statutes cited by the Department of Law as authority for the proposed regulations allow, create a perceived need for, or suggest that state resources may or should be used to provide or pay for defending a public officer in an ethics complaint under the Act. There are only two references in the Act to representation. Under AS 39.52.340(b) the subject of an ethics complaint has the right to contact an attorney if they choose. Under AS 39.52.360(d) the subject of an ethics complaint may (or may not) be represented by counsel. It is not likely a court would find that adoption of the proposed regulations is necessary to interpret and implement these two provisions. Therefore, they may find that the regulations are invalid.

According to *the Manual*,

When an agency adopts a regulation, it is acting in place of the legislature, usually by virtue of the legislature's general delegation of that power in a specified area. A regulation cannot waive or disregard a statutory requirement.^[17]

And,

to determine whether a regulation conflicts with statute, the court will use a reasonable and common-sense construction consonant with the objective of the legislature. The intent of the legislature must govern and the policies and purposes of the statute should not be defeated.^[18]

The proposed regulations do not meet these requirements. AS 39.52 does not contain a single provision that explicitly or implicitly authorizes the department to adopt the regulations it has proposed. The absence of a provision that prohibits adoption of a regulation does not imply a delegation of authority to adopt one; a delegation that broad would be unconstitutional, even if it were explicit. According to one past attorney general, "delegations of legislative authority are only permissible where the legislature establishes an 'intelligible principle' to guide and confine administrative decision making."¹⁹ A statute allowing adoption of any regulation not otherwise prohibited by that statute, or an interpretation of a statute that reaches a similar conclusion, does not meet that requirement. The legislature has in fact provided guidance, including AS 39.52.010, AS 39.52.110, and AS 39.52.950, to inform decision making by the attorney general with respect to regulations.

¹⁷ *The Manual*, page 101, (2018), citing *E.g., Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227, 1229 (Alaska 2003), and *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983).

¹⁸ *The Manual*, page 103, (2018) citing *Mech. Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004).

¹⁹ *The Honorable Frank Rue*, 1995 WL 848549, at *5, citing *State v. Fairbanks North Star Borough*, 736 P.2d at 1143.

In considering how much deference to give to an interpretation of law by the attorney general that the Act authorizes the proposed regulations, a court may also take the Department of Law's past practice into account. The Alaska Supreme Court has stated that "if agency interpretation is neither consistent nor longstanding, the degree of deference it deserves is substantially diminished."²⁰ In this instance, the proposed regulations are inconsistent with the Department of Law's longstanding interpretation and practice as reflected in the Sullivan attorney general opinion, discussed above.

(C) Equal protection.

The regulations raise a constitutional issue under the equal protection clause in art. I, sec. 1 of the Constitution of the State of Alaska. The Alaska Supreme Court has said, "[I]n considering state equal protection claims based on the denial of an important right we ordinarily must decide first whether similarly situated groups are being treated differently."²¹ Whether two entities are similarly situated is generally a question of fact.²² The governor, lieutenant governor, and the attorney general are three of many public officers who are subject to the Act.²³ Since the Act first became law, all public officers faced with ethics complaints have had to rely on their own private resources to defend against the complaints.

The proposed regulations would allow the state to provide, and the governor, lieutenant governor, and the attorney general to receive, state resources for the purpose of defending against ethics complaints; however, all other public officers would not be eligible for that benefit. If facts show that the remaining public officers are at a lesser risk of ethics complaints by virtue of the offices they hold, irrespective of their individual conduct, a court may determine they are not similarly situated as the governor, lieutenant governor, and attorney general. The Court has said:

[I]n "clear cases" we have sometimes applied "in shorthand the analysis traditionally used in our equal protection jurisprudence." If it is clear that two classes are not similarly situated, this conclusion "necessarily implies that the different legal treatment of the two classes is justified by the

²⁰ *Totemoff v. State*, 905 P.2d 954, 968 (Alaska, 1995) (citing *Bowen v. American Hosp. Ass'n*, 476 U.S. 610, 646 n. 34, 106 S. Ct. 2101, 2122 n. 34).

²¹ *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 966 (Alaska, 2005) (internal footnotes omitted).

²² *Id.* at 967.

²³ Under AS 39.52.960(21), public officers covered by the Act include all employees and officers in the exempt, partially exempt, or classified service in the executive branch.

differences between the two classes."^[24]

However, because individual conduct with respect to the Act may determine the number and type of ethics complaints against a public officer, regardless of whether they are elected, appointed, or hired based on merit, a court may not be able to distinguish the governor, lieutenant governor, and attorney general from the remaining public officers covered by the Act, for purposes of an equal protection analysis.

The Alaska Supreme Court applies a sliding scale in reviewing challenges under the equal protection clause and is more protective of the right than federal courts are. At a minimum, the state must provide a rational justification for treating similarly situated individuals differently.²⁵

In *Malabed v. North Slope Borough*, the Court summarized the equal protection test as follows:

[T]he Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment. To implement Alaska's more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, we determine the weight of the individual interest impaired by the classification; second, we examine the importance of the purposes underlying the government's action; and third, we evaluate the means employed to further those goals to determine the closeness of the means-to-end fit. An appropriation that cannot be justified under this minimum standard would likely violate the equal protection clause of the Alaska Constitution.^[26]

Under this test, as the importance of the individual rights affected increases, so does the burden on the state to show that the state's goal justifies the intrusion on the individual's interests in equal treatment and that the state's goal is rationally related to the means chosen to achieve the goal. A person's interest may be accorded a low level of protection from discrimination under the state equal protection clause, if the court determines that

²⁴ *Id.* (internal footnotes omitted).

²⁵ *See Underwood v. State*, 881 P.2d 322 (Alaska 1994).

²⁶ *Malabed v. North Slope Borough*, 70 P.3d 416, 420 - 421 (Alaska 2003).

the discrimination implicates only an economic interest.²⁷ However, a court would probably find that the interest of the remaining public officers covered by the Act is not purely economic because, from the governor down to public officers at the lowest level of government, a public officer's personal and professional reputations are both on the line when an ethics complaint is filed against that officer. If the court finds the interest at stake for the public officers denied free representation by the state is not purely economic, the state's burden under the second and third parts of the three-part sliding scale equal protection test increases.

(2) Does the Act permit representation of the Governor, the Lieutenant Governor, or the Attorney General as proposed by the pending regulations?

"When a regulation conflicts with a statute, the regulation must yield."²⁸ As discussed in (A) - (D), below, the proposed regulations conflict with several statutes and, as discussed more specifically in (E) below, they may also raise significant ethical conflicts of interest.

(A) The proposed regulations conflict with the Act's prohibitions on favoritism and self-enrichment.

The proposed regulations conflict with AS 39.52.010(a)(5), which reads, "in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism." As noted elsewhere in this memorandum, the proposed regulations would provide a significant benefit — free representation by the agency that interprets and administers the Act in concert with the personnel board, the body responsible for determining the outcome of ethics complaints — to only three of the many public officers who are covered by the Act. This may or may not violate the equal protection clause of the Constitution of the State of Alaska, but it clearly constitutes favoritism.²⁹

The proposed regulations conflict with AS 39.52.120(b)(3), which provides that a public officer may not "use state time, property, equipment, or other facilities to benefit personal or financial interests." Authorizing the use of state time for the defense of a public officer in an ethics complaint proceeding, or using state time for defense of that public officer, would be contrary to this rule.

²⁷ See *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

²⁸ *The Manual*, page 112, (2018), citing *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004).

²⁹ "Favoritism" is not defined by the Act. When interpreting a statute in the absence of a statutory definition for a term, a court gives the term its commonly understood definition, and may rely on a dictionary. *Alaskans for Efficient Government, Inc. v. Knowles*, 91 P.3d 273, 276 n. 4 (Alaska 2004), quoting *2A Norman J. Singer, Sutherland Statutory Construction* sec. 47.28 (6th ed. 2000). According to *Webster's New World Dictionary of the American Language, Second College Edition*, "favoritism" means "the showing of more kindness and indulgence to some person or persons than to others."

The proposed regulations conflict with AS 39.52.120(b)(4), which provides that a public officer may not take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest. The proposed regulations would at the very least shield the governor, the Lt. governor and the attorney general from public scrutiny in connection with an ethics complaint, regardless of the outcome. They would also give the attorney general sole discretion over whether state resources can be used to defend the governor against an ethics complaint, and vice versa. It would be surprising if a governor or attorney general, when deciding how to exercise that discretion, did not give some weight to how their decision might affect a similar calculation by their counterpart, if in the future their discretion-exercising roles are reversed.

The attorney general serves at the pleasure of the governor, and depends on the governor's good will for employment. And because the attorney general is a political appointee of the governor's and the governor's top legal advisor, the governor has a vested personal interest in the attorney general's success; an attorney general whose reputation is damaged by a successful ethics complaint may weaken the governor's chances of being reelected or, increase the chances that a governor is recalled by the electorate. In exercising the sole discretion described in the proposed regulations, the governor and the attorney general would each be faced with a choice between taking or withholding official action that will affect a matter in which they have a personal interest.

The proposed regulations conflict with AS 39.52.120(b)(5), which provides that a public officer may not "attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time." A decision under the proposed regulations that the department of law will provide a defense of the governor, Lt. governor, or attorney general amounts would be contrary to this rule. Regardless of whether some aspect of the decision may or may not advance a public purpose, it is beyond debate that a public officer who receives a free defense in an ethics complaint matter, while shielded from public scrutiny behind a cloak of confidentiality made impenetrable by a regulation that only applies to them, is in receipt of a substantial private benefit.³⁰

(B) The proposed regulations may conflict with a prohibition on the use of state assets or resources for a partisan political purpose.

³⁰ For purposes of the Act, "benefit" is defined under AS 39.52.960(3), as follows:

(3) "benefit" means anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value;

The proposed regulations may conflict with AS 39.52.120(b)(6), which provides that a public officer may not "use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes." Under AS 39.52.120(b)(6), "for partisan political purposes"

- (A) means having the intent to differentially benefit or harm a
 - (i) candidate or potential candidate for elective office; or
 - (ii) political party or group;
- (B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

The proposed regulations provide a free legal defense for only three of the thousands of public officers who are subject to the Act. Because those three hold political positions (two are elected, and one of those two appoints the third), and most of the public officers excluded by the regulations do not, the proposal that they receive a free defense presumably has to do with a concern that they may be more vulnerable to politically-motivated attacks in the form of meritless ethics complaints. If so, the purpose of the regulations is political, and, depending on applicable facts, using or authorizing the use of state services to defend a public officer who is a candidate or potential candidate for public office may constitute a partisan political use of state resources contrary to this ethics rule.

(C) The proposed regulations conflict with statutes that make ethics complaint proceedings public.

The proposed regulations also conflict with AS 39.52.335, AS 39.52.340(a), and AS 39.52.350(a), which provide that records of an ethics complaint hearing are public, at certain stages of the complaint procedure. While confidentiality aids investigation and resolution of complaints, "the state can protect its interest in the integrity of Ethics Act investigations by creating careful internal procedures."³¹ The proposed regulations would shroud ethics complaint hearings with secrecy when the subject of the complaint is the governor, Lt. governor, or attorney general, but not when other public officers are the subject of a complaint. Transparency in the hearing process may reassure the public that the Act is being applied fairly and without bias and favoritism, to all public officers; the absence of transparency may have the opposite effect on public perception. Because the proposed regulation regarding confidentiality conflicts with statutes enacted by the legislature, a reviewing court may determine that the proposed regulation regarding confidentiality is invalid.³²

(D) Unwarranted benefits or treatment and improper motivation.

Under AS 39.52.110(a), "[T]he legislature reaffirms that each public officer holds office

³¹ 2009 Op. Alaska Att'y Gen. *3 (August 5).

³² As noted above, "[I]f a regulation conflicts with a statute, the regulation must yield." *The Manual*, page 112, (2018), citing *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004).

as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust." Under AS 39.52.120(a), "a public officer may not . . . intentionally secure or grant unwarranted benefits or treatment for any person."³³ Under 9 AAC 52.040(a) and (b), "unwarranted benefits or treatment" as used in AS 39.52.120 includes:

(1) *a deviation from normal procedures for the award of a benefit, regardless of whether the procedures were established formally or informally, if the deviation is based on the improper motivation; and*

(2) an award of a benefit if the person receiving the benefit was substantially less qualified, in light of the formal or informal standards set out for the award, than another person who was or reasonably should have been considered for the award if the award is based on an improper motivation.

(b) A public officer may not grant or secure an unwarranted benefit or treatment, *regardless of whether the result is in the best interest of the state.* (Emphasis added).

The proposed regulations seem to create an exception allowing an otherwise prohibited use of state resources when the attorney general or the governor, in their "sole discretion," determine the use would be in the public interest. The legislature did not create a "public interest" exception in the Act, or grant authority for the attorney general to adopt a regulation creating one. Past attorneys general may have recognized this when they adopted and enforced 9 AAC 52.040(b), prohibiting unwarranted benefits or treatment.

Similarly, 9 AAC 52.020 provides that:

A public officer may not take or withhold official action on a matter if the action is based on an improper motivation.

Adoption of a the proposed regulations allowing the attorney general or the governor, in their sole discretion, to require the department of law to represent an elected or politically appointed public officer in an ethics complaint under the Act allows the taking or withholding of official action that in each instance would beg the question, "was it based on an improper motivation?"

(E) Ethical conflicts of interest.³⁴

³³ AS 39.52.120(a).

³⁴ Ethical conflicts of interest under the Alaska Rules of Professional Conduct (ARPC) are outside the scope of this memo. However, defending ethics complaints under the

As former Attorney General Dan Sullivan advised:

[H]aving the Department of Law directly defend public officers against ethics complaints could present conflict-of-interest challenges because of the attorney general's role in interpreting, enforcing, and prosecuting violations of the Ethics Act.

...

It could also create difficulties under the Alaska Rules of Professional Conduct because of the conflicting obligations of the state attorneys and their supervisors.^[35]

AS 44.23.020(a) states: "The attorney general is the legal advisor of the governor and other state officers." A court would probably find that this role is limited to advising the governor and state officers in their official capacity, not as individuals. The public may perceive that a person representing or authorizing representation of the governor, the Lt. governor, or the attorney general in an ethics complaint puts the represented person under an obligation to the person providing or authorizing the representation. Conversely, it may seem to the public that a person in a position to provide or authorize the representation may not be able to refuse to provide or authorize it, because of their professional or political relationship with the person who is the subject of the complaint. This runs counter to the purposes of the Act set forth in AS 39.52.010 and cited elsewhere in this memo. There is also a conflict between the statutory duties of the attorney general and assistant attorney general, and the new duties imposed on them by the proposed regulations. For example, under AS 39.52.310(a) the attorney general may initiate an ethics complaint against the governor or Lt. governor, and, under AS 39.52.335(a), is required to forward complaints to the personnel board. This conflicts with the power, under the proposed regulations, to decide whether the governor or Lt. governor may be defended by the Department of Law.

Beyond being the legal advisor to the governor and other state officers in their official capacities, the attorney general has other statutory duties, including duties under AS 44.23.020(b),³⁶ but those duties do not include a duty to defend matters, like ethics

proposed regulations may create a conflict of interest under the ARCP 1.7 and 1.8, for an attorney general or assistant attorney general charged with providing that defense, because it requires that person, as a lawyer, to balance their duty to one client (the State of Alaska) and another client (the governor, the Lt. governor, or the attorney general).

³⁵ 2009 *Op. Alaska Att'y Gen.* at *7 (August 5) (footnote omitted).

³⁶ The attorney general also has an ongoing duty, under AS 44.23.020(h), to review federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions that may be in conflict with and that may preempt state law, and submit a report to the legislature on or before January 15th of each year. Although U.S.

complaints, that are prosecuted by the state; in fact, they include the opposite. The attorney general has a statutory duty to "represent the state in all civil actions in which the state is a party,"³⁷ and the duty to "prosecute all cases involving violation of state law."³⁸ A violation of the Act is a violation of state law, and the Act explicitly requires, in hearings to determine the outcome of ethics complaints under the Act, that "the attorney general shall present the charges before the hearing officer."³⁹ At the hearing, the attorney general has the additional burden of demonstrating by a preponderance of the evidence that the subject of the accusation has, by act or omission, violated the Act.⁴⁰

Because of these statutory requirements, an attorney general or assistant attorney general who elects or is directed to defend a public officer in an ethics proceeding under the Act would have a conflict of interest. Moreover, the regulations create a situation where the governor, attorney general, and assistant attorneys general are all likely to have to weigh the potential personal consequences—on themselves and on each other—of authorizing or not authorizing the representation, or undertaking or refusing to undertake the representation. That may be especially difficult to weigh objectively and professionally, with the best interests of the state in mind, when the personal goodwill of a supervisor or appointing authority is at stake.

Finally, the entire Department of Law may be in a legally and ethically untenable predicament if the proposed regulations are adopted. As noted by former Attorney General Dan Sullivan regarding whether the Department of Law should defend the governor, lt. governor or attorney general in ethics complaints:

. . . the role of the attorney general and Department of Law is to interpret, implement, and enforce the Act, with the goal of promoting the Act's purposes.

. . .

Defending individual officers against ethics complaints would therefore create an *unacceptable conflict* between the Department of Law's duty to provide them zealous representation and its general duty to promote the

Supreme Court decisions are not on this list of items requiring review, it is reasonable to assume that the attorney general would review relevant federal court decisions and render advice regarding their effect on laws in Alaska.

³⁷ AS 44.23.020(b)(3).

³⁸ AS 44.23.020(b)(5).

³⁹ AS 39.52.360(b).

⁴⁰ AS 39.52.360(c).

Representative Matt Claman
October 22, 2019
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purposes of the Ethics Act in interpreting, implementing, and enforcing the Act.⁴¹

If I may be of further assistance, please advise.

DCW:kwg
19-318.kwg

⁴¹ 2009 *Op. Alaska Att'y Gen.* at *8 (August 5) (emphasis added).

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November 4, 2019

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RE: Comments and Objections to Proposed Changes in 9 AAC 52.040, 52.140, and 52.160
Submitted via email (law.regulations.comments@alaska.gov)

Dear Ms. Bahr:

I write to provide comments on and objections to the three recently proposed Department of Law regulation changes in 9 AAC 52, which deal with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960). As set forth below and further detailed in the attached memorandum to my office from Legislative Legal Services (22 October 2019) (the "LLS Memorandum"), the Department should not adopt any of these proposed regulations because they violate the Alaska Constitution and Alaska Statutes; fail to follow the policies and interpretation of attorney generals before Mr. Clarkson; and raise appropriation questions about whether the state should be paying the personal expenses of the governor, the lieutenant governor, or the attorney general.

After receiving notice of these proposed regulations, my office requested an opinion from our Legislative Legal Division about whether these proposed regulations create legal or constitutional problems and, more specifically, whether the Act permits representation of the governor, the lieutenant governor, or the attorney general as proposed in the regulations. The attached LLS Memorandum identifies three constitutional problems with the proposed regulations: violation of the public purpose requirements in Article IX, sec. 6; violation of separation of powers in Article II, sec. 1 and Article III, secs. 1 and 16; and violation of equal protection in Article I, sec. 1. Additionally, the proposed regulations conflict with several statutes and create ethical conflicts of interest. Please see the LLS Memorandum for a thorough review of those issues, which I incorporate by reference in their entirety.

In addition, I want to highlight some of the issues discussed in the LLS Memorandum and address other concerns.

Fiscal Impact and Lack of a Specific Appropriation

Alaska is facing substantial budget challenges and the governor has taken the lead in seeking massive reductions in state government spending. Nevertheless, this regulatory proposal will result in increased costs to the state that serve the governor's personal interests—not the state's interest. In the current

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(FY 2020) budget, the Civil Division of the Department of Law took a \$963,000 budget reduction (-1.9%) and the Opinions, Appeals and Ethics section took a \$114,600 budget reduction (-4.2%). It appears the section achieved the reductions by transferring an Attorney IV to the Labor and State Affairs section and bringing in an Attorney III (less experience and less cost) from the Labor and State Affairs section. In addition, the section transferred a Paralegal II to the Commercial and Fair Business Practices section and brought in a Law Office Assistant II (less cost) from the Commercial and Fair Business Practices section. OMB described the duties of the Opinions, Appeals and Ethics section as follows:

The Executive Branch Ethics Act is another key challenge for the section. The section handles issues, investigations, hearings, opinions, and oral and written advice, and also provides ethics training for state agencies. These issues arise daily from all over state government. There is continuing work on several pending ethics investigations and issues. The section strives to give ethics advice that is prompt and consistent. Some advice requires significant factual and legal research.¹

The budget details reflect significant workload demands on existing staff, and the 4.2% overall reduction to the Opinions, Appeals and Ethics section shows that the section is already working at its maximum capacity. Yet the fiscal information provided by the Department in the proposed regulation states that the changes “are not expected to require an increased appropriation.” The Department’s financial analysis is not realistic.

Before taking any further action on the regulation, the Department should provide a detailed workload analysis for the Opinions, Appeals and Ethics section and provide a responsible analysis of the costs that will arise from representing the governor, lieutenant governor, and the attorney general on ethics matters.

Even more troubling from a fiscal perspective is the proposal of regulations that effectively place representing the governor in his individual capacity—on matters in which he is alleged to have acted outside his official capacity as governor and for which the state should *not* be paying for his representation—as a higher priority for the Department of Law than its existing duties. And should the governor face a large number of ethics complaints, similar to the large number of ethics complaints allegedly faced by Governor Palin, recognizing that many ethics complaints remain confidential, the fiscal impact could be enormous. In short, the likely fiscal implication of these regulations provides a compelling reason to reject the proposal.

Unwarranted Departure from Past Precedent

The LLS Memorandum cites three separate opinions from the Attorney General regarding ethics complaints. On review, however, there are at least four prior opinions referenced: (1) an opinion from 16 April 1986 that specifically cited the prohibition in AS 39.52.120(b)(3) that a public official may not use “state time... to benefit personal or financial interests;” (2) an update of the 1986 opinion from 1 January 1994; (3) an opinion from 3 June 1994 that unequivocally states that the state “will not provide a defense or indemnification for actions under the Executive Branch Ethics Act;” and (4) a 5 August 2009 opinion by then-Attorney General Dan Sullivan that identified “conflict-of-interest challenges” with the

¹ FY2020 Governor’s Operating Budget: Department of Law Opinions, Appeals and Ethics Component Budget Summary at 3 (14 Dec. 2018).

Department of Law directly defending public officers against ethics complaints “because of the attorney general’s role in interpreting, enforcing, and prosecuting violations of the Ethics Act.”

The 2009 opinion confirmed that the Department of Law has never defended or covered the legal expenses of an accused public officer. Indeed, as stated in the June 1994 opinion, “[n]o section of the Ethics Act ... provides for indemnification or defense of public officers.” In the 2009 opinion, the attorney general further states at p. 18:

If the Department of Law directly defended public officers in Ethics Act proceedings, the result would be that—for ethics complaints against most public officers—the defense counsel and the lawyer investigating and prosecuting the complaint would be in the same department and be supervised by the same attorney general and, perhaps the same deputy attorney general. In essence, the attorney general, through attorneys in the Department of Law, would be prosecuting and defending against the ethics complaints. That could not only create an appearance of impropriety, but could also prejudice the interests of the accused officers and diminish the officers’ confidence in the representation they receive. It could also create difficulties under the Alaska Rules of Professional Conduct because of the conflicting obligations of the state attorneys and their supervisors.

The proposed regulations represent an unprecedented departure from the approach adopted by every prior attorney general to serve the state. The Department should not adopt these regulations because they fail to follow past precedent.

Failure to Include Formal Analysis by the Alaska Bar Association Ethics Committee

Another problem with the proposed regulations is the failure of the Department of Law to obtain a formal ethics opinion on this question from the Alaska Bar Association. The Alaska Bar Association routinely addresses ethics matters in published opinions. By proposing regulations that contradict past practices in the Department of Law since statehood, the Department is inviting ethics complaints brought against Department of Law attorneys. Rather than subject its attorneys to ethics complaints with the Alaska Bar Association and expose the state to the cost of defending those ethics complaints, the Department should first seek a formal ethics opinion on this subject from the Alaska Bar Association. Does the proposed regulation violate Alaska R. Professional Conduct 1.7 and 1.10? Failure to incorporate a formal ethics opinion from the Alaska Bar Association on this issue is another reason to decline to adopt the proposed regulations.

Equal Protection

In addition to the equal protection problems identified in the LLS Memorandum, the regulation proposes to change whether to provide legal services to elected officials from both a legal standpoint and a financial standpoint. Specifically, individual legislators are subject to the provisions of the Legislative Ethics Act, which is similar in many respects to the Executive Ethics Act. Currently, individual legislators, the governor, and the lieutenant governor are on equal footing: the state does not provide a defense to ethics complaints.

The regulatory change would treat the governor and lieutenant governor differently from all other elected officials when a citizen alleges that the elected official is acting outside their official duties by acting unethically. While some may not hire legal counsel at the outset of an ethics complaint, relying on

the personnel board or the ethics committee to dismiss a potentially frivolous complaint, others hire legal counsel for every stage of such a proceeding. As stated in the LLS Memorandum at pg. 7, "since the Act first became law, all public officers faced with ethics complaints have had to rely on their own private resources to defend against the complaints." Similarly, state legislators have been required to pay for their own ethics defense. Unless and until the state provides legal counsel for *all* elected officials in ethics matters, the governor and the lieutenant governor should not receive publicly-funded legal counsel to defend allegations that they have acted unethically.

Conclusion

For the reasons discussed above and discussed in the LLS Memorandum, I oppose adoption of these regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Claman".

Matt Claman
Representative Matt Claman
District 21, Anchorage

Cc: Representative Bryce Edgmon, District 37
Email: Rep.Bryce.Edgmon@akleg.gov

Senator Cathy Giessel, District N
Email: Sen.Cathy.Giessel@akleg.gov

Jamie Ginn

From: Jamie Ginn
Sent: Monday, November 4, 2019 3:58 PM
To: lawregulationscomments (LAW sponsored)
Subject: recall dunleavy

To whom it may concern,

The Alaskan people have spoken, clearly Dunleavy and his inability to lead are the epitome of the concerns of Alaskans.

We are requesting that our concerns be taken seriously, and not be a battle of lines drawn by red or blue.

Please consider our pleas, as we fight to maintain the spirit of Alaska.

Jamie Ginn
Concerned citizen

Sent from my iPhone

MaryBea Byrne

From: MaryBea Byrne
Sent: Monday, November 4, 2019 4:04 PM
To: lawregulationscomments (LAW sponsored)
Subject: Lynch comments on reg changes 9 AAC 52

Regarding: The Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960), including:
9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.
9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

Comments:

50 plus years as a state, this law or rule change was NOT needed.
As my grandparents told me all those years ago,
“If you don’t violate ethics, you will not have to defend \$ your ethics violations.”

Submitted by: Daniel L. Lynch
44755 Sterling Hwy
Soldotna, AK 99669

BOI

Julia Bevins

From: Julia Bevins
Sent: Monday, November 4, 2019 4:11 PM
To: lawregulationscomments (LAW sponsored)
Subject: Reject changes in ethics law proposed by Governor Dunleavy

Dear State of Alaska,

Ethics laws are in place for a reason. They should be a "minimum" standard by which elected officials behave. Conflicts of interest, misuse of state funds, all those are reasonable ethics complaints and the state should not have to pay for the defending of such.

I encourage all those who vote not to pass Governor Dunleavy's proposed bill that would require the state to pay legal costs of ethics complaints of government officials. This is a recipe for more bad behavior and corruption.

Julia Bevins
PO Box 31
Homer, Ak 99603

BOI

DavidCindy Audet

From: DavidCindy Audet
Sent: Monday, November 4, 2019 4:16 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed change to ethics rules by Clarkson. (Executive Branch Ethics Act)

These rule changes would violate the constitution and statute, and that I do not support the changes.

David Audet
Juneau AK

Aaron Brakel

From: Aaron Brakel
Sent: Monday, November 4, 2019 4:37 PM
To: lawregulationscomments (LAW sponsored)
Subject: Reject proposed Executive Branch Ethics Regulation changes

As an Alaskan I am opposed to the proposed changes to regulations that would make defending the Governor, Lt. Governor or Attorney General from ethics violations complaints a responsibility of the State of Alaska.

Please reject the proposed changes that would benefit only the individuals in these three positions. Let them defend themselves.

Aaron Brakel
309 D St.
Douglas, Alaska 99824

Ted

From: Ted
Sent: Monday, November 4, 2019 4:38 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Ethics rules change to allow the Governor, Lt. Governor and the Attorney General to use the Department of Law as their personal lawyers if an ethics complaint is filed against them.

The new proposed regulations violate the constitution and statute, and I do not support them.

Sincerely,

Theodore M. Krieg

P O Box 621

Dillingham AK 99576

BOI

Sent from my iPhone

Jane Ransdell

From: Jane Ransdell
Sent: Monday, November 4, 2019 4:46 PM
To: lawregulationscomments (LAW sponsored)
Subject: I oppose ethics defense on public dime

Dear Ms. Maria Bahr:

I oppose the action that is being proposed that would have the Alaska Department of Law be the legal representative of the governor, lieutenant governor and attorney general against ethics complaints. I believe that for such accusations, the holders of these offices should be responsible for hiring their own private lawyers. Also certainly the subsection making it confidential should not be adopted because if these office holders have been accused of ethics violations, the people of the state should be privy to this information. And Alaskans should definitely not be paying for such defense of these office holders without knowing the details of the accusations and case.

Thank you for your time.

Sincerely,

R. Jane Ransdell
607 Bullion Drive
Fairbanks, AK 99712

Joe Ransdell-Green

From: Joe Ransdell-Green
Sent: Monday, November 4, 2019 4:47 PM
To: lawregulationscomments (LAW sponsored)
Subject: Opposition to state funded ethics defense

Dear Ms Bahr,

I am writing you to oppose 9 AAC 52. 140 and 9 AAC 52. 160. The Governor's ethics defense should not be state funded and should not be kept confidential from the public. We have a right to know the actions of our government.

Sincerely,

Joseph Ransdell-Green

Casey

From: Casey
Sent: Monday, November 4, 2019 4:51 PM
To: lawregulationscomments (LAW sponsored)
Subject: Public Comment on Proposed Ethics Act Regulations (9 AAC 52.140 & 160)

I am submitting the following public comment on the proposed changes to regulations 9 AAC 52.140 and 9 AAC 52.160 under the Executive Branch Ethics Act.

Please do not adopt the proposed Ethics Act regulations amending 9 AAC 52.140 and 9 AAC 52.160. I am deeply concerned that the proposed regulations would foster conflicts of interest and lack of transparency. The Department of Law should be dedicated to protecting the interests of the State of Alaska. The proposed regulations risk compromising the Department's ability to fulfill this purpose.

Sincerely,
Casey Carruth-Hinchey

Anne Kilkenny

From: Anne Kilkenny
Sent: Monday, November 4, 2019 4:51 PM
To: lawregulationscomments (LAW sponsored)
Subject: Public comment on chgs to 9AAC52

re: NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LAW

Brief Description: The Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)

I OBJECT to this proposed change.

The present process for investigating ethics violations has worked pretty well to weed out frivolous complaints . . . I'm thinking of all of the complaints that were lodged against Governor Palin and how few of them went anywhere.

When a complaint is not frivolous, it doesn't seem right to me to have the AG or other people who the governor appoints or who work at will be tasked/trusted with the responsibility of defending their boss/mentor, aka the governor, at taxpayer expense.

I see a massive conflict of interest here that does not serve the voters, which could easily be abused by a corrupt governor, all at taxpayer expense.

NO!

Thank you for consideration of my opinions.

Sincerely,

Anne Kilkenny, voter # AS15.07.195/BO1

Roger Brunner

From: Roger Brunner
Sent: Monday, November 4, 2019 4:51 PM
To: lawregulationscomments (LAW sponsored)
Cc: Roger Brunner
Subject: 9 AAC 52 proposed regulations changes

The proposed regulation changes to 9 AAC 52 by the Department of Law are probably unconstitutional and are themselves unethical and against the public interest.

Any Assistant AG who was tasked to work on behalf of the Governor, Lt. Governor or Attorney General in the face of a violation of statute would have their own attorney Professional Liability duties to worry about. Just being told by the Attorney General to do it would not relieve them of their duty to the State of Alaska. The AG has presumably signed a loyalty oath to the Governor which makes him unable to make a dispassionate determination at all, and would put his own Alaska Bar license in jeopardy for pretending to do so. He is obliged to uphold the Constitution and laws of the State of Alaska, not the will of the Governor or Lt. Governor. The Attorney General has spent a good deal of time writing opinion pieces for the media trying to advocate for the Governor. That is not his job either, and demonstrates his political aims and lack of neutral judgment.

The fact that this is being proposed, while the Governor is on a fundraising trip in the Lower 48 to defend his conduct makes it plain that he expects and deserves complaints about his loyalty, duties and ethics. To set up a system where the AG and the Governor can use state money to fund each other's defense in their sole discretion would be plainly fraudulent and an obvious "self-licking ice cream cone".

At a time when the state funding is weak, to spend it defending allegations of statutory ethics violations would also be a waste of limited resources. The Department of Law is understaffed and has trouble prosecuting crime in a timely and proper fashion. To put a zero fiscal note on this change cannot be justified. This change would be very time consuming and expensive, and everybody knows that. In fact, that expense is the supposed justification for the change.

Please don't put ethics in the trash and force Department of Law employees into a situation that would put their licenses to practice law in jeopardy. Don't force them to choose between their jobs and their Professional Responsibility which could cost them their bar licenses.

Roger Brunner
1249 Donna Dr.
Fairbanks, AK 99712

BOI

Tom Green

From: Tom Green
Sent: Monday, November 4, 2019 4:53 PM
To: lawregulationscomments (LAW sponsored)
Subject: Opposition to 9 AAC 52.140 and 9 AAC 52.160

Dear Ms. Bahr,

I am writing to express my opposition to 9 AAC 52.140 and 9 AAC 52.160. The DOL has no business defending the Governor, Lt. Gov or Attorney General on claims of ethics violations. Furthermore, the proposal that it be kept confidential is ridiculous and should be rejected.

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

Yours,
Thomas K. Green
607 Bullion Drive
Fairbanks, Alaska 99712

Sonja Kawasaki

From: Sonja Kawasaki
Sent: Monday, November 4, 2019 4:59 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comments Opposing Attorney General Clarkson's Proposed Regulations

Ms. Bahr:

The attorney general's proposed regulations 9 AAC 52.140(f) and (g) appear self-serving and would result in conferring personal benefits to the governor, lieutenant governor, and attorney general, including in instances of legitimate complaints of ethical violations. I oppose the regulation changes over this concern and for the same reasons expressed by Senator Bill Wielechowski, Representative Andy Josephson, and Representative Gabrielle LeDoux in their letter dated October 30, 2019, submitted as public comment, as well as in light of the legal issues noted by legislative attorneys in the legal memo accompanying that letter.

In addition, the proposed regulations appear unsound on their face. It is obviously possible that a governor, lieutenant governor, and attorney general could vacate their positions at any time, due to resignation or simply at the end of their term, while proceedings involving allegations of Executive Branch Ethics Act violations could continue beyond that person's service to the State. But the language of the regulations does not address how the state-provided legal representation would be managed beyond the individual's State service; the attorney general would have to promulgate additional regulations to fix the currently proposed regulations.

This in itself suggests that the attorney general is probably overstepping the scope of his authority to establish regulations. In having to address the issue, the attorney general would not be simply interpreting the Act or providing clarification on a subject of the Act for which he possesses special or technical expertise to give suitable guidance, but would be having to adopt more regulations to clarify an approach to a problem he himself created by establishing flawed regulations in the first place.

Furthermore, it appears that such additional regulations could only provide for one of two courses of action: either the state representation could extend beyond the person's service, or the state representation would end, and the former public official would have to seek private representation for the continued defense. Clearly, in the first instance, a result of providing state representation to a private citizen would be highly anomalous—and probably not the public policy the attorney general would want to effect. On the other hand, in the second instance—say, in a circumstance where the public official departs State service abruptly and becomes a private citizen—he or she could not expect to simply waive confidentiality to have the state attorney assist the new private attorney in assuming the representation without the Department of Law providing a benefit to a private citizen.

Any formulation of a solution to the forgoing issues would be complicated—seemingly too complicated to not exceed the attorney general's regulation authority.

I would hope to see the attorney general fully withdraw his proposed regulations at this time. Thank you for the opportunity to comment.

Sonja Kawasaki

David Rohlfing

From: David Rohlfing
Sent: Monday, November 4, 2019 5:00 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Rulemaking

Hello,

I am writing to submit comment on the proposed rule changes to 9 AAC 52.140 and 9 AAC 52.160 under the Executive Branch Ethics Act.

Please do not adopt the proposed Ethics Act regulations amending 9 AAC 52.140 and 9 AAC 52.160. I am deeply concerned that the proposed regulations would foster conflicts of interest and lack of transparency. The Department of Law should be dedicated to protecting the interests of the State of Alaska. The proposed regulations risk compromising the Department's ability to fulfill this purpose.

Further, the proposed regulations appear to be in direct conflict to the DoL's mission of receiving and investigating those complaints under the statute.

Sincerely,

Dave Rohlfing

--

Anchorage, AK

Cell:

Work:

jazz

From: jazz
Sent: Monday, November 4, 2019 5:07 PM
To: lawregulationscomments (LAW sponsored)
Cc: jazz
Subject: Ethics violations

Good Afternoon,

The proposed changes by AG Clarkson are a violations of AK constitution. The. AG is supposed to protect all Alaskan. The changes are a blatant abuse of power which is another reason for the three to be removed from office. Stop acting like autotrons.

Thank you.
Bernie Hoffman

Sent from my iPhone

sks

From: sks
Sent: Monday, November 4, 2019 5:34 PM
To: lawregulationscomments (LAW sponsored)
Subject: Don't pass regulation!!

Asking the attorney general to be personal lawyer for an elected official is against the Alaska Constitution.
Don't pass this regulation.

Sandra K Schultz
HC 62 Box 5440
Delta Junction, AK 99737

--

All it takes is one person to believe in you, and your outlook can change. Jessica Edgar

Cliff Davidson

From: Cliff Davidson
Sent: Monday, November 4, 2019 6:27 PM
To: lawregulationscomments (LAW sponsored)
Subject: Those who would sabotage public ethics policy for illegal personal protection.

Shame shame Gov Donefor & AG Clarkbar begone! You two disgrace your offices & the trust Alaskans have placed in you to uphold the Alaskan Constitution. Sabotaging local communities and their economic efforts demonstrates your disdain for Alaskans wellbeing.

Do the right thing, resign your offices and make way for honorable Alaskans to perform the tasks of Your public offices.

Sent from my iPhone

Veri di Suvero

From: Veri di Suvero
Sent: Monday, November 4, 2019 7:25 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comments regarding regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960),
Attachments: AKPIRG_public comment_9 AAC 52.pdf

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Veri di Suvero (pronouns: [they/them](#))
Executive Director
Alaska Public Interest Research Group
www.akpirg.org
w. 907.350.2286
c. 917.209.9928

Dena'inaq ełnen'aq' gheshtnu ch'q'u yeshdu. (Dena'ina)
I live and work on the land of the Dena'ina. (English)





November 4, 2019

Alaska Public Interest Research Group
Veri di Suvero
Executive Director
308 G Street, Suite 202
Anchorage, AK 99501

RE: Regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960)

On behalf of the Alaska Public Interest Research Group, we are sending our abject opposition to two proposed regulations relating to the Executive Branch Ethics Act (the Act), 9 AAC 52.

The Alaska Public Interest Research Group (AKPIRG), founded in 1974, is Alaska's only non-profit consumer advocacy organization. We advocate in the public's interest and against special interests controlling public office.

According to Daniel Wayne, Legislative Counsel, these proposed changes are directly in opposition to the public interest, and are unconstitutional.

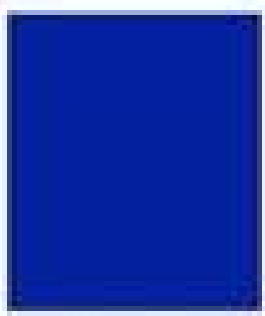
A few poignant examples include:

- This would protections to some state employees and not others (differential treatment)
- Conflict of interests between the Attorney General and Governor's office (e.g. the legislative branch and executive branch) would endanger the State's separation of powers
- Representation by the AG's office would provide a private benefit (personal representation) on the public's dime. This is explicitly, legally not a 'public purpose'
- This funding could be used for a partisan political purpose.

Due to these above reasons as well as other concerns outlined in the brief written by Daniel Wayne, Legislative Counsel underline that these changes would harm the constitutional separations between both legislative and executive branch as well as Alaska's citizens, and it will erode confidence in the State's separation of powers and allow the public to pay for private interests. We strongly urge the Department of Law to reject these changes.

Sincerely,

Veri di Suvero
Executive Director



AKPIRG

Alaska Public Interest Research Group

Alaska Counts

The logo features the text "Alaska Counts" in a large, bold font. "Alaska" is in orange and "Counts" is in dark blue. Below this, a thick orange line extends from the left, then turns down and right to form a bracket-like shape. Inside this bracket, the text "2020 Census" is written in dark blue. The entire graphic is set against a background of a faint, light blue grid.

2020 Census

Ken Higgins

From: Ken Higgins
Sent: Monday, November 4, 2019 7:38 PM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed Changes to Ethics Law

I am strongly opposed to the proposed changes to state ethics laws that would allow the attorney general to defend a governor, lieutenant governor, or attorney general against an ethics complaint. The very proposal itself is intensely unethical.

Sent from AOL Mobile Mail
Get the new AOL app: mail.mobile.aol.com

Catherine Sullivan

From: Catherine Sullivan
Sent: Monday, November 4, 2019 10:03 PM
To: lawregulationscomments (LAW sponsored)

To Whom it May Concern:

Leave the ethics rules alone! Changing them to new regulations to benefit Attorney General Clarkson, Governor Dunleavy, and Lt. Governor Meyer that would allow all three of them to use the Department of Law as their personal lawyers, if ethics complaints are filed against them, violates the constitution and statute. I DO NOT support the change.

Sincerely,

**Catherine Sullivan
13530 Westwind Drive
Anchorage, AK 99516**

Ann Rappoport

From: Ann Rappoport
Sent: Monday, November 4, 2019 10:30 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comments on proposed regulation changes to 9 AAC 52 of the AK Admin Code

To whom it may concern -

Please accept our comments on the proposed regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960).

We are strongly opposed to this regulation change. In effect, it will allow 'the fox to guard the henhouse.' If we have a governor who is violating ethics, they should not be defended by the Attorney General, a position appointed by the Governor.

The rules have worked fine to date. Should someone bring a frivolous ethics complaint against a governor or other top official, it will easily be thrown out. Otherwise, the governor should pay for their own defense. Usually this is not a concern as we elect responsible individuals to this important position.

We note that attorneys in the Alaska House from both the Democrat and Republican parties have denounced this proposed rule change. Other expert attorneys - other than the current Attorney General who is leading the push for this nonsensical rule change - have similarly spoken to the ill logic of it. The Department of Law is charged with enforcing the state's laws. This rule change would ask the department to try to poke holes in those same laws. Please note a 2009 attorney general opinion from Dan Sullivan, now one of our two U.S. senators. In 2009, Sullivan ruled that, "defending individual officers against ethics complaints would . . . create an unacceptable conflict" for the Department of Law. Additionally, asking the Department of Law to defend the governor, lieutenant governor, and attorney general from ethics complaints would take time and energy of the Department's attorneys away from their legislatively mandated duties. Certainly this would be an unnecessary cost - particularly egregious when essential services have already been so deeply cut.

Note, we were surprised to learn that comments on this proposal were due at 5 pm today - typically public comments are accepted until midnight on the day they are due. Consequently we hope you will consider these comments.

Sincerely,

Ann Rappoport and David Irons
17053 Aries Court
Anchorage, AK 99516

John McKay

From: John McKay
Sent: Monday, November 4, 2019 10:41 PM
To: lawregulationscomments (LAW sponsored)
Subject: Comments on Proposed DOL regs, 9 AAC 52.140-160
Attachments: Comments to DOL re- Proposed Exec Branch Ethics 110419.pdf

D. JOHN McKAY
Attorney at Law
117 E. Cook Ave.
Anchorage, Alaska 99501

Telephone
(907) 274-3154

Fax
(907) 272-5646

November 4, 2019

Maria Bahr, State Ethics Attorney
Alaska Department of Law
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994
via e-mail: law.regulations.comments@alaska.gov

Re: Proposed Changes in Regulations of the Department of Law
Sections 9 AAC 52.140, - .160

Dear Ms. Bahr,

I am submitting these comments in opposition to the Department of Law's proposed new regulation 9 AAC 52.160 pertaining to confidentiality of complaints filed under the Executive Branch Ethics Act against the Governor, Lieutenant Governor, or Attorney General. The proposed regulations also deal with legal representation of these three officials by the Department of Law when an ethics complaint is filed against them. While these comments are made in the context of this set of proposed regulations, I am not taking a particular position here on the proposed amendments to 9 AAC 52.140, *per se*, one way or the other.

I am an attorney, and have represented a number of news organizations, journalists and others throughout the state over a period of four decades on matters relating to access to government, and transparency and accountability of government. I am filing these comments as an individual citizen, and not on behalf of any client or other persons or organizations, but my views are informed by my experience in working on such issues in Alaska since 1978.

The point of these comments is to object to the confidentiality provisions, and urge that no changes to the rules governing treatment of ethics complaints against the Governor, Lt. Governor, and Attorney General should be made without eliminating provisions that keep such complaints secret. I wish to underscore that this position is not based on partisan preferences or personalities. Regardless of which party and what individuals occupy these positions of such substantial public trust, the public interest is best served by requiring more transparency and accountability. These are among the highest-ranking officials in the state. The public clearly has an interest in their job performance. If allegations are made that they have not performed in accordance with their legal or ethical obligations, the public is entitled to know about this.

This should be true in any event, given that these three individuals occupy the highest positions of trust in our executive branch, and should be fully accountable to the people. But it is

particularly so if public money is being spent to defend them, and when the proposal is to change the rules to allow providing a defense by the Department of Law without charge even if the ethics complaint may be completely meritorious, the least the public can ask for is complete transparency.

The new regulations assume that either 1) the Attorney General will decide that it is *not* in the public interest that the Governor be provided with state-paid legal services (and associated costs) and instead should pay his or her own fees and costs even though the law (and specifically here, the regulations) would allow such payment, or 2) that it *is* in the public interest that the Governor have his or her fees and costs paid from day one, rather than following the existing process where this happens only after it is determined that the ethics complaint in question lacked merit. Either way, the public interest is significantly affected* and the facts and process should not be hidden.

If this new practice were to be adopted—either by regulation now, or after due consideration by the Legislature—it should not be implemented without eliminating or substantially changing the provisions making such ethics complaints confidential. At present, the practice, and perhaps the law itself, not only requires substantial confidentiality with respect to ethics complaints, but in particular requires the person making the complaint to keep that fact confidential.

Information that is *not* generated by the ethics investigation, but is discovered or obtained independently, is not subject to confidentiality. The law, as I understand it, does not prohibit someone who files an ethics complaint from talking about the subject matter of that complaint, and any facts or assertions that might be in such complaint. If it were otherwise, in my opinion such a rule would be clearly unconstitutional. But it appears that the law may purport to keep someone who files an ethics complaint from disclosing to anyone else the fact that such a complaint has been filed. At least with respect to the positions of public trust addressed in these proposed regulations (Governor, Lt. Governor, and Attorney General), there should be no legal prohibitions preventing a person with knowledge of an ethics violation, or belief that one has occurred, from disclosing the fact that they have filed a complaint, either.

Is there a possibility of some embarrassment or nuisance if one of the three highest executives of the state is the subject of an ethics complaint? Possibly. But the law could not be clearer that such high ranking officials have diminished expectations of privacy to begin with, and should have little or no expectation of privacy when the subject matter of the complaint is the ethical performance of their public duties. Dealing with occasional embarrassment or annoyance goes with the territory for the people who choose to occupy our highest positions of trust.

* This comment is based on proposed 9 AAC 52.140(f), which allows the Attorney General to decide if his or her boss should be given this significant public benefit or not. The same analysis applies to proposed section 9 AAC 52.140(g), in which the Governor decides whether his or her legal advisor, and the person who must decide whether the Governor gets the benefits of the new section .140(f), will be provided with public funds as allowed under this corresponding section .140(g). These comments apply equally to both sections, applying to all three top executive positions.

The incremental “harm” or potential prejudice to any of these three highest officers of our Executive Branch is outweighed by the public’s right to know about allegations of unethical behavior on their part, and about the process that evaluates and deals with such allegations. This is particularly true when we consider that we are talking about the *incremental* effect of disclosing the fact that a complaint has been filed, over and above any potential negative consequences for these highest-ranking public officials that could already flow from the public disclosure of the nature and contents that might be found in any such complaint, which already could be made public so long as the fact that a complaint has been filed isn’t mentioned.

Our Legislature has declared, and our Supreme Court has underscored, that it is the policy of the state that Alaskans’ fundamental right of access to information about our government must be safeguarded because we, the people of the state, do not yield our sovereignty to the agencies that serve us, and that in delegating authority, we don’t give our public servants the right to decide what is good for the people to know and what is not good for us to know. See, AS 44.62.312(a)(3)-(4); *cf. City of Kenai v. Kenai Peninsula Newspapers*, 642 P.2d 1316, 1323 (Alaska 1982).

The proposed regulations would significantly change the way things are done. They would mean public money would be spent for the Department of Law to provide a defense when it is not now provided, and there likely would be no means and little motivation to recover public monies spent to defend behavior of our top public officials if they are found to have, in fact, acted unethically. The proposed changes assume one of our top government officials can authorize a significant public benefit, involving expenditures of substantial public funds, without disclosing this to the public at the time, or perhaps ever. If we assume, for the sake of argument, that the state should begin paying for defending against well-founded complaints about unethical conduct through the Department of Law, and doing so from day one, it is not too much to ask that there be transparency about the nature of the claims and the process.

When the Governor, Lieutenant Governor, or Attorney General is sued in a court, that is a matter of public record—both the fact of it, and the substance of it. There is no reason to keep this confidential, and it is not kept confidential. Likewise, there is no sufficient reason to keep secret either the fact or the nature of an ethics complaint filed against the Governor, Lt. Governor, or Attorney General of the State of Alaska. The law should reflect this, and in any event, the rules should not be changed to provide additional benefits to the individuals occupying these highest positions of public trust when they are accused of ethics violations unless and until the rules are also changed to eliminate any cloak of secrecy keeping the Alaska public from knowing about these allegations of ethical breaches relating to their performance of public duties.

Thank you for your consideration of these comments.

/s/ D. John McKay

Mitch Michaud

From: Mitch Michaud
Sent: Tuesday, November 5, 2019 5:35 AM
To: lawregulationscomments (LAW sponsored)
Subject: Against the changing of the rule allowing state resources to be used to defend any employees from ethics violations and the like

Changing the rule to allow state resources to defend the executive branch of AK state government Is a consolidation of power to maintain power by using legal procedures to pry and twist weaknesses in the regulation.

Instead of clarifying the regulation or adding to it, this maneuver opens the door to greater abuse of power and further consolidates power by use of state resources . In the end the governor is further removed from accountability adding to the eroding of public trust.

Mitch Michaud, PMB 357 35555 spur hwy,, Soldotna

Hobbs, Angela J (LAW)

From: Hobbs, Angela J (LAW)
Sent: Tuesday, November 5, 2019 9:43 AM
To: Bahr, Maria Pia L (LAW)
Subject: proposed ethics regs comment attached from Daniel L. Lynch
Attachments: Daniel L. Lynch - comment on proposed ethics regs changes.pdf

Hi Maria – please see attached comments on the proposed ethics regs from Daniel L. Lynch.

Angie Hobbs
Law Office Assistant II
Labor and State Affairs Section
Alaska Department of Law
1031 W. 4th Avenue #200
Anchorage, Alaska 99501
(907) 269-6612

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Date: 11-4-19

Faxed to : (907) 276-3697

Regarding: The Department of Law proposes to adopt regulation changes in 9 AAC 52 of the Alaska Administrative Code, dealing with the Executive Branch Ethics Act (AS 39.52.010 - 39.52.960), including:

9 AAC 52.140 is proposed to be changed to expressly clarify that the attorney general, through the Department of Law, may defend against complaints alleging a violation by the governor, lieutenant governor, or attorney general upon a public interest determination.

9 AAC 52.160 is proposed to be changed to add a new subsection addressing confidentiality.

Comments:

50 plus years as a state, this law or rule change was NOT needed.

As my grandparents told me all those years ago,

“If you don’t violate ethics, you will not have to defend \$ your ethics violations.”

Submitted by: Daniel L. Lynch

44755 Sterling Hwy

Soldotna, AK 99669

BOI

V Knapp

From: V Knapp
Sent: Thursday, November 7, 2019 6:30 AM
To: lawregulationscomments (LAW sponsored)
Subject: Proposed ethics law change

There are serious constitutional and ethics issues with the proposed change.
Under no circumstances should a political appointee (AG) be in charge of defending ethics complaints against the person who hired him or her.
Alaska is better and wiser than this.
Vickie Knapp
Big Lake Alaska

Barbara Rondine

From: Barbara Rondine
Sent: Thursday, November 7, 2019 3:11 PM
To: lawregulationscomments (LAW sponsored)
Subject: Conflict of Interest

Dear Law Regulations,

This was written 3 days ago and has just bounced back.

I am writing to say that I am strongly opposed to the proposed changes that would create special privileges for the governor, Lt. governor and the district attorney by giving them free legal help in ethic cases. This change would positively create a conflict of interest and forestall the integrity of the law as it is.

Thank you,
Barbara Rondine
2640 Gaia Lane
Fairbanks, AK
99709

Suzi McClear

From: Suzi McClear
Sent: Thursday, November 7, 2019 7:01 PM
To: lawregulationscomments (LAW sponsored)

A friend's passed this on along Facebook. I hope that it's a hoax, but if not please make it go away.

"Now that I have your attention, please email law.regulations.comments@alaska.gov to reject the proposed ethics law change that Dunleavy is trying to push through. If a governor, or some other high state official, is accused of not being ethical, they can get state lawyers (our money) for free. What could possibly go wrong? Tell them before they pass this! Deadline is end of day Monday, so hurry."

It seems if a state official has been unethical he/she should not have the state pay for his/her defense. Or am I missing something relevant? Thank you for your consideration. Suzi McClear