

DEPARTMENT OF LAW  
PROPOSED REGULATIONS RELATED TO THE ETHICS ACT  
QUESTIONS AND ANSWERS

By Deputy Attorney General Treg Taylor

As of October 16, 2019

**Q:** Why would we insert a provision for confidentiality in an ethics law when the Ethics Act applies to all public employees doing public business?

**A:** The new provision was proposed to maintain consistency with both attorney-client privilege and the Alaska Rules of Professional Conduct regarding client confidentiality. 9 AAC 52.160 (the existing confidentiality section) is based on situations where the Department of Law is acting as the “ethics prosecutor” and other confidentiality requirements may arise if the Department of Law operates in a different capacity. 9 AAC 52.160 requires that certain information collected in the course of an ethics investigation remains confidential, such as information that is not relevant to the underlying ethics complaint. This section also protects employee privacy in the event that the Attorney General decides formal ethics proceedings are not warranted at the end of an investigation.

**Q:** Who requested the proposed amendments?

**A:** The regulations were proposed to address an identified need – the Attorney General instructed the Department of Law to propose the amendments.

**Q:** How is the Department of Law supposed to be objective when reviewing ethic violations and defend the Governor at the same time?

**A:** The Department of Law does not investigate, evaluate, or adjudicate complaints filed against the Governor, Lt. Governor, or Attorney General. These complaints are investigated, evaluated, and adjudicated by private attorneys (not state employees) who are hired by the Personnel Board under AS 39.52.340(c). As the Department of Law is not involved in this review, there is no issue regarding department objectivity.

**Q:** Why would the Attorney General direct the Department of Law not to represent the Governor when he is directly employed by the taxpayers and installed by the Governor?

**A:** The Attorney General has a constitutional duty to follow the law and has sworn an oath to do so. The AG would only have discretion to determine if it is in the State's best interest to defend the Governor. It is important to remember that while the Department of Law may defend the Governor, Lt. Governor, or AG, the department does not indemnify them. If they have been found to have violated the Ethics Act, the Governor, Lt. Governor, or AG is personally responsible for whatever penalty is imposed.

**Q:** Why would these proposed regulations apply only to the Governor, Lt. Governor and Attorney General, when all executive branch employees are subject to the Ethics Act?

**A:** For all State employees, except the Governor, Lt. Governor, and Attorney General, the Department of Law is the entity that performs an initial investigation of an ethics complaint, accepts or rejects the complaint, and ultimately determines whether an ethics violation has occurred; therefore, it would be improper for the Department of Law to also represent these other executive branch employees.