



**RESPONSE TO QUESTIONS RECEIVED ON PROPOSED  
CHANGES IN THE REGULATIONS OF THE DEPARTMENT  
OF LAW REGARDING REPRESENTATION IN AN ETHICS  
COMPLAINT AGAINST THE GOVERNOR, LIEUTENANT  
GOVERNOR, OR ATTORNEY GENERAL**

*September 2023*

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- 1. Question #1 of the August 2023 Proposed regulations – FAQ states, “The current regulation requires the governor, lieutenant governor and attorney general to hire outside counsel to represent them during these proceedings.” Where in the regulations is the specific requirement for the Governor, Lt. Governor, and Attorney General to hire outside counsel to represent them during proceedings before the Board of Personnel?**

Please see 9 AAC 52.040(c)(3) and (4). The current regulations allow public officers, in some circumstances, to seek reimbursement of reasonable expenses incurred for professional legal services to defend against a complaint. The regulations do not, however, grant the Department of Law the authority to defend public officials in response to complaints filed under the Ethics Act.

- 2. How do the regulations not clash with current ethics law that relate to 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?**

As stated in the response to question 1, the regulations already provide public officers with the ability to seek reimbursement in some circumstances. Rather than reimburse the public officer for outside counsel fees, this regulation allows the Department of Law to defend the governor, lieutenant governor, or attorney general when there is no conflict of interest, and the representation is in the public interest. Such a defense is consistent with the Ethics Act, which, for example, expressly allows for the “use of state funds, facilities, equipment, services or another government asset” for actions that “have[] the intent to benefit the public interest at large through the normal performance of official

duties.” AS 39.52.120(6)(c)

**3. The August 2023 Proposed regulations – FAQ document states there are no costs to comply with the proposed regulations. Where are the data and figures to support that statement?**

Alaska Statute 44.62.195 requires that state agencies prepare fiscal notes if the adoption, amendment, or repeal of a regulation would require increased appropriations by the state. Adoption of the proposed regulation will not require increased appropriations.

**4. How many ethics complaints have been filed related to Alaska’s governors, lieutenant governors and attorneys general in the last 15 years? What is the number of ethics complaints filed each year?**

Unless and until the personnel board finds probable cause to support a complaint, all complaints filed against the governor, lieutenant governor, or attorney general are confidential. AS 39.52.340. To protect that confidentiality, the Department of Law will not provide information on the number of complaints filed each year.

We reviewed our filing system and, dating back to November 2007, the Department of Law has 29 files dedicated to complaints filed against governors, lieutenant governors and attorneys general.

**5. How many total ethics complaints have been filed in the last 15 years? What were the costs to the state, according to the Dept. of Law’s time-keeping system, for each ethics complaint?**

We reviewed our filing system and, dating back to November 2007, the Department of Law has 131 files dedicated to complaints filed under the Ethics Act. During that period, multiple assistant attorney generals have served as the Ethics Attorney. Due to differences in how attorneys maintained their files, this number may not be inclusive, but it represents a good faith effort to provide the most accurate response to this question.

Based on our timekeeping system, 3,812.40 hours were billed to these matters. This includes 3,064.6 of attorney time and 747.8 hours of paralegal time. Using the current rate the Department of Law bills to its clients (\$170.53 an hour for attorneys) and (\$110.78 per hour for paralegals), the total cost for

these hours amounted to \$605,447.51. Please note that this amount is higher than the actual costs given the Department of Law's rate has increased over the past 15 years. And, as explained above, this is a good faith effort to respond to this question, but it may not be inclusive given differences in how the various attorneys opened and billed to their matters.

**6. How many ethics complaints were found to be baseless in the last 15 years? Could you provide a list of baseless ethics complaints as well as the body determining each ethics complaint to be baseless?**

The questioner did not define what they meant by "baseless." Alaska Statute 39.52.310(d) provides that the attorney general "shall review each complaint filed, to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of this chapter." "If the attorney general determines that the allegations in the complaint do not warrant in investigation, the attorney general shall dismiss the complaint with notice to the complainant and the subject of the complaint." *Id.* Prior to the initiation of formal proceedings, "the complaint and all other documents and information regarding an investigation conducted . . . are confidential and not subject to inspection by the public." AS 39.52.340. To maintain confidentiality, the Department of Law will not provide a list of dismissed ethics complaints, or any document related to those complaints.

In reviewing our files, of the 131 files dedicated to Ethics Act complaints, at least 30 complaints were dismissed. However, around 25% of the files, likely due to the file's age, were incomplete and did not include information about how the complaint was resolved.

The Department of Law does not conduct such a review if the complaint involves the governor, lieutenant governor, or the attorney general. Those complaints are referred to the personnel board per AS 39.52.310(c).

**7. What are all and complete costs to the State of Alaska to represent Gov. Dunleavy and former Chief of Staff Tuckerman Babcock in the wrongful-firing lawsuits brought by former State of Alaska employees: psychiatrists Dr. Anthony Blanford, Dr. John Bellville, and attorneys Kelly Parker, Ruth Botstein and Elizabeth "Libby" Bakalar? Along with payouts to these former employees, could you please include an itemization of the costs of outside counsel hired by the state and all attorney-hours, per each attorney, for each former employee, according to the Dept. of Law's time-keeping system, as they provided public-funded representation to Gov. Dunleavy and former Chief of Staff**

**Babcock for what a judge had concluded that the men’s actions were so far beyond normal that they cannot be considered part of their normal duties as state officials. That may make them personally liable?**

This question is not relevant to the proposed regulation and does not require a response for the following reasons:

1. The proposed regulation focuses on complaints filed under the Executive Branch Ethic Act.
2. The referenced matters were cases brought in state and federal court alleging wrongful termination under state law, none of these cases alleged violation of the Ethics Act. Moreover, there was no litigation related to Ms. Botstein.
3. The Department of Law defends civil litigation brought against state employees who are acting in the scope of their employment; this includes actions taken by the governor, lieutenant governor, commissioners and other employees. In doing so, the Department seeks reimbursement from the legislature for the judgment and claims arising from these matters.

**8. What constitutes an ethics complaint? Are requests sent, in the public interest, to the AK Attorney General’s office to look into certain questionable actions considered ethics complaints.**

A complaint filed by a member of the public is a written document, signed under oath, containing a clear statement of the details of an alleged violation of AS 39.52.210, .220, .250, or .260. The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210, .220, .250, or .260. For additional explanation, please see the response to question 6.

The Department of Law does not conduct such a review if the complaint involves the governor, lieutenant governor, or the attorney general. Those complaints are referred to the personnel board per AS 39.52.310(c). Consequently, a finding that it is in the public interest for Department of Law to represent those officials in proceeding before the board does not conflict with the Department's duty under the Executive Branch Ethics Act.

**9. What specific assessment processes will be used by the governor and attorney general to certify that publicly-funded legal representation by the Dept. of Law is warranted and is in the public interest? Will this “public interest” assessment process be publicly noticed and available for review by Alaskans in a relevant and timely manner?**

The facts surrounding each ethics complaint will be closely evaluated to determine whether representation would be in the public interest. As mentioned above, representation of state employees happens routinely in the context of litigation and is based on a thorough analysis of the nexus between the scope and duties of the employee and the allegations against the employee. A similar analysis would occur in this context. Unless and until the personnel board finds probable cause to support a complaint, all complaints filed against the governor, lieutenant governor, or attorney general are confidential. AS 39.52.340. To protect that confidentiality, the Department of Law will not publicly notice the public interest determinations.

**10. Is a run for national office by the governor, Lt. governor or attorney general considered within the scope of official duties?**

The Ethics Act prohibits public officers from using “state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes.” AS 29.52.120(b)(6). Partisan political purposes includes the “intent to differentially benefit or harm” a “candidate or potential candidate for elective office” or “political party or group” but “does not include having the intent to benefit the public interest at large through the normal performance of official duties.” *Id.*

**11. Would ethics complaints filed with the AG's office wherein the subject of the complaints are the governor, Lt. governor, or AG be automatically dismissed, per the Alaska Executive Branch Ethics Act?**

Under AS 39.52.310(c), complaints involving the governor, lieutenant governor, or the attorney general are referred to the personnel board.

**12. Are endorsements of partisan political candidates for national office by the governor, Lt. governor and attorney general within the scope of official duties?**

As mentioned above, the facts surrounding each ethics complaint will be closely evaluated to determine whether representation would be in the public interest. As mentioned above, representation of state employees happens routinely in the context of litigation and is based on a thorough analysis of the nexus between the scope and duties of the employee and the allegations against the employee. Because the facts in each case differ, it is not

appropriate to speculate based on a hypothetical.

**13. For the purpose of the above subsection, is there a difference between 'public interest' and 'Alaska's interest'?**

The phrase “public interest” is used in the Ethics Act. *See* AS 39.52.120(b)(6)(B); AS 39.52.180(c); AS 39.53.335(f) and (h)(3). “Public interest” in the regulation is meant to have the same meaning as “public interest” in the Ethics Act.

**14. Will the official titles of governor, Lt. governor, and attorney general continue to be considered official government asset, as stated by former Dept. of Law attorney and current Fairbanks District Court Judge Maria Bahr?**

This question is not relevant to the proposed regulation, which focuses on representing the governor, lieutenant governor, and attorney general when these public officials receive an Ethics Act complaint. It also asks the Department of Law to discuss confidential legal advice allegedly given by a former assistant attorney general and solicits an opinion on the use of official titles.

**15. Since the turnaround time for responses to these questions is too short and too soon before the public comments deadline, would AG Taylor consider this request to extend the deadline for submissions of public comments so Alaskans can formulate and base their comments on full, complete and more comprehensive information supplied in the DOL responses to the submitted.**

The proposed regulation is being promulgated under the Alaska Administrative Procedure Act. In compliance with AS 44.62.190, the Department of Law publicly noticed the proposed regulation at least 30 days before its adoption. Alaska Statute 44.62.213 requires the agency to make a good faith effort to answer questions that relate to a proposed regulation. If a question is posed at least 10 days prior to the close of the public comment period, the answer is included in a FAQ-type document that is posted on the Alaska Online Public Notice System. There is no requirement to postpone or extend the public comment period if questions are received during the public comment period.