



**RESPONSE TO QUESTIONS RECEIVED ON PROPOSED CHANGES ON
LEGAL SERVICES TO STATE AGENCIES IN THE REGULATIONS OF THE
DEPARTMEN OF LAW**

October 2026

1. **AS 44.62.020 provides that the Administrative Procedure Act does not itself enlarge an agency's regulatory authority, and AS 44.62.030 requires regulations to be consistent with and reasonably necessary to carry out the authorizing statutes. Please identify the specific statutory authority supporting each of the following proposed requirements:**
 - a. **requiring every covered executive-branch agency to obtain Attorney General approval before hiring outside legal counsel;**
 - b. **requiring an agency-employed attorney to defer to the Attorney General concerning interpretation of the Alaska Constitution, the agency's own statutory authority, APRA, the Open Meetings Act, APA, ethics law, budgeting law, personnel law, and governance of boards and commissions;**
 - c. **requiring independent outside counsel to defer to the Attorney General on those same issues;**
 - d. **prohibiting covered state agencies from initiating litigation, settling claims, appealing decisions, agreeing to indemnification, or agreeing to specified choice-of-law or forum provisions without written Attorney General approval.**

The authority for each regulation is listed under the proposed regulation. For example, all of the regulations list AS 44.23.020 which outlines the Department of Law's duties and powers, including being the "legal advisor of the governor and other state officers," "represent[ing] the state in all civil actions in which the state is a party" and "administer[ing] state legal services." All attorneys advising executive branch departments work in the Department of Law at the direction of the Attorney General.

2. **AS 44.17.040 provides that each person appointed to a subordinate position within a department is under the supervision, direction, and control of that department's principal executive officer. How does proposed 9 AAC 02.020(d), which requires an agency-employed attorney to defer to the Attorney General on substantial legal matters, interact with the statutory authority of that attorney's own department head under AS 44.17.040? Which official has final authority when the Attorney General and the agency's principal executive officer disagree?**

Attorneys advising and representing executive branch departments work in the Department of Law at the direction of the Attorney General.

3. **If the Attorney General, Department of Law, Governor, or another DOL client is the subject of an investigation, claim, dispute, or potential litigation involving another state agency, board, authority, or public corporation, does proposed 9 AAC 02.015(d)(3) still require independent outside counsel to "defer to the attorney general"? If so, how can that counsel remain genuinely independent? If not, please identify the provision creating an exception.**

Conflicts are carefully evaluated and any conflicted individuals are walled off. In rare cases, if the potential conflict extends to the department as a whole or it is deemed prudent for other reasons, outside counsel will be hired with the direction in the scope of the contract that they will act independently.

4. **Alaska Rule of Professional Conduct 2.1 requires an attorney representing a client to exercise independent professional judgment and render candid advice. How does DOL reconcile that obligation with a regulation compelling a separately retained attorney to "defer to" the Attorney General's interpretation of constitutional and statutory law? Does "defer to" mean consult, give substantial consideration, follow unless clearly erroneous, or accept the Attorney General's conclusion as binding?**

Nothing in this rule would supersede an attorney's duty under the Rules of Professional Conduct, and the rules themselves already recognize and acknowledge the powers and duties of the Attorney General in the preamble: "Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in

circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the “public interest” in circumstances where a private lawyer would not be authorized to do so.” These Rules do not abrogate any such authority. *See Botelho v. Griffin*, 25 P.3d 689 (Alaska 2001)."

5. **Proposed 9 AAC 02.015(c) and .020(b) provide that waiver of a conflict or potential conflict must be approved by the Attorney General. Who is the “client” whose informed consent is required under the Alaska Rules of Professional Conduct? Does Attorney General approval supplement, or replace, the informed written consent of the affected agency, board, corporation, or other governmental client? Who determines and approves the conflict when the Attorney General or Department of Law itself is one side of the conflict?**

The waiver of a conflict or potential conflict is a conflict with representation of a non-state entity against the State, which includes any agency within the State. As the legal advisor and counsel for the State of Alaska as established in AS 44.23.020, the Attorney General determines whether a conflict can or should be waived in consultation with affected state agencies.

6. **Proposed 9 AAC 02.030 defines “state agency” broadly enough to appear to include an “authority” or “public corporation,” including the Alaska Industrial Development and Export Authority. Does DOL intend 9 AAC 02.015, .020, and .025 to apply to AIDEA? If so, please identify the present statutory authority requiring AIDEA to obtain Attorney General approval before filing litigation. This question is particularly important because HB 124, presently pending in the 34th Legislature, contains a proposed AS 44.88.225 that would expressly require AIDEA to obtain written Attorney General approval before filing a lawsuit. If that requirement already exists through AS 44.23.020, what legal change would proposed AS 44.88.225 make? Conversely, if legislation is required to impose that requirement on AIDEA, how may substantially the same requirement be imposed through 9 AAC 02.025 before HB 124 has become law?**

As noted, “state agency” is defined in the regulation. Proposed 9 AAC 02.020 also has its own exceptions as to when it applies and when it does not. Any particular board or commission would be evaluated in light of the regulation, if passed, and other governing statutes, including AS 44.23.020 which gives sole authority to the Attorney General “to represent the state in all civil actions” and “administer the legal services.”

7. Does DOL intend these regulations to apply to the Alaska Permanent Fund Corporation?

If so, how does the requirement for Attorney General approval of outside counsel and specified legal decisions interact with AS 37.13.120(d), which authorizes the Corporation to enter into and enforce all contracts necessary, convenient, or desirable for managing fund assets and corporate operations, and with the Board's statutory prudent-investor and fiduciary responsibilities?

If a Board fiduciary reasonably concludes that independent legal advice contrary to the Attorney General's position is necessary to fulfill the Board's fiduciary obligations, which duty controls?

As noted, “state agency” is defined in the regulation. Proposed 9 AAC 02.020 also has its own exceptions as to when it applies and when it does not. Any particular board or commission would be evaluated in light of the regulation, if passed, and other governing statutes, including AS 44.23.020 which gives sole authority to the Attorney General “to represent the state in all civil actions” and “administer the legal services.”

8. Please provide a list of every authority, public corporation, board, commission, and other governmental entity DOL presently considers covered by proposed 9 AAC 02.030(3).

Please separately identify those considered exempt because a statute or constitutional provision gives the entity independent authority concerning legal counsel, litigation, governance, or decision-making.

As noted, “state agency” is defined in the regulation. Proposed 9 AAC 02.020 also has its own exceptions as to when it applies and when it does not. Any particular board or commission would be evaluated in light of the regulation, if passed, and other governing statutes, including AS 44.23.020 which gives sole authority to the Attorney General “to represent the state in all civil actions” and “administer the legal services.”

9. Proposed 9 AAC 02.030 expressly excludes the Alaska Railroad Corporation, University of Alaska, and Alaska Bar Association.

What statutory or constitutional principle distinguishes those entities from AIDEA, APFC, Alaska Housing Finance Corporation, Alaska Energy Authority, and other authorities, corporations, boards, or commissions?

The exclusion pertains to the governing statutes and constitutional provisions of those entities.

- 10. Under proposed 9 AAC 02.015(d)(3) and .020(d), attorneys must defer to the Attorney General concerning APRA, the Open Meetings Act, APA, ethics law, and governance of boards and commissions.
Would this language make an Attorney General interpretation binding on an agency or board before judicial review?
May outside counsel advise a board or agency that the Attorney General's interpretation of APRA or the Open Meetings Act is incorrect?
If the attorney believes the Attorney General's interpretation is contrary to statute or controlling Alaska Supreme Court precedent, what is the attorney required to do?**

This regulation concerns the advice provided by attorneys, and does not purport to govern the decisions made by agencies.

- 11. Will approvals, denials, conflict determinations, conflict waivers, and directions issued under 9 AAC 02.015-.025 be reduced to writing?
Will those records ordinarily constitute public records under AS 40.25, subject to specific lawful exceptions?
If an Attorney General denies an agency permission to file litigation, appeal a case, obtain independent counsel, or settle a claim, will the Attorney General provide a written statement identifying the legal and factual basis for that decision?**

The conflict waiver process already exists. This regulation is simply codifying it for consistency and clarity.

- 12. Proposed 9 AAC 02.025(a)(1) prohibits an agency from waiving sovereign immunity without Attorney General approval.
Does this provision merely require Attorney General approval when another statute already permits waiver, or does DOL contend that Attorney General approval itself supplies substantive authority to waive sovereign immunity?
Please identify the statutory authority supporting the latter interpretation, if that is DOL's position.**

The proposed regulation simply clarifies that waivers of sovereign immunity must be approved by the Attorney General. This ensures all relevant statutes and case law is taken into account along with any liability that would result.

- 13. Will these regulations apply to legal-service contracts, memoranda of understanding, pending litigation, pending appeals, and continuing representations already in existence on the regulations' effective date? If so, please identify the legal authority for applying the new requirements to previously authorized relationships or proceedings.**

Alaska Statute 44.23.020 already outlines the Department of Law's authority. These regulations are merely clarifying it for consistency.

- 14. Finally, please identify the governmental problem these regulations are intended to correct.
Are these regulations intended merely to codify an existing statewide practice, or will they materially expand the Attorney General's present control over legal counsel employed or retained by executive-branch boards, authorities, commissions, and public corporations?
If they merely codify existing practice, please identify the existing written policies, administrative orders, Attorney General opinions, or other authorities presently establishing each requirement.**

These regulations came about at the direction of the Governor in Administrative Order 362.

- 15. Article IV, Section 8 of the Alaska Constitution creates the Alaska Judicial Council and expressly allocates its membership and appointment authority. Three attorney members are appointed by the governing body of the organized state bar; three non-attorney members are appointed by the Governor subject to legislative confirmation; and the Chief Justice serves as the seventh member.
The Judicial Council also acts according to rules it adopts.
Does the Department contend that proposed 9 AAC 02 applies in any respect to the Alaska Judicial Council, its executive director, its employees, or attorneys employed or retained by the Council?
If the answer is yes, please identify the constitutional and statutory authority permitting the Attorney General, by executive-branch regulation, to supervise legal services performed for an independent constitutional entity associated with the judicial branch.
If the answer is no, please state that exclusion expressly in the final regulation so that there can be no future uncertainty.**

The regulations only apply to the executive branch and cannot apply to the Alaska Court System, which houses the Judicial Council.

- 16. Article IV, Section 10 creates the Alaska Commission on Judicial Conduct and establishes its constitutionally prescribed membership, including lawyer members appointed by the Governor from nominations made by the organized bar.**

Does DOL contend that proposed 9 AAC 02 applies to the Commission on Judicial Conduct or counsel serving the Commission?

If so, how can an executive-branch regulation alter, control, or materially influence the legal advice received by an entity whose structure and authority originate directly in Article IV?

If the regulation does not apply to ACJC, please expressly state that exclusion.

The regulations only apply to the executive branch and cannot apply to the Alaska Court System, which houses the Judicial Council.

- 17. On August 14, 2026, Acting Attorney General Cori Mills issued Attorney General Opinion No. 26-001 addressing statutory provisions requiring the Governor to select executive-branch board and commission appointees from lists provided by private organizations.**

The opinion concludes that such statutory restrictions are likely unconstitutional in many circumstances but expressly recognizes that the Governor's appointment authority remains subject to explicit limitations contained in the Alaska Constitution.

Does the Department agree that Opinion No. 26-001 concerns statutory limitations imposed on executive appointment authority and does not displace express appointment provisions contained in Article IV, Sections 5, 8, and 10?

Does DOL agree that constitutional allocation of appointment authority controls over any contrary executive interpretation, regulation, policy, or Attorney General opinion?

This is not relevant to the regulation, but insofar as there is confusion, the Attorney General Opinion cited relates to executive branch boards and commissions, not any board or commission housed in the Alaska Court System.

- 18. Does the Department agree that Article IV, Section 8—not the general executive appointment provisions of Article III—specifically governs appointment of the three non-attorney members of the Alaska Judicial Council?**

Does the Department further agree that the Governor's appointment authority under Article IV, Section 8 remains subject to every limitation contained in that provision, including:

- a. the requirement that the appointee be a non-attorney;**
- b. legislative confirmation;**
- c. due consideration to area representation;**
- d. appointment without regard to political affiliation; and**
- e. the prohibition against another office or position of profit under the United States or the State?**

Does Opinion No. 26-001 alter any of those constitutional limitations? If DOL believes that it does, please identify the specific constitutional authority supporting that conclusion.

This is not relevant to the regulation, but insofar as there is confusion, the Attorney General Opinion cited relates to executive branch boards and commissions, not any board or commission housed in the Alaska Court System.

- 19. The pending appeal involving the appointment of John W. Wood to the Alaska Judicial Council, *Alaskans for Fair Courts v. Wood/Dunleavy*, Supreme Court Nos. S-19662/S-19682, presents constitutional questions concerning the meaning of “non-attorney,” “position of profit,” legislative confirmation, and recess appointment authority under Articles III and IV. While those constitutional questions remain before the Alaska Supreme Court, will proposed 9 AAC 02 be interpreted or applied in any manner that requires another state attorney, board, commission, authority, or constitutional entity to defer to the Attorney General's interpretation of those same disputed constitutional questions?**

If so, how would such a requirement be consistent with the judiciary's authority to exercise independent judgment concerning the meaning of the Alaska Constitution?

This is not relevant to the regulation, but insofar as there is confusion, the Attorney General Opinion cited relates to executive branch boards and commissions, not any board or commission housed in the Alaska Court System.

- 20. The John Wood litigation illustrates a potentially important conflict created by these regulations.**
- When the Attorney General represents the Governor in litigation concerning the constitutional limits of the Governor's appointment authority, the Attorney General is acting as counsel and advocate for a particular constitutional officer.**
- Under proposed 9 AAC 02, however, the Attorney General would also possess broad authority requiring other state attorneys and outside counsel to defer to the Attorney General on constitutional interpretation, statutory authority, and governance of boards and commissions.**
- What mechanism prevents the Attorney General's advocacy position for one client from becoming mandatory statewide legal policy for another state entity with a separate or potentially adverse institutional interest?**
- Does the Department recognize a distinction between:**
- a. the Attorney General's role as advocate representing the Governor in litigation; and**
 - b. the Attorney General's role as legal supervisor of executive agencies?**
- If so, where is that distinction protected in the proposed regulations?**

This question is not relevant to the regulations, but insofar as there is confusion, any attorney acts as both advisor to assist their client in understanding the law and representative when advocating and defending decisions that are made by the client within the bounds of the law. The Attorney General and the attorneys the Attorney General oversees are no different in that regard. The difference is that the Attorney General's duties and powers are prescribed by statute, specifically AS 44.23.020. This is recognized in the preamble to the Rules of Professional Conduct: "Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so." These Rules do not abrogate any such authority. *See Botelho v. Griffin*, 25 P.3d 689 (Alaska 2001)."

- 21. To avoid future disputes, will the Department amend proposed 9 AAC 02.030 to expressly state that “state agency,” for purposes of this chapter, does not include constitutionally independent entities outside the executive branch, including the Alaska Judicial Council and Alaska Commission on Judicial Conduct? If DOL declines to include such language, please explain why.**

The proposed regulation only applies to the executive branch. *See* 9 AAC 02.030(3), specifically the language “of the executive branch.”

- 22. Taken together, proposed 9 AAC 02 would establish substantial Attorney General control over outside counsel, agency-employed attorneys, constitutional interpretation, statutory interpretation, public records law, open meetings law, board governance, litigation, appeals, settlements, conflict waivers, and other major legal decisions.**

Please therefore answer directly:

Does the Department contend that AS 44.23.020 presently authorizes the Attorney General to establish binding legal interpretations for every covered executive board, authority, commission, and public corporation, even where another statute assigns independent duties to that entity?

And does the Department agree that no regulation adopted under AS 44.23.020 may enlarge the Governor's or Attorney General's constitutional power over an entity, appointment, or decision that the Alaska Constitution itself assigns elsewhere?

Alaska Statute 44.23.020 outlines the Department of Law’s duties and powers, including being the “legal advisor of the governor and other state officers,” “represent[ing] the state in all civil actions in which the state is a party” and “administer[ing] state legal services.” The Attorney General is principal executive officer of the Department of Law. The regulations are merely clarifying this statute.