

Alaska Department of Law October 2005 Newsletter®

DAVID MÁRQUEZ, ALASKA ATTORNEY GENERAL



PROTECTING ALASKANS

CRIME

Anchorage: Assistant District Attorney **Robert Henderson** obtained a sentence of 225 days jail time against Nathaniel Vickers for violating conditions of release while awaiting trial on allegations that Vickers attempted to murder his wife. Vickers had been previously ordered not to have contact with his wife after previously being charged in 2004 with assault in the first degree and attempted murder after allegedly dousing her with rubbing alcohol and setting her on fire.

Fairbanks: Number crunching: The felony unit received 77 new cases in October. Two of the new cases were for murder and two were for manslaughter and/or criminally negligent homicide. Felony assault and property crimes again lead the number of referrals. The misdemeanor unit received 488 referrals during October. Miscellaneous misdemeanors lead with 103 referrals and assaults were a second with 100. The unit received 89 new DUI's and 60 new DWLS cases.

Kodiak: In terms of trends, cocaine possession/distribution stats are decreasing, while meth possession/distribution stats are increasing, as well as are prescription forgery cases.

Palmer: On October 25, 2005, Assistant District Attorney **Richard Payne** secured pleas of no contest from defendant John P. Smith to Burglary in the First Degree (two counts); Misconduct Involving Weapons in the Third Degree; Vehicle Theft in the First Degree; Reckless Driving; Robbery in the First Degree; Assault in the Third Degree; Vehicle Theft in the First Degree; and Theft in the Second Degree. Smith, who is 19 years old, burglarized numerous homes, and, during one burglary, he held the homeowner at gun point, tied him up with phone chords and placed a pillowcase over the victim's head. Smith also received some notoriety as of late when he left his third

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PROTECTING STATE FINANCES

Health & Social Services - Subrogation/Liens: During the month of September 2005, Medicaid subrogation and lien collection activity has been ongoing. There are now 372 open files where the state is pursuing reimbursement of Medicaid expenditures where a third

party has been identified as potentially responsible for causing the injury of illness treated. The total number of files closed, year to date is 132. 17 files were closed in September 2005. The total amount collected for September, 2005 was \$55,513.41 and there is

\$202,382.53 in accrued collections not yet received.

Collections & Support: The section received \$1.4 million on its first batch of PFD garnishments. These are garnishments against debtors owing victim restitution or

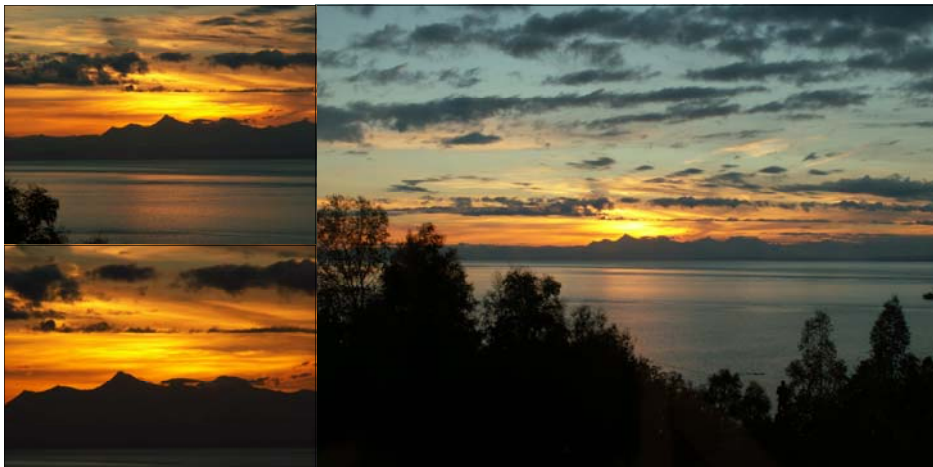
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PROTECTING STATE FINANCES

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criminal judgments (fines, cost of appointed counsel, cost of incarceration on DWI charges, etc).

Labor & State Affairs - Retirement and Benefits. A recent decision by the Alaska Supreme Court could have profound impact on state finances. In ***Alaska Civil Liberties Union v. State of Alaska and Municipality of Anchorage***, (October 28, 2005) the court held that the denial by the State of Alaska and Municipality of Anchorage of public employment-related health insurance and survivor benefits to employees' and retirees' same-sex domestic partners violated the equal protection clause of the Alaska Constitution. Although the court found that the state and municipality had identified three legitimate interests—cost control,



administrative efficiency, and promotion of marriage—the court determined that the absolute denial of benefits to public employees with same-sex domestic partners was not substantially related to those legitimate interests. The court

invited supplemental briefing on the question of an appropriate remedy. Until the court decides the issue of remedies, the benefits programs remain in effect as the statutes now provide. For more information, contact **Virginia Ragle**.

PROTECTING STATE RESOURCES

Protecting Alaska's Resources and State's Rights:

Water Rights: In August 2005, in *Young v. State, DNR*, the superior court ruled that DNR properly revoked two water rights held by Dale Young for the use of water from Baranof Hot springs and Baranof River in Southeast Alaska. The superior court concluded that the state did not violate Young's due process rights by inviting the public to comment on whether it was in the public interest to lift an automatic administrative stay on the revocation order during the pendency of the administrative appeal of the order. The court also ruled that DNR had not applied an inappropriate burden of proof on the water right holder, and that the evidence supported revocation. The time for appeal expired in early October, and Mr. Young has not appealed the decision. Assistant Attorney General **Rob Nauheim** represented the state in this matter.

Fishing: **Lance Nelson** filed our opening brief with the Supreme Court in the second appellate round of the Chignik Co-op Fishery litigation, *State v. Grunert*. In the first round, the Supreme Court ruled in March of this year that the salmon co-op regulation was invalid, largely because it allowed permit holders to receive an economic benefit without actually fishing, which the Court found to be fundamentally inconsistent with the Limited Entry Act. We are appealing the Superior Court (Judge Morse) decision that an emergency regulation adopted by the Board of

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PROTECTING ALASKANS (CONTINUED)

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party custodian, cut off two ankle-monitors, and remained at large for a week after being released to attend his father's funeral. It is expected that additional charges will be forthcoming regarding the escape.

TORTS

Suits against state employees: Judge Curda of Bethel superior court, in the first trial court ruling under AS 09.50.253(c) -- authorizing the state to substitute as defendant in the place of employees certified by the AG to have acted within the scope of their employment -- ruled that a plaintiff is entitled to judicial review of the AG's certification decision. We have filed a motion for extension of time with the Supreme Court for possibly filing a petition for review. **David Brower** is filing for a petition for rehearing in this case.

CONSUMER PROTECTION

Platt – Superior Court Judge Charlie Hugelset in a surprising decision reversed the nursing board's decision to deny licensure to a certified nurse's aide applicant based on felony conviction for a series of thefts and forgeries. Because the applicant had received an SIS and subsequently had her conviction set aside, Judge Hugelset held that the conviction was no longer a conviction for purposes of the licensing statute and the board could not rely on it to deny a license. Dave Brower is filing a petition for rehearing and if unsuccessful will do an evaluation for appeal to the Alaska Supreme Court.

PROTECTING OUR CHILDREN

Children In Need of Protection:

There were 50 new CINA cases filed statewide in October.

CINA decision of note: In a case from a remote area, a magistrate found that the father had sexually abused two of the children and that the others were at risk. Despite the mother's repeated violation of an order not to allow the father back in the home and the mother's denial of the abuse, the magistrate refused to grant removal findings. The magistrate also refused to find that the mother was at all culpable. **AAG Susan Wibker** filed objections to the magistrate's findings, and the superior court judge ruled for the state, finding that the magistrate's findings were clearly erroneous. The court granted the state legal custody based upon the acts of both the father and the mother and gave the state removal authority.

Consumer Protection:

Cindy Drinkwater drafted and filed an Alaska Supreme Court brief in the *Mendenhall Valley Tesoro v. State of Alaska* case. This case involves an administrative appeal of an order by the Department of Commerce, Community, and Economic Development that suspended the tobacco endorsement of Mendenhall Valley Tesoro for 65 days and imposed a civil fine of \$800 based on two convictions of the retailer's employees for tobacco sales to minors. Mendenhall lost an appeal at the superior court level earlier this year in a decision issued by Judge Patricia Collins. On appeal, Mendenhall is challenging the constitutionality of the relevant tobacco statutes that limit the scope of the hearing and that impose mandatory civil penalties upon finding of a violation.

PROTECTING STATE RESOURCES (CONTINUED)

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Fisheries in May that required active participation by every permit holder in the 2005 co-op still violated the Limited Entry Act. Our reply brief is due Nov. 22, and we expect an expedited decision by the end of February 2006.

Right of Ways: In *State of Alaska v. United States, et. al* (Coldfoot RS 2477 case) **Elizabeth Barry** and **Laura Bottger**, representing the State, reached an agreement with Yukon Pacific Corporation in which they agreed not to contest or deny the validity of the State's RS 2477 rights-of-way, and the parties agreed to work together to insure their respective rights-of-way did not interfere with each other. The State then filed a notice dismissing YPC from the lawsuit.



Mark Morones is the Special Assistant for Communications for the Dept. of Law. If you have information that you want to share in the newsletter, please contact me at 907-269-6393 or at Mark_Morones@law.state.ak.us.

WHAT'S NEWS

- ❖ Attorney General Issues Statement Regarding Irwin Memorandum, Oct. 27
- ❖ Craig Tillery Named Deputy Attorney General for the Civil Division of the Department of Law, Oct. 17
- ❖ Department of Law Secures Funding for Statewide Rural Prosecution Unit, Oct. 17
- ❖ Department of Law Secures Funding for Statewide Sexual Assault and Domestic Violence Prosecution Units, Oct. 12
- ❖ Dianne Olsen Receives Attorney General's 2005 Civil Division Leadership Award, Oct. 6



Craig Tillery



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WORD OF LAW

As Alaska's largest law firm with offices across the state it is especially important that the lines of communication remain open. In October we took several steps to further this goal.

First, we modified the department's press policy to make it easier for our assistant attorney generals, our prosecutors, our paralegals and our office assistants to respond to media requests while making certain that issues of particular importance are shared with civil section heads, supervising prosecutors and department leadership.

Second, we have re-tooled department efforts to encourage statewide prosecutors and civil section heads to report on important developments within their areas of expertise on a monthly basis.

Finally, we are reinstating our efforts to share with all department personnel significant information about what our professional staff is doing across the state through the use of this newsletter. It is important for the operation of this department that all of us continue to remain aware of the good work we are doing on behalf of the state. The information included in this newsletter format is intended to serve as a snapshot for events around the state. The contents of the newsletter are organized based on the critical functions that the department of law performs on a daily basis: protecting Alaskans, protecting our children, protecting our state resources and our environment, protecting the state's fiscal resources and finally, protecting our state's rights.

PASSAGES

Need a Lawyer? On October 27, 2005, **Jarom Bangerter, Michael Perry, Alison Collins, Andrew Peterson and SaraEllen Hutchinson** received notice that they passed the Alaska Bar Exam. Congrats!

Children's' Services: **Craig Condie** joined our office on September 16. Craig will be handling CINA cases in Anchorage. **Ide Sy-Lumba** joined the section in Anchorage as a law office assistant.

Human Services: **Ryan Heffernan's** final day in the office will be October 13. Ryan is moving to Washington State. **Blair Christensen** will be taking over the Medicaid position full time after Ryan Heffernan leaves.

Eric Aarseth and **Kari Kristiansen** were nominated by the Alaska Judicial Council to fill two vacant Anchorage superior court judicial openings; **Dennis Cummings** was nominated for a vacancy on the Bethel District Court. The Governor has 45 days to review the nominations and make appointments.

Collections & Child Support: Collection clerk **Abraham Weiss** resigned his post in the collections unit and accepted a position with another state agency. He is now working as a licensing examiner with Occupational Licensing.

Labor & State Affairs: The section welcomed **Carrita Campbell** as an LOA I, Juneau, and **Larry McKinstry** to the Labor and Workforce Development position in Anchorage. **Julia Tucker** is saying good-bye after six years representing the Office of Rates Review to take the position of Anchorage Municipal Assembly attorney. Her last day is November 4 and the office will be recruiting for that position.

Torts: AAG **Laura Bottger** is leaving the Natural Resources Section to work in the Opinions, Appeals and Ethics Section. She is transitioning between the two sections as we try to fill her position.

Workers' Compensation: **Kristin Knudson** was appointed Chair of the new AK Workers' Compensation Commission. Kristin was the department's WC expert since she became an AAG in 1989.