ALASKA COURT SYSTEM
JUDICIAL OFFICER SALARY AFFIDAVITS

NOVEMBER 13, 2001

41-30009-02

December 20, 2001

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

ALASKA COURT SYSTEM
JUDICIAL OFFICER SALARY AFFIDAVITS
NOVEMBER 13, 2001

AUDIT CONTROL NUMBER

41-30009-02

This audit report reviews the consistency with which judges and justices of the Alaska Court System comply with the requirements of state law related to the distribution of their salary warrants. Specifically, AS 22.05.140(b), AS 22.07.090(b) and AS 22.10.190(b) require superior court judges, appeals court judges, and Supreme Court justices to attest by means of an affidavit that they are timely in their work assignments as a condition of receiving their salary warrant.

Citing the confidential nature of certain information related to assignments made to judges of the Court of Appeals and the justices of the Supreme Court, the Chief Justice, acting on behalf of the court as a whole, limited our access to various documentation. Accordingly, we could not verify and evaluate the consistency that these judicial officers appropriately completed their salary warrant affidavits.

With the exception discussed in the prior paragraph, the audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	Page
Objectives, Scope, and Methodology	1
Organization and Function	3
Background Information	7
Report Conclusions	11
Findings and Recommendation	15
Auditor Comments	17
Agency Response	19
Legislative Auditor's Additional Comments	29

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the provisions of AS 24.20.281 and a special request from the Legislative Budget and Audit Committee, we have conducted a review of the certain procedures used by the Alaska Court System (ACS). More specifically, we reviewed the procedures followed to ensure compliance with the provisions of AS 22.05.140(b), AS 22.07.090(b) and AS 22.10.190(b). These statutes require judicial officers of the Supreme Court, Court of Appeals and Superior Court to attest they have met specified work production standards before receiving their salary warrants.

Objectives

The specific audit objectives were:

- To evaluate the consistency with which superior court judges are appropriately completing their semi-monthly salary warrant affidavits.

- To evaluate the consistency with which judges of the state court of appeals are appropriately completing their semi-monthly salary warrant affidavits.

- To evaluate the consistency with which justices of the state supreme court are appropriately completing their semi-monthly salary warrant affidavits.

Scope

Our review encompassed fiscal years FY 00 and FY 01 and was limited to the supreme court, court of appeals, and the superior court (similar statutes are in place for district court judges and magistrates, but we were not requested to review those salary affidavits). The review focused on procedures followed to ensure judicial compliance with the provisions of AS 22.05.140(b), AS 22.07.090(b) and AS 22.10.190(b).

These sections of law state that a salary warrant may not be issued to a justice or judge of the appellate or superior courts until they have filed with the state officer designated to issue salary warrants an affidavit that no matter referred to them for opinion or decision has been uncompleted or undecided for a period of more than six months.

Scope Limitation

AS 24.20.271(6) provides the Division of legislative Audit access to *"the books, accounts, reports, or other records, whether confidential or not, of every state agency."* While the Alaska Constitution provides *"The supreme court shall make and promulgate rules governing the administration of all courts."*

We were advised by legal counsel that our statutory authority to review confidential information would not prevail against records declared to be confidential by the Supreme Court.

The Supreme Court has declared certain records related to the deliberations and assignments of the appellate courts to be confidential. Among these confidential records are those that we needed in order to evaluate the compliance of the Supreme Court justices and Court Appeal judges with the requirements of AS 22.05.140(b) and AS 22.07.090(b), respectively.

We formally requested to review these confidential records, but were turned down by the Chief Justice after a conference with the Supreme Court. This denial of access to records results in a scope limitation to our audit.

Methodology

In order to address our audit objectives we reviewed the following documents:

- Superior court case files.
- Court of appeals and public supreme court (appellate courts) case files.
- Department of Administration (DOA), Division of Finance's (DOF) policies and procedures relating to payroll, and in particular, the judges' and justices' affidavit lists.
- Applicable Alaska statutes.
- Internal reports and documents prepared or maintained by DOF payroll section.
- DOF's files of received affidavits.
- Payroll reports from the state's accounting system.
- ACS' annual report.
- ACS' Profile of the Alaska Court System report.
- Internal reports and documents prepared or maintained by ACS.
- Internet sites relating to Alaska court opinions and decisions.

In addition, we conducted interviews with the following individuals:

- Chief Justice and staff of the Alaska Supreme Court.
- Clerk of the appellate court.
- DOA, Division of Finance payroll management and staff in Juneau.
- Presiding judges in 1st, 2nd ,3rd judicial districts.
- Area court administrators in all four judicial districts of the superior courts.
- Two superior court judges in the 3rd district.
- ACS Human Resource – Anchorage payroll management and staff.
- The Director of the Public Defender Agency, and selected assistant public defenders.
- Various attorneys who appeared before the Superior and appellate courts.

ORGANIZATION AND FUNCTION

Overview of the Alaska Court System (ACS)

There are four levels of courts in the ACS, each with different powers, duties and responsibilities. Alaska has a unified, centrally administered, and totally state-funded judicial system. Municipal governments do not maintain a separate court system.

The four levels of courts in the Alaska court system are the supreme court, the court of appeals, the superior court and the district court. The supreme court and the court of appeals are appellate courts, while the superior and district courts are trial courts. Jurisdiction and other areas of judicial responsibility for each level of court are set out in Title 22 of the Alaska statutes, and are discussed in the Background Information section of this report.

The supreme court and the superior court were established in the Alaska Constitution; the court of appeals was established by the Legislature in 1980. In 1959, the Legislature created a district court for each judicial district and granted power to the supreme court to increase or decrease the number of district court judges.

The supreme court is the appellate court of final authority in Alaska consisting of a chief justice and four associate justices.

This court hears cases on appeal from final judgment from the superior Court and may also review criminal appeals from the court of appeals. In addition, the court oversees the admission and discipline of attorneys.

The five supreme court justices, by majority vote, select one of their members to be the chief justice. The chief justice holds that office for three years and may not serve consecutive terms.

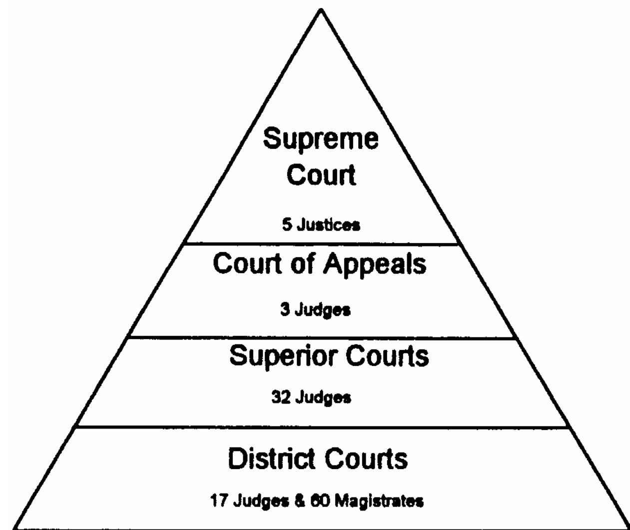

EXHIBIT 1

The chief justice of the Alaska supreme court is the administrative head of the Alaska Court System. An administrative director is appointed by the chief justice with concurrence of the supreme court. The director supervises the administration of all courts in the states. Rules governing the administration of all courts and the rules of practice and procedure for civil and criminal cases are promulgated by the supreme court.

The court of appeals is comprised of a chief judge and two associate judges. The chief judge is appointed by the supreme court chief justice and serves a two year term. The court is located in Anchorage. The judges, as a panel, hear criminal appeals from the superior and district courts and appeals in quasi-criminal cases such as juvenile delinquency cases.

The clerk the appellate court supports the work of the supreme court and the court of appeals. The clerk is required to be an attorney. The clerk's responsibilities include monitoring the case flow through the supreme court and the court of appeals and making recommendations for improvements in appellate procedure. The clerk is also responsible for all case filing and calendaring, publishing opinions and related tasks.

The superior court is the trial court of general jurisdiction with original jurisdiction in all civil and criminal matters. It has the exclusive power to hear all domestic relations matters, children's proceedings, probate and guardian matters, and cases involving the involuntary commitment of persons to institutions for the mentally ill. This court also serves as an appellate court for appeals from the district court.

For jurisdictional purposes, the state is divided into four judicial districts and the boundaries are defined by state statute. Each judicial district is administered by a presiding superior court judge, who is appointed by the supreme court chief justice. In addition, each judicial district has an area court administrator, who is hired by the judges in that district. The area court administrators operate under the presiding judge of each district. The area court administrators supervise the administration of their judicial district, in particular, personnel, budget and facilities.

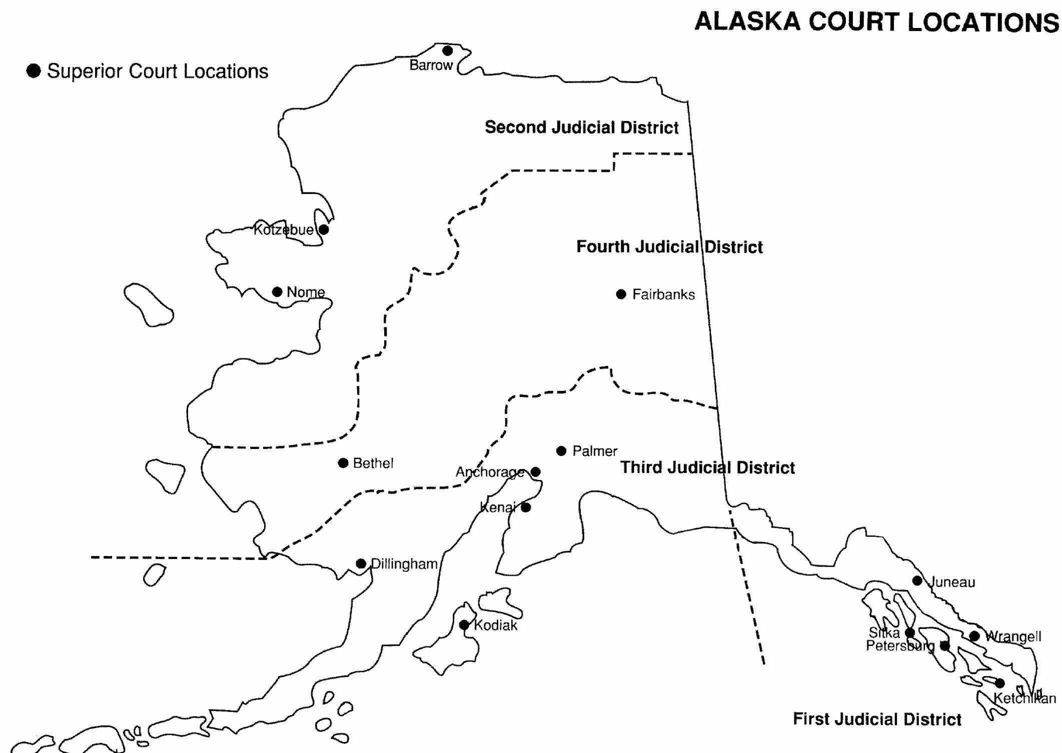

EXHIBIT 2

BACKGROUND INFORMATION

Alaska law has a provision relating to the distribution of salary warrants to the state's judicial officers. At four different places in statute, the distribution of semimonthly salary warrants to the state's magistrates, district court judges, superior court judges, appellate court judges, and Supreme Court justices is made contingent upon each officer filing an affidavit. The affidavit attests that the magistrate, judge, or justice currently has no matter before them that has been pending decision for more than six months. If the judicial officer does have a pending decision that has been before them longer than six months, they must not submit their affidavit and accordingly, their salary warrant is held to such a time as when they make the decision or decisions involved and can submit the affidavit.

Statutes linking salary warrants to timeliness of decisions go back to statehood

In 1956 the Alaska Constitution established a supreme court and a superior court. The constitution provided that judicial officer salaries were to be prescribed by law. At statehood in 1959, when setting compensation for various judicial officers the legislature adopted the following statutory language for the supreme court:

> *No salary warrant shall be issued to any justice of the supreme court until he has made and filed with the State officer designated to issue salary warrants an affidavit that no matter referred to the justice for opinion or decision has been uncompleted or undecided by him for a period of more than six months."*[1]

This statutory requirement has remained substantially unchanged since statehood.[2] The 1959 legislature adopted similar language for superior court judges, and in 1980 when the Court of Appeals was established the same statutory provision was adopted for those judges.[3]

The statute has come to be interpreted as referring to the director of the Department of Administration's (DOA) Division of Finance (DOF) as the *"state officer designated to issue salary warrants."* Judicial officers are required to file an affidavit with the division each pay period. Jointly, DOF and Alaska Court System (ACS) personnel work to ensure affidavits are submitted timely. Salary warrants are withheld for those judicial officers unable or who failed to submit the required affidavit.

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[1] Laws of Alaska, 1959, Chapter 50, Article I, Section 14(2) is applicable to the Supreme Court. Chapter 50, Article II, Section 30(2) is applicable to the superior court (the language is similar except that "judge" replaces "justice.")

[2] Statutory language has been revised over the years to be gender-neutral (now references are made to "justice" or "judge" rather than "he" or "him").

[3] Our review specifically addresses judicial decisions covered by AS 22.05.140(b) which applies to the Supreme Court, AS 22.07.090(b) which applies to the Court of Appeals, and AS 22.10.190(b) which applies to the superior courts. Excluded from our review is AS 22.15.220(c) which applies to district court judges and magistrates.

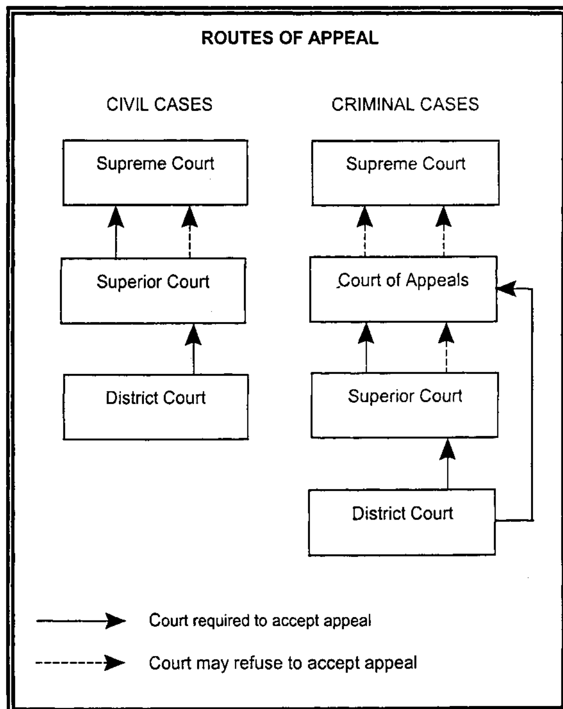
THE JURISDICTION OF ALASKA COURTS

The Supreme Court *–*

The Supreme Court has final state appellate jurisdiction in both civil and criminal matters. Under the state's constitution all citizens are entitled to one appeal of any court decision. Accordingly, the court must accept appeals from final decisions by the superior court in civil cases. At its discretion, the Supreme Court may accept criminal appeals from the court of appeals, petitions for review and petitions for hearing. Petitions for review are requests for discretionary review of interlocutory (not final) decisions of a trial court. Generally, interlocutory decisions are processed quickly. The court also may, at its discretion, hear matters such as bar admissions, attorney disciplinary matters, and questions of state law certified from the federal courts.

Court of Appeals *–*

The court of appeals has jurisdiction to hear appeals in cases involving criminal prosecutions, post-conviction relief, juvenile delinquency, extradition, habeas corpus, probation and parole, bail and the excessiveness of leniency of a sentence. The court must hear appeals from final decisions by the superior court or district court (appeals of right). At its discretion, the court may accept petitions for review from the superior or district court or petitions for hearing from final decisions of the superior court on review of the district court's decisions. Additionally, they may discretionally hear cases in which relief cannot be obtained from the court through one of the other types of appeals.



Superior Court *–*

The superior court is a trial court of general jurisdiction. The court has the authority to hear both civil and criminal cases. It serves as an appellate court for appeals from civil and criminal cases that have been heard in the district court or by a state administrative agency. The court hears cases involving children, property matters, domestic relations and involuntary commitment of persons to institutions for the mentally ill.

EXHIBIT 3

The statutory phrase "matters referred for decision" varies depending on the court involved

The statutory term "matters referred for decision" involves different types of legal decisions for various judicial officers. Decisions made by trial courts – the district and superior courts – typically involve not only final decisions as to the outcome of the trial, but also decisions regarding the various motions that the parties to the case may make during the proceedings.

Matters referred for decision at the appellate court level – the Court of Appeals and the Supreme Court – typically involve appeals of final decisions made by the lower courts. The appellate courts do make other decisions. Exhibit 3 on the opposite page discusses the other types of matters decided by the appellate courts.

Under court rules judicial officers are to report weekly the status of pending decisions

Procedures governing the operations of legal proceedings and administration of the court are set out in the *Alaska Rules of Court*. Administrative Rule 3 of (AdR3) sets out procedures for judicial officers to follow to allow for the monitoring of the status of pending decisions. In general, AdR3 provides a process by which pending court decisions can be monitored by presiding judges and court administrators. Additionally, although not required specifically by AdR3, the reports are posted in some local courthouses, allowing the local bar and general public to monitor the status of pending decisions. The various aspects of AdR3 are as follows:

1. Compilation and submittal of lists of pending matters. AdR3(d) requires all superior and district court judicial officers submit a weekly list of all matters before them pending decision to the area court administrator or presiding judge.

2. Specific information must be included on the weekly listings. In addition to requiring area court administrators maintain current weekly listings for each court in their district, AdR3(b) provides that certain minimum information be included on the weekly list, such as:

   (1) name of justice, judge or master;
   (2) date matter was referred to the justice or judge for decision, or in the case of a master, for preparation of report;
   (3) nature of decision or matter
   (4) title of the action; and
   (5) court file number

   Additionally, AdR3(b) requires the Clerk of the Appellate Courts maintain this information for matters before the Court of Appeals and the Supreme Court.

3. Lists are to be circulated. AdR3(c) requires the list *"be circulated on a weekly basis among the judges and masters regularly assigned to that judicial district"* and to the administrative director. Additionally, on a weekly basis the clerk of the appellate

court is required to circulate the listing to the appropriate judicial officers and the administrative director of the court system.

In addition to other uses, the lists can be used by the presiding judges and area court administrators as a case management tool. The lists provide valuable information on workload as well as timeliness of decisions. The rule does not provide for a retention requirement; it only specifies the maintenance of a "current list." Some courts retain the lists for unspecified periods of time; others maintain only the current week's listing.

<u>The six month decision period for a matter begins when it is ripe for decision</u>

The six month requirement set out in the statutes linking salary warrants to judicial decision making is commonly referred to as the "six month rule." The six month period for a given decision begins when a matter becomes what is termed ripe. Ripe refers to the first possible day that a judicial officer has the necessary information before them to make a decision, issue an order, complete a draft of an assigned opinion, or other action that would be involved in a "*matter referred*" for "*opinion or decision.*"[4] The end date is considered the day the decision is issued, the order is handed down, or the assignment is completed by the individual. The six month period is then measured between the ripe date and the end date.

<u>In contrast to trial court decisions, appellate courts make decisions collaboratively</u>

As previously discussed, the nature of "a matter referred for decision" varies between trial courts and appellate courts. Likewise, the manner in which matters are decided also varies. At the appellate court level – both Court of Appeals and Supreme Court – decisions are made in a collaborative manner, that is, these courts as a whole issue opinions regarding trial court decisions.

The process followed by both the Court of Appeals and the Supreme Court are similar. After taking a case on appeal, the parties involved file summaries of the arguments, termed briefs, with the court. Following the briefing of a case, it is tentatively assigned on a random basis to a justice or judge. The chamber with the tentative assignment is responsible for developing a pre-conference memorandum which is distributed to the rest of the court approximately a week before the scheduled conference, allowing sufficient time for review.

For some of the appellate court cases, the parties involved make oral arguments before the court in addition to their written briefs.[5] Generally when oral arguments are presented, the courts listen to all sides and typically confer on the case the same day. Oral conference and vote usually occur on the same day. In some instances however, the initial vote may be delayed due to an inability to come to a consensus because an issue is questionable, the briefing is inadequate or perhaps absence of a justice or judge. Typically, at the time the case

[4] It is possible for a matter to have a revised ripe date due to new evidence, a stay of the case, reassignment of the case, change of venue, etc. In these instances, the six month measurement period is reset.

[5] Most supreme court cases are orally argued; conversely, few court of appeals cases are orally argued.

is conferenced, a judge or justice will be assigned to develop a draft opinion for the consideration of the full court.

In a collaborative setting referred matters involve judicial assignments rather than decisions

In the view of the appellate courts, the assignment made to an individual justice or judge for developing a draft represents the first ripe date for a "matter referred for decision." From the date the court makes the assignment for development of the draft opinion, the judge or justice involved is subject to the six month rule for that task.

When the draft opinion is completed, circulated and brought back to the full court for a vote, the six month measurement period ends. If the court does not concur with the draft, or a judge or justice decides to develop a dissenting opinion, or the other judicial chambers want to edit and alter the draft, this process is done outside of the six month measurement period. This is done since such proceedings involve a matter before the court as a whole rather than one particular judge or justice.

Accordingly, under this interpretation more than six months could lapse between the date a case is orally argued before the Supreme Court and the date a decision is issued publicly – with no particular justice being in violation of the six month rule at any given time. For an illustration of how the six month requirement relates to assignments made to judges and justices in the appellate courts see Exhibit 4 on the following page.

In rare instances, the beginning date of the six month period could be reestablished altogether. If the justice or judge of the draft opinion does not convince a majority of the court of their position and is in the minority when a vote is taken, the draft opinion is reassigned to an individual in the majority and the six month period starts over again.

AN EXAMPLE OF HOW A MATTER REFERRED TO A JUSTICE COULD BE DONE WITHIN SIX MONTHS WHILE THE DECISION OF THE COURT TAKES OVER A YEAR

As discussed in the report, at the Supreme Court level the phrase *"... no matter referred to the justice for opinion or decision..."* as used at AS 22.05.140(b) has been interpreted as referring to an internal assignment made to a particular justice. Such assignments are made as part of the court's collaborative judicial decision making process.

Under the Court's interpretation an individual justice could meet the requirements of the statute, submitting an affidavit attesting no referred matters was before them for more than six months – even though the final decision for a particular case could take longer than six months.

For example, the following scenario illustrates such a situation

1. A case is argued before the Supreme Court in January.

2. After hearing oral arguments the court holds a confidential conference, discusses the case informally, perhaps takes an initial vote regarding how the case should be decided.

3. Justice X is in the majority of justices making the preliminary vote, and is assigned to draft a proposed decision for the consideration of the full court. The assignment is made on January 15th, the same day as oral arguments.

4. Justice X completes a draft opinion and circulates it to the full court on May 15th – completing the assignment within four months. Justice X has satisfied the six month rule.

5. After reviewing the proposed opinion, Justices V, Y and Z agree to support the decision, but ask that some editing changes be made to the opinion to encompass specific concerns.

6. Justice X agrees and on June 1st begins redrafting the opinion. This marks the beginning of the collaborative decision making process and is essentially done "off of the clock."

7. The redrafted opinion comes back before the court on August 1st. Although, the decision has been before the whole court for more than six months since oral argument, no particular justice has had an assigned matter before them for more than six months.

8. On August 1st, Justice Q decides she is not satisfied with all elements of the majority decision. She chooses to develop a dissenting opinion. The six month rule for this assignment begins on August 1st, and the final decision of the court is delayed further.

A 4 to 1 opinion is issued in December, and even though the court as a whole has taken 11 months to decide a case, all justices could appropriately filed their affidavits that no matter had been referred to them for decision longer than six months.

EXHIBIT 4

REPORT CONCLUSIONS

In order to assess the degree of compliance of judicial officers with the statutory affidavit requirements we reviewed various documentation related to the length of time involved with judicial decisions and proceedings. For superior court judges we reviewed various records to identify motions, and to a lesser extent cases, that may have taken longer than six months to decide. Much of our focus at the superior court level fell on civil cases, since requirements related to criminal and child-in-need-of-aid proceedings typically result in decisions that are made in less than six months.

With very few exceptions, superior court judges are in compliance with the affidavit statute

In general, Alaska court system's superior court judges comply with AS 22.10.190(b). This statute provides that a salary warrant may not be issued to a judge until an affidavit has been filed stating that no matter referred to them has been undecided for a period greater than six months.

We analytically reviewed more than 35,000[6] superior court cases filed between July 1, 1999 and June 30, 2001. From this analytical review we selected 239 cases involving 229 matters for detailed analysis.[7]

From this detailed analysis, we identified 21 instances where a matter was before a superior court judge longer than six months at the date the affidavit was signed. Of these 21 decisions the judge involved appropriately withheld their affidavit in all but 12 instances. This represents a negligible .03% rate of noncompliance with the statute (as measured against the number of cases analytically reviewed). Instances of noncompliance were noted in both the 1st and 3rd judicial districts. Below is a summary of our review and analysis.

SUPERIOR COURT CASES				
District	Analytical Reviewed	Detail Review	Exceptions Identified	Error Rate Exceptions ÷ Analytically Reviewed
1st	3,951	30	1	0.03%
2nd	2,015	48	0	0.00%
3rd	22,526	90	11	0.05%
4th	6,924	71	0	0.00%
Totals	**35,416**	**239**	**12**	**0.03%**

EXHBIT 5

[6] The number of cases is from the ACS's 2000 and 2001 Annual Reports. FY 00 and FY 01 superior court case filings were 17,785 and 17,631, respectively.

[7] Some cases selected for detailed testing had matters requiring a judgment by the court clerk rather than a judge (clerks of the court are not subject to the affidavit statute). For instance, a petitioner filed a complaint but there was no response by the defendant. The clerk may enter an application for default and enter default judgment without involvement of the judge (Civil rule 55). As a result of this type of situation, actual items tested were less than those selected.

The 12 instances where a superior court judge inappropriately submitted an affidavit were as follows:

District	Judge	Number of instances of initial noncompliance	Subsequent pay periods in noncompliance
1	Collins	1	1
3	Hensley	1	5
3	Sanders	1	0
3	Reese	7	15
3	Link	1	0
3	Hopwood	1	6
	Totals	**12**	**27**

EXHIBIT 6

As reflected in Exhibit 6 above, we calculate that for the twelve instances involved there were a total of 27 subsequent pay periods where the judges were still not in compliance with the six month rule, but continued to file affidavits attesting they were.

Based on our review, all these situations were inadvertent. As discussed further in this report, the court system does not have a single, centrally utilized management information system that tracks pending decisions before each superior court judge. Each judge must rely on their own documentation and filing system to keep apprised of the status of their workload.

For the most part this decentralized process has worked very well. However, when errors do occur, they often go on for a period of time without the judge involved being aware of the situation. Accordingly, as discussed in Recommendation No. 1 the court system currently has a procedure in place and will, in the future, have a system in place that can assist judges in monitoring their caseload.

<u>Due to scope limitations we could not assess affidavit compliance for the appellate courts</u>

As discussed in the Background Information section, in the Court of Appeals and the Supreme Court a matter becomes ripe for decision at the time a judge or justice is assigned the task to develop a draft of a proposed decision. The Clerk of the Appellate Courts maintains a management information system (MIS) that records the date such an assignment is made. The MIS also records the date that a draft is completed and is circulated to the full court.

We were not allowed to review documentation to confirm the accuracy of the relevant dates nor were we allowed access to information that identified which judge or justice received a given assignment for a particular case for the appellate courts. Our access was restricted because of the confidential status of the information involved. The Supreme Court believes that allowing access to these records would compromise the integrity of the collaborative decision making process.

Such restriction constitutes a limitation on the scope of our review. Due to this scope limitation, we were unable to review pertinent case data for both the Supreme Court and the Court of Appeals; accordingly, we could not assess compliance with the applicable statutes.

Exhibit 7 below summarizes unaudited information from the Alaska Court System case management system. It is unaudited because we were unable to verify critical elements of the information. We present this information to provide some perspective on the possible rate of compliance with the salary affidavits. Information contained in this analysis includes only those matters that were considered ripe for an opinion or decision by one of the appellate courts.

Compliance with salary affidavits was measured in two ways.

1. Using the court systems interpretation and application which is discussed in the Background information section of the report.
2. Using a publicly issued decision document as the measurement date for when an opinion or decision was made.

As expected, the unaudited data shows a higher rate of compliance when using the ACS interpretation as compared to the rate of compliance when using a measurement date from a publicly issued decision.

Court	Matters for decision	Decision longer than 6 months measured by:	
		ACS interpretation	publicized decision
Supreme Court	590	8 (1.3%)	69 (11.7%)
Court of Appeals	249	7 (2.8%)	119 (47.8%)

EXHIBIT 7

The Department of Administration records show that some appellate jurists did not file a salary affidavit during each pay period in FY 00 and FY 01. However, we cannot determine if those withheld salary affidavits correlate to the matters which had late decisions because of our restricted access to court records.

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FINDINGS AND RECOMMENDATION

Recommendation No. 1

The Alaska Court System's administrative director should utilize the new integrated management information system (MIS) to track the timeliness of matters pending decision by judicial officers.

Currently a wide variety of systems both computerized and manual exist for tracking matters under advisement. Given the caseload in the various judicial districts this appears to be less efficient than utilizing one centralized system. Additionally Administrative Court Rule 3 requires a list of matters under advisement (MUA) to be prepared and circulated to all other judicial officers in the district.

During the course of our review we observed the weekly MUA listings are not a priority of the ACS and accordingly are not completed and circulated as required by administrative court rules.

ACS should develop and maintain a centralized MIS which would allow for efficient, accurate reporting of specific case information. An important aspect of the system should be generation of reports that would aid judges in tracking the status of matters before them. Rather than delegating sole responsibility to each individual judicial officer to monitor the status of pending decisions before them, a reliable MIS-generated report would be available to assist judges in complying with the affidavit statute.

In FY 02 ACS received the final installment of a total $2.9 million appropriation for a new integrated case MIS. This MIS system should streamline the preparation of the MUA listings. Additionally, the MIS system could maintain a historical record for the weekly MUAs allowing ACS to evaluate and demonstrate compliance with state laws and court administrative rules on an ongoing basis.

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AUDITOR COMMENTS

There are, in our view, two public policy objectives involved in the evident intent of the affidavit statutes. The first objective is make judicial officials accountable for keeping up with their workload. The second objective is to promote timely decisions on the part of the state's court system.

The court system's application of the law does not meet both of these policy objectives

The way the appellate courts have interpreted and applied the statute is designed to satisfy the individual accountability objective[8] of the statute without necessarily accomplishing the timeliness objective. As discussed and illustrated in the Background Information section and Exhibit 4, a Supreme Court decision can and has extend(ed) beyond six months.

Exhibit 7 in the Report Conclusion section summarizes unaudited information from the Alaska Court System's case management information system. That data shows a very high level of compliance with the salary affidavit requirements using the court's interpretation of the statute. However, a lesser degree of compliance is shown when salary affidavit compliance is measured against when a decision is publicly issued.

In our view, a reasonable reading the affidavit statutes is that the legislature wanted to promote timely decisions and the standard set was six months. As the contrasting statistics indicate, it is possible under the Alaska Court System's (ACS) interpretation and application of the affidavit statutes (as illustrated in Exhibit 5) to be in compliance with the law even though judicial opinions, based on publicly know dates are often taking more than six months to produce.

The dissimilarity in how successful the affidavit statutes have been in achieving this timeliness objective at the superior court level compared to the appellate courts, reflects the difference in how decisions are made by trial court jurists compared to how decisions are developed by appellate court judges and justices. This difference in how decisions are made involve the following differing circumstances:

1. Trial court decisions are made by individual judges. "Matters referred" as set out in the affidavit statute for trial court judges typically result from motions filed in open court before a single judge. The decision involves the reasoning and analysis of only that single judge, and the lawsuit or case moves proceeds.

2. Appellate court level decisions are made in a collaborative manner. For the Court of Appeals and the Supreme Court, the "matters referred" typically involve a joint

[8] Because of the previously explained scope limitation we are unable to offer an opinion on the level of compliance with the affidavit law for the appellate courts judges and justices.

decision making process where individual assignments are made to a judge or justice to develop a preliminary analysis of the arguments involved and proposed decision.

The name of the judge or justice receiving this pre-decisional assignment is confidential, but the date the assignment is made and the date the first draft of the analysis and proposed decision is completed is recorded on the court system's case management system. There may be various drafts, revisions, and dissenting opinions may all contribute to, and be part of a collaborative decision on given matter before the court.

<u>Legal constraints likely limit potential legislative remedy</u>

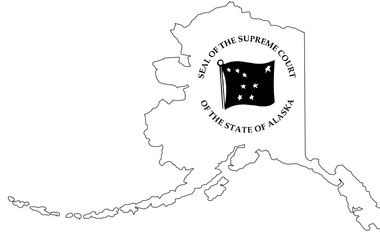
We believe a reasonable interpretation of the affidavit statutes for the appellate courts is that decisions were expected to be issued within six months of being taken up by these courts. The sanction set out in the statutes was seemingly designed to be applied to individual justices and judges. As discussed previously, the use of individually-based sanctions to promote more timely judicial decision making appears to break down in a setting where judicial decisions are made in a collaborative manner.

One strategy that could be used to address this lack of timeliness is amend the statutes to extend the sanction, the withholding of a paycheck, to the whole court when decisions take more than six months. We have been advised that such action may not only be impractical but would most likely raise the specter of a constitutional challenge. Linking a jurist's paycheck to the work productivity of their peers would likely raise legal challenge.

Although the appellate court's process may not be transparent to the public, there is a process, which in the view of the court system is reasonable. If the legislature moved to dramatically change the statute to impose strict timelines – it is very possible the court system could see this as an intrusion on its administrative prerogatives – and reject the enforceability altogether on constitutional grounds.

We have been advised by legal counsel that such possibilities are very real and a likely result of any attempt to amend the statute to sanction appellate courts as a whole for not issuing opinions within six months.

There is a gap between the expectations established by existing law for timely appellate court decisions and the publicly visible record. The options available to effectively address this expectations gap in the context of the existing legal constraints, seems to be limited. The better course of action would seem to be to encourage the Courts to adopt court rules or procedures which would improve administrative transparency of the process without unduly compromising the deliberations of the appellate courts.



ALASKA COURT SYSTEM
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Stephanie J. Cole
Administrative Director

February 8, 2002

Pat Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811

Re: Preliminary Audit Report
Judicial Officer Salary Affidavits
November 13, 2001

Dear Ms. Davidson:

Thank you for the opportunity to offer a written response to the information, conclusions, findings, and recommendations contained in the above-referenced preliminary audit. This response represents the views of the Administrative Office of the Court (AOC).

As noted on page one of the audit, your specific objectives were to evaluate the consistency with which supreme court justices, judges of the court of appeals, and superior court judges are appropriately completing their semi-monthly salary affidavits. We believe that the information available to Legislative Audit establishes that those judicial officers are completing the affidavits appropriately and on a consistent basis.

1. With respect to the superior court, we agree with the conclusion on pages 11 and 12 that there is a "negligible .03% rate of noncompliance" with the affidavit statute, and that "all these situations were inadvertent." As you note, the Alaska Court System (ACS) does not have a comprehensive case management system that tracks decisions pending before each judge. Accordingly, each judge must rely on his or her own documentation and filing system to keep track of the workload. This means that compliance is subject to case tracking errors made by the judge, by the judge's secretary or law clerk, or by a file clerk employed outside the judge's chambers.

We believe that with the statewide installation of a modern case management system, which will take place in approximately two years, this minute rate of noncompliance will be further reduced or eliminated. This new system is being designed to minimize the possibility of human error in the case

tracking process.

2. With respect to the appellate courts, we believe that the audit does not give the full picture of the data and access to records that we provided when it states on pages 12 and 13 that "[o]ur access [to information] was restricted" and thus "we could not assess compliance with the applicable statutes."

It is our understanding that, in response to the auditors' requests, the clerk of the appellate courts provided a voluminous amount of information on over 1600 cases filed in fiscal years 2000 and 2001. That information included the following:

- access to the Internet case management system, containing contemporaneous information kept in the normal course of business about each case, including oral argument and publication dates; ACS provided terminals with information from the case management system to allow access for the auditors when that database was unavailable to the public due to a hacking incident;
- a listing of all cases filed in FY 00 and 01 that had reached the "submitted" stage, including case number; case name; case type; date opened; current status; date submitted to the court; date of first draft opinion; and calculation of elapsed time between date of submission and first draft;
- confidential information regarding whether a reassignment had occurred;
- the same case list, formatted in Excel;
- a new spreadsheet containing all cases filed in FY 00 and 01, with case number; case name; case type; date opened; current status; date submitted to the court; date of first draft opinion; and calculation of elapsed time between date of submission and first draft;
- information on cases selected by Legislative Audit for further review;
- access to appellate court files and trial court records for all cases selected by Legislative Audit for further review;
- a new spreadsheet containing case number; case name; case type; date opened; date submitted to the court; date of first draft opinion; calculation of elapsed time between date of submission and first draft; date published; opinion number; Pacific Reporter cite; and calculation of elapsed time between date of submission and date of publication;
- an updated spreadsheet adding the status of the cases as of 12/31/01; and
- spreadsheets containing information on cases other than appeals (petitions and bar matters, primarily), indicating case name; case number; case type; current status; date of assignment; date of recommendation; elapsed time between assignment and recommendation; date of disposition; type of disposition; calculation of elapsed time between assignment and disposition; and for granted petitions: date of submission; date of first draft opinion; calculation of elapsed time between date of submission and draft; date of publication; calculation of elapsed time between date of submission and publication; date closed; and calculation of elapsed time between date of assignment and date closed.

In addition to the documents provided, our staff spent many hours preparing the information requested in a usable format, pulling files for the auditors' review, and answering questions. We tried to be as helpful as possible, within the limits of our confidentiality concerns.

In fact, as we understand it, in only twenty of those 1600-plus cases did the auditors request backup documents to supplement the documents already made available to them, in order to verify compliance with the six-month rule. As to those few cases, the auditors were provided information showing that some of the cases did not fall within the six-month rule for various reasons (such as having been closed after the appellant's death). The auditors then asked for backup documentation verifying the draft circulation date and proof of the non-existence of a reassignment in fourteen

supreme court cases.

The only relevant backup information available that was denied to the auditors falls into two categories: 1) confidential justice-to-justice memoranda, and 2) the name of the assigned justice in pending cases that had not yet been decided. The court withheld this information under both the inherent rule-making authority granted to it by the Alaska Constitution, Art. IV, §1 (see, e.g., Citizens Coalition for Tort Reform v. McAlpine, 810 P.2d 162 (Alaska 1991), and the explicit rule-making authority granted to it by the Alaska Constitution, Art. IV, §15. Administrative Rule 37.5 states that court records are public, with certain exceptions. AdR 37.5(b)(2) provides that information not subject to disclosure includes the following:

> Memoranda, notes or preliminary drafts prepared by or under the direction of any judicial officer of the Alaska Court System which relate to the adjudication, resolution or disposition of any past, present or future case, controversy or legal issue.

AdR 37.5(b)(4) states that information not subject to disclosure also includes the following:

> Matters which are required to be kept sealed or confidential pursuant to statute, court rule or order of a court for good cause; or if consistent with state law, pursuant to administrative regulation or local ordinance.

The information sought by the auditors falls within these categories. The audit notes on page two that your legal counsel has opined that Legislative Audit's statutory authority to review confidential information "would not prevail against records declared by the supreme court to be confidential." We assume that this opinion is based in part on the supreme court's decision in Abood v. League of Women Voters of Alaska, 743 P.2d 333 (Alaska 1987); as you will recall, that case recognized the supremacy of the legislature's constitutional rule-making power over certain state statutes that purported to regulate the administration of the legislature.

The reasons this information has been made confidential by court rule or order are obvious. Justice-to-justice memoranda are the core of the collaborative decision-making process. Drafts are circulated via a confidential memorandum from the assigned justice to the other justices, containing a discussion of whether the draft is in accordance with the earlier conference among the justices. As the audit correctly points out at page 12, the court is concerned that access to internal voting documents, which constitute the method of communication among justices about a particular decision, would compromise the integrity and confidentiality of the collaborative decision making process.

Moreover, if the name of the justice to whom an opinion was assigned was revealed prior to the release of the opinion, it would encourage speculation by interested persons about the impending result, based on previous opinions rendered by that justice or questions asked by that justice at the oral argument. Note that judicial assignment information was provided to Legislative Audit for appeals in which the decisions had already been published, including information not normally available to the public: whether a particular matter had been reassigned and the date of reassignment.

During our conference call on September 18, 2001, the auditors recognized that it is impossible to prove through documentation the lack of a reassignment without reviewing every voting memorandum and other written communication among the justices. We understand that appellate clerk Marilyn May offered to provide an affidavit attesting to the accuracy of the information provided, but that offer was declined. Notwithstanding that, her affidavit is attached.

Even without the additional confidential information requested, it is clear from the myriad of data provided that the appellate courts are in compliance with the six-month rule. Exhibit 7 of the report indicates that, based on information available to the public, in 83.3% of cases before the supreme court, and in 52.2% of cases before the court of appeals, the decision was entered within six months of the date of submission of the matter to the court. That is, the entire collaborative process took less than six months, not just the portion of the process that is covered by the statutory warrant affidavit requirements. Not only does this data belie the statement that Legislative Audit was unable to assess compliance, but in addition, it conflicts with the audit's conclusion that the appellate courts are not meeting the purposes of the six-month rule.

Exhibit 7 indicates that eight supreme court and seven court of appeals matters took longer than six months, under the ACS "interpretation" of the affidavit requirement (in fact, this is not a mere "interpretation;" the language of the statutes is absolutely clear). It should be noted that, in each of these matters, ACS records show the draft was issued in just over six months. In each of these cases, either the affidavit was not submitted at the normal time and a paycheck was not issued, or the draft had issued prior to the due date of the salary affidavit. The auditors have identified no instance in which an appellate judge or justice filed a salary warrant falsely attesting that no matters remained pending over six months.

There are a few related items that merit response. The audit states at page 13:

> Department of Administration records show that some appellate jurists did not file a salary affidavit during each pay period in FY 00 and FY 01. However, we cannot determine if those withheld salary affidavits correlate to the matters, which had late decisions because of our restricted access to court records.

The auditors are apparently referring to the fact that, for open and pending cases that have not yet been decided, the name of the assigned justice is confidential. However, the auditors were able to determine the assigned justice for those cases that had been decided because the authoring justice's name is on the opinion. Moreover, we indicated if a case had been reassigned. Thus, if the auditors had chosen to review cases that had closed during the specified time instead of those opened during that time, they would have had the name of the assigned justice along with the publication information for almost all of those cases and could have matched affidavits with the name of the judge or justice in most cases.

3. On page 15, the preliminary audit makes one recommendation, as follows:

<u>The Alaska Court System's (ACS) administrative director should utilize the new integrated management information system (MIS) to track the timeliness of matters pending decision by judicial officers.</u>

We agree with this recommendation. As you are aware, the court system's current case management system (RUG, for "Rural Users Group") is not a true case management system. It is a 20-year old rural court statistics program that has been modified over the years to do some limited case tracking at our 28 largest courts. It is thoroughly inadequate for both the court system's internal management purposes, as well as for the legislature's oversight purposes. This point has been made to the legislature numerous times over the last decade by the court system and by Legislative Audit. As you point out, the legislature has responded in the last two years by providing funding for the purchase and installation of a modern case management system. We anticipate that this new system

will be installed statewide by the end of 2003.

This new case management system is being designed to allow the tracking of the status of matters pending before individual judges. This will provide a more reliable method of monitoring compliance with the affidavit statutes, and should substantially reduce the current .03% rate of inadvertent noncompliance. In addition, the new system will allow the court system to track compliance with the time standards for case disposition that the supreme court adopted last year as a method of measuring the performance of the trial courts.

4. Beginning on page 17, the preliminary audit makes "auditor comments." Specifically, it states in pertinent part:

> In our view, there are two public policy objectives involved in the evident intent of the affidavit statutes. The first objective is to make judicial officers accountable for keeping up with their workload. The second objective is to promote timely decisions on the part of the state's court system.
>
> * * * *
>
> The way the appellate courts have interpreted and applied the statue is designed to satisfy the individual accountability objective of the statute without necessarily accomplishing the timeliness objective.
>
> * * * *
>
> . . . a reasonable interpretation of the affidavit statutes for the appellate courts is that decisions were expected to be issued within six months of being taken up by these courts.

Unfortunately, these statements are predicated on an unsupported theory of the intent of the affidavit statutes. It is not obvious why the audit concludes that a reasonable interpretation of the affidavit statutes is that decisions were expected to be issued within six months of being taken up by the appellate courts. There is no available legislative history that suggests any such intent. In fact, the statutory language is absolutely clear on its face, and leaves no room for interpretation. It applies to opinions or decisions by individual judicial officers, not to opinions or decisions by entire courts. To suggest otherwise would mean that the 1959 legislature intended that the collaborative process of obtaining a consensus of a multi-member court, or the process of authoring a dissent, would be allotted no additional time beyond that allowed a single trial judge to issue a decision on his or her own. That is not a logical conclusion.

The supreme court has been applying the statute in accordance with its clear terms since 1959. Prior to the first session of the 22nd Legislature, the legislature had 41 sessions in which to modify this interpretation if it believed it to be wrong. Instead, its only action during that time was to reenact the exact same language in 1980 when it created the multi-member court of appeals. This suggests that subsequent legislatures did not believe that the clear language of the statute was at odds with the 1st Legislature's actual intent.

During the first session of the 22nd Legislature, a proposal to modify the salary affidavit statutes was introduced by the Senate Judiciary Committee. In its original form, SB 161 would have required individual appellate judges and justices to issue decisions within four months, and the full courts to issue decisions within eight months. CSSB 161 (JUD) amended this to require individual appellate

judges and justices to issue decisions within six months, and the full courts to issue decisions within 12 months. Both bill versions recognized that it is not logical to hold a multi-member court to the same time limit as an individual member. There is no reason to believe that the logic of the 1st Legislature on this matter was any different than the logic of the 22nd Legislature.

The "auditor comments" continue as follows:

> One strategy that could be used to address this lack of timeliness is amend the statutes to extend the sanction, the withholding of the paycheck, to the whole court when decisions take more than six months. We have been advised that such action may not only be impractical but would most likely raise the specter of a constitutional challenge. Linking a jurist's paycheck to the work productivity of their peers would likely raise a legal challenge.

We agree that this proposal would most likely raise a constitutional challenge. This proposal was actually discussed during the Senate Finance Committee hearings on CSSB 161 (JUD) held on April 25, 2001. After receiving testimony on the constitutionality of the salary affidavit statutes and the likely result if amendments were adopted that imposed a deadline for the full court rather than individual members, the committee adopted a bill substitute that eliminated any substantive change to the six-month rule. Instead, the substitute simply stated the intent of the legislature that cases be decided within certain periods of time. The senate passed CSSB 161 (FIN) on May 5, 2001. HCS CSSB 161 (JUD), which treats timeliness issues in the same fashion, is currently in the House Rules Committee awaiting final passage.

To summarize the testimony taken by the Senate Finance Committee, it is the view of the AOC that the existing salary affidavit statutes are unconstitutional, and that judicial officers comply with those laws as a matter of comity. Similar statutes have been struck down in the three states in which they have been challenged (Nevada, Montana, and Wisconsin), for two reasons that are directly applicable under the Alaska Constitution.

First, Art. IV, §13 of the Alaska Constitution provides that the salary of a justice or judge "shall not be diminished" while in office. Withholding a judicial officer's paycheck for weeks or months acts to diminish the salary.

Second, Art. IV, §1 and §15 of the Alaska Constitution provide that the authority to administer the judiciary resides with the supreme court, not with the legislature. Time limits within which judicial officers are to decide cases relate to the efficient and effective functioning of the court system. They apply directly to the work of every judge, every day, in every case. Such management is a matter of administration within the exclusive authority of the supreme court.

There are two additional legal issues that were not addressed by the decisions in Nevada, Montana, or Wisconsin. First, we believe that the application of new time limits to judicial officers currently serving on the bench violates those provisions of the state and federal constitutions that prohibit the impairment of contracts, by changing the state's financial commitment to sitting judicial officers.

Second, we believe that taking the pay check of one state employee because another state employee has not done his work on time raises serious equal protection problems. It also raises issues of fundamental fairness.

Notwithstanding our belief that the existing statutes are unconstitutional, judicial officers have followed them for 43 years. They have done so out of respect for the wishes of a coordinate branch

of government, and because the legislature has generally provided a level of resources that makes it possible to comply. It should be noted that during the period reviewed by Legislative Audit, there were 34 instances in which a judicial officer did not receive a paycheck because he or she could not execute the salary affidavit. Significantly, there were nine additional instances in which a judicial officer who was entitled to a paycheck did not receive one, due to a clerical error by the Department of Administration or a judge's secretary. While there are currently over 20,000 state employees, judicial officers are the only ones who have their paychecks withheld if they do not meet an arbitrary work schedule set by statute.

The risk of making these statutes more onerous is that an individual judge or justice will challenge them, and the statutes will not survive. For example, if the supreme court had been required to issue every single opinion within six months or even within 12 months in FY 2000, no member of the court would have received a paycheck that year. Even those members who had completed every individual decision within six months would not have received a paycheck that year. It is unrealistic to expect people to work for free, and a legal challenge would be inevitable. In our opinion, such a challenge would result in the six-month rule being struck down. The likely result is that cases would begin to move more slowly at both the trial and appellate levels.

Because of these problems, the preliminary audit report suggests that instead, ACS "adopt court rules or procedures which would improve transparency of the process without unduly compromising the necessary confidentiality involved with deliberations of the appellate courts."

We agree that the process can be made more transparent. The supreme court will make available to the public the date a conference on the briefs has occurred, in order to allow the parties to better track the progress of their cases. Moreover, the court will consider making available to the public the reassignment information that was provided to the auditors. Furthermore, a draft rule defining "under advisement" is circulating for comment and is expected to be considered by the court in the immediate future.

5. On page 6, the preliminary audit presents Exhibit 3, describing the jurisdiction of the appellate courts. There are several substantive errors in this exhibit.

The first paragraph states: "At its discretion, the supreme court may accept criminal appeals from the court of appeals, petitions for review and petitions for hearing." A more accurate statement would be: "At its discretion, the supreme court may accept petitions for hearing of appellate decisions by the court of appeals (in criminal appeals from the district or superior court) or the superior court (in civil appeals from the district court)." We would then suggest leaving out the following statement: "Petitions for hearing are final decisions of the superior court on review of the district court's decisions in civil matters."

The first paragraph further states: "Petitions for review are interlocutory decisions by the superior court in civil cases." It would be more accurate to state: "Petitions for review are requests for discretionary review of interlocutory (not final) decisions of a trial court." As to the following sentence, "[g]enerally, interlocutory decisions are processed quickly and do not impact the outcome of a case," you might consider rewording that as follows: "Generally, discretionary matters are processed quickly." Note that if a petition for review is granted and the appellate court overturns a trial court's ruling, it may have a great impact on the outcome of the case. For the same reason, we would suggest deleting footnote 4; we believe that the foregoing language should explain interlocutory review sufficiently, and it is not quite accurate to say that interlocutory review never determines the issues at trial.

We would also suggest modifying the last sentence in the first paragraph, which states: “The court also may, at its discretion, hear matters such as bar admissions, attorney disciplinary matters, and questions of state law certified from the federal courts.” A more accurate statement would be: “The court also may, at its discretion, answer questions of state law certified from the federal courts and hear cases in which relief cannot be obtained from the court through one of the other types of proceedings. In addition to the types of cases noted above, the supreme court also has jurisdiction over matters such as bar admissions and attorney discipline.”

Thank you for the opportunity to comment on this preliminary audit. Please feel free to contact me if you have any questions.

Very truly yours,

Stephanie J. Cole
Administrative Director

February 19, 2002

Members of the Legislative Budget
and Audit Committee:

We have reviewed the response of the Alaska Court Administrator (ACA) to our audit (which begins on page 19 of the report) and offer the following comments:

Access to information

On the second page of the response (p. 20 of the report) the ACA disputes our characterization that the Alaska Court System (ACS) restricted our access to appellate court records. In her response she enumerates the extensive amount of information that the appellate courts did make available to us. We acknowledge the Clerk of the Appellate Courts did provide us with an extensive amount of information and we are appreciative of her efforts. However, as stated in the report, we were not given access to the critical source records and documentation necessary for us to confirm the data provided from the appellate court's case management system.

On the third page of the response (p. 21 of the report) the ACA states there are obvious reasons the information we sought to review must be kept confidential. Specifically, the response states

> *Justice-to-justice memoranda are the core of the collaborative decision-making process…. if the name of the justice to whom an opinion was assigned was revealed prior to the release of the opinion, it would encourage speculation by interested persons about the impending result, based on previous opinions rendered by that justice or questions asked by that justice at the oral argument.*

As discussed with the Chief Justice of the Supreme Court, confidential information provided to Legislative Audit during the course of an audit remains confidential. This information would have become part of our working papers and are held confidential under the provisions of AS 24.20.301(a). This statute states in part *"The legislative audit division shall keep… a complete file of audit work papers and other related supportive material… Audit records are confidential…."* Additionally, no confidential information may be released in a public report. What would have been reported is the extent to which the appellate court judges and justices complied with the salary warrant affidavit statute.

Inability to draw conclusions

On page four of the response (p. 22 of the report) the ACA discusses the implications of the information presented in Exhibit 7. As observed, the table indicates that using ACS's own data over 80% of Supreme Court matters and 52% of Court of Appeal matters are *"entered within six months of the date of submission to the court."* The ACS observes that this data belies the statement that we were unable to assess compliance.

This information was presented to provide the report with additional perspective. We state twice on page 13 of the report that the information presented is **unaudited**. The information is **unaudited** because of our restricted access to the necessary information to confirm the dates of select cases from the appellate court's case management system. We did not perform additional audit procedures to the information provided by the court system since we did not have access to all the supporting information necessary to meet the audit objective. Additional procedures to only a portion of the information would not be a prudent use of limited audit resources.

Timeliness as an objective of the statute

On page five of the response (p. 23 of the report) the ACA observes that our statements in the Auditor Comments section are *"...predicated on an unsupported theory of the intent of the affidavit statutes."*

The arguments presented emphasize and assert that the statutes had a singular purpose – to promote accountability among judicial officials to conduct their duties in a timely matter. While we agree this is likely one intent of the statute, in the absence of any clear legislative history (which is acknowledged in the response) it is also reasonable to infer the expectation that judicial decisions will be rendered in six months from statute.

Corrections

On the last two pages of the response (pages 25 and 26 of the report) the ACA makes suggestions for certain editorial changes to the text of Exhibit 3 on page 6 of the report. We have made these suggested changes, and this Final Report reflects these changes as set out in the response.

In summary, we reaffirm the conclusions presented in this report.

Pat Davidson
Legislative Auditor