

State of Alaska
FY2008 Governor's Operating Budget

Department of Law
Torts & Workers' Compensation
Component Budget Summary

Component: Torts & Workers' Compensation

Contribution to Department's Mission

The Torts and Workers' Compensation section provides legal defense and advice in personal injury lawsuits filed against state agencies and state employees. It also provides advice and training to state agencies and represents the State as employer before the Workers Compensation Board.

Core Services

Attorneys in the Torts and Workers' Compensation section defend tort claims, maritime personal injury claims, and civil rights claims for damages under 42 USC §1983 filed in both state and federal court, and in both the trial courts and appellate courts. Examples of the types of lawsuits defended by the section include: wrongful death claims, claims of injury occurring on state or state maintained facilities, medical malpractice claims brought by inmates, maritime personal injury claims against the Alaska Marine Highway System, claims of negligence in the handling of children's abuse or neglect cases, cases against the state for actions of third parties in state custody (e.g. probationers, foster children, inmates), and other claims of injury alleged against state officials (e.g. Alaska State Troopers, drivers of state vehicles, etc.). Attorneys in the section represent state agencies in Workers Compensation claims filed by state employees where the state is the employer. They advocate on behalf of the state at hearings before the Workers' Compensation Board, and represent the state in appeals from the Board taken to the Workers Compensation Appeals Commission and to the Alaska Supreme Court.

Attorneys in the Torts and Workers' Compensation section provide oral advice and training to state agencies on risk management, workers' compensation, and liability issues and provide oral advice to state adjusters on workers' compensation issues.

FY2008 Resources Allocated to Achieve Results		
FY2008 Component Budget: \$3,401,000	Personnel:	
	Full time	28
	Part time	1
	Total	29

Key Component Challenges

The section is faced with challenges caused by retirement of senior attorneys in the section and frequent turnover of staff providing support to the attorneys in the section. The frequent turnover in staff decreases the section's efficiency in meeting ever present pretrial deadlines. Additional challenges to the section are caused by the disproportionate amount of the section's resources that must be channeled to defending lawsuits filed by unrepresented plaintiffs. Over the last several years, changes in Alaska case law have resulted in lengthier and more complex motion and trial practice to defend these lawsuits.

To further assist attorneys with their caseloads, the section sought approval from Risk Management to add another paralegal in part to assist in the wake of the retirement of some senior attorneys.

Significant Changes in Results to be Delivered in FY2008

The section anticipates continued litigation over the application of AS 09.50.253, actionable claims against state employees, which became effective for claims arising after June 26, 2004. Because most of the tort work in the section is governed by a two year statute of limitations, it is anticipated that AS 09.50.253 will be more frequently applied in trial

court matters. The section continues to be involved in litigation in specific cases where the State's entitlement to a portion of punitive damage awards arising out of AS 09.17.020(j) (allocation of punitive damage awards to the state) is challenged by the parties in the underlying lawsuits. In workers compensation matters, the section's work will be to transition through the changes in workers compensation laws effective in 2005.

Major Component Accomplishments in 2006

Appellate Work of the Section of Particular Note:

In *Scott Groom v. State* the section filed an appellee brief, representing the state as employer, in a novel workers compensation matter where the Board denied the employee's claim finding that the employee was not credible. Appeal of the Board's decision was filed by the employee. The case has been argued and is awaiting decision by the Supreme Court.

In *Lance Miller v. State* the section filed its brief as appellant in a lawsuit tried in Bethel involving a plane crash at the Kipnuk airport. The appeal challenged several adverse rulings by the trial court and the jury verdict in excess of one million dollars.

The section took two Petitions for Review (requests for interlocutory relief) to the Supreme Court in a Fairbanks case filed against the Office of Children Services and two social workers. The Supreme Court accepted the Petitions for Review and ordered further briefing on the issues of whether the social workers can be collaterally estopped from findings in a parental termination trial and the scope of immunity for social workers involved in child protection matters.

Trials and Hearings Defended by the Section of Particular Note:

Although many cases were prepared for defense at trial, those that were not dismissed through summary judgment were resolved shortly before trial as reflected in the Judgment Bill for 2006.

The section prevailed on two workers compensation hearings of note. In a hearing involving allegations of work-relatedness for an employee's carpal tunnel syndrome (and a claim for permanent and total disability), the Board found for the first time that an employee's carpal tunnel syndrome was not caused by computer keyboarding. The section also prevailed in a claim filed by an employee who assaulted a client at work and then argued that he was entitled to workers compensation benefits.

Another hearing of note involved allegations by an employee that he developed post-traumatic stress disorder as a result of threats he allegedly received from inmates while he worked as a correctional officer. The employee claims that he is permanently unable to return to work in any capacity based upon this condition combining with other non-work related conditions.

Dispositive Motions of Particular Note Won by the Section in the Trial Court:

The section briefed the constitutionality of the cap on non-economic damages (AS 09.17.010) after notice was given by the trial court of the constitutional challenge. After briefing, the trial court upheld the constitutionality of the cap. The matter is now on appeal. *Brown v. LDG, Inc.*

The section was granted summary judgment in a case brought by a marine highway worker challenging the constitutionality of AS 09.50.250(5) which withdraws the state's waiver of immunity for suits by state employed seamen and provides workers' compensation benefits for work-related injuries. The matter is now on appeal. *Glover v. AMHS*

After exhaustive motion practice, a mixed common law tort/ §1983 case filed against two social workers following extensive child in need of aid proceedings was wholly dismissed by the trial court. The Court found that the issues raised by plaintiff were litigated and decided in the underlying child in need of aid (CINA) proceeding. This matter is now on appeal. In a similar type of lawsuit, summary judgment was granted in favor of the Office of Children's Services in a tort lawsuit brought after children's proceedings. Grandparents alleged intentional infliction of emotional distress arising out of the child in need of aid proceedings; the Court dismissed the lawsuit for failing to establish outrageous conduct or severe emotional distress.

The section successfully obtained partial summary judgment in favor of the state in a personal injury case involving allegations that a ramp at the Juneau Boat Harbor constructed in the 1960s violated the Uniform Building Code and Title II of the Americans with Disabilities Act.

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information
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Torts & Workers' Compensation Component Financial Summary			
<i>All dollars shown in thousands</i>			
	FY2006 Actuals	FY2007 Management Plan	FY2008 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	2,435.7	2,610.9	2,986.6
72000 Travel	63.2	28.5	28.5
73000 Services	314.7	347.0	347.0
74000 Commodities	36.4	38.9	38.9
75000 Capital Outlay	20.2	0.0	0.0
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	2,870.2	3,025.3	3,401.0
Funding Sources:			
1004 General Fund Receipts	0.0	47.1	420.0
1007 Inter-Agency Receipts	2,870.2	2,978.2	2,981.0
Funding Totals	2,870.2	3,025.3	3,401.0

Estimated Revenue Collections				
Description	Master Revenue Account	FY2006 Actuals	FY2007 Managemen t Plan	FY2008 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	2,870.2	2,978.2	2,981.0
Restricted Total		2,870.2	2,978.2	2,981.0
Total Estimated Revenues		2,870.2	2,978.2	2,981.0

**Summary of Component Budget Changes
From FY2007 Management Plan to FY2008 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2007 Management Plan	47.1	0.0	2,978.2	3,025.3
Adjustments which will continue current level of service:				
-FY 08 Health Insurance Increases for Exempt Employees	0.0	0.0	2.8	2.8
-Fund Source Adjustment for Retirement Systems Increases	372.9	0.0	-372.9	0.0
Proposed budget increases:				
-FY 08 Retirement Systems Rate Increases	0.0	0.0	372.9	372.9
FY2008 Governor	420.0	0.0	2,981.0	3,401.0

Torts & Workers' Compensation Personal Services Information				
Authorized Positions			Personal Services Costs	
	<u>FY2007</u> <u>Management</u> <u>Plan</u>	<u>FY2008</u> <u>Governor</u>		
Full-time	28	28	Annual Salaries	1,823,555
Part-time	1	1	Premium Pay	3,386
Nonpermanent	0	0	Annual Benefits	1,278,625
			<i>Less 3.83% Vacancy Factor</i>	(118,966)
			Lump Sum Premium Pay	0
Totals	29	29	Total Personal Services	2,986,600

Position Classification Summary					
Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney II	1	0	0	0	1
Attorney IV	9	0	1	0	10
Attorney V	1	1	1	0	3
Attorney VI	1	0	0	0	1
Law Office Assistant I	5	1	0	0	6
Law Office Assistant II	1	1	1	0	3
Paralegal II	3	1	1	0	5
Totals	21	4	4	0	29