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SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ELIZABETH BAKALAR,

Plaintiff,

v.

MICHAEL J. DUNLEAVY, in his
individual and official capacities;
TUCKERMAN BABCOCK; and the
STATE OF ALASKA,

Defendants.

Case No. 3AN-19-04444 CI

Complaint for Damages and Injunctive Relief

Plaintiff Elizabeth Bakalar complains and alleges as follows:

Introduction

1. Elizabeth (Libby) Bakalar brings this action to vindicate her
rights to freedom of speech under the Alaska Constitution and the
Constitution of the United States.

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COMPLAINT

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2. Ms. Bakalar frequently exercises her free speech rights by speaking publicly about national politics and by criticizing President Donald Trump in her blog, "One Hot Mess Alaska."

3. Defendants Michael J. Dunleavy and Tuckerman Babcock violated Ms. Bakalar's rights to free speech when they fired her from her job as an assistant attorney general for the State of Alaska, a position which she held for over twelve years and for which she was repeatedly recognized for professional excellence.

4. Defendants terminated Ms. Bakalar's employment because they were unhappy with the political views expressed in Ms. Bakalar's blog postings.

5. Ms. Bakalar seeks in this action to defend the principle that public employees may not be harassed or retaliated against for holding opinions that are disfavored by elected officials.

Jurisdiction and Venue

6. This is a complaint for declaratory relief and damages brought pursuant to AS 22.10.020(a) and (g). This court has original jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015(a)(1) and AS 22.10.020(a).

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7. Venue is proper in this district pursuant to AS 22.10.030 and Alaska Rule of Civil Procedure 3(c).

Parties

8. Plaintiff Elizabeth Bakalar is a resident of Juneau, Alaska.

9. Defendant Michael Dunleavy is the Governor of the State of Alaska and is responsible, in whole or in part, for the decision to terminate Ms. Bakalar's employment. Mr. Dunleavy is sued in his official and individual capacities.

10. Defendant Tuckerman Babcock is the chief of staff to Governor Dunleavy, and was the chair of Gov. Dunleavy's transition team after Mr. Dunleavy was elected on November 6, 2018. Mr. Babcock is responsible, in whole or in part, for the decision to terminate Ms. Bakalar's employment. Mr. Babcock is sued in his individual capacity.

11. Defendant State of Alaska is a sovereign entity organized in accordance with the laws of the United States.

Factual Statement

12. Ms. Bakalar was employed by the State of Alaska as an assistant attorney general in the Department of Law for over twelve years. Ms. Bakalar was first hired by the State as an "Attorney II" in

July 2006. The position of Attorney II is considered by the State to be "the initial level of professional law practice."

13. When she was first hired, Ms. Bakalar was a member of the Department's Human Services section, representing the Department of Health and Social Services in agency advice, litigation, and regulations.

14. Ms. Bakalar's tenure at the Department of Law was characterized by steady upward advances. In January 2009 she was promoted to the position of Attorney III, "the first experienced level of professional practice," according to the State. At the time of her promotion her supervisors found her to be "very smart and capable."

15. In April 2011 Ms. Bakalar transferred to the Department's Labor and State Affairs section, where she was assigned to represent the Division of Elections and then-Lieutenant Governor Mead Treadwell.

16. Ms. Bakalar was again promoted in March 2012, to the position of Attorney IV, defined as a "full working level class" of attorneys who work on more complex cases that "involve difficult legal issues." Ms. Bakalar was seen at this time as a "highly valued" lawyer who could "comfortably handle complex matters" and who did a

“splendid job” on issues that were “novel, highly complicated, and involved detailed analysis [sic] of applicable constitutional law.”

17. Ms. Bakalar became an indispensable member of the Labor and State Affairs section, and was called upon to represent numerous state agencies in the Departments of Health and Social Services, Administration, Public Safety, Education and Early Development, and Commerce, Community, and Economic Development.

18. In 2013, Ms. Bakalar received the Attorney General’s Award for Legal Writing from then-Attorney General Michael Geraghty, which is given periodically to just one attorney in the Department of Law for excellence in legal writing. The award reads: “In recognition of your thorough research, rigorous analysis, and clear writing—often accomplished on tight deadlines. Your written work product is exceptional.”

19. In July 2018 Ms. Bakalar was promoted into the “expert” class of attorneys that hold the position of Attorney V.

20. Between 2011 and 2018, Ms. Bakalar authored thirteen published Attorney General Opinions regarding certification of ballot measures, referenda, and the recall of state officials and school board members. Her most recent published Attorney General Opinion

recommended denying certification of the Stand for Salmon ballot measure, which was subsequently litigated and found partly unconstitutional by the Alaska Supreme Court.

21. Ms. Bakalar also defended the State of Alaska in 2013 in a two-week federal trial brought by Alaska Native individuals and tribes under the language assistance provisions of Section 203 of the federal Voting Rights Act. In late 2014, she defended the Parnell administration in a lawsuit brought by the Alaska Dispatch News under the state Public Records Act over records related to the National Guard sexual assault scandal. In 2016, Ms. Bakalar represented the State in a trial over the conduct of the 2016 primary election in House District 40.

22. Over the course of her employment with the State of Alaska, Ms. Bakalar's representation resulted in favorable decisions to the State from the Alaska Supreme Court and the Ninth Circuit Court of Appeals in *Hughes v. Treadwell*, 341 P.3d 1121 (Alaska 2015); *State v. Alaska Fisheries Conservation Alliance, Inc.*, 363 P.3d 105 (Alaska 2015); *Bachner Co., Inc. v. State*, 387 P.3d 16 (Alaska 2016); *Mallott v. Stand for Salmon*, 431 P.3d 159 (Alaska 2018); *Nageak v. Mallott*, 426 P.3d 930 (Alaska 2018); *Patterson v. Walker*, 429 P.2d 829 (Alaska

2018); and *Raymond v. Fenumiai*, 580 Fed.Appx. 569 (Mem) (9th Cir. 2014).

23. Although Ms. Bakalar represented the State in many important and sometimes high-profile cases, Ms. Bakalar was never in what is considered a “policymaking” role during her employment. Neither affiliation with a particular political party nor allegiance to or eschewing of any political points of view was an appropriate requirement for the effective performance of Ms. Bakalar’s job.

24. In 2014, Ms. Bakalar started a blog entitled “One Hot Mess Alaska” that focused on her personal lifestyle and parenting.

25. Since 2014, One Hot Mess Alaska has included commentary, often in irreverent terms, on topics such as books and movies, childhood reminiscences, friendships, music, technology, style, fashion, and national politics.

26. After the 2016 presidential election, Ms. Bakalar started blogging more about national politics, to oppose what she viewed as human rights abuses and a deterioration in constitutional norms under the Trump administration.

27. Ms. Bakalar also occasionally participated in rallies or public gatherings to support social justice causes.

28. Although Ms. Bakalar has been outspoken about her political views, she has never publicly criticized in her blog or otherwise any positions taken by the State of Alaska in matters related to her work as an assistant attorney general.

29. Despite the views expressed in her blog, Ms. Bakalar's opinions in no way interfered with the discharge of her duties and responsibilities as an assistant attorney general. Indeed, Ms. Bakalar won high praise for her work from colleagues and clients from both sides of the political spectrum.

30. In January 2017 Nancy Driscoll Stroup, an attorney in Palmer, Alaska, started a blog of her own entitled "Ethics and One Hot Mess Alaska." Ms. Stroup was very clear about the purpose of this blog: "This blog makes the case that Blogger Libby Bakalar of 'One Hot Mess Alaska' fame should not be working as an Assistant Attorney General for the State of Alaska."

31. Ms. Stroup has posted numerous times on this blog between January 2017 and the present and has repeatedly called for Ms. Bakalar to lose her job as an assistant attorney general. Ms. Stroup made clear that she believes Ms. Bakalar should not be an

assistant attorney general for the State of Alaska because Ms. Bakalar is "hysterically anti-Trump" and has "a liberal worldview."

32. Ms. Stroup also made many accusations that Ms. Bakalar was blogging while she was at work and violating provisions of the State of Alaska Executive Ethics Act that prohibit state employees from conducting personal business on State time. Ms. Stroup also voiced these complaints to a number of State officials.

33. Soon after Ms. Stroup made these complaints, the State of Alaska initiated an investigation into Ms. Bakalar's blogging activities to determine if she was using State time to write and post to her blog.

34. The State hired an outside attorney, William J. Evans from the Anchorage law firm Sedor Wendlandt Evans Filippi, to conduct the investigation and to issue findings about whether Ms. Bakalar had violated the Executive Ethics Act.

35. On March 16, 2017, Mr. Evans issued a fourteen-page report that concludes that Ms. Bakalar did not violate any ethical standards in writing or posting to One Hot Mess Alaska. The report further notes that Ms. Bakalar's supervisor described her as "an exceptional attorney who can produce organized, top notch legal work quicker than any attorney she has supervised during her long career."

Her supervisor was also certain that Ms. Bakalar's blogging activities "had not interfered with her work" in any way.

36. On November 6, 2018, Michael Dunleavy was elected Governor of Alaska. On November 8, 2018, the Governor-elect announced that Tuckerman Babcock would serve as his chief of staff and as the chair of Mr. Dunleavy's transition team.

37. Immediately prior to being selected as Mr. Dunleavy's chief of staff and transition chair, Mr. Babcock served for two-and-a-half years as the chair of the Alaska Republican Party.

38. Mr. Babcock's primary role as chair of the Alaska Republican Party was to promote Republican candidates and get them elected to State offices.

39. As the chair of the Alaska Republican Party, Mr. Babcock was well known for his criticisms of Republicans who, once elected, attempted to work in bipartisan coalitions or who attempted to work in a bipartisan manner to address important policy issues in Alaska.

40. As the chair of the Alaska Republican Party, Mr. Babcock also attempted to undermine Republican elected officials who worked in a bipartisan manner and attempted to facilitate, sometimes successfully, their removal from office.

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41. On November 16, 2018, Mr. Babcock sent a memorandum to more than 1,200 at-will State of Alaska employees requesting their resignations. The Babcock memorandum states in part that "the incoming administration will be making numerous personnel decisions" and that Mr. Dunleavy "is committed to bringing his own brand of energy and direction to state government."

42. Although characterized as "customary during the transition from one administration to the next," the request for resignations was sent to an unprecedented number of State of Alaska employees, including, according to several legislators who criticized the move, "medical doctors, psychiatrists, pharmacists, fiscal analysts, state tax code specialists, investment managers, petroleum geologists, trust managers, accountants, research analysts, IT professionals, loan officers, military & veterans affairs coordinators, marine transportation managers, administrative law judges, and state attorneys presently working on behalf of the public on important and complicated legal issues, including prosecutors on criminal cases."

43. When asked about the memorandum the day after it was issued, Mr. Babcock said that then-Governor-elect Dunleavy "just

wants all of the state employees who are at-will . . . to affirmatively say, 'Yes, I want to work for the Dunleavy administration.'"

44. Mr. Babcock further stated that the requests for resignations were meant to solicit a pledge of allegiance from state employees to Mr. Dunleavy's political positions by asking, "Do you want to work on this agenda, do you want to work in this administration? Just let us know."

45. Mr. Babcock also announced that any state employee who refused or failed to offer her or his allegiance to Mr. Dunleavy risked being fired. "If you don't want to express a positive desire, just don't submit your letter of resignation," Babcock said. "And then you've let us know you just wish to be terminated."

46. Mr. Dunleavy echoed Mr. Babcock's description of the resignation requests, saying they were meant "to give people an opportunity to think about whether they want to remain with this administration"

47. The Babcock memorandum states that the resignations would not be "automatic," but that "consideration will be given" to each employee's "statement of interest in continuing in [her or his] current or another appointment-based state position."

48. The Babcock memorandum set a deadline of November 30, 2018, for employees to submit their resignations and statements of allegiance to the Dunleavy transition team.

49. On information and belief, all of the attorneys in the Department of Law received the Babcock memorandum requesting their resignations, regardless of whether they were "policymakers" or not. Ms. Bakalar was one of the non-policymaking attorneys who received it.

50. The Babcock memorandum caused a great deal of confusion, uncertainty, and anxiety within the Department. In an effort to allay these concerns, then-Attorney General Jahna Lindemuth provided the Department's attorneys with suggested language for those attorneys who intended to comply with the Babcock memorandum's resignation ultimatum. The language included the following statement: "I would like to continue serving the State of Alaska in the new Dunleavy administration in my current position, and I ask that my resignation not be accepted."

51. Ms. Bakalar submitted her resignation to the Dunleavy transition team before the November 30 deadline, and included the statement that Attorney General Lindemuth suggested. Ms. Bakalar

also described in her resignation notice all of the work she had performed for the Department and for the State of Alaska.

52. Mr. Dunleavy was sworn in as the Governor of Alaska at 12:00 p.m. on December 3, 2018.

53. At 12:18 p.m., Ms. Bakalar was notified that her resignation had been accepted and that her employment had been terminated. She was given less than two hours to clean out her office and leave the building.

54. Ms. Bakalar's employment was terminated at the direction of Mr. Dunleavy and Mr. Babcock.

55. Only one other non-policymaking attorney in the Department, assistant attorney general Ruth Botstein, was fired when Mr. Dunleavy became Governor. Like Ms. Bakalar, Ms. Botstein was an Attorney V, had outstanding performance evaluations, enjoyed the confidence of her supervisors and colleagues, and had represented the State in numerous cases. Ms. Botstein worked in the Opinions, Appeals, and Ethics section of the Department and has twice represented the State of Alaska before the United States Supreme Court.

56. Although Ms. Botstein's social media presence is much more limited than Ms. Bakalar's, in January 2017 Ms. Botstein tweeted or retweeted several posts that are critical of Donald Trump.

57. Shortly after President Trump assumed office, Ms. Botstein retweeted two tweets from an account named "Rogue POTUS Staff," one of which accused Mr. Trump as wanting to "be remembered as a King," and another arguing that Mr. Trump is "known to favor low quality pub[lic] schools, saving quality edu[cation] for the right, to remind commoners 'where they rank in the world.'"

58. In addition to complaining about Ms. Bakalar's blogging activities, Ms. Stroup also complained about Ms. Botstein's tweets. On February 27, 2017, Ms. Stroup posted a message on social media in which she complained that "[t]he 'Deep State' is a true problem in our country. . . . The vast majority of AAGs for the State of Alaska are liberal. One of them – one of the state's top appellate attorneys – who has represented the State in many high profile political cases (including US Supreme Court cases) is posting all sorts of left-wing liberal nonsense on her twitter feed and keeps retweeting the completely bogus 'Rogue Potus Staffer' stuff. . . . I don't trust ANY of these AAGs to represent conservative Alaskan's [sic] interests."

59. After the 2018 election, Ms. Stroup complained to Mr. Dunleavy's transition team that attorneys in the Labor and State Affairs and Opinions, Appeals, and Ethics sections were "very, very liberal." She urged the transition team to "carefully vet" such lawyers because she believed having them work for the State of Alaska created a "lack of trust."

60. Like Ms. Bakalar, Ms. Botstein submitted a resignation letter in response to the Babcock memorandum.

61. Like Ms. Bakalar, Ms. Botstein's resignation was accepted within minutes of Mr. Dunleavy becoming Governor.

62. On December 12 and 13, 2018, a news story about Ms. Bakalar's and Ms. Botstein's firings aired on Alaska radio. The story highlighted Ms. Botstein's most recent United States Supreme Court argument in which she argued a position on behalf of the State that was closely aligned with John Sturgeon, a hunting advocate who is fighting a legal battle to increase access to federal lands in Alaska. Mr. Sturgeon's case has been known to be a "celebrated cause for conservative Alaska politicians, including [Mr.] Dunleavy."

63. The December 12 and 13 news story also quoted Mr. Sturgeon as saying that Ms. Botstein "did a fantastic job. . . . I was

extremely surprised that they didn't keep her, and I'm not sure the reason."

64. On December 13, soon after the news story aired, the State approached Ms. Botstein to inquire about her interest in being reinstated to her position.

65. Ms. Botstein asked if Ms. Bakalar was also asked to consider an offer of reinstatement. She was told no.

66. On information and belief, several other State of Alaska employees intended, but were unable, to submit resignation notices on November 30 because a strong earthquake that occurred in Southcentral Alaska on that day disrupted their ability to get to work or send and receive email. These employees were also fired from their jobs on the morning of December 3.

67. On information and belief, these employees submitted their resignation letters immediately after learning that they had been fired, explaining the reason for their inability to meet the Babcock memorandum's November 30 deadline, and their termination notices were rescinded.

68. Three other non-policymaking employees refused to submit their resignations to the Dunleavy transition team because they did not

believe that their jobs required them to offer a pledge of allegiance to the new Governor.

69. All three of the employees who refused to submit their resignations were fired by Mr. Babcock as soon as Mr. Dunleavy became Governor.

**First Cause of Action: 42 U.S.C. § 1983
Violation of the Right to Freedom of Speech Under the First
Amendment of the U.S. Constitution**

70. The First Amendment of the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech."

71. Inherent in the First Amendment's guarantee is the principle that public employees in non-policymaking roles cannot constitutionally be compelled to relinquish the free speech rights they otherwise enjoy as citizens to comment on matters of public interest.

72. Plaintiff Elizabeth Bakalar frequently engaged in public speech on matters of public concern.

73. Ms. Bakalar was employed in a non-policymaking role as an assistant attorney general for the State of Alaska.

74. Defendants received and were aware of numerous complaints about Ms. Bakalar's public speech on matters of public concern.

75. Much of Ms. Bakalar's public speech on matters of public concern was contrary to the political beliefs of Defendants Dunleavy and Babcock.

76. Defendants retaliated against Ms. Bakalar for her public and political speech by terminating her employment.

77. Defendants had no legitimate reason for terminating Ms. Bakalar's employment.

78. By terminating Ms. Bakalar's employment, Defendants have violated, and continue to violate Ms. Bakalar's rights to free speech guaranteed by the First Amendment to the United States Constitution.

79. Defendants' violation of Ms. Bakalar's free speech rights was done with intent, malice, and gross and reckless disregard for Ms. Bakalar's constitutional rights.

80. Ms. Bakalar has suffered harm in the form of lost wages, benefits, other remuneration, and damages as a result of Defendants' termination of her employment.

**Second Cause of Action: Violation of the Right to Freedom
of Speech Under Article I § 5 of the Alaska Constitution**

81. Article I § 5 of the Alaska Constitution provides: "Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right."

82. Like the United States Constitution, the Alaska Constitution's free speech guarantee includes the principle that public employees in non-policymaking roles cannot constitutionally be compelled to relinquish the free speech rights they otherwise enjoy as citizens to comment on matters of public interest.

83. Plaintiff Elizabeth Bakalar frequently engaged in public speech on matters of public concern.

84. Ms. Bakalar was employed in a non-policymaking role as an assistant attorney general for the State of Alaska.

85. Defendants received and were aware of numerous complaints about Ms. Bakalar's public speech on matters of public concern.

86. Much of Ms. Bakalar's public speech on matters of public concern was contrary to the political beliefs of Defendants Dunleavy and Babcock.

87. Defendants retaliated against Ms. Bakalar for her public and political speech by terminating her employment.

88. Defendants had no legitimate reason for terminating Ms. Bakalar's employment.

89. By terminating Ms. Bakalar's employment, Defendants have violated, and continue to violate Ms. Bakalar's rights to free speech guaranteed by Article I § 5 of the Alaska Constitution.

90. Defendants' violation of Ms. Bakalar's free speech rights was done with intent, malice, and gross and reckless disregard for Ms. Bakalar's constitutional rights.

91. Ms. Bakalar has suffered harm in the form of lost wages, benefits, other remuneration, and damages as a result of Defendants' termination of her employment.

**Third Cause of Action: Violation of the Implied Covenant
of Good Faith and Fair Dealing**

92. Every at-will employment contract in Alaska is subject to the implied covenant of good faith and fair dealing.

93. The implied covenant of good faith and fair dealing has two components, a subjective component and an objective component. If an employer breaches either component, the employer breaches the implied covenant.

94. An employer breaches the subjective component of the implied covenant of good faith and fair dealing when it terminates an employee's employment and the termination decision is motivated by an improper or impermissible objective.

95. An employer breaches the objective component of the covenant of good faith and fair dealing if it treats an employee in a manner that a reasonable person would regard as unfair.

96. Under either component an employer cannot legally terminate an employee on unconstitutional grounds or for reasons violating public policy.

97. It is the public policy of the State of Alaska, embodied in Article XII, § 6 of the Alaska Constitution, that the employment of persons by the State be governed by the merit principle.

98. It is also the public policy of the State of Alaska, embodied separately in AS 39.26.010, that a person's political affiliation or philosophy have no bearing on her or his consideration for employment with the State.

99. It is also the policy of the State of Alaska, embodied in AS 44.17.040, that the principal executive officer of each State department be responsible for the appointment and removal of

employees. In accordance with this policy, Ms. Bakalar was hired with the understanding that she was subject to removal only by the Attorney General.

100. Defendants Michael Dunleavy and Tuckerman Babcock unconstitutionally directed the termination of Ms. Bakalar's employment with the State.

101. Defendants Michael Dunleavy and Tuckerman Babcock also violated the public policy of the State when they directed the termination of Ms. Bakalar's employment.

102. Defendants violated both the subjective and objective components of the implied covenant of good faith and fair dealing when they terminated Ms. Bakalar's employment.

103. Defendants' violation of the covenant has caused Ms. Bakalar harm in the form of lost wages, benefits, and other remuneration.

Prayer for Relief

Accordingly, based on the facts set forth above, Plaintiff requests that judgment be entered in her favor as follows:

1. For declaratory judgment that Defendants violated Ms. Bakalar's First Amendment rights to free speech by terminating her employment;

2. For declaratory judgment that Defendants violated Ms. Bakalar's rights to free speech guaranteed by the Alaska Constitution by terminating her employment;

3. For declaratory judgment that Defendants violated the implied covenant of good faith and fair dealing by terminating Ms. Bakalar's employment;

4. For an injunction ordering Mr. Dunleavy in his official capacity and the State of Alaska to reinstate Ms. Bakalar to her position as an assistant attorney general, and pay her back pay and front pay and make her whole with respect to any other diminishment of remuneration or compensation resulting from the loss of her job;

5. For an injunction ordering Defendants to refrain from any future retaliation against Ms. Bakalar and any other similarly situated non-policymaking State of Alaska employees;

6. For damages, including punitive damages, against Defendants Dunleavy and Babcock in their individual capacities for the unlawful

deprivation of Ms. Bakalar's free speech rights, in an amount to be adduced by the evidence at trial;

7. For Plaintiff's costs and attorneys' fees incurred in obtaining the relief sought in this proceeding; and

8. For such other relief as this court may deem just and equitable.

Dated January 10, 2019.



By: _____
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PERSONNEL

APR 16 2012

TECHNICAL SERVICE

STATE OF ALASKA
DEPARTMENT OF LAW

PERFORMANCE EVALUATION REPORT FOR ATTORNEYS AND ASSOCIATE ATTORNEYS

| NAME | | JOB CLASSIFICATION TITLE | PCN | EMPLOYEE NUMBER |
|---|----------|--|--------|-----------------|
| Elizabeth (Libby) Bakalar | | Attorney III | 03. bn | 302154 |
| REPORT COVERAGE | | REASON FOR REPORT | | |
| FROM | TO | | | |
| 1/31/08 | 3/1/2012 | <input checked="" type="checkbox"/> ANNUAL <input type="checkbox"/> RESIGNATION <input checked="" type="checkbox"/> OTHER (SPECIFY) <u>Promotion</u> | | |
| OVERALL PERFORMANCE RATING | | | | |
| <input type="checkbox"/> DOES NOT MEET DEPARTMENTAL EXPECTATIONS <input checked="" type="checkbox"/> MEETS OR EXCEEDS DEPARTMENTAL EXPECTATIONS* | | | | |
| Rater's Recommended Action: <u>Promotion to Attorney IV, effective 3/16/2012.</u> Evaluation was discussed with employee: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If no, explain: _____ Signature of Rater: <u>[Signature]</u> Title: <u>Chief, Labor & State Affairs</u> Date: <u>3/15/12</u> Employee: <input checked="" type="checkbox"/> Concur with Evaluation <input type="checkbox"/> Disagree (Employee comments attached) Signature: <u>[Signature]</u> Date: <u>3/15/12</u> Division: <u>Chief</u> Signature: <u>[Signature]</u> Title: <u>Chief</u> Date: <u>4/16/12</u> Department: <u>Det.</u> Signature: <u>[Signature]</u> Title: <u>A.G.</u> Date: <u>4/16/12</u> | | | | |
| DUTIES ASSIGNED TO THIS POSITION | | | | |
| <p>During this rating period Libby worked for the Human Services section of the Juneau office until August 1, 2011, when she transferred to the Labor and State Affairs Section. While in Human Services her primary duties include representing the Division of Public Health, the food stamp section of the Division of Public Assistance, she handled all of the substantiated allegations of neglect and abuse under AS 47.05.300 for the Office of Children's Services, and conducted the involuntary mental commitments for southeast Alaska, she also handled a number of significant administrative (602) appeals to the superior court, as well as civil litigation related to the Medicaid program. Upon transferring to the Labor and State Affairs Section in August 2011, Libby was assigned to represent the Division of Elections and the Lieutenant Governor's office. She handles such matters as initiative applications, ballot challenges, candidate and voter eligibility, and compliance with federal voting requirements. Libby represents elections and the Lieutenant Governor in litigation, provides advice, and assists with legislation and regulations.</p> | | | | |

SOA DOA DOPLR

MAY 23 2012

For purposes of AS 39.27.011(h) this rating satisfies the requirements of a rating of "good" or higher.

Information Center

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1. Applies good judgment in advising on legal matters and in preparing written materials and oral presentations:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby is very bright and capable. She is well versed on providing advice on legal issues and has become very comfortable with her role as an agency attorney. Libby is an exceptionally good writer. And, since the last rating period, she has worked hard on her personal interaction and verbal advice with her clients. In a short period of time, Libby has established a good working relationship with elections and the lieutenant governor's office and they routinely seek her advice and trust her judgment.

2. Applies effective legal research in advising on legal matters and in preparing written materials and oral presentations:

☐ Deficient ☐ Needs Improvement ☐ Good ☒ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby does an excellent job on legal research; she is quick to understand an issue and to find authority on point. She is able to recognize and assess the core legal issues of her cases. Libby has worked to finely hone her research skills and the effort shows in her written analysis. She is an exceptional writer. She continues to work on and improve her oral presentations. She has already demonstrated her ability to learn new areas of law (i.e., election law) and to produce excellent written memoranda on election issues under tight deadlines.

3. Produces grammatical, well-organized, concise, understandable, and persuasive written materials:

☐ Deficient ☐ Needs Improvement ☐ Good ☒ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby has great technical skills and is very confident with her writing. She was the "go to" person in the Human Services section for assistance in writing and editing to make the section work product better. Libby has continued to produce high-quality written work in the Labor & State Affairs section.

4. Makes well-organized, concise, understandable, and persuasive oral presentations:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby continues to work on her oral presentation skills, and shows more skill and ease in her oral expositions. Her work in L&SA has enabled her to argue before the superior court on complex case motions and appeals.

5. Efficiently allocates time to competing priorities, and works diligently and efficiently to complete assignments by deadlines:

☐ Deficient ☐ Needs Improvement ☐ Good ☒ Exceptional

☐ Not observed during this rating period

Libby is very well organized. She works diligently to learn the law and become familiar with the facts of her cases and is diligent in meeting her deadlines. Her work product improved as she continued to focus more on the details and subtexts of the project. She is collaborative with others and exercises good judgment as to when to ask others to brainstorm with her in fleshing out ideas and concepts.

6. Willingly accepts and carries out new assignments, accepts supervision, demonstrates a positive attitude toward the job, and demonstrates a willingness to learn new skills:

☐ Deficient ☐ Needs Improvement ☐ Good ☒ Exceptional

☐ Not observed during this rating period

Libby willingly takes on new work assignments. She has been instrumental in researching and analyzing a novel constitutional issue for DMV during this period. She has a positive attitude about her work assignments. She also willingly accepts supervision and follows through on her case assignments.

7. Demonstrates the ability to work independently, and to identify, analyze, and solve problems:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

Libby is able to work independently and her recent move to the L&SA section has allowed her independence to flourish. While in the Human Services section, the circumstances often limited Libby from being able to take full ownership of a project or matter. Instead, she often worked with the section supervisor collaboratively on cases. With the cases she handled on her own in Human Services, she worked through issues appropriately and demonstrated the ability to handle matters independently. In the LSA section, she is able to act independently on matters and has a platform to demonstrate the ability to handle a more complex caseload using her own judgment, skill and expertise.

8. Demonstrates proficiency in trial and administrative advocacy skills, including planning and implementing an effective litigation strategy, conducting thorough discovery, developing a strong record, skillfully examining witnesses, presenting effective opening and closing arguments, and preserving issues for appeal:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

Libby has developed a strong set of litigation skills. She especially excels as to motion practice and oral advocacy on those motions. She has handled a number of contested evidentiary hearings at the OAH and by all accounts has done a fine job.

9. Proficiently handles regulation and legislation assignments:

☐ Deficient ☐ Needs Improvement ☐ Good ☒ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby's excellent writing skills have served her well on regulation and legislation projects.

| | | | |
|---|--|--|---|
| 10. Works effectively with others as a member of a team, the section, the office, and the department: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input checked="" type="checkbox"/> Good | <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period <input type="checkbox"/> Does not apply to this position. Libby is a team player who works very well with others and is a great colleague. | | | |
| 11. Regularly communicates with clients or victims and law enforcement about significant developments in their matters, and has established efficient and effective working relationships with them: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input checked="" type="checkbox"/> Good | <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period. Libby had very good working relationships with her client at DHSS and has already established a good working relationship with elections and the Lt. Governor's office. DHSS clients all reported how attentive she was to their questions and concerns and they were sorry to see her leave. It will help her enormously to have her primary client be in Juneau as it will focus her interpersonal efforts, which while top notch, are still not her preferred mode of communication. In her last review this was an issue mentioned by the rater that she should focus on and to her credit she did. Those efforts resulted in better client relationships and better outcomes for the client. | | | |
| 12. Is considerate of and interacts effectively, respectfully, and professionally with clients or victims and law enforcement, support staff, co-workers, members of the public, opposing counsel, court personnel, and supervisors: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input checked="" type="checkbox"/> Good | <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period. <input type="checkbox"/> Does not apply to this position. | | | |
| 13. Demonstrates good work habits, including punctuality, reliability, and professional appearance: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input checked="" type="checkbox"/> Good | <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period | | | |
| 14. Effectively manages and organizes files, and keeps supervisor and support staff apprised of significant workload issues: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input type="checkbox"/> Good | <input checked="" type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period. Libby is well-organized and efficient with her time. She manages her projects and cases very well. She keeps her supervisors and her clients informed at all facets of a project. She also prepares a monthly report for the lieutenant governor to apprise him of developments in election and initiative matters -- a report that is much appreciated by the lieutenant governor. | | | |

| |
|--|
| <p>15. Complies with departmental policies such as those on settlement authority, appeals, case assessment, charging decisions, and press contacts:</p> <p> <input type="checkbox"/> Deficient <input type="checkbox"/> Needs Improvement <input checked="" type="checkbox"/> Good </p> <p><input type="checkbox"/> Not observed during this rating period</p> |
| <p>16. Complies with departmental requirements for leave, travel, and timesheets:</p> <p> <input type="checkbox"/> Deficient <input type="checkbox"/> Needs Improvement <input checked="" type="checkbox"/> Good </p> <p><input type="checkbox"/> Not observed during this rating period</p> |
| <p>17. Acts ethically and honestly in performing duties:</p> <p> <input type="checkbox"/> Unacceptable <input checked="" type="checkbox"/> Acceptable </p> |

18. Additional comments and performance goals:

Libby has been an attorney for over six years and has been with the Department for more than five years. Each year there is a marked leap in her continued development as an attorney. She was a great member of the human services team and is missed by that section. Libby's greatest skills continue to be her writing, which is technically outstanding, and her fine analytical skills. She continues to work on making these skills even better. Libby has taken supervision and suggestions about how to improve the other facets of her work very well and has made improvements in these areas, including being more comfortable with oral argument in administrative proceedings, court, and client meetings. She still relies upon her writing and analytical skills, but has seen the benefit of face-to-face meetings in getting to core issues and problems so that she can better advocate for her client.

Libby is always willing and ready to take on a new project or assist in an existing project and get it done. Libby has evolved and developed into an attorney that can handle any project handed to her. She is competent, qualified and works independently to achieve the goals of her client. She is collaborative when necessary but can rely on her own judgment when it comes to her cases. She can comfortably handle complex matters.

Since joining the L&SA section in August 2011, Libby has demonstrated her ability to work independently and effectively for the division of elections and the lieutenant governor. She has effectively handled several high-level and politically sensitive election matters since joining the section. She has written several opinions for the division, including a legal review of a petition seeking to recall a state representative and a complicated opinion on an initiative that seeks to revive a coastal zone management program in state law. The issues she has handled for elections have been novel, highly complicated, and involved detailed analysis of applicable constitutional law. She has done a splendid job for elections. The lieutenant governor and the director of elections routinely seek her advice on election matters and they quickly came to trust her advice. She has shown her versatility as a legal practitioner as well, having volunteered to take on a superior court appeal for the Division of Motor Vehicles regarding a constitutional challenge to division practices and policies regarding the change of a person's sex on their driver's license. Libby is already a highly valued member of the L&SA section and it is a pleasure to work with her.

Based on the rater's joint review of Libby's work and the characteristics and performance standard typical of an Attorney IV, we are pleased to promote Libby to an Attorney IV.

SUPERVISION

☒ Does not apply to this position

19. Appropriately directs and delegates tasks to employees:

- ☐ Deficient ☐ Needs Improvement ☐ Good ☐ Exceptional
- ☐ Not observed during this rating period

20. Regularly and effectively communicates – including written evaluations – with employees about the quality of their performance and developments that may concern the employees:

- ☐ Deficient ☐ Needs Improvement ☐ Good ☐ Exceptional
- ☐ Not observed during this rating period

21. Is readily approachable and accessible to subordinates, guides and motivates employees, and fosters a positive work environment:

- ☐ Deficient ☐ Needs Improvement ☐ Good ☐ Exceptional
- ☐ Not observed during this rating period

22. Resolves conflicts constructively and capably handles challenging situations:

- ☐ Deficient ☐ Needs Improvement ☐ Good ☐ Exceptional
- ☐ Not observed during this rating period

The performance ratings are defined as follows:

OVERALL PERFORMANCE RATINGS

1. **Does not meet departmental expectations:** The employee's performance during the rating period was below job expectations for the position, whether due to lack of effort or lack of skill. The employee's work was inadequate. Corrective action is required.
2. **Meets or exceeds departmental expectations:** The employee's performance during the rating period consistently satisfied or exceeded job expectations for the position, reflected positively on the organization, and demonstrated a commitment to the organization's work. For purposes of AS 39:27.011(h) this rating satisfies the requirement of a rating of "good or higher."

COMPONENT RATINGS

1. **Deficient:** The employee's performance during the rating period consistently or significantly fell below job expectations. Corrective action is required.
2. **Needs Improvement:** The employee's performance was inconsistent and needs improvement to fully meet job expectations. Corrective action is required.
3. **Good:** The employee's performance during the rating period consistently met or exceeded job expectations, reflected positively on the organization, and demonstrated a commitment to the organization's work. The employee is a fully competent, valuable member of the organization.
4. **Exceptional:** The employee performed extraordinarily well during the rating period, greatly exceeding job expectations.

The overall performance rating on the first page reflects the rater's overall assessment of the employee's job performance during the rating period. The individual component ratings on the following pages reflect the rater's assessment of the various components of the employee's job performance. The overall performance rating is not an average or similar function of the component ratings.

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JAN 13 2009

STATE OF ALASKA
DEPARTMENT OF LAW
PERFORMANCE EVALUATION REPORT FOR ATTORNEYS AND ASSOCIATE ATTORNEYS

DEPT. OF LAW
ADMIN. SERVICES

| NAME | JOB CLASSIFICATION/TITLE | PCN | SOCIAL SECURITY NUMBER |
|--|--------------------------|--|------------------------|
| Elizabeth (Libby) Bakalar | Attorney II | 03-0226 | [REDACTED] |
| REPORT COVERAGE | | REASON FOR REPORT | |
| FROM | TO | | |
| 09/20/06 | 12/31/2008 | <input checked="" type="checkbox"/> ANNUAL <input type="checkbox"/> RESIGNATION <input type="checkbox"/> OTHER (SPECIFY) _____ | |
| OVERALL PERFORMANCE RATING | | | |
| <input type="checkbox"/> DOES NOT MEET DEPARTMENTAL EXPECTATIONS <input checked="" type="checkbox"/> MEETS OR EXCEEDS DEPARTMENTAL EXPECTATIONS | | | |
| Rater's Recommended Action: <u>Promotion to Attorney III, effective January 1, 2009.</u> | | | |
| Evaluation was discussed with employee: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If no, explain: _____ | | | |
| Signature of Rater: <u>[Signature]</u> | | Title <u>Chief Assistant Attorney General</u> Date <u>1/5/09</u> | |
| Employee: <input checked="" type="checkbox"/> Concur with Evaluation <input type="checkbox"/> Disagree (Employee comments attached) | | | |
| Signature: <u>[Signature]</u> | | Date <u>1/5/09</u> | |
| Division Signature: <u>[Signature]</u> | | Title <u>Chief</u> Date <u>1/9/09</u> | |
| Department Signature: <u>[Signature]</u> | | Title <u>DAG</u> Date <u>1/12/09</u> | |
| DUTIES ASSIGNED TO THIS POSITION | | | |
| Libby works out of the Juneau office and her primary duties include representing the Division of Public Health, the food stamp section of the Division of Public Assistance, she handles all of the substantiated allegations of neglect and abuse under AS 47.05.300 for the Office of Children's Services, and she conducts of the involuntary mental commitments for southeast Alaska | | | |

SOA DOA Personnel
JAN 13 2009
General
Management Services

For those that are eligible for a merit increase or longevity increment, this rating satisfies the requirement of a rating of 'acceptable' or better or "good" or higher."

1. Applies good judgment in advising on legal matters and in preparing written materials and oral presentations:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby is very smart and capable. She is well versed on legal issues and is becoming more comfortable with her role as an agency attorney. Libby is an exceptionally good writer but needs to work on her comfort level with respect to verbal advice. To her credit, Libby is aware of the fact that she sometimes relies on her strong writing skills to the detriment of developing her oral skills.

2. Applies effective legal research in advising on legal matters and in preparing written materials and oral presentations:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby does a very good job on legal research. She does, however, need to take time with her conclusions and advice so that she has logically thought it all out before she proceeds. On occasion she is anxious to complete a project, which at times has the effect of limiting the depth of her analysis. This is something that Libby has worked on since she arrived and I see great improvement. However, on occasion she still reverts to her law clerk days and the need to complete something quickly rather than taking her time to make sure she has thoroughly thought through all of the issues and consequences.

3. Produces grammatical, well-organized, concise, understandable, and persuasive written materials:

☐ Deficient ☐ Needs Improvement ☐ Good ☒ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby has great technical skills and is very confident with her writing. She has been very helpful in assisting with brief writing and in editing my own work, which produces a better work product for the section.

4. Makes well-organized, concise, understandable, and persuasive oral presentations:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby is very thorough in her preparation, which is big asset, and it has been reported that her presentations have been good. She is encouraged to continue to work on her oral presentation skills, in order to become more comfortable with that part of the job.

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DEPT. OF LAW
ADMIN. SERVICES

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JAN 13 2009

5. Efficiently allocates time to competing priorities, and works diligently and efficiently to complete assignments by deadlines: MAIN SERVICES

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

Libby is well organized, covers her caseload and meets her deadlines. Her work is good, but it could be outstanding if she focused less on timeliness and more at the details and subtexts of the project. That is not to say the work is deficient in any way, but she tends to rely upon others in the section with more experience to flesh out some of the details which short changes her opportunity to expand her own base of knowledge of agency issues and processes.

6. Willingly accepts and carries out new assignments, accepts supervision, demonstrates a positive attitude toward the job, and demonstrates a willingness to learn new skills:

☐ Deficient ☐ Needs Improvement ☐ Good ☒ Exceptional

☐ Not observed during this rating period

Libby is ready and willing to take on new work; when she does, she needs to take full ownership of the project and trust her efforts and her judgment.

7. Demonstrates the ability to work independently, and to identify, analyze, and solve problems:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

Libby is working on becoming more and more independent and when she has done so, her efforts have had good results. She continues to improve in this area and is becoming more confident in her skills.

8. Demonstrates proficiency in trial and administrative advocacy skills, including planning and implementing an effective litigation strategy, conducting thorough discovery, developing a strong record, skillfully examining witnesses, presenting effective opening and closing arguments, and preserving issues for appeal:

☐ Deficient ☐ Needs Improvement ☒ Good ☐ Exceptional

☐ Not observed during this rating period

Historically, I would guess that Libby would state that she was not a big "fan" of litigation, but the more she develops her skills in this area and the more success she has had, may have moderated her views. She is actively seeking to gain more experience and without hesitation conducted a day long jury trial. Libby's trial skills are good. Litigation gives her an opportunity to use her exceptional writing skills and has prevailed in two cases this past year by winning motions for summary judgment. She should be very pleased with the result of her hard work in this area.

9. Proficiently handles regulation and legislation assignments:

☐ Deficient ☐ Needs Improvement ☐ Good ☒ Exceptional

☐ Not observed during this rating period

☐ Does not apply to this position

Libby has worked on a number of regulation projects for DHS; she is very good technical writer so those skills are well served on these types of projects.

JAN 13 2009

DEPT. OF LAW
JAIL SERVICES

| | | | |
|---|--|--|---|
| 10. Works effectively with others as a member of a team, the section, the office, and the department: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input checked="" type="checkbox"/> Good | <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period <input type="checkbox"/> Does not apply to this position Libby is a team player and works well with everyone in the office. | | | |
| 11. Regularly communicates with clients or victims and law enforcement about significant developments in their matters, and has established efficient and effective working relationships with them: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input checked="" type="checkbox"/> Good | <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period I would like to see Libby "talk" more to her clients rather than relying upon email and the written word; her comfort and skill is with writing so it is normal for her to default to that, but she needs to foster and facilitate her the client relationships which is best done, in many instances, in person. She is working on these issues and she will see the fruits of those efforts in the next rating period. | | | |
| 12. Is considerate of and interacts effectively, respectfully, and professionally with clients or victims and law enforcement, support staff, co-workers, members of the public, opposing counsel, court personnel, and supervisors: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input checked="" type="checkbox"/> Good | <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period <input type="checkbox"/> Does not apply to this position | | | |
| 13. Demonstrates good work habits, including punctuality, reliability, and professional appearance: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input checked="" type="checkbox"/> Good | <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period | | | |
| 14. Effectively manages and organizes files, and keeps supervisor and support staff apprised of significant workload issues: | | | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement | <input type="checkbox"/> Good | <input checked="" type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period Libby is well-organized and managing her projects and her cases very well. She keeps me informed as appropriate and is learning to work more independently and is showing good judgment and skill as an attorney. | | | |

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DEPT. OF LAW

CIVIL SERVICES

15. Complies with departmental policies such as those on settlement authority, appeals, case assessment, charging decisions, and press contacts:

- ☐ Deficient ☐ Needs Improvement ☒ Good
- ☐ Not observed during this rating period

16. Complies with departmental requirements for leave, travel, and timesheets:

- ☐ Deficient ☐ Needs Improvement ☒ Good
- ☐ Not observed during this rating period

17. Acts ethically and honestly in performing duties:

- ☐ Unacceptable ☒ Acceptable

18. Additional comments and performance goals:

Libby has been with the Department for three years now and is developing into a very good attorney. She has been a great addition to the section. Libby came to the section after clerking for Judge Outler so she was familiar with the civil rules and court process and has been able to help with motion practice and other litigation issues very quickly. Her greatest skill is her writing, which is technically outstanding but it has taken some time to move from law clerk mode to advocate in organizing and developing arguments. These skills continue to improve each time she writes a brief or motion. Libby has worked hard to improve her other skills over the past three years, including being more comfortable with oral argument and client meetings. She still tends to resort to an email rather than a phone call, which in some situations works to her disadvantage, as the give and take to flesh out issues and facts often works better in person than over email. She needs to remember that not everyone is as good at communicating in writing as she is!

Libby has been very helpful in working on matters as assigned and helping out when others are busy in the office. She has been extremely helpful to me on a number of matters and I appreciate her positive attitude and efforts in helping the section meet its various demands. She is a great office-mate and has a keen mind to use as a sounding board for ideas and to strategize on cases and motions.

Libby is also very efficient in her work. One point that she really needs to work on in the upcoming year, is that the timeliness of a project does not trump the quality. That is not to say that she does not do great work for the section - she does, but there needs to be some time taken to re-think issues, talk them over in her own mind or with others in the section, re-evaluate what has been done and written to make sure all of the nuances and subtleties have been covered. I would suggest that she take what she considers to be a final project and put it aside for a day or two and then re-read and re-evaluate the project. Much of the time she is on the right track, she needs a bit more time to develop and finalize a project.

Libby is a great asset to the section; it has been fun to watch her grow professionally and she continues to improve as an attorney every day. I am pleased, based upon skills and experience, to promote her to an Attorney III.

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DEPT. OF LAW
ADMIN. SERVICES

| SUPERVISION | |
|---|---|
| <input checked="" type="checkbox"/> Does not apply to this position | |
| 19. Appropriately directs and delegates tasks to employees: | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement <input type="checkbox"/> Good <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period | |
| 20. Regularly and effectively communicates – including written evaluations – with employees about the quality of their performance and developments that may concern the employees: | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement <input type="checkbox"/> Good <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period | |
| 21. Is readily approachable and accessible to subordinates; guides and motivates employees, and fosters a positive work environment: | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement <input type="checkbox"/> Good <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period | |
| 22. Resolves conflicts constructively and capably handles challenging situations: | |
| <input type="checkbox"/> Deficient | <input type="checkbox"/> Needs Improvement <input type="checkbox"/> Good <input type="checkbox"/> Exceptional |
| <input type="checkbox"/> Not observed during this rating period | |

The performance ratings are defined as follows:

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ADMIN. SERVICES

OVERALL PERFORMANCE RATINGS

1. **Does not meet departmental expectations:** The employee's performance during the rating period was below job expectations for the position, whether due to lack of effort or lack of skill. The employee's work was inadequate. Corrective action is required.
2. **Meets or exceeds departmental expectations:** The employee's performance during the rating period consistently satisfied or exceeded job expectations for the position, reflected positively on the organization, and demonstrated a commitment to the organization's work.

COMPONENT RATINGS

1. **Deficient:** The employee's performance during the rating period consistently or significantly fell below job expectations. Corrective action is required.
2. **Needs improvement:** The employee's performance was inconsistent and needs improvement to fully meet job expectations. Corrective action is required.
3. **Good:** The employee's performance during the rating period consistently met or exceeded job expectations; reflected positively on the organization, and demonstrated a commitment to the organization's work. The employee is a fully competent, valuable member of the organization.
4. **Exceptional:** The employee performed extraordinarily well during the rating period, greatly exceeding job expectations.

The overall performance rating on the first page reflects the rater's overall assessment of the employee's job performance during the rating period. The individual component ratings on the following pages reflect the rater's assessment of the various components of the employee's job performance. The overall performance rating is not an average or similar function of the component ratings.



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March 16, 2017

James E. Cantor
Deputy Attorney General
State of Alaska Department of Law
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501

Via Electronic Mail

Re: Employment Investigation Report; Libby Bakalar – “One Hot Mess Alaska” Blog
Our File No. 5078-0001

Dear Mr. Cantor:

This Investigation Report constitutes the factual findings and conclusions stemming from the investigation conducted into possible misconduct committed by Assistant Attorney General Libby Bakalar in connection with her blog “One Hot Mess Alaska.”¹ The investigation took place during the first two weeks of March 2017. The primary impetus for the investigation were concerns raised about the partisan political nature of “One Hot Mess Alaska” and the possible use by Ms. Bakalar of state resources or work time in the creation of articles posted on the blog.²

I. Scope and Limits of Investigation

The investigation was limited to two threshold questions: (1) whether Ms. Bakalar posted or in any manner worked on her blog during work time or with the aid of state

¹ While the focus of this investigation involved Ms. Bakalar’s activities with respect to the blog site “One Hot Mess Alaska,” it also included a review of similar activities concerning Ms. Bakalar’s use of social media including the “One Hot Mess Alaska” Facebook page. This page most often was used a forum for re-posting or sharing previously posted blog articles.

² The investigation did not include any specific complaint filed against Ms. Bakalar. On February 27, 2017, prior to the commencement of the investigation, I was provided with an email message from Ms. Bakalar which indicated her belief that the investigation was prompted by a complaint from Nancy Driscoll Stroup. The email from Ms. Bakalar included a copy of a Facebook posting by Ms. Driscoll Stroup complaining that the “vast majority of [Assistant Attorneys General] for the State of Alaska are liberal.” Ms. Bakalar requested that her email message and the message from Ms. Driscoll Stroup be part of the official record of the investigation. Ms. Bakalar’s email message and supporting Facebook post are attached hereto as Ex. 1.

funds or resources; and (2) whether, if the answer to the first question was "yes," such activity violated any law or policy applicable to Ms. Bakalar.³

The investigation included a review of potentially applicable Alaska statutes, State of Alaska employment policies and ethics decisions.⁴ (A list of the statutes, policies and decisions reviewed is attached as Exhibit 2.) The investigation also included interviews with Ms. Bakalar and her immediate supervisor Marjorie Vandor.⁵ Inquiries were made concerning the ability of the State Security Office to review Ms. Bakalar's use of her work computer for posting on her blog.⁶ A review of Ms. Bakalar's blog and Facebook postings was also conducted.⁷

II. Summary of Conclusions

Ms. Bakalar did on infrequent occasions do some work on her blog during her normal business day. The level of her activity was consistent with the commonly accepted practice of allowing salaried attorneys to take small unscheduled breaks during their work day to engage in de minimis personal activities. Ms. Bakalar has a reputation as a very productive and hard working attorney who does not abuse her unscheduled breaks.

³ It is important to note that the scope of the investigation did not include whether Ms. Bakalar's involvement in the blog "One Hot Mess Alaska" on her own personal time was in any manner improper.

⁴ Rebecca Cain, a Civil Division Attorney V who focuses on employment law, and Melanie Ferguson, the Civil Division's Administrative Operations Manager, were consulted to ensure that all applicable policies and practices were identified.

⁵ Both interviews took place telephonically. Ms. Bakalar's interview took place on March 7 and Ms. Vandor's on March 8. Ms. Bakalar's personal attorney, James Sheehan, was present with Ms. Bakalar during her interview.

⁶ Because traffic with Blogspot, the site which hosts Ms. Bakalar's blog, is encrypted, the State Security Office was unable to identify the use of Ms. Bakalar's work computer for any specific blog postings. Accordingly, IT resources were unable to provide any specific verification concerning Ms. Bakalar's claim of de minimis use of her state computer for activity concerning her blog. Because of a recent change, however, going forward, it is reported that the state will have a better ability to determine the frequency of use of such sites via a state computer.

⁷ The investigation did not include a review of every single post on either the blog or Facebook. A comprehensive review of the last few months of postings was done and a more summary review of previous months' postings was also included. Ms. Bakalar is prolific in her writing and her blog often contains multiple articles per day.

The infrequent work by Ms. Bakalar on her blog during work hours did not violate any state statutes or policies. Ms. Bakalar receives no financial remuneration from her blog and there is no evidence that any "partisan political" activity occurred during work hours. To the extent that any "partisan political" activity may have occurred during work hours, it would have to be characterized as de minimis and insignificant and thus not a violation of state restrictions on such activity.

III. Relevant Factual Background

Ms. Bakalar is an Attorney V, who has been working for the Attorney General's office since 2006.⁸ She has worked in the Labor and State Affairs section under the supervision of Marjorie Vandor since 2011. Similar to the majority of attorneys in her section, Ms. Bakalar works a Regular Day Off ("RDO") schedule.⁹ Her normal work day is from 8:30 a.m. until 5:00 p.m. Monday through Friday with every other Friday off.

As a salaried employee, Ms. Bakalar will often work hours that fall outside of her normally scheduled work hours and work days.¹⁰ All of the attorneys in the Department are required to account for their time in the state's *ProLaw* system.¹¹ Each attorney, like Ms. Bakalar who is on a RDO schedule, must account for 8.5 hours each work day.¹² According to Ms. Bakalar, unless she is in trial or attending to some other special

⁸ Ms. Bakalar's original assignment was to the section of the attorney general's office representing the Department of Health and Human Services. As an Attorney V, Ms. Bakalar does not supervise any other attorneys. She has on occasion supervised summer interns and does serve as a mentor in the Department's official mentorship program.

⁹ According to the Department of Law Civil Manual, the Department allows employees to elect (with approval of their supervisor) either a flex or an alternate work week schedule. (Department of Law Civil Manual, p. 21) The alternate work week schedule consists of working nine out of every 14 days and completing 75 working hours within every two-week period. (*Id.*) The "alternate work week schedule" is the RDO schedule.

¹⁰ Both Ms. Bakalar and Ms. Vandor report that the primary emphasis for attorneys in their section is getting the job done which requires putting in the necessary hours whenever they are needed.

¹¹ Vandor Interview.

¹² In addition to "billable" hours, attorneys often record "administrative" time in order to properly reflect and account for their full day of work.

matter, she would be found in her office from 8:30 a.m. until 5:00 p.m. during her work days.¹³

Even though Ms. Bakalar and the other attorneys in her section are required to account for 8.5 hours of work time during their normal work day, it is a commonly accepted practice that the attorneys will from time-to-time take short breaks from work to engage in purely personal activities or to simply refresh their minds.¹⁴ Such personal activities could include getting a cup of coffee, reading a news article online, checking personal email or social media messages, or simply chatting briefly with co-workers.¹⁵

In October of 2014, Ms. Bakalar began her blog "One Hot Mess Alaska."¹⁶ The blog began as a mostly comedic and satirical take on a variety of issues.¹⁷ Initially, many of the articles were focused on parenting issues but could also include posts concerning feminism, meals, and other general lifestyle issues.¹⁸ Periodically, there would be posts on political issues as well as current events.¹⁹ The rise of Donald Trump as a candidate for President became an increasingly frequent topic for Ms. Bakalar.²⁰ Ms. Bakalar readily acknowledges that the intent of many of her posts involving Mr. Trump is to ridicule and criticize him.²¹ Other than posts critical of Donald Trump, the blog does not typically target other politicians or public officials.²² To the extent that it is

¹³ Bakalar Interview. Because she has two small children, Ms. Bakalar states that unless there is a pressing work requirement she usually leaves the office promptly at 5:00 p.m.

¹⁴ Bakalar Interview; Vador Interview.

¹⁵ As section chief, Ms. Vador confirmed that these short breaks occur regularly and are viewed as entirely acceptable as long as they are not abused. Because the attorneys have a work load they are responsible for, such breaks are largely self-regulated. Ms. Vador reports she has had no problems with attorneys in her section spending too much time on personal matters during the work day.

¹⁶ Bakalar Interview.

¹⁷ Bakalar Interview.

¹⁸ Bakalar Interview.

¹⁹ Bakalar Interview.

²⁰ Bakalar Interview.

²¹ The blog received some wide-spread notoriety when one of its posts involving imaginary tweets from Frederick Douglass was reportedly shared over two million times. The original post appeared on her blog on February 1, 2017.

²² Bakalar Interview.

fair to label the overall viewpoint or tenor of the blog, it can be described as progressive or liberal leaning on many issues.²³

Ms. Bakalar considers her blog a creative exercise.²⁴ Her specific individual talents allow Ms. Bakalar to compose articles for the blog fairly quickly, often taking only ten minutes to complete an article.²⁵ So while Ms. Bakalar's blog posts can be described as prolific, they may not require as much time as one might normally assume.

Ms. Bakalar's normal practice is to do most of writing for the blog at night and not infrequently during early morning hours.²⁶ Much of her blog work is conducted in the bedroom of her children while she awaits them falling asleep.²⁷ Ms. Bakalar uses her personal laptop or phone for composing her posts.²⁸ Even though Ms. Bakalar may compose a post at night or early in the morning, she often does not officially post the article until later.²⁹ Her blog site allows her to save drafts and chunks of material for future work and/or posting.³⁰ She is also able to pre-select a future time for the article to be automatically posted.³¹ Often Ms. Bakalar would compose an article at night and

²³ To avoid any bias, this description of the blog content was provided to Ms. Bakalar and approved by her attorney.

²⁴ Bakalar Interview.

²⁵ Ms. Bakalar's ability to churn out significant material in a short amount of time has been noted by her supervisor as well. According to Ms. Vandor, Ms. Bakalar is a very quick study who can provide a finished work product quicker than just about any attorney she has worked with in her career. Ms. Bakalar's claims of being able to compose her blog articles relatively quickly are ostensibly consistent with her abilities as noted by her supervisor.

²⁶ Bakalar Interview.

²⁷ Bakalar Interview.

²⁸ Bakalar Interview.

²⁹ Bakalar Interview.

³⁰ Bakalar Interview.

³¹ Ms. Bakalar does not believe that the posting times displayed on the blog always align properly with actual Alaska Time. She believes that sometimes the blog appears to be using Pacific Time. Prior to this investigation, however, Ms. Bakalar was not concerned about the precise posting time of her posts, so she had not investigated this further.

then manually post it the next day.³² The actual act of posting the article involves nothing more than simply clicking on a button.³³

Ms. Bakalar states that it has not been her practice to write any of the articles for her blog during work hours, but she cannot say that it has never occurred during the two-and-a-half years that she has maintained the blog.³⁴ She cannot, however, recall any specific instance when she has composed an article during work hours.³⁵ She acknowledges that there have been times during her work day when she might check her blog site on her work computer to view readership statistics.³⁶ Ms. Bakalar also acknowledges that there have been occasions during her normal 8.5 hour work day when she might spend a few minutes performing some last minute editing or posting a previously written article.³⁷ Moreover, while Ms. Bakalar does acknowledge engaging in some last minute editing and posting of articles during normal work hours, her normal practice is to do so using either her personal laptop or phone.³⁸ It is possible, however, on some rare occasion she may have used her work computer to either edit or post an article, but she does not recall specifically ever doing so.³⁹

After a particular article is posted to her blog site she will frequently share the blog post to the "One Hot Mess Alaska" Facebook page.⁴⁰ The sharing of blog posts to the Facebook page can at times occur during work hours as it takes only seconds to perform and can easily be accomplished during a short break.⁴¹

Ms. Bakalar receives no compensation or any remuneration from her blog.⁴² On a couple of occasions, however, the Anchorage Dispatch News contacted Ms. Bakalar and offered her a small stipend (\$100) in return for permission to publish one of her

³² Bakalar Interview.

³³ Bakalar Interview.

³⁴ Bakalar Interview.

³⁵ Bakalar Interview.

³⁶ Bakalar Interview.

³⁷ Bakalar Interview.

³⁸ Bakalar Interview.

³⁹ Bakalar Interview.

⁴⁰ Ms. Bakalar has a personal Facebook page and also maintains a page for "One Hot Mess Alaska."

⁴¹ The state work computer cannot be used to access Facebook; so any sharing of blog posts to Facebook must be done utilizing Ms. Bakalar's personal devices.

⁴² Bakalar Interview.

posts as a commentary in their newspaper.⁴³ On these occasions Ms. Bakalar has consulted with her immediate supervisor and others within the Department's management before accepting the stipend.⁴⁴

IV. Analysis

A. Did Ms. Bakalar Work on her Blog During "Work Time" or Use State Funds or Resources?

Answer: Yes.⁴⁵

The concept of "work time" for a salaried Assistant Attorney General is somewhat nebulous. There is no question that Ms. Bakalar's first mission is to ensure that the legal work she is responsible for is completed in a timely manner.⁴⁶ That would often require Ms. Bakalar to actually be working during periods when she would normally be off work including late hours, weekends and holidays.⁴⁷

Despite frequently having to work at other times, there is, nonetheless, an expectation that Ms. Bakalar would be in her office and available for work from between 8:30 a.m. and 5:00 p.m. Monday through Friday.⁴⁸ Accordingly, for the purpose of this

⁴³ Bakalar Interview.

⁴⁴ Bakalar Interview; Vador Interview.

⁴⁵ A reasonable argument can be made that the answer to this question should be "no." AS § 39.52.120(d) provides that "[i]n this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any." Because Ms. Bakalar's immediate supervisor permitted attorneys in Ms. Bakalar's section to engage in personal activities while on unscheduled and self-regulated breaks during the work day, it can be argued that such break times should not be considered "work time." For the purpose of this investigation, however, it is believed to aid in the understanding of the situation if it is acknowledged that Ms. Bakalar engaged in certain blog-related conduct from between 8:30 a.m. and 5:00 p.m. during her work days. Answering "yes" to this question does not lead to the conclusion that Ms. Bakalar engaged in any inappropriate or unlawful conduct.

⁴⁶ Bakalar Interview; Vador Interview.

⁴⁷ Bakalar Interview; Vador Interview.

⁴⁸ Vador Interview. Ms. Vador indicates that occasionally attorneys may be running late and will not arrive at the scheduled start time. On such occasions the attorneys

investigation, these days and hours will be considered Ms. Bakalar's "work time." This concept is supported by the requirement that Ms. Bakalar account for 8.5 hours of time during a scheduled work day in the state's *ProLaw* system. Ms. Bakalar is required to account for the full 8.5 hours even if some of the time is administrative or non-billable time.⁴⁹

Ms. Bakalar acknowledges that on occasion she may perform some minor tasks related to her blog (or Facebook page) during the period between 8:30 a.m. and 5:00 p.m. on work days.⁵⁰ While she does the vast majority of composition for her blog during non "work-time" hours, she admits that on occasion she may edit or post an article to her blog during her work hours.⁵¹ In addition, although it is not her normal practice, Ms. Bakalar acknowledges she may have on occasion used her state work computer in accomplishment of these incidental blog-related tasks.⁵²

A review of the blog reveals some posting times which would fall between 8:30 a.m. and 5:00 p.m. during normal work days. A similar situation exists with respect to posting times on the "One Hot Mess Alaska" Facebook page. The listed posting times, however, cannot be viewed as determinative as to when Ms. Bakalar was actually working on the blog content. There are several reasons why the posting times are not determinative. First, it cannot be verified that the posting times listed on the blog accurately reflect Alaska Time. In fact, a discrepancy between blog and Facebook posting times for certain articles suggests that the posting time for at least one of the sources is inaccurate.⁵³ Second, Ms. Bakalar's blog site allows her to pre-select an automatic time for posting an article, meaning she can compose an article at home at

typically notify Ms. Vandor that they will be late and will often indicate that they will make up the time during their lunch hour or by working later.

⁴⁹ Bakalar Interview; Vandor Interview.

⁵⁰ Bakalar Interview.

⁵¹ Bakalar Interview.

⁵² Bakalar Interview. Ms. Bakalar has indicated that her work computer was occasionally used to review her blog's readership statistics. Such use would not involve any work on the content of articles on the blog.

⁵³ There are a number of Facebook posts in which blog articles are shared registering a Facebook posting time that is earlier than the time the article is shown as being posted to the blog. In order to share the blog posting to Facebook, the article has to first be posted to the blog. It follows that there should not be any Facebook postings that pre-date the blog postings. This discrepancy is sufficient to cause concern regarding a too-strict reliance on the blog posting time as evidence of when Ms. Bakalar was working on her blog.

night and pre-select a time the next day for the article to be posted to the blog.⁵⁴ Finally, Ms. Bakalar acknowledges that on occasion she will compose an article at night and delay posting it until the next day. On such occasions she may manually click on the button to post the article during work hours, but won't have actually worked on the content during work hours. For these reasons, the conclusion of the investigation is that the extent of Ms. Bakalar's work on her blog posts cannot accurately be determined by simply reviewing the posting times on her blogs.

Based entirely on Ms. Bakalar's own admissions, it must be concluded that on occasion she has engaged in some activities associated with her blog during her normal work hours. Similarly, on rare occasions, Ms. Bakalar has indicated that she may have used her work computer for tasks associated with her blog.

B. Did Ms. Bakalar's Blogging Activities that Occurred During her Normal Work Hours or with Use of her Work Computer Violate any State Statute or Policy?

Answer: No.

1. Statutory and Policy Restrictions on Personal and Political Activity

There are several restrictions applicable to state employees which prohibit them from engaging in conduct that benefits them personally or financially or which involves partisan political activity on work time or with state resources. Two primary statutes establish the framework for the activities that state employees may or may not engage in during work hours or with state resources.

The State Personnel Act, AS § 39.25.178, codifies the political rights of state employees.⁵⁵ Among the rights protected by the Personnel Act is the qualified right of a

⁵⁴ Bakalar Interview. Ms. Bakalar claims that she does not routinely use the pre-selected posting feature but has periodically used it over the history of her work on the blog. She can't recall specific times or specific posts for which when she has used the pre-set posting option. In reviewing the blog's posting times there are an unusual number of posts which show a posting time of exactly 5:00 p.m. It is possible that these posts reflect occasions when Ms. Bakalar set a pre-determined time for posting.

⁵⁵ The Department of Law Civil Manual provides a useful summary of the rights and restrictions on political activities for state employees. The manual provides:

Division employees, like all state employees, enjoy statutory protection to engage in certain political activities. See AS 39.25.178. A state employee may:

state employee to “express political opinions.”⁵⁶ This right is a qualified right because the state employee may not display or distribute partisan political material while engaged on official business.⁵⁷

The restriction on engaging in certain activities on work time and with state resources is further set forth in the Alaska Executive Branch Ethics Act (“Ethics Act”), AS § 39.52.010 et seq. At issue for the purpose of this investigation are two restrictions found in the Ethics Act. The restrictions bar state employees from:

[using] state time, property, equipment, or other facilities to benefit personal or financial interests⁵⁸;

and

[using] or [authorizing] state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes...⁵⁹

“Partisan political purposes” is defined to mean having the intent to differentially benefit or harm a candidate or potential candidate for elective office or a political party or group.⁶⁰

In addition to the applicable statutes, the State’s Information and Security Policy regarding “Business Use/Acceptable Use” prohibits employees from using the email system and other communications to engage in:

Express political opinions; however, while engaged in official business, a state employee may not display or distribute partisan political material.

In addition, AS 39.52.120(b)(6) prohibits the use of any state funds, facilities, equipment services, or government asset or resource for partisan political purposes....

As explicit as these provisions are, they do not replace good judgment in your daily conduct of state business. They also may not cover every possible situation. Employees are encouraged to seek guidance from their supervisor if questions arise.

Department of Law Civil Manual, pp. 12-13.

⁵⁶ AS § 39.25.178(3).

⁵⁷ AS § 39.25.178(3).

⁵⁸ AS § 39.52.120(b)(3).

⁵⁹ AS § 39.52.120(b)(6).

⁶⁰ AS § 39.52.120(b)(6)(A)(i) and (ii).

Any illegal activity;⁶¹

Use for fundraising, political campaign or partisan activities, or public relations activities not specifically related to SOA government activities.⁶²

2. Ms. Bakalar's Use of Work Hours for Personal Activities was De Minimis and Within Commonly Accepted Limits

The head of Ms. Bakalar's section, Ms. Vandor, acknowledges that the sixteen attorneys she supervises routinely take intermittent breaks during their work day.⁶³ During such breaks it is not uncommon for the attorneys to engage in a variety of personal tasks.⁶⁴ Such tasks can include getting coffee, making a personal phone call, sending a text message, checking personal email or social media, or reading items online.⁶⁵ Ms. Vandor is not aware of any written departmental policy that specifically authorizes such breaks but believes the practice has been to allow such activities as long as they remain de minimis.⁶⁶

Ms. Vandor describes Ms. Bakalar as an exceptional attorney who can produce organized, top-notch legal work quicker than any attorney she has supervised during her long career.⁶⁷ She further describes Ms. Bakalar as "a worker" who frequently reaches out to fellow employees offering her assistance. Because Ms. Bakalar can turn around work so quickly, she ends up performing more overall work than others in her section.⁶⁸ While Ms. Vandor has not specifically monitored exactly what Ms. Bakalar does during her brief break periods, she is certain that it has not interfered with her work

⁶¹ Business Use/Acceptable Use Policy, Section 5.1.9.1. This could conceivably be implicated if Ms. Bakalar's conduct violated either the State Personnel Act or the Executive Branch Ethics Act.

⁶² Business Use/Acceptable Use Policy, Section 5.1.9.1.

⁶³ Vandor Interview.

⁶⁴ Vandor Interview.

⁶⁵ Because attorneys in the Labor and State Affairs section often get involved in issues that are political and newsworthy, it is not uncommon for the attorneys to keep abreast of political and news developments during the workday by checking various internet news sources.

⁶⁶ Vandor Interview.

⁶⁷ Vandor Interview.

⁶⁸ Vandor Interview.

and has not been excessive.⁶⁹ Based on her observations, Ms. Vandor believes Ms. Bakalar spends no more time on breaks than any other attorney she supervises.⁷⁰

In addition to her diligence during the work day, Ms. Vandor reports that Ms. Bakalar is very responsive during non-work hours. It is common to receive work-related messages from Ms. Bakalar at all hours of the day or night. Put simply, Ms. Vandor describes Ms. Bakalar as being extremely conscientious about her work.

Based upon the information obtained from Ms. Bakalar and Ms. Vandor and absent any contradictory evidence, the investigation concludes that Ms. Bakalar's personal activities during work hours are de minimis, consistent with that of her co-workers, and fully within the level of such activity historically accepted by Department management.

3. Incidental Work by Ms. Bakalar on her Blog Occurring During Work Hours does not Violate any State Statute or Policy

Because Ms. Bakalar's use of personal time during work hours is deemed to be acceptable, the only question is whether the nature of the personal activities undertaken by Ms. Bakalar during such break periods is unlawful or inappropriate. The Ethics Act prohibits employees from using state time, property, equipment or other facilities to advance personal or financial interests.⁷¹ Ms. Bakalar receives no income or remuneration from her blog.⁷² It follows that work performed by Ms. Bakalar on her blog during her work hours or using her work computer would not benefit Ms. Bakalar's personal or financial interest and thus would not violate AS § 39.52.120(b)(3).

The Ethics Act also prohibits employees from using or authorizing state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes.⁷³ A review of Ms. Bakalar's blog postings indicates that a minority of her posts can be considered as being for "partisan political purposes" under the statute. The definition of "partisan political purpose" is quite narrow. Only activities that have the "intent to differentially benefit or harm a candidate or potential candidate for elective office" or a political party or group are considered as having a partisan political purpose. Accordingly, while a significant portion of the content of Ms. Bakalar's blog can be

⁶⁹ Vandor Interview.

⁷⁰ Vandor Interview.

⁷¹ AS § 39.52.120(b)(3).

⁷² In the few instances the Alaska Dispatch News paid Ms. Bakalar to publish one of her posts in the newspaper as a commentary, Ms. Bakalar ensured that her supervisor and others within the state approved of her receipt of a payment.

⁷³ AS § 39.52.120(b)(6).

interpreted to evince a liberal or progressive worldview, few posts actually meet the definition of having a partisan political purpose.

The majority of posts that can be described as “political” involve criticism or satirical mockery of Donald Trump. Ms. Bakalar acknowledges that her blog rarely references any specific political figure other than Mr. Trump.⁷⁴ Many of the posts concerning Mr. Trump, while political in nature, cannot be viewed as having a “partisan political purpose,” based upon its statutory definition. Once Mr. Trump was elected President, he was no longer “a candidate or potential candidate,” therefore any critical posts concerning him post-election would not be a violation of the Ethics Act and would simply be allowable political opinion or commentary.⁷⁵

Accordingly, the sphere of posts on Ms. Bakalar’s blog that can be said to potentially involve partisan political activity occurred prior to November 8, 2016, during Mr. Trump’s presidential candidacy. During this period there are certainly posts critical of Mr. Trump which can be characterized as having the intent to “differentially harm” Mr. Trump’s candidacy. It is important to understand, however, that there is no evidence that any of these specific potentially partisan posts were ever worked on by Ms. Bakalar during work hours or using state resources.

Ms. Bakalar has acknowledged that she has on rare occasions done some minor work on a post during work hours or possibly used her work computer for some work on her blog.⁷⁶ There is no evidence, however, that links any of these rare occasions to any specific post concerning Donald Trump during the presidential campaign. In other words, on the rare occasions when Ms. Bakalar engaged in any work involving her blog during work hours, it may have involved posts which did not constitute partisan political activity and were thus acceptable for Ms. Bakalar to work on during her de minimis breaks.

Even if we assume that on one of those occasions when Ms. Bakalar worked on her blog during work hours she actually worked on a post that could be considered as having a partisan political purpose it is still unlikely that she violated any statutory prohibition. The Ethics Act incorporates its own “de minimis” standard. For instance, AS § 39.52.110(a)(3) states:

(3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that

⁷⁴ Bakalar Interview.

⁷⁵ Note that the State Personnel Act expressly acknowledges that state employees retain their right to “express political opinions.” AS § 39.25.178(3)

⁷⁶ Bakalar Interview.

are unavoidable in a free society, and those conflicts of interest that are substantial and material.

Similarly, AS § 39.52.110(b) states:

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

(2) action or influence would have insignificant or conjectural effect on the matter.

Accordingly, because the evidence establishes that the vast majority of work performed by Ms. Bakalar on her blog occurs during non-work hours and that the few de minimis instances on which some work on the blog may have occurred during work hours did not necessarily involve an posts that could be said to have a "partisan political purpose," Ms. Bakalar's activities, when viewed in their entirety, do not appear to violate any state statute or policy.

V. Conclusion

Ms. Bakalar's activity with respect to her blog "One Hot Mess Alaska" is an activity that takes place predominately on Ms. Bakalar's own time and would appear to be protected activity. Any amount of work or activity with respect to the blog occurring during normal work hours appears to fall within the accepted level of de minimis personal activity allowed by her section. It cannot be established that any of the de minimis activity occurring during normal work hours involved activity having a partisan political purpose.

Sincerely,

SEDOR, WENDLANDT, EVANS & FILIPPI, LLC



William J. Evans

From: Bakalar, Elizabeth M (LAW)
Sent: Monday, February 27, 2017 10:49 AM
To: Lindemuth, Jahna M (LAW); Cantor, James E (LAW); DeVries, Steven D (LAW); Vandor, Marjorie L (LAW); Grace, Joanne M (LAW)
Cc: Jim Sheehan (jsheehan@stsl.com)
Subject: RE: Independent Personnel Investigation and Retention of Counsel

All,

I have an important follow-up that I think you should know about—and that Mr. Evans should know about—because it affects our entire Department, and I want this email and the attachment made part of the official record of Mr. Evans' "investigation." I know for a fact that Ms. Driscoll-Stroup is behind the attack on my job via the Legislature. Rick Allen from OPA forwarded me the attached screenshot of Ms. Driscoll-Stroup's Facebook status attacking other "top appellate attorneys" in our office. She is not going to stop with me.

And while it might be politically expedient/necessary to "investigate" me, it won't be economical to spend thousands of dollars doing this to every lawyer in our office at the whim of a lunatic, whether she has the ear of the legislature or not. I just want you to understand who you are dealing with here, and that others could be impacted, as I have been.

I will add that this entire situation is making me incredibly stressed out and it is creating a very difficult work environment for me. I am having trouble eating, sleeping, and generally remaining sane and calm throughout this, much less focused on my work which I am doing my best to continue undistracted. I am crying at my desk every day. I have no idea when this investigation is starting or when it will end.

I feel like this is a LOT of indignity and uncertainty for a good employee to suffer, and while I understand why it's happening, I would also hate to see others—apparently many of our best lawyers per Ms. Driscoll-Stroup herself—go through the same thing at the instigation of one individual with a vendetta that she appears completely unwilling to abandon.

Thanks,

Libby

From: Bakalar, Elizabeth M (LAW)
Sent: Thursday, February 16, 2017 2:36 PM
To: Lindemuth, Jahna M (LAW); Cantor, James E (LAW); DeVries, Steven D (LAW); Vandor, Marjorie L (LAW)
Cc: Jim Sheehan (jsheehan@stsl.com)
Subject: Independent Personnel Investigation and Retention of Counsel

All,

Margie and Jim came to my office this morning to inform me that a contract is underway at the instigation of several legislators and one of their constituents into my popular blog, One Hot Mess. The purpose, as I understand it, is to conduct an independent personnel investigation into my blogging activities and its relationship to my work life, a relationship which is of course non-existent. My understanding is that the person who is being hired to conduct this investigation is an employment attorney named Bob Evans, whom I do not know.

I have reason to believe that this complaint has been initiated by a long-time online reader/stalker of One Hot Mess named Nancy Driscoll-Stroup. Ms. Stroup is an under-employed attorney living in the Mat-Su Valley, has documented white supremacist leanings, and has taken similar actions against other people with whom she disagrees to the point that she succeeded in getting her children expelled from the Valley Charter School based on her harassing conduct. She also initiated a similar personnel action this year against a federal law clerk, who was subsequently hospitalized with a mental health breakdown (though not ultimately disciplined to my knowledge) as a result of the "investigation" into the intersection of her work life and her so-called "political" beliefs, as initiated by Ms. Driscoll-Stroup.

I will not be bullied and threatened by this individual, or by anyone.

Regardless of the origins of the complaint, based on our conversation this morning, it is my understanding that you are not asking me to stop blogging on my own time or to take down my blog, and I have no intention of doing either. It is also my position that I do not use state time and resources beyond any *deminimus* level to look at, read, or write my blog notwithstanding the time stamps on some of the posts, for which there is a ready explanation that I will be happy to share with Mr. Evans.

It is further my position that I am a productive and valued member of this Department, just promoted to an Attorney V in December, with an excellent relationship to almost all my co-workers and every last one of my clients throughout my ten plus years at the Department and my three plus years of writing my blog. It is further my position that I have a First Amendment right to my beliefs and all of my writings on my own time. I have many references who would vouch for me and I plan to share their names with the investigator should he request them.

That said, I am taking this situation seriously. At this time, I have retained an attorney, Jim Sheehan, of Simpson, Tillinghast, Sorensen and Sheehan to represent me on all matters related to this "investigation" and its ultimate outcome. I have copied him on this email. Please pass on this information to Mr. Evans, who can reach me through Mr. Sheehan at the above email and at (907) 586-1400.

I fully plan to cooperate with Mr. Evans, but not without my attorney present.

Sincerely,

Libby

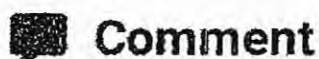
Libby Bakalar
Assistant Attorney General
State of Alaska
Department of Law
Labor & State Affairs
Tel: (907) 465-3600
Fax: (907) 465-2520



Nancy Driscoll Stroup

15 mins •

The "Deep State" is a true problem in our country. I have been doing some research. The vast majority of AAGs for the State of Alaska are liberal. One of them - one of the State's top appellate attorneys - (not Libby but another AAG) who has represented the State in many high profile political cases (including US Supreme Court cases) is posting all sorts of left - wing liberal nonsense on her twitter feed and keeps re-tweeting the completely bogus "Rogue Potus Staffer" stuff. This is a problem because so many cases are politically charged and attorneys and judges take the side/issue opinions based on their partisan opinions. The law is so malleable it is ridiculous. Planned Parenthood just sued our State. I don't trust ANY of these AAGs to represent conservative Alaskans' interests.



MEMORANDUM

From: Tuckerman Babcock,
Governor-Elect Dunleavy
Transition Chair

Date: November 16, 2018

Re: Request for Resignation

Over the next several weeks, the outgoing and incoming administration are working together to make the transition from Governor Walker to Governor-Elect Dunleavy as seamless as possible. Both administrations greatly appreciate the dedication and service of all employees who serve the State of Alaska. We understand that transitions can be difficult both personally and professionally. Therefore, we are working to provide you with information to make the transition process as smooth as possible.

As you are aware, Governor-Elect Dunleavy will be sworn into office on Monday, December 3, 2018. In the coming weeks, the incoming administration will be making numerous personnel decisions. Governor-Elect Dunleavy is committed to bringing his own brand of energy and direction to state government. It is not Governor-Elect Dunleavy's intent to minimize the hard work and effort put forth by current employees, but rather to ensure that any Alaskan who wishes to serve is given proper and fair consideration.

As is customary during the transition from one administration to the next, we hereby request that you submit your resignation in writing on or before November 30, 2018 to Team2018@alaska.gov. If you wish to remain in your current position, please make your resignation effective upon acceptance by the Dunleavy administration.

Acceptance of your resignation will not be automatic, and consideration will be given to your statement of interest in continuing in your current or another appointment-based state position. Please also include your e-mail address and phone contact so that you can be reached to discuss your status directly.

Governor-Elect Dunleavy is encouraging you and all Alaskans to submit their names for consideration for service to our great state. Should you desire to continue your service to the State of Alaska in another appointment-based position, you are invited to submit your information and the position(s) you desire for consideration before December 3, 2018. Please submit your application through the portal located at GOVERNORMIKEDUNLEAVY.COM.

We appreciate your assistance and cooperation during this period of transition. Again, we wish to express our sincere gratitude for your dedication and service to the State of Alaska and wish you the best in your future endeavors.

Note: If you believe you have received this message in error please so indicate in a reply to the above electronic mail address.

ALASKA STATE LEGISLATURE



27 November 2018

The Honorable Mike Dunleavy
Governor-elect of the State of Alaska
3rd Floor, State Capitol
Juneau, AK 99811

Dear Mr. Dunleavy,

You recently requested resignations from all current at-will State of Alaska employees, with the stated objective to maintain the employment of only those who "want to work on" your administration's "agenda." The employees will be terminated unless they express "a positive desire" to serve the Dunleavy administration through an affirmative statement in writing. We believe your policy is ill-considered, and we call on you to reverse course on it immediately.

We certainly recognize your right to seek the resignations of those state employees whose positions are more policy-oriented in nature—department commissioners, directors, executive staff, and the like. However, your resignation demand goes far beyond that. The state employees whose resignations you have demanded are professionals with specialized education, training, and skill sets—and years of experience. Among the employees from whom you've sought resignations are medical doctors, psychiatrists, pharmacists, fiscal analysts, state tax code specialists, investment managers, petroleum geologists, trust managers, accountants, research analysts, IT professionals, loan officers, military & veterans affairs coordinators, marine transportation managers, administrative law judges, and state attorneys presently working on behalf of the public on important and complicated legal issues, including prosecutors on criminal cases.

The functions of these employees are not political. They serve the state's needs and its greater good. These individuals swear an oath to uphold and defend the U.S. and Alaska Constitutions, not a pledge to support any particular state chief executive. We do not believe they should feel intimidated into specific allegiance to the Dunleavy administration. Whether or not you intended it, your policy effects a demonstration of loyalty, and only then through economic coercion and a risk of negative impacts to one's professional career. These employees are now faced with unwarranted personal uncertainty; they only know that their best chance of preserving their current employment and their livelihoods is through attesting their strong desire to serve you.

While you've acknowledged that you've "broadened the scope" from the typical set of public servants who are asked to resign by an incoming administration, you've suggested this move is yet "customary." Your request is far from customary. On Friday November 16, the day you issued your policy memorandum, your transition chairman and incoming chief-of-staff stated to media that he did not know the number of exempt and partially exempt at-will employees who received the memo, but

indicated he believed it to be over 400. In time, we have learned the number is in excess of 1,200 employees. By comparison, Governor Walker's similar resignation request affected only about 250 employees.

Your resignation demand implicates several serious additional concerns. Public employees are citizens with First Amendment rights, but your resignation and rehire policy tends to effect a chill to their freedom of speech and freedom of association. We hope and anticipate that none of these public servants will experience loss of his or her job due to past or present political affiliation or other activities. We further hope and expect that your administration will continue to respect the freedoms and diverse perspectives of those serving in these state positions in non-political roles, whose sole focus is to work to improve the state and the lives of the people of Alaska.

While you sort through your hiring decisions, in the meantime, your resignation policy will continue to leave employees with anxiety and poor morale, which unsurprisingly detracts the state. If every incoming administration were to take this same posture with respect to our at-will employees—every four or eight years—we imagine the instability to our workforce that would result. This is certainly not the behavior one would ever expect in the private sector—wholesale resignation demands anytime a new chief executive takes the helm. The uncertainty employees would feel would cause many of our highly skilled, specially trained personnel to seek employment elsewhere, even out of state. Disruption and discontinuity to our projects and programs harm Alaska.

Your action also raises other significant questions. It's been observed in the media that when a state employee is terminated—even for just one day—that person's accrued leave balance must be "cashed out." As of November 19, the present value of cashing out the 1224 state employees' leave was \$20,755,631. Even if some or most of these employees end up staying with the State, if some or many are in fact terminated, or they decide to leave based on perceived insecurity as a result of your policy, this could result in large leave payouts that the State may not have anticipated, especially in its present fiscal circumstances. What provisions have you made in anticipation of these leave payouts?

What will be the unemployment benefits eligibility status of state employees affected by your policy who lose their jobs as a consequence? Alaska Statute 23.20.379 provides that an insured worker is disqualified for unemployment benefits for up to the initial six weeks when the worker "left [his or her] last suitable work voluntarily without good cause." It's possible that your resignation requirement could be construed by a court as a "voluntary" departure, because the end of state service would be based first on the employee's submitted resignation, then your acceptance. In fact, even the employee's decision *not to submit* a resignation could be deemed a "voluntary" departure, because as your transition chair has forewarned, where an employee does not submit one, then "you've let us know you just wish to be terminated." In light of this notice, the employee who elects to forego an *attempt* to keep his or her job may well be considered to have quit.

At any rate, your resignation policy may subject the State to legal action in this regard, even a class action. And employees presently uncertain of their continued state service are undoubtedly weighing the possible outcomes extending from your policy against what may be best for their families in the long-run, and pursuing unemployment benefits is likely on their minds.

Further troubling is that you are requiring employees to resign to a State email address, Team2018@alaska.gov, but for rehire, to submit their application materials online at a private website, www.governormikedunleavy.com. We question whether this private website—which uses a private Lower-48 corporation to collect our state employees' information—provides a proper, legal venue for

receipt of such submissions for official State business. Will actions taken via your private website allow legally mandated transparency? Will legitimate future requests for documents under the Freedom of Information Act and the Alaska Public Records Act be honored? Will the information collected on this website regarding state employees be used for any purposes other than to assess their hiring?

We also question whether the privacy and security features of your website align with State of Alaska policies for handling such applicant information. The State's web use policy explains it is "committed to protecting visitor privacy and developing technology" to provide "a safe and secure online experience," and that it has "appropriate security measures in place to protect against the loss, misuse, or alteration of information that has been collected from visitors." On the other hand, your private website expresses outright that an applicant's personal information *could be disclosed* to entities like "subsidiaries and affiliates" of the private hosting company, and to "contractors, service providers and other third parties." This company also establishes that it has no liability for accidental loss of personal data, as it "cannot guarantee the security of [an applicant's] personal information"; "transmission of personal information is at [the user's] own risk." Your hiring practices therefore force applicants to choose between applying for rehire, or ensuring the security of their private information, and we wonder whether the use of this private site violates State privacy and security policies in any event.

Concerning hiring procedures, is your approach commensurate with State policies or best hiring practices? For instance, your memo advises employees that they may re-seek their present posts or "another appointment-based state position," which suggests that opening positions may not or will not be advertised to the public before filled. We do not see this as sound government hiring process. Alaskans should be afforded the opportunity to review and apply for open government service positions for which they may be better qualified, rather than hiring only those already in the system who are aware of existing positions and who have crafted persuasive statements of interest for you. In addition, we understand that for many of the affected at-will positions, hiring procedures had previously been followed that included review by human resource agents for application component completeness, for minimum qualifications and training, for nepotism concerns, and for equal opportunity enforcement, as well as hiring panels who deliberated on candidate selection and conducted interviews. Such good practices lead to selection of fit public servants and allows the State to maintain accurate and complete records of hiring decisions.

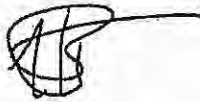
We are additionally troubled by the public safety implications of your action. Aside from further damaging the morale of our state attorneys, summarily terminating prosecutors in the midst of legal matters and court process could result in more criminals being set free and inexperienced attorneys being forced to litigate cases.

Based on the foregoing concerns and outstanding questions, we ask that you immediately rescind your blanket request for resignations from all at-will state employees. A better approach would be to allow these employees to continue their duties and commitment to the State of Alaska during your administration, and if or when an employee appears—in your competent judgment—to inadequately serve Alaska's best interests in his or her assigned role, then termination would be an appropriate action.

Sincerely,



Senator Bill Wielechowski



Senator Tom Begich



Senator Donny Olson



Senator-elect Elvi Gray-Jackson



Senator-elect Jesse Kiehl



Representative Matt Claman



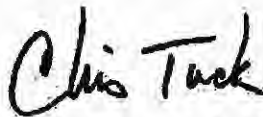
Representative Les Gara



Representative David Guttenberg



Representative Scott Kawasaki



Representative Chris Tuck

ANCHORAGE DAILY NEWS

Politics

Dunleavy team asks all at-will state workers for resignations

✍ Author: Annie Zak ⓘ Updated: November 17, 2018 📅 Published November 16, 2018



Alaska Gov.-elect Mike Dunleavy addresses the Alaska Miners Association annual conference at the Dena'ina Convention Center in Anchorage on Nov. 8. (AP Photo/Mark Thiessen)

This story has been updated with a new article.

Alaska Gov.-elect Mike Dunleavy's transition team on Friday sent an email to all at-will state employees asking them to submit resignation letters and, if they choose, reapply for their jobs. The request went to a bigger group of state workers than occurred with previous incoming governors, according to Dunleavy's transition team.

"Such a move is customary when a new administration takes over, but the governor-elect has broadened the scope

of which employees have been asked to take this step," said a statement emailed by Dunleavy communications director Sarah Erkmann Ward.

Broadening that scope to include all at-will state employees, rather than a smaller, more select group, "typically has not been done in the past," she said in another email.

Dunleavy, a Republican, will be sworn in on Dec. 3.

At an Anchorage hotel Friday night for a separate announcement, Dunleavy told a reporter, "we look forward to talking with a whole bunch of folks" in Gov. Bill Walker's current administration.

"We want to give people an opportunity to think about whether they want to remain with this administration and be at to have a conversation with us," Dunleavy said when asked why the scope of the resignation letter request included all at-will state workers.

Dunleavy's transition chairman Tuckerman Babcock said employees are being asked to submit resignation letters, but that doesn't mean those resignation letters are automatically accepted. The request does not affect classified employee Babcock said.

"(Dunleavy) just wants all of the state employees who are at-will -- partially exempt, exempt employees -- to affirmatively say, 'Yes, I want to work for the Dunleavy administration,'" Babcock said. "Not just bureaucracy staying in place, but sending out the message, 'Do you want to work on this agenda, do you want to work in this administration? Just let us know.'"

Later, he said, "I do think this is something bold and different, and it's not meant to intimidate or scare anybody. It's meant to say, 'Do you want to be part of this?'"

It wasn't immediately clear how many employees were asked to resign on Friday.

Babcock said he did not know the number of how many at-will employees have been asked to submit resignations. He used 400 as a number of workers that have been asked to submit letters of resignation in the past.

"So you add in AHFC (Alaska Housing Finance Corp.) and AIDEA (Alaska Industrial Development and Export Authority) and the Permanent Fund and all these independent agencies," Babcock said. "But independent agencies all serve the public, and they're all part of the administration."

In 2014, a transition team member for Walker also sent out a statement asking members of former Gov. Sean Parnell's administration to submit resignation letters. That letter affected about 250 state workers, the Anchorage Daily News reported at the time.

Employees have been asked to submit their resignation in writing on or before Nov. 30, according to the memo that was sent to workers on Friday.

"Acceptance of your resignation will not be automatic, and consideration will be given to your statement of interest in

continuing in your current or another appointment-based state position," the memo said.

The other alternative for at-will workers who don't submit a letter of resignation is termination from the job, Babcock said.

"If you don't want to express a positive desire, just don't submit your letter of resignation," Babcock said. "And then you let us know you just wish to be terminated."

At the Crowne Plaza hotel for the Alaska Farm Bureau's annual banquet, Dunleavy announced the appointment of Tam Ledbetter as his commissioner of the Department of Labor and Workforce Development.

"She's worked in the department for some time, she comes with great recommendations," Dunleavy said. "She's had a lot of administrative experience, her educational background is terrific."

Ledbetter is currently a regional manager for the agency's Anchorage and Matanuska Susitna Valley region. She's registered as a Republican, according to state voter registration data. Ledbetter is a veteran of the U.S. Air Force and has a doctorate degree and master's degree from the University of Phoenix, according to information from the Dunleavy transition team. She also has a bachelor's degree from Virginia Union University.

About this Author

Annie Zak

Annie Zak covers business news and general assignments.

Comments

Attorney General Jahna Lindemuth
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501

Attorney General Jahna Lindemuth:

Per the November 16, 2018 request of Transition Chair, Tuckerman Babcock, please accept this letter as notice of my resignation from my position as Assistant Attorney General in the Labor & State Affairs Section of the Department of Law. My resignation is not voluntary, but is instead being made at the request of Mr. Babcock, who has indicated that if I do not submit my resignation as requested my employment will be terminated. I would like to continue serving the State of Alaska in the new Governor Dunleavy administration in my current position, and hope that my resignation is not accepted.

I have been with the department over 12 years, and I am assigned to work primarily on elections matters on behalf of the Office of the Lieutenant Governor. In that capacity, I represent the Division of Elections in litigation; provide agency advice; testify on legislation; assist with federal compliance; and help draft legislation and regulations in the area of elections law.

In non-election years or when my elections workload is light, I also handle overflow work for numerous other client agencies. In addition to the Office of the Lieutenant Governor and the Division of Elections, in my 12 years with the Department of Law, I have represented—and continue to represent on an as-assigned basis—the following state agencies in all stages of litigation, regulations, compliance, and agency advice:

- **THE OFFICE OF THE GOVERNOR**
 - Boards & Commissions
 - Public Records
 - Alaska State Commission on Human Rights
- **THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES**
 - Commissioner's Office
 - Office of Children's Services
 - Division of Public Assistance
 - Division of Public Health
 - Division of Behavioral Health
 - Alaska Pioneer Homes
 - Division of Vital Statistics
 - Division of Health Care Services
 - Division of Senior and Disabilities Services
 - Division of Juvenile Justice
- **THE DEPARTMENT OF ADMINISTRATION**
 - Division of Retirement and Benefits
 - Division of General Services
 - Office of Information Technology
 - Alaska Public Offices Commission
 - Division of Personnel and Labor Relations

- Division of Motor Vehicles
- **THE DEPARTMENT OF PUBLIC SAFETY**
 - Commissioner's Office
 - Division of Alaska State Troopers
- **THE DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT**
 - Alaska State Council on the Arts
- **THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS**
 - Alaska Air National Guard
 - Alaska Army National Guard
- **THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**
 - Division of Labor Standards and Safety
 - Division of Labor Relations
 - Division of Vocational Rehabilitation
 - Division of Workers' Compensation
- **THE DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT**
 - Division of Corporations, Business and Professional Licensing
 - Alaska Seafood Marketing Institute
 - Division of Community and Regional Affairs
- **THE ALASKA COURT SYSTEM.**

To clarify, I am submitting this notice in response to the November 16, 2018 mass email memorandum from Mr. Babcock seeking my (and other similarly situated state employees') resignation. I understand this resignation is only effective upon receiving notice from you or a new attorney general, and in no event will it be effective earlier than December 3, 2018 at noon.

Over the last 12 years, I have exceeded job expectations, successfully representing the aforementioned agencies. In fact, my representation has resulted in favorable decisions from the Alaska Supreme Court and the Ninth Circuit Court of Appeals in *Hughes v. Treadwell*, 341 P.3d 1121 (Alaska 2015); *State v. Alaska Fisheries Conservation Alliance, Inc.*, 363 P.3d 105 (Alaska 2015); *Bachner, Inc. v. State*, 387 P.3d 16 (Alaska 2016); *Mallott v. Stand for Salmon* (2018 WL 375103, August 8, 2018); *Nageak v. Mallott*, 46 P.3d 930 (Alaska 2018); *Patterson v. Walker*, (2018 WL 5093232, October 19, 2018); and *Raymond v. Fenumiai*, 580 Fed.Appx. 569 (Mem) (9th Cir. 2014).

Because I am not interested in a different position in the new administration, I have not submitted my name for consideration through the GOVERNORMIKEDUNLEAVY.COM portal.

Sincerely,

/s/Elizabeth M. Bakalar/
Assistant Attorney General

cc: Team2018@Alaska.gov

From: Sniffen, Clyde E (LAW) <ed.sniffen@alaska.gov>
Sent: Monday, December 03, 2018 12:18 PM
To: Bakalar, Elizabeth M (LAW) <libby.bakalar@alaska.gov>
Cc: TEAM2018, gov (GOV sponsored) <team2018@alaska.gov>
Subject: Resignation Notice

Libby,

Sorry Libby. Wrong name on last email. Correcting.

As Acting Attorney General, I want to let you know that your resignation has been accepted and is effective as of 12:01 p.m. on December 3, 2018. I want to sincerely thank you for your service to the people of Alaska; it has been invaluable. I wish you luck in your future endeavors.

Clyde "Ed" Sniffen Jr.
Acting Attorney General
Alaska Department of Law
1031 W. 4th Ave. #200
Anchorage, AK 99501
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907-465-4044 (Juneau)