



OMBUDSMAN COMPLAINT A2013-0210

This investigative report has been edited and redacted to remove information made confidential by Alaska Statute and to protect privacy rights.

June 26, 2014

BACKGROUND

A resident of a rural community was arrested in December 2012. He was charged with several crimes and as of this writing remains incarcerated pending trial on the original charges and several other charges. He has been transported to and from the Community Jail in his town to the Department of Corrections (DOC) Anchorage Correctional Complex (ACC) on several occasions during his incarceration.

The Inmate initially contacted the ombudsman to report that DOC lost his money when he was transported from the Community Jail to ACC on December 31, 2012. He reported that his property was not inventoried in front of him when he arrived at ACC and the money was not subsequently placed in his prisoner account. Before the inmate contacted the ombudsman, he filed a lost property claim with ACC. ACC Superintendent Debbie Miller denied the claim, based on the recommendation of staff.

The ombudsman opened an investigation into the following allegation, stated in terms that conform to AS 24.55.140:

Performed inefficiently: Department of Corrections failed to safeguard inmate funds to prevent loss during transfer between facilities.

Alaska Ombudsman Linda Lord-Jenkins sent notice of investigation to Department of Corrections Commissioner Joseph Schmidt on April 5, 2013. Then Assistant Ombudsman Gwen Byington initially investigated this complaint before she left the ombudsman's office in May of 2013. The investigation was then assigned to Assistant Ombudsman Kate Higgins who drafted this report. Intake Officer Linda Ritchey and Intake Assistant Megan Gosda assisted in this investigation.

After Ms. Higgins received the complaint she contacted DOC staff. Lieutenant Rebecca Cowart-Wilkerson reviewed the complainant's documentation and recommended that DOC reimburse the Inmate for his loss. In making her recommendation, Lt. Cowart-Wilkerson reviewed the same information used previously by the DOC investigator who recommended denying the complainant's initial lost property claim. Supt. Miller subsequently approved the recommendation and DOC reimbursed the Inmate's \$60.

Then, on August 16, 2013, shortly after DOC reimbursed the Inmate, he was transported from the Community Jail to ACC with more money. This time, DOC staff inventoried his money in front of him and the Inmate signed off on the inventory form. DOC subsequently lost the money. The Inmate submitted another lost property claim. After investigation, DOC was unable to determine what happened to that money but decided to credit the Inmate's account for the lost funds.

INVESTIGATION

In reviewing this complaint, the ombudsman investigators interviewed the complainant, DOC staff, Alaska State Troopers (AST) in the community and Anchorage, and Community Jail staff. At the behest of the ombudsman, AST investigated the missing money but was unable to determine what happened to it. Additionally, several members of the ombudsman's Anchorage staff toured ACC specifically to review the facility's procedures for handling property and inmate funds during transfer. Assistant Ombudsman Higgins also reviewed DOC's Policy & Procedures addressing inmate personal property and financial management of prisoner accounts.

Investigation of the December 2012 Loss

On December 31, 2012, the Inmate was transported from the Community Jail to ACC, along with five other inmates. Community Jail staff prepared the inmates' property for transport. According to Community Jail staff, the procedure at the time was to place an inmate's cash in an envelope and tape the envelope to the top of the inmate's property box. An Alaska Wildlife Trooper transported the inmates from the Community Jail to the Community airport, where they were met by two Alaska State Troopers who then flew the inmates to the Ted Stevens International Airport in Anchorage. There they were met by Alaska State Troopers who transported the inmates to ACC.

The Inmate told ombudsman investigators his property and funds were not inventoried in front of him when he arrived at ACC. Failure to inventory property and funds in front of inmates violates DOC Policy and Procedure 302.12.VII.C. which states in part:

C. Cash and other negotiable instruments at booking

1. At the time of booking, the prisoner's cash or other negotiable securities must be relinquished. (Note: Coin or currency of historical value or foreign origin may be inventoried, sorted, and processed as personal property in accordance with Policy 811.05: Prisoner Personal Property.) **When a prisoner is received and an inventory of the articles in their possession or on their person includes cash, the following procedure applies:**

a. **As early as practical in the booking process the booking officer shall inquire of the prisoner what cash or checks are in their or the transporting officer's possession.**

The cash must be counted in the presence of the prisoner and the amount noted on the booking record. Checks will be processed in compliance with 2. below. The prisoner shall sign the booking record acknowledging the inventory of all personal property including cash. **If an individual is for any reason unable to sign the booking record, it shall be noted in the booking record.** In cases where there is a large amount of cash, \$500 or more, a second employee shall verify the amount of cash and initial that portion of the booking record.

b. The cash shall be placed into the cash drawer (till). [Emphasis Added]

The Inmate's property was not inventoried until January 1, 2013, the day after he arrived at ACC according to DOC's electronic record-keeping system. DOC staff could not locate the Inmate's money or any property inventory forms to contradict his account that he had not been present when his property was inventoried. The Inmate's funds were not placed in his offender trust account (OTA).

The Inmate filed a lost property claim. Sergeant Tom Elmore investigated the claim and recommended that ACC Superintendent Debbie Miller deny the claim. In recommending that DOC deny the claim, Sgt. Elmore wrote:

[The Inmate] was transferred from [Community] to ACC on 12/31/12, the file indicates that he did have 60 \$ put on his books while in [Community]. There is also a receipt of disbursement from [Community] on 12/31/12 when he was transferred.

When Property did the inventory on his property at ACC no money was logged. [The Inmate] filed a lost property claim and property did another search of his property box and found no money. DOC should not be held liable for this loss. It is unknown if the money made it out of [Community] or if JS [judicial services] my [sic] have misplaced it. The inmate did not have it when he arrived at ACC.

ACC's report on the investigation did not indicate that anyone from ACC contacted the Community Jail or Judicial Services or did anything more than check the property box to locate the missing money.

Supt. Miller approved Sgt. Elmore's recommendation and the Inmate then complained to the ombudsman. With his complaint he provided a copy of a receipt from the Community Jail acknowledging receipt of \$60 on behalf of the Inmate. He also provided a copy of a "Receipt for Prisoner" form that the transporting officer signed on December 31, 2012 acknowledging that the Inmate had \$60 in cash at the time of transport. He also provided a copy of DOC's response to his lost property claim.

Upon receiving the complaint, the ombudsman investigator contacted AST, whose officers transported the Inmate from his Community to ACC. After ombudsman contact, AST conducted its own investigation but was unable to determine what happened to the money. One of the transport troopers recounted his recollection of the transport for the AST report which stated, in part:

One of the DOC booking officers (James Phillips) informed me that they remove the paperwork from the left side of the files and then discard the [Community] file do [sic] to booking using the DOC's file folder.

He also informed me that it would've been very easy for them to have just thrown away the file without looking into the right hand side due to it contains no pertinent information that is use [sic] by DOC. And the right-hand side is where [Community] jail places the monies.

The AST investigative report stated that one of the other inmates on the December 31, 2012 transport had \$860 in cash in his property which arrived intact. The other inmates had a combined total of less than \$60 cash when they were transported. Those funds also arrived. The AST report stated that at no time did the prisoners have access to the

property boxes. After they were taken to ACC their prisoner folders were handed through a “pass through window” to the booking officer and apparently not seen again.

AST viewed about one hour of video footage from two cameras at the Community Jail which documented the Community Jail officer inventorying property for each prisoner being transported. The AST report stated the video gave no leads for the officer to follow.

The ombudsman investigator also requested video footage from the Community Jail showing staff processing the Inmate’s property. The video purportedly showed an officer counting the Inmate’s money and placing it in his file. However, the video simply showed the officer picking up an envelope, contents unknown, and placing it in one of the transport files for one of the six inmates transported that day. The video also appears to show something taped to the top of the property boxes as Community Jail officers said was their practice. However, the video footage is fairly grainy and did not clearly show the contents of the envelope so it is impossible to know what was in the envelope or in whose file it was placed.

Ombudsman staff toured ACC East in the summer of 2013. Sgt. Elmore led the tour. He explained that, when inmates are transferred from a local jail, their cash is in an envelope and found either in the inmate’s property box or on the inmate’s person. The Sergeant said that after an inmate arrives, the booking officer takes the inmate and his property into the intake room to inventory the property and count his cash, if any. Sgt. Elmore reported it has been at least five years since ACC has received cash with the inmate’s transport file.

Assistant Ombudsman Higgins contacted ACC to get copies of the Inmate’s booking records. She spoke with Lt. Cowart-Wilkerson who was unable to find any booking records for the Inmate’s December 31, 2012, transfer, but who also agreed to conduct another review of the issue of his missing funds. Ms. Higgins provided Lt. Cowart-Wilkerson with copies of the Inmate’s receipts.

After reviewing the documentation, Lt. Cowart-Wilkerson agreed that DOC should reimburse the Inmate because it was unclear who lost his funds. She had the Inmate fill out a second lost property claim, which was later approved by Supt. Miller.

Investigation of the August 2013 Loss

The Inmate was transferred back to the community in the spring of 2013 while awaiting trial.

On August 16, 2013, the Inmate was transported from the Community Jail to ACC with \$326.38 in cash. This time, ACC inventoried his funds with the Inmate present and had him sign the property intake sheet. Sometime later, this money went missing at ACC. The Inmate filed another lost property claim in early September 2013. Sgt. Elmore investigated this claim and recommended approving the claim. He wrote:

Three of the four property clerks have looked for the missing money for this inmate. Video shows that it was taken in the intake room and accounted for. After the property was put in the property room the money was not accounted for and is no longer in the prisoner’s property. I feel this claim should be reimbursed in the amount of \$326.38 dollars. [sic]

Supt. Miller approved this recommendation and the Inmate’s funds were subsequently credited back to his Offender Trust Account.

ANALYSIS AND PROPOSED FINDING

The Office of the Ombudsman Policy and Procedures Manual at 4040 defines the standards against which the ombudsman judges an agency's actions. The policy defines "performed inefficiently" as "instances of unreasonable delay and ineffectual performance."

AS 24.55.150 authorizes the ombudsman to investigate administrative acts that the ombudsman has reason to believe might be contrary to law; unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory, even though in accordance with law; based on a mistake of fact; based on improper or irrelevant grounds; unsupported by an adequate statement of reasons; performed in an inefficient or discourteous manner; or otherwise erroneous. "The ombudsman may investigate to find an appropriate remedy."

Under 21 AAC 20.210 the ombudsman evaluates evidence relating to a complaint against a state agency to determine whether criticism of the agency's actions is valid, and then makes a finding that the complaint is *justified*, *partially justified*, *not supported*, or *indeterminate*. A complaint is *justified* "if, on the basis of the evidence obtained during investigation, the ombudsman determines that the complainant's criticism of the administrative act is valid." Conversely, a complaint is *not supported* if the evidence shows that the administrative act was appropriate. If the ombudsman finds both that a complaint is *justified* and that the complainant's action or inaction materially affected the agency's action, the complaint may be found *partially justified*. A complaint is *indeterminate* if the evidence is insufficient "to determine conclusively" whether criticism of the administrative act is valid.

The standard used to evaluate all Ombudsman complaints is **the preponderance of the evidence**. If the preponderance of the evidence indicates that it is more likely than not that the administrative act took place and the complainant's criticism of it is valid, the allegation is found justified, if the complaint does not meet the standard, the complaint is found to be unsupported.

* * *

The Inmate complained that DOC didn't adequately protect his funds during his December 31, 2012 transfer and again during his August 2013 transfer. The ombudsman investigated the following allegation:

Performed inefficiently: The Department of Corrections failed to safeguard prisoner funds to prevent loss during transfer between facilities.

The ombudsman cannot definitively say what happened to the Inmate's \$60 which went missing on December 31, 2012. Many people from various agencies were involved in transporting him and his money from Community Jail to ACC: the officers at the Community Jail, the Alaska Wildlife Trooper who drove the inmates from the Jail to the airport, the AST officers who flew with the inmates from their Community, and the AST officers that transported the inmates to ACC.

At ACC, the Inmate's property presumably was handled by both a booking officer and a property clerk. The complainant was not present when the property was inventoried, in violation of DOC policy and procedure. Somewhere along the way, his money went missing, but it is impossible to determine at what point. The one thing the ombudsman is certain of is that there is no evidence

to suggest that the Inmate is responsible for his money going missing. He never had it at any point in the transport. State employees had custody of his money when it went missing.

But the ombudsman also cannot say with certainty that the \$60 went missing *after* it arrived inside ACC walls. What is clear to the ombudsman is that DOC's procedure on handling incoming prisoner funds during transport and after arrival at ACC is confusing and inconsistent at best.

In this case, Community Jail officers maybe put the \$60 in an envelope that maybe was attached to the right side of a Community Jail file folder, or maybe it was taped to the top of the complainant's property box. If the \$60 was in an envelope in the jail folder, maybe it was thrown away because contents of the jail transport files are transferred to DOC files and the jail files are occasionally thrown away, apparently without anyone from booking or property thoroughly inspecting them.

The evidence shows that ACC isn't adhering to DOC policy on handling property coming into the institution: The Inmate wasn't allowed to witness ACC staff inventorying his property and, in fact, according to ACC staff, property boxes often are not inventoried in front of prisoners. Aside from violating policy requiring that prisoners witness the inventory, there is no consistent procedure for handling cash coming into ACC from the regional jails. The boxes often sit unattended for hours after transfer. This makes the situation rife for mistakes at best or abuse and theft at worst.

The fact that neither the ombudsman nor AST can determine precisely how the Inmate's \$60 disappeared doesn't relieve DOC of its culpability in this allegation. It is more likely than not that the money went missing while in DOC custody. Therefore, the ombudsman proposes to find this portion of the allegation to be *partially justified*.

In the instance of the Inmate's missing \$326.38, the ombudsman's determination is much simpler. ACC lost the Inmate's money sometime *after* inventorying it in the ACC property/booking area and passing it along to the property section. That the property clerks inventoried the money but then the next day were unable to locate the money makes it indisputable that DOC was inefficient in the handling the funds. The ombudsman proposes to find this portion of the allegation *justified*.

When the ombudsman finds one portion of an allegation to be justified and another partially justified or unsupported, the finding is partially justified. Therefore the ombudsman proposed to find the allegation that DOC failed to safeguard the prisoner's cash during transport to be *partially justified*.

DOC's Response to the Finding:

On behalf of DOC, ACC Superintendent Debbie Miller wrote:

Subsequent review by your office does not confirm [the Inmate's] funds were transported from the [Community] Jail to ACC on December 31, 2012. Further, it notes that funds for other [Community] prisoners transferred on the same day arrived. ACC reimbursed the \$60.00 despite uncertainty of being at fault. This uncertainty is even acknowledged by your office.

Community jails are not DOC facilities. Additionally, DOC does not have authority over AST/Judicial Services who are responsible for transporting the prisoner and their

property and funds. It appears unjust to conclude that DOC failed to safeguard prisoner funds to prevent lost [sic] during transfer between facilities.

The report of any prisoner's property or funds is taken seriously and efforts are made to conduct investigation, as evidenced in the second lost [sic] that occurred in August 2013. On discovery that ACC was clearly at fault in this instance the funds were promptly reimbursed and credited to the Offender Trust Account without notice from your office.

The ombudsman recognizes that there may be a minor element of unfairness to pinning the loss of the \$60 on DOC when others had access to the property boxes. The difference is that the inmates being transported had some awareness of what was going with their property boxes during transport from the jail to the Community airport, to the Anchorage airport and during the AST transport from Anchorage International to ACC. But once the property boxes arrived at ACC they were unattended at least overnight. It is more likely that the loss occurred at ACC than during transport. And, it would be even more unfair to expect the Inmate to bear the loss of his funds when he had no contact with the funds during his transport. It matters not that the funds of the other inmates that traveled with the Inmate did not turn up missing. The Inmate's money did. ACC's argument does not convince the ombudsman to change the finding. This allegation will be closed as partially justified.

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Although ACC initially denied the Inmate's \$60 lost property claim, the agency reassessed the situation after inquiry from the ombudsman investigator and decided to reimburse him, thus rectifying that portion of the Inmate's individual complaint. Supt. Miller also determined that the loss of his \$326.38 in August 2013 was ACC's responsibility and reimbursed him for that missing money, thus rectifying this portion of his complaint.

However, the reimbursements don't address the systemic problems found by ombudsman investigators.

After the Inmate reported the second loss to the ombudsman investigator, staff from the ombudsman's office visited ACC and toured the booking and property areas. Ombudsman staff has toured ACC several times in the past 10 years. These tours always include the property room. During each tour ombudsman staff were told that if pressed for time, the ACC booking officer may bypass the step of inventorying an inmate's property box in the inmate's presence and take the property to the property room without inventorying it in front of the inmate. Once the inmate's box is taken to the property room it sits, unsecured, until a property clerk is ready to inventory it. In the Inmate's case, he was transported on December 31, but his property wasn't inventoried until the next day.

The ombudsman investigator also contacted the Community Jail to discuss their practices in processing inmates' property for transport. The Community Police Officer indicated that he was familiar with the Inmate's complaint and that his December 31, 2012 loss actually triggered a change in practice for Community Jail staff. The Officer said that the jail's old practice was to place an inmate's money into an envelope and then tape the envelope to the top of the inmate's property box. However, Community Jail staff changed practice after the Inmate was transported back to the Community Jail in February or March of 2013 and complained about his lost money. The Officer also recalled that about that time an ombudsman investigator and later AST contacted the Community Jail about the missing money. In response to the Inmates complaints

upon his return to his Community, Jail staff began taping the envelope to the transport file instead of taping it to the property box. Unfortunately, that might be why the \$60 went missing.

ACC's Sgt. Elmore told ombudsman staff that money is either on the inmate's person or in the inmate's property box upon arrival from a local jail. Community Jail staff say that they used to tape the money to the top of the property box and then switched to taping the money to the top of the transport folder after the Inmate's money went missing in December 2012. AST's investigative report indicates that the money was attached to the inside of the transport folder. All of this information is contradictory and, as such, the ombudsman is unable to determine with certainty just how money is being transferred from local jails to DOC facilities.

Past Ombudsman Investigations of Money Missing from ACC

This is not the first time that the ombudsman has received complaints from inmates alleging that DOC lost their money after they were transported from a local jail to ACC. In December 2005, the ombudsman released a report addressing this same issue – in that case, two inmates were transferred from local jails to ACC and their funds were lost.

In response to the ombudsman's report, then-DOC Commissioner Marc Antrim directed that DOC would adopt a policy of only accepting checks or money orders on behalf of inmates transferred into the state system from local jails. This policy was supposed to take effect on January 31, 2006. It appears, however, that the policy was never actually implemented or, if it was, it was later abandoned, as at least the Community Jail in this case was still sending inmates to DOC facilities with cash instead of checks or money orders.

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Finding of Record and Closure

The ombudsman proposed four recommendations to rectify problems uncovered in this investigation. DOC accepted two and rejected two of the recommendations. The ombudsman will not release the content of the recommendations because they relate peripherally to the security of ACC.

This investigation will be closed as *partially justified* and *partially rectified*.

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