



INVESTIGATIVE REPORT

Ombudsman Complaint J2006-0144
(Finding of Record and Closure)

August 28, 2006

PUBLIC REPORT

(Edited to remove confidential information and information that might identify the complainant as per AS 24.55.160)

SUMMARY OF THE COMPLAINT

The Division of Juvenile Justice (DJJ) in March of 2006 filed a Petition for Adjudication against AB (not his real initials), age 14. DJJ did not provide notice of a court proceeding to AB's father, FB.¹

After discovering that DJJ failed to notify him, the father filed a complaint with the Office of the Ombudsman.

On June 6, 2006, the ombudsman opened an investigation into the following allegation stated in terms to conform with AS 24.55.150, which authorizes the ombudsman to investigate complaints about administrative acts of state agencies:

Allegation 1: Contrary to law, the Division of Juvenile Justice failed to provide notice of a court proceeding to the parent of the child who was subject of the proceeding.

During the course of the investigation, the ombudsman added another allegation:

Allegation 2: Contrary to law, the Division of Juvenile Justice failed to serve a Petition for Adjudication and a Summons on the parent of the child who was subject of the proceeding.

The ombudsman finds these allegations ***justified*** for the reasons set forth in this report.

¹ The names have been removed and replaced with initials to protect the identity of the family. The initials have been changed to further protect the family's identity.

Assistant Ombudsman David Newman investigated the allegations and forwarded his report to the ombudsman. Mr. Newman gave written notice of the investigation to DJJ probation officer III Linda Moffitt on June 26, 2006, in accordance with AS 24.55.140.

BACKGROUND

On March 21, 2006, DJJ filed the petition against AB² alleging that AB had had sexual contact with his younger sibling in violation of “AS 11.420(a)(1).” [sic]³

On that same day, DJJ sent the petition and notice of the upcoming court proceeding to AB’s mother, MB. DJJ did not send the petition or notice of the hearing to AB’s father. The mother has primary physical custody of AB and his sibling. The father has visitation two out of every three weekends. The father and mother have joint legal custody of the children.

On April 13, 2006, AB and his mother attended the hearing in Anchorage Superior Court. The father was not present. Later that day, AB contacted his father and informed him about what transpired at the hearing.

On April 14, 2006, the father placed a phone call to DJJ and left a message.

On April 18, 2006, DJJ probation officer Lizbeth Meredith returned the father’s call. Ms. Meredith informed the father of the existence of the petition and of the next court hearing scheduled for May 18, 2006. Ms. Meredith then sent the father a copy of the petition.

After speaking with DJJ, the father filed a complaint with the ombudsman.

INVESTIGATION

AS 47.12.050(a) states that DJJ must provide parents with notice of hearings. It states that

Except as may be otherwise specifically provided, in all cases under this chapter, the minor, *each parent of the minor*, the foster parent of the minor, and the guardian of the minor are entitled to notice adequate to give actual notice of the proceedings... [Emphasis added]

AS 47.12.050(b) states that “Proof of giving of the notice shall be filed with the court before the petition is heard or other proceeding commenced.”

Delinquency Rule 3(a) states that “Notice of each hearing must be given to all parties and to any foster parent within a reasonable time before the hearing.”³

²AB was not placed in the custody of DJJ. He remained in his mother’s home.

³ Correct citation is AS 11.41.420 for sexual assault in the second degree. It states that “an offender commits the crime of sexual assault in the second degree if (1) the offender engages in sexual conduct with another person without consent of that person.”

Delinquency Rule 2(n) defines “party” to include the juvenile’s parents.

Delinquency Rule 8(b) states that a summons needs to be included with a petition. It states that

Upon the filing of a petition for adjudication, the court shall set a time for the arraignment on petition and shall, if the juvenile is not in custody, issue a summons to be served with the petition compelling the attendance of the juvenile. The court shall issue a summons compelling the attendance of the juvenile's parents or guardian at the hearing. If the summons and petition are not contained in one document, the petition must be attached to and incorporated by reference into the summons. The summons must contain a statement advising the parties of their right to counsel.

Delinquency Rule 8(c) states that “The petition must be served on the juvenile and the juvenile’s *parents or guardian*.” [Emphasis added]

During the course of the investigation, the ombudsman investigator contacted DJJ probation officer Lizbeth Meredith, who signed the petition. The investigator asked Ms. Meredith why the father was not notified about the hearing on April 13, 2006. Ms. Meredith responded that it was not practical in this type of “time crunch situation” to find out where all the parents were, and that it was sufficient to only notify the mother. Ms. Meredith added that nothing really happened at the hearing because it was continued so that AB could receive a public defender.

The investigator then requested that Ms. Meredith send a copy of the petition to him. During his review of the petition, the investigator discovered that the addresses for AB, his father, and his mother were listed after the signature line. The petition stated

Minor’s address is (Ombudsman note: Removed to protect confidentiality)
Minor’s father is (Ombudsman note: Removed to protect confidentiality)
Minor’s mother’s address is the same as minor’s.

After reviewing the petition, the investigator asked Ms. Meredith for a copy of the summons. Ms. Meredith responded that

... I sent out a petition to the minor’s mom and a business card with dates/times, so no summons was necessary. Since the mom was interested in getting him to court quickly to get a lawyer and an arraignment date, I didn't need to - she was clearly going to show up.

³ Article IV, Section 15, of the Alaska Constitution states “The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.”

The investigator then contacted Ms. Meredith again. Ms. Meredith suggested that the investigator speak with her supervisor, probation officer III Linda Moffitt. The investigator asked Ms. Moffitt why the father was not notified of the hearing. Ms. Moffitt said that she did not know, but that she would speak to Ms. Meredith and let the investigator know.

The investigator then asked Ms. Moffitt why a summons was never issued in this case. Ms. Moffitt responded that serving a summons is “routinely not done,” and that sometimes DJJ just informs one of the parents. She stated that a summons is normally only used when DJJ is concerned that the juvenile is not going to appear.

Ms. Moffitt then explained that DJJ and Judicial Services do not have the resources to send a summons out in every case. Ms. Moffitt said that Judicial Services requires three weeks to provide service, and therefore it could not be done in a “timely fashion.” She also said that the probation officers have to do a lot of clerical work themselves because DJJ does not have enough clerical support.

Ms. Moffitt then added that DJJ desires to get into court and move the process along, and that serving a summons in every case would “slow down the system so much.” She also added that the judges and attorneys have never called their practices into question.

The investigator and Ms. Moffitt spoke again eight days later. Ms. Moffitt told the investigator that she had spoken with Ms. Meredith, but that she still did not have a good answer as to why the father was not notified about the court hearing. However, Ms. Moffitt said it could have been a “time issue.” She explained that Ms. Meredith was simply more focused on getting the custodial parent (the mother) into court, and that it was more expedient to proceed without notifying the father. Ms. Moffitt acknowledged that she is not happy that this kind of thing happens, but emphasized that DJJ needs more staff.

Activity since the investigation was opened

During the week of June 26 - 30, 2006, DJJ revised its Policies and Procedures. Policy and Procedure 2.2.3(d)(5)(A) now states:

If the Probation Officer determines, based on available information, that the facts alleged are sufficient to establish jurisdiction, and there is sufficient admissible evidence available to support an adjudication of delinquency, and that the matter requires formal court intervention in order to assure an adequate plan of supervision, a petition will be filed with the court on a form approved by the Division. Reasonable efforts will be made to notify the victim of their right to attend all hearings, and these efforts will be documented in JOMIS.⁴ The Probation Officer shall

⁴ Juvenile Offender Management Information System

schedule a hearing and notify all parties. *The minor, each parent of the minor, the foster parent of the minor, and the guardian of the minor are entitled to notice of the proceedings, taking into account education and language differences known to the Probation Officer. If the juvenile is not in custody, the Court shall issue a summons compelling the attendance of the juvenile and each parent, individually, as well as foster parents and guardians, if appropriate.* Except as required elsewhere in this section or in the policy section entitled Legal Assistance, it will be at the discretion of the Probation Officer to have the Department of Law review the petition for legal sufficiency and/or request their assistance at further proceedings. [Emphasis on revision].

ANALYSIS AND FINDING

The standard used to evaluate all ombudsman complaints is the **preponderance of the evidence**. If the preponderance of the evidence indicates that the administrative act took place and the complainant's criticism of it is valid, the allegation is found justified.

The Office of the Ombudsman's Policies and Procedures Manual at 4040(1) defines *contrary to law*. The portion of the definition relevant to both allegations is:

(A) Failure to comply with statutory or regulatory requirements.

Allegation 1

Allegation 1: Contrary to law, the Division of Juvenile Justice failed to provide notice of a court proceeding to the parent of the child who was subject of the proceeding.

AS 47.12.050(a) states "... the minor, *each parent of the minor*, the foster parent of the minor, and the guardian of the minor are entitled to notice adequate to give actual notice of the proceedings..." [Emphasis added]

AS 47.12.050(b) states that "Proof of giving of the notice shall be filed with the court *before* the petition is heard or other proceeding commenced." [Emphasis added]

Delinquency Rule 3(a) states that "Notice of *each* hearing *must be given to all parties* and to any foster parent within a reasonable time *before* the hearing." [Emphasis added]

In this case, DJJ provided notice of the first court hearing to the mother on the same day the petition was filed. In contrast, DJJ did not notify the father until five days *after* the first hearing, and twenty-eight days after the petition was filed. It also appears that Ms. Moffitt only notified the father of the next scheduled hearing because he placed a phone call to her.

DJJ's failure to notify the father is contrary to AS 47.12.050(a) and (b) and Delinquency Rule 3(a). As AB's father, and a party to the case, he was entitled to notice *before* the commencement of court proceedings. Ms. Meredith's statement that nothing really happened at the hearing is irrelevant. The father had the right to be notified regardless of what happened at the hearing.

Therefore, the ombudsman proposes to find the allegation that DJJ acted contrary to law *justified*.

Allegation 2: Contrary to law, the Division of Juvenile Justice failed to serve a Petition for Adjudication and a Summons on the parent of the child who was subject of the proceeding.

Delinquency Rule 8(c) states that "The petition *must* be served on the juvenile and *the juvenile's parents* or guardian." [Emphasis added]

Ms. Moffitt acknowledged that DJJ failed to serve the petition on the father. She said that she did not have a good answer as to why DJJ failed to do this, but that it could have been a "time issue." The problem with the "time issue" explanation is that the father's address was listed in the petition and the hearing was not scheduled for another 23 days. Therefore, time could not have been a problem. Moreover, the mother was sent the petition on the same day it was filed. It would have been very easy for DJJ to have done the same with the father.

Delinquency Rule 8(b) states that "The court shall issue a summons compelling the attendance of *the juvenile's parents* or guardian at the hearing." [Emphasis added]

Ms. Meredith acknowledged that she failed to serve a summons on either the mother or father. The ombudsman is especially troubled that Ms. Meredith was unaware that serving a summons was required. In her email to the ombudsman investigator, Ms. Meredith stated, "I sent out a petition to the minor's mom and a business card with dates/times, so no summons was necessary." Serving a summons is a requirement of Delinquency Rule 8(b); it is not an option.

Ms. Moffitt then stated that serving a summons is "routinely not done." The ombudsman is concerned that DJJ believes it can pick and choose which court rules it wants to follow depending on staffing and convenience. DJJ may have the good intention to save itself time and resources, but ignoring court rules will inevitably lead to problems.

DJJ failed to meet the requirements of Delinquency Rules 8(b) and 8(c).

Therefore, the ombudsman proposes to find this allegation *justified*.

RECOMMENDATIONS

The ombudsman proposes the following recommendations:

Recommendation 1: DJJ should conduct training for its staff regarding relevant statutes and delinquency rules.

Recommendation 2: DJJ should review the relevant statutes and delinquency rules. If it determines that the statutes and rules are impractical, superfluous, or redundant, DJJ administrators should work with the Alaska Legislature to have them changed.

AGENCY RESPONSE

On August 23, 2006, Regional Manager Rob Wood responded on behalf of DJJ to the ombudsman's preliminary report. Mr. Wood wrote "The complaints are valid and illuminated some deficiencies in Probation's P&P, local training, and logistics related to the service of a summons."

He said that the probation officer and her supervisor appeared unaware of the legal requirements cited in the complaint. They have both been advised of the requirements and instructed to comply.

He further stated, "My reading of the Policy and Procedure indicated that policy was ambiguous, at best, and did not satisfy statutory requirements. The appropriate change has been made in new policy."

Mr. Wood added the following:

The difficulty in regard to "service" remains a problem for the Anchorage Office. Our current procedure is to file a "petition" and "summons" with Judicial Services (JS) who perform the service. Officers generally schedule non-custody arraignments out 3 to 4 weeks to allow JS ample time to get parties served. This time allowance is at their request. If officers desire or need to have the hearing earlier they operate on the basis of a verbal notification and a notification form that had been developed for this purpose. This has worked well but does not meet the legal requirement of a "summons." Delinquency Rule 8 does allow the court to appoint a probation officer to serve a "summons." We have requested that our court consider doing so.

I contacted other offices regarding their practices and found that some use the court summons consistently and some use it but not all the time. This inconsistency is at the root of the investigation by the ombudsman. The law appears clear in regard to our need to use this legal notification method. I believe we need to direct our staff accordingly. Among the offices serving summons most are able to get them served within a few days rather than the few weeks that is common in the Anchorage experience.

Mr. Wood concluded:

This office will hold a training session during the week of 8/21 to ensure staff are acquainted with statutory requirements related to parent/guardian notice and the service of summons. They will be instructed to comply with these requirements.

Finding of record and closure

Based on DJJ's decision to comply with the recommendations, the ombudsman closed his complaint as *justified* and *rectified*.