

# **INVESTIGATIVE REPORT**

## *Final Finding and Closure*

**\*\*\*PUBLIC REPORT\*\*\***

*(Edited to remove confidential information per AS 24.55.160)*

Ombudsman Complaint J099-0107

May 20, 1999

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## **BACKGROUND AND INVESTIGATION**

Eva Nova (not her real name) was the victim of a crime committed by a juvenile. The juvenile was prosecuted and ordered, in part, to pay her restitution. The juvenile did not pay. Ms. Nova said she wrote to the minor's parents requesting the money, but never received an answer. She said she sought advice from the Court Clerk's office in Juneau and was advised to obtain legal help to enforce the order. She said she called several attorneys but found that the cost of an attorney would be greater than the amount of the judgment.

Ms. Nova contacted the Office of the Ombudsman on April 2, 1999, complaining that the juvenile probation officers in the Department of Health and Social Services failed to enforce a judgment for restitution against the juvenile delinquent. Ms. Nova provided the ombudsman investigator with a copy of the July, 1998, disposition order that ordered the juvenile to pay Ms. Nova \$586.96 in restitution.

Ms. Nova said probation officers told her that she had to file a writ of execution with the courts to enforce the order, but that court clerks in Juneau told her she could not file for such a writ because the debtor is a minor. Ms. Nova said she bounced back and forth between juvenile probation and the courts several times before contacting the Ombudsman's Office in frustration.

Upon initial review, the ombudsman investigator closed the complaint against juvenile probation and opened a similar complaint against the clerk of court. He did this based on AS 47.12.170, Enforcement of Restitution, which states that a judgment for restitution against a juvenile delinquent is enforceable under AS 09.35 "as if it were a civil judgement enforceable by execution."

The allegation under investigation was as follows:

***Unreasonable: The office of the Clerk of Court, 1st Judicial District, prevented the complainant from filing a petition for a writ of execution against a minor against whom the complainant had a judgment for restitution.***

Assistant Ombudsman Mark Kissel investigated this complaint.

On April 6, 1999, Mr. Kissel spoke to Adam Fleischman, Clerk of Court for the 1st Judicial District in Juneau. Mr. Fleischman reiterated what his staff had told Ms. Nova, that she could not file a writ of execution against a minor. Mr. Fleischman suggested that she retain an attorney to extend the judgment to the minor's parents and then secure a writ of execution against them. He also suggested she could wait until the minor emancipates and then execute the judgment. He said the court has a form for filing a writ of execution against a debtor's Permanent Fund dividend (PFD) that would be useful to the complainant when she is able to file. Mr. Kissel obtained a copy of this form, CIV-502, from the clerk's office.

The following information contradicted Mr. Fleischman's position:

***AS 43.23.065*** exempts 45 percent of a person's PFD from debt collection. However, paragraph (b)(5) states that the exemption is not available for PFDs taken to satisfy "writs of execution under AS 09.35 of a judgment that is entered against a minor in a civil action to recover damages..."

***AS 47.12.170*** provides that restitution orders against juveniles found delinquent may be enforced "as if the order were a civil judgment..."

Mr. Kissel phoned Kathleen White of the Permanent Fund Division of the Department of Revenue and asked whether a person can file a writ of execution against a minor's PFD. She answered, "Yes, for restitution."

When informed of the above, Mr. Fleischman consulted with the court's attorney who advised that victims like Ms. Nova could indeed file for a writ of execution. Mr. Fleischman invited Ms. Nova to come to the court clerk's office and file at her convenience.

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**FINDING**

The allegation is that the actions of the Clerk of Court were unreasonable. The Office of the Ombudsman Policies and Procedures manual at 4040(2) defines unreasonable, in part, as

(B) a procedure that defeats the complainant's valid application for a right or program benefit...

Procedures followed by the office of the Clerk of Court prevented Ms. Nova from filing a writ of execution valid under the statutes cited above. The Ombudsman, therefore, in her preliminary report of May 3, 1999, proposed to find the allegation *justified*.

On May 18, 1999, Kristen Carlisle, Area Court Administrator for the First Judicial District, responded to the Ombudsman's preliminary report. Ms. Carlisle accepted the proposed finding without objection and it is forwarded as the finding of record.

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## **RECOMMENDATIONS**

The Clerk of Court responded quickly to the issues raised by Ms. Nova's complaint and resolved Ms. Nova's immediate problem. The Ombudsman proposed two recommendations aimed at preventing similar confusion from arising in the future.

***Recommendation 1:*** Alert Juneau court staff, and request that the court administrator or staff counsel alert court staff statewide, of the conditions under which a person can petition for a writ of execution against a minor.

***Recommendation 2:*** Request that the court administrator, during the next revision cycle, revise court form CIV-502 (Writ of Execution on PFD) to include a check box for "court ordered restitution against a minor."

The current form was revised seven years ago. It lists the five categories specified in AS 43.23.065 in 1992. Since that time, two additional categories were added to the statute, but the form remains unchanged. This can be confusing not only to citizens seeking to file a *pro se* writ of execution, but also to court staff.

In her May 18 response, Ms. Carlisle accepted the Ombudsman's recommendations. She wrote:

We have taken the following steps to comply with your recommendations:

1. Mr. Fleischman held a staff meeting with the Juneau clerk's office where the issues of executions and juvenile restitution were discussed and reviewed the procedures, rules and regulations with the clerk's office staff.

2. Mr. Fleischman also brought the subject to my attention and the procedures were reviewed with all of the first district clerks of court by teleconference on April 19, 1999. The Clerks of Court were instructed to discuss the appropriate procedures with their respective staff members.

3. The first district magistrates were reminded of these procedures in their monthly teleconference held on May 14, 1999. This includes magistrates from all thirteen (13) first district courts.

4. I contacted the Area Court Administrators in the second, third and fourth districts to alert them to the problem that occurred here.

5. I have contacted Susan Miller, chair of the Alaska Court System Forms Committee and provided her with a copy of the preliminary findings and recommendations. The forms committee is responsible for creating and revising all court system forms and has both judicial, administrative and clerical members. Ms. Miller assures me that this matter will be placed on the June 1999 Forms Committee agenda for review.

With these actions reported by the Area Court Administrator, the Ombudsman closed this complaint as *rectified*.