



## INVESTIGATIVE REPORT

Ombudsman Complaint A2005-0237  
Finding of Record  
June 29, 2005

### PUBLIC VERSION

*Edited to remove information that would reveal the complainant's identity or contain information made confidential by law.*

A woman complained to the Office of the Ombudsman in March of this year about the Department of Law Collections and Support Section (Collections). Specifically, the woman claimed to have paid the office \$300 toward court-ordered restitution and alleged that Collections credited her with a payment of only \$30.

This letter is a report of the ombudsman's finding per Alaska Statute 24.55.190. That statute requires that ombudsman findings and recommendations be kept confidential and not be disclosed to the public. However, it is our practice to post on our web site redacted versions of final reports. This is the enclosed edited version.

The complainant alleged that Collections unreasonably refused to credit her for a payment of \$300, crediting her for \$30 instead. The preponderance of evidence leads the ombudsman to conclude that the complainant's allegation is *justified*.

On advice from the ombudsman, the complainant submitted a claim to the state government's Risk Management office. Risk Management assesses non-tort damage claims against the state. On May 20, 2005, Claims Administrator Leasa Davis alerted our office that she had accepted the complainant's damage claim and issued a check for \$270 to be applied to her restitution account. This pays in full the complainant's monetary claim. Consequently, the ombudsman closed the complainant's allegation as *resolved*.

The complainant is a convicted felon who served time in prison for theft. Her criminal record includes several charges alleging theft or shoplifting. She was released from prison and is under the supervision of a parole officer until October 2006. She was ordered by the court to pay \$600 restitution to her victim. According to Collections records, the complainant made seven payments of \$30 each from March through October 2004. The complainant made each of these payments in cash and received a receipt of payment in exchange.

In the fall of 2004, she approached her Department of Corrections (DOC) parole officer with a request to visit family out of state. The parole officer told her that her restitution had to be paid or nearly paid before DOC would approve the out-of-state trip. The

complainant said this is why she paid a large sum in November--she was planning to leave for a couple of weeks beginning on November 11 and needed approval from her parole officer. The complainant said she paid \$300 on November 3 and took the receipt to her parole officer on November 4. The parole officer approved her travel, and the complainant was out of state between November 11 and November 26.

The complainant's previous parole officer and current parole officer corroborated the complainant's story. Both said they believe she is telling the truth. Indeed, given the requirements for a travel pass from her parole officer, it would seem unusual for the complainant to make her usual \$30 restitution payment in November.

The primary evidence supporting the complainant's claim is receipt number 6170 initialed by the Collections receptionist for the amount of "\$300.00" cash. Ombudsman Investigator Mark Kissel interviewed the receptionist who said that she made a mistake when filling out the receipt. When she discovered the mistake shortly after the complainant left her office, she ran after her. She said she asked another office worker standing nearby to watch the phones for her while she did this. However, she was unable to identify that office worker. After failing to catch up with the complainant, she then inexplicably ceased to make further efforts to contact the complainant, failed to notify her supervisor of the error, and did not mention the incident to any of her co-workers. She changed the receipt, crossing out \$300.00 and marking in \$30.00.

The complainant said she did not learn that Collections had credited her with only a \$30 payment until she went to their office in December to make another payment. She expected to be nearly paid up, she said, and was upset when she saw her balance. She said she showed her receipt and tried to get Collections to honor it, but was told instead that the amount on her receipt was a "clerical error."

The complainant has evidence in the form of a receipt initialed by the receptionist. The complainant also gave a rationale, corroborated by her parole officers, for making a payment larger than her normal \$30 payments. Collections has the testimony of its receptionist, which has not been corroborated and which, against hard examination, is neither consistent nor compelling.

In its response to the Ombudsman's preliminary report, Collections argued that the complainant took advantage of a clerical mistake.

Collections pointed out that the receptionist attached a note to the agency copy of the receipt indicating that "We owe \$20 to petty cash." The receptionist told the investigator that the complainant gave her a \$50 bill, which required that she take \$20 from petty cash to make change. This raises two points:

First, this fact has no bearing on how much cash the complainant gave the receptionist; it indicates only that, whatever amount the complainant paid, the denominations of the bills could not make \$30. In other words, one cannot know whether the complainant handed over one \$50-bill or seven. The amount of change would be the same.

Second, it is troubling that the worker did not bother to notify her supervisor about the unusual circumstances surrounding the "incorrect receipt" at the same time she went to

the trouble of explaining the \$20 shortage in petty cash. Nor did the worker call the complainant or send a written notice to her informing her of the receipt error.

Collections also pointed out that two months passed from the time the complainant first complained about the amount credited to her account and the time she raised her complaint again. The ombudsman is uncertain why Collections believes this is significant. The complainant's patience over two months ought not to be held against her. Perhaps she had faith that Collections would eventually honor its own receipt.

In its response to the Ombudsman preliminary finding, Collections also wrote:

It was not until February 4, 2005 – a period of over two months – that she again raised the issue. On February 4, 2005, she spoke with [the Collections Coordinator] and later spoke with the Law Office Manager]. In both of those conversations, it was indicated to [the complainant] that if she could verify or corroborate the source of the funds we might reconsider our position. She had indicated that the money had come from her church and it was cash. [The office manager] suggested that she ask the church to provide a letter or other verification of the funds. Despite this suggestion, [the complainant] did not provide any additional support to our office of her position.

The complainant told Collections and the ombudsman that she earned her money as cash payments for doing odd jobs for people at her church. Collections' attitude that it "might" reconsider if she produced statements from each of these persons was more than inconvenient—it was difficult to defend. Collections seems to believe that a person holding a receipt needs additional proofs of payment. The ombudsman believes that a receipt is substantial evidence in itself, and the agency that wishes to dispute the accuracy of its own receipt bears the burden of proof. Collections has not provided that proof.

In its final argument, Collections maintains that its Anchorage office is hectic at times, which makes clerical errors like this possible. The ombudsman knows of few state offices that are not "hectic at times." The source of the problem here is not the busy office, but sloppy cash handling procedures at Collections. Their procedures allowed this to become a question of "he said, she said." In when such questions arise, physical evidence, such as a receipt, wins the day.

Collections may argue that the complainant took advantage of a clerical error but has not presented convincing evidence to support its argument. The weight of evidence remains on the complainant's side far more than on Collections' side, and therefore the ombudsman finds the complaint *justified*. With Risk Management's payment of the complainant's claim, the ombudsman closes the complaint as *resolved*.

The Law Office Manager has informed the ombudsman that Collections has changed the way cash is handled. For example, receipts will be generated by computer instead of by hand. The manager said the agency is studying other proposals to improve the way they receive and account for cash payments. Because Collections has acted to improve its money-handling procedures, and because Risk Management has agreed to pay the complainant's claim, no recommendations are necessary in this case.