



Alaska OCS Crisis; Parents are Pursuing Accountability

Description

TAMMIE WILSON



LEGISLATIVE SERVICE

2009-2020 Representative Distr

:

Residency in Alaska:

North Pole, Alaska

Occupation:

Automotive Shop Owner/Manager

Family:

Husband: Robert

Children: Sandra, Daniel, Robert, Josh

Education:

Illinois State University – BS Education 1983

Alaska State House of Representatives:

Armed Services: 2009 - 2010

OCS Crisis Enabler: In response to constituent concerns, in 2015 Rep. Wilson launched a campaign seeking a *Special Grand Jury* to investigate behaviors by State Employees harming Alaska families. Wilson then dropped the ball and switched sides in 2019, JOINING the Dunleavy Administration at *Department of Health and Social Services (DHSS)* as *DSS Program Coordinator for Family and Community Services*.

Wilson's email address: tammie.wilson@alaska.gov

Violation of Alaska families by the **Office of Children's Services (OCS)** is nothing new. Some parents and family advocates have long documented abusive and illegal actions by this agency purporting to protect children. Alaska parents now AGAIN seek remedy through the **Alaska Court System** IF that is possible.

In her case against OCS, Rep. Wilson on September 9, 2016 stated: *The Alaska Office of Children's Services conducts interventions so aggressive they amount to legal kidnapping.* [3AN-16-9924CR]

A shrill call for action, but the Grand Jury passed the buck

Superior Court Judge

Third Judicial District - Anchorage
Presiding Judge of the Third Judicial District

William F. Morse



At an October 13, 2022 hearing before Third District Presiding Judge, *William Morse*, Parent *Thomas Garber* offered his renewed plea for a *Grand Jury Investigation* into practices of OCS. This writer attended this most recent hearing and detected an interest by Judge Morse to find a way to address the on-going OCS crisis. He had previously presided over such a Grand Jury investigation in 2016, when Rep. Wilson first brought voluminous testimony to the court.

Those grand jury recommendations were released by Judge Morse in January 2017. Rep. Wilson's Grand Jury specifically stated that under Alaska Statute 24.55.010 .340, the Ombudsman is Statutorily **authorized**. And, under Alaska Statute 47.14.205, the Citizen Review Panel is Statutorily **required** to address the concerns. **Currently neither the Ombudsman nor CRP have officially announced active investigations of Children's Services.** ((Ombudsman Report Conclusion in Response to Grand Jury Referral of Inquiry into Office of Children's Services, September 5, 2017. <https://ombud.alaska.gov/wp-content/uploads/2018/01/Ombudsman-Report-to-Grand-Jury-re-OCS-9-5-2017-FINAL.pdf>))

From the Report: *The Ombudsman's role is to objectively review the administrative actions of state agencies to determine whether they are unlawful, unreasonable, unfair, or based on unacceptable grounds. The Ombudsman is not a citizen or consumer advocate. The role of the ombudsman is to help ensure that state government is serving Alaskans as efficiently, effectively, and equitably as possible.*

Yadda-Yadda-Yadda. See how effective the *Alaska Ombudsman* was when charges of licensing agency inaction jeopardized security at the **Ft. Greeley Missile Defense System**:

[How Secure Should Ft. Greeley Missile Defense Field Be?](#)



Judge Releases Grand Jury Recommendations on OCS Request

January 18, 2017 (Anchorage, AK) – In September of 2016, the Department of Law received a request to convene a grand jury to conduct an investigation of the Office of Children's Services (OCS) to determine if OCS was complying with statutory duties. The request was made pursuant to article I, section 8 of the Alaska Constitution, which allows a grand jury to "investigate and make recommendations concerning the public health or safety." Just as normal grand jury proceedings are confidential, investigatory grand jury proceedings are also confidential under Alaska Criminal Rule 6(l). A judge must determine whether to unseal the recommendations and make them public.

Today, the Presiding Judge of the Third Judicial District unsealed the recommendations of the grand jury relating to the request to investigate OCS. The documents unsealed by Presiding Judge [Name] show that the Department of Law presented the request to the grand jury on December 22, 2016. The grand jury issued two separate recommendations signed by the grand jury foreman.

In the first recommendation, the grand jury "determined that the Alaska Ombudsman, pursuant to Alaska Statute 24.55.010 - .340, is statutorily authorized to address the concerns." In the second recommendation, the grand jury "determined that the Alaska Citizen Review Panel, pursuant to Alaska Statute 47.14.205 *et. seq.*, is statutorily required to address the concerns."

Based upon the recommendations, the Department of Law has forwarded the necessary information to the Ombudsman and the Citizen Review Panel.

The judge's order and the grand jury's recommendations are attached.

CONTACT: Chief Assistant Attorney General Robert Henderson at (907) 269-6250 or robert.henderson@alaska.gov.

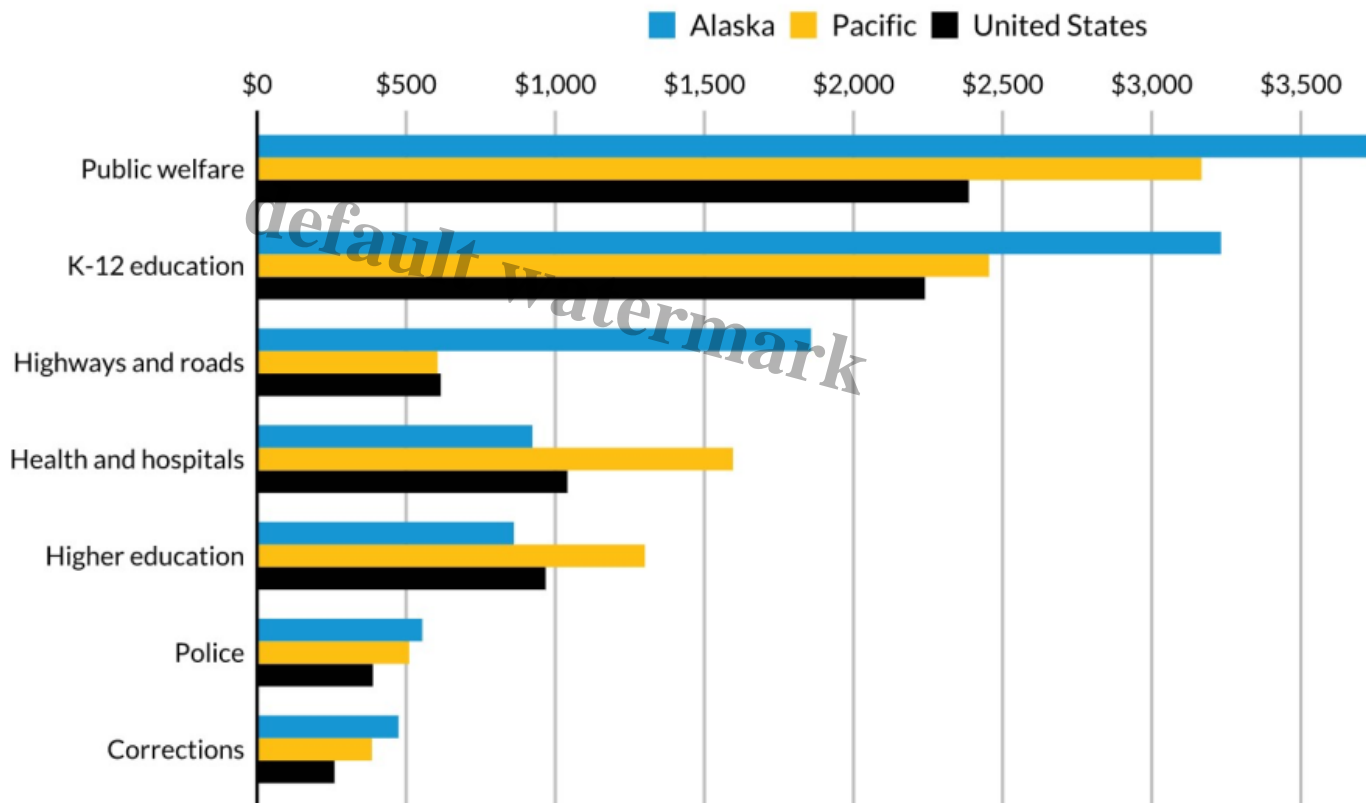
This writer was NOT successful in obtaining information from Wilson for this story.

Alaska State Government in Crisis

DHSS—which includes OCS—is the most expensive and least effective agency in state government. **Alaska Department of Education** is the second most expensive agency demonstrating breathtaking failure year after year. This is a tradition our elected officials in the legislature and administration enable every legislative session in Juneau with ever more unaccountable funding.

Alaska's State and Local Per Capita Expenditures, Fiscal Year 2020

Compared with national and regional averages



Source: US Census, Fiscal Year 2020.

Note: Medicaid spending is allocated to both public welfare and health and hospitals, with the majority of dollars allocated to the former. Census's definition of the Pacific region includes Alaska, California, Hawaii, Oregon, and Washington.

State workers who are members of unions with negotiated pay and benefits approved by people they helped elect, are quick to equate poverty with neglect. The *Indian Child Welfare Act (ICWA)* specifies the treatment of Native people. Yet, those safeguards are not followed, and Native children are treated differently. OCS makes little effort to keep any families together with community-based services. Inconsistent application of policies and procedures by unlicensed and uninsured social workers—often arbitrarily dismissing Grandparent rights and roles in *Child in Need of Aid (CINA)* proceedings—instead creating alienation with typical OCS Soap Opera crappy case plans and bountiful excuses.

[Challenges Of Mental Illness: Tell me whoâ??s crazyâ? the Alaska Department of Health and Social Services!](#)

Judge Morse denied Garberâ??s petition with an Order September 4, 2018. It corresponded with David Haegâ??s efforts to get a Grand Jury Investigation in Kenai. ((Judge Morse Denial Order))

<https://donnliston.net/2022/04/power-of-the-grand-jury/>
Read about Haegâ??s 20-year effort to get justice here

Meanwhile OCS takes kids away from their families, sweeping them up like salmon in fish wheels into sometimes marginal foster care and further crisis, creating ever more bureaucracy-induced dependency.

And now the slippery salmon is flying back at Judge Morse.



Thomas Garber

Undeniable OCS Dysfunction

Over 10 years Garber has been pursuing justice and accountability at OCS. And, despite adverse rulings, by OCS against him, Garber has over this time become an advocate for families with the same concerns. Simultaneously, Garber has managed to develop dialog and get an audience with Judge Morse. An episode dealing with one of his own sons caused Garber to realize something is not right with OCS. In fact, he was outraged at the agency intrusion into his own family.

Garber explained: *The grievance process within OCS is defunct and non-existent. You go through all these processes, to appeal, and all this other stuff, and there's no resolution. And so I, along with other folks over the years, have approached Judge Morse in the aftermath of what Rep. Wilson tried to do. We are now asking for another Grand Jury Investigation.*

Networking on social media has provided an abundance of evidence, according to Garber: *We have a couple of private groups on Facebook, with other parents—I hate to say they are victims—they are a part of this system, and they have come forward, you know, trying to figure out what their rights are. They are saying, "Hey, why is THIS happening?" They don't know whether it's right or wrong, but they're putting their concerns out on social media. We have been gathering these stories, taking names, finding out which places in the department and where—Wasilla, Kenai, Juneau, Barrow, Bethel—wherever the families live that we can document abuse of Alaskans.*

We have found what OCS typically does when they take kids from a home and put them in foster care, explained Garber. **Often the parents have recognized disabilities. Yet, the legal system will not provide reasonable accommodations. When the state takes the proceedings into the judicial system it becomes more of a mess. OCS inevitably makes criminal allegations in what are civil proceedings.**

Here is the difference, according to Garber: *In criminal proceedings, you have protections: Right? To an attorney, right to records, right to evidence, exculpatory evidence. But in civil proceedings you don't have those same safeguards. So **OCS, uses civil proceedings to make criminal allegations against the parents, basically using a restraining order, or other order by the court, to take the kids and put them in foster care.** Then, after throwing the family into crisis, the system often doesn't have the means to provide the services that the children need—medical or psychological—because they do not have enough foster care homes, meaning the whole agency is in on-going crisis.*

What Must Parents Do when Kids are Taken by OCS?

Parents are supposed to have case plans, and do certain things that they are required to do, continued Garber. *They'll give the parents referrals; mental health, or drug and alcohol, or whatever. But, when they go to get those referrals—they're just referrals not prescriptions, where you take it to the pharmacy and get it filled—it's a REFURRAL: "please go." A lot of the counselors and people are so overwhelmed with all the case loads, that clients wait six months to get in, while the courts are processing the paperwork to take their children—even denying grandparents custody. Everything's slow and methodical, yet they expect you to be doing certain things in certain time-frames and everything becomes MORE orchestrated drama.*

I want Judge Morse to address the rights of the people to have a meaningful grievance process, said Garber.

One hour with Judge Morse

About 20 people were in the gallery on October 13 in support of Garber as he took his place at the table to ask Judge Morse for a Grand Jury to investigate OCS. Judge Morse was instructional in his introduction, explaining his experience with this case and how he sees the possible role of a new Grand Jury.

Judge Morse: *Typically, there's a prosecutor there, and the grand jury and the prosecutor work out how to get information that the grand jury wants before it. And the prosecutor plays sort of an advisory role: "Here are the rules. Here are statutes. Here's instructions that you're supposed to follow."*

Then Judge Morse became more specific about expectations: *A federal case has been initiated here recently. I've seen the documents. (3:22 CV 00129 JMK) but I haven't read them. I don't know anything about it in very early stages. There have been other complaints raised about OCS by citizens, but I don't know any more about what Mr. Garber's particular concerns are. So what I'm most interested in, Mr. Garber, is for you to tell me what it is you want to do. ((Anchorage Daily News, Class-action lawsuit calls for major reform in Alaska's failing, dangerous foster care system, May 19, 2022. <https://www.adn.com/alaska-news/2022/05/19/class-action-lawsuit-calls-for-major-reform-in-alaskas-failing-dangerous-foster-care-system/>))*

Some of the biggest problems in Alaska, according to the lawsuit: OCS worker caseloads are too high, sometimes three times the national average. Turnover is at a crisis level, topping nearly 60% annually and leading mission critical tasks to go unmet, according to a legislative report cited. Children are shuffled between foster homes too much. And Alaska Native children, who make up nearly two-thirds of the youths in foster care, aren't provided with Alaska Native foster homes or other services, violating the *Indian Child Welfare Act* and often inflicting deep wounds of cultural loss in the process.

Judge Morse continued: *For example, if what you want is to indict the head of OCS for criminal negligence, or something like that, we're done. You can go to the prosecutor's office and say "please investigate this alleged crime," and they have the authority to do that or choose not to. IF, on the other hand you want them to investigate some aspect of an agency, then what I am contemplating doing is getting you to educate me about what you want to do.*

*I don't think I have the authority to tell the grand jury not to do it, Morse continued. You know, if you want to investigate space, aliens and Mars, I'm not going to waste the grand jury's time. If you've had some other more reasonable requests that seems to invoke, you know, **public welfare and safety**, I'm going to say to the grand jury: "Here's a brief summary of what this gentleman has and wants you to do. And I had this hearing, where he fleshed it out more, if you want to listen to that record. You don't have to, but you may." Then the grand jury will decide whether to exercise that authority. I think a majority of the grand jurors must authorize this—it can't just be one person or two.*

Garber responded: *Going by your order here, thereâ??s four points: â??Number one says be prepared to describe in detail what I seek to have the grand jury do,â?• which I have prepared a folder for your consideration. Second, â??confirm that I do not seek to have the grand jury issue a criminal indictment,â?• that is not what I intend to do. My wish is to identify deficiencies and certain statutes and policiesâ??investigate patterns of crimes or patterns of behavior within the Office of Childrenâ??s Services.*

Judge Morse: You want to not indict anybody, but you want to have them investigate what you believe is criminal behavior by OCS?

Not necessarily criminal behavior, said Garber. This grand jury would be asked to specifically come up with the solutions to the problems presented.

Morse clarified: *Iâ??m not sure that the grand jury has any authority or capacity to propose solutions. They clearly write recommendations, they clearly have the ability to say: â??Here is conduct which we think affects public safety, or action or inaction that affects public safety or public welfare, right? And presumably, children or their families are being affected by what you think is out there. And so the grand jury would probably say, â??we think that parents are being affected, or children, and this is a problem. Go forth. Somebody deal with it.â?• The grand jury is not going to say: â??I think you need to hire a PhD.â?• You want to expose what you think is either a dereliction of duty or is it just failure for them to do what they ought to be doing?*

This hearing went on for quite a while longer and as it neared the end of the allotted time Judge Morse asked if Garber would like to have another hour December 14. Garber affirmed he would like to further pursue this matter and given what perimeters have been identified advocates for families being harmed by OCS should be hopeful.

The good news is that the **3rd Judicial District of the Alaska Court System** is considering giving parentsâ??as a result of Garberâ??s persistenceâ??another bite at this Grand Jury apple. The bad news is that the agency will continue to grind parents under the heel of state government if they are found to be negligent or deficient in their management of kids requiring ever greater resources to support and maintain in this economy.

As with state funded government schools, poor outcomes at OCS will likely result in more demand for services of the **Alaska Department of Corrections**.

References:

[\[1\] Ombudsman Report in Response to Grand Jury Referral of Inquiry into Office of Childrenâ??s Services, September 5, 2017.https://ombud.alaska.gov/wp-content/uploads/2018/01/Ombudsman-Report-to-Grand-Jury-re-OCS-9-5-2017-FINAL.pdf](https://ombud.alaska.gov/wp-content/uploads/2018/01/Ombudsman-Report-to-Grand-Jury-re-OCS-9-5-2017-FINAL.pdf)

[2]Judge Morse Denial Order

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

In the Matter of:

Request for Grand Jury Investigation

CASE NO. 3AN-18-00002GC

ORDER

*Motion for Hearing
Regarding Petition for Independent Special Grand Jury Investigation*

On 16 May 2018 the Court issued the following Notice:

David Haeg has submitted a Petition for Independent Special Grand Jury Investigation to the presiding judge of the Third Judicial District. His petition is supported by roughly 125 persons who signed it.

Haeg appears to allege that Ray Southwell was on a Kenai grand jury and that Southwell wanted to present information to the grand jury, but was not allowed to proceed.¹ The petition asserts:

Whereas we believe Kenai District Attorney Scot Leaders and Judge Jennifer Wells, in violation of Article 1, Section 8 of the Alaska Constitution and AS 12.40.040, illegally prevented Kenai Grand Juror Ray Southwell from disclosing, to the other jurors, his evidence and belief triable crime were committed by numerous State Official within Alaska's Judicial System (including crimes by DA Leaders, judge investigator Marla Greenstein,

¹ Haeg refers to AS 12.40.040 which provides: "If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it."

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Troopers, and Alaska judges)—and that this concerns a risk to the public's welfare and safety.

Haeg does not provide any further information that describes the alleged crimes that these persons committed. Nor does he provide any description of the information that Southwell wanted to present the grand jury.

The authority of the grand jury is defined by the Alaska Constitution, Alaska statutes, and the Rules of Criminal Procedure. Article 1, section 8 of the Alaska Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

Alaska Statute 12.40.030 provides:

The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety.

The grand jury has two basic functions. It may investigate alleged crimes and, under certain circumstances, charge citizens with crimes. Its second function is to investigate and make recommendations about the public welfare and safety. The Court construes Haeg's petition to be a request that the grand jury exercise either or both functions. Thus he seeks to have the grand jury either issue a criminal indictment, charging persons with crimes, and/or issue a report concerning the public welfare or safety.

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Haeg appears to be requesting that Southwell be permitted to present his information to a grand jury. He also seeks to have an independent counsel assist the grand jury. He identifies Henry F. Schuelke as the person to play this role. Haeg provides no other information about Schuelke.

It is the prosecutor's responsibility to bring to the grand jury allegations of criminal activity.² Prosecution of crimes is an executive branch function. The judiciary does not have the authority to charge a person with a crime or to initiate a criminal presentation to the grand jury.

The Court will forward Haeg's petition to Robert Henderson, the deputy attorney general of the criminal division of the Department of Law for his consideration. Henderson may consider whether to seek a criminal indictment or have the grand jury evaluate Haeg's petition to determine if it wants to investigate his allegations of harm to the public safety or welfare. The grand jury may elect not to charge any person or may elect not to investigate the allegations of harm to the public safety or welfare. If it undertakes an investigation, it may identify witnesses that it would like to hear from but need not. Whether or not it issues a report is for the grand jury to decide.

Among Haeg's apparent allegations is that one or more prosecutors is corrupt. That is something the Department of Law might investigate. Or the Attorney General or her designee might determine that an independent counsel should be appointed.

Haeg has not pointed to any source of authority that would empower the judiciary, in general, or a presiding judge, in particular, to appoint an independent counsel to present his or Southwell's allegations to the grand jury. Assuming, only for the purposes of this discussion, that some judge might have that authority in appropriate circumstances in order to avoid any conflict the Department of Law might have, the Court is unwilling to exercise that authority on the present record.

² AS 12.40.070 and Criminal Rule 6(i) (prosecuting attorney shall prepare indictments and presentments to the grand jury).

Haeg makes only the most skeletal allegations of unspecified wrongdoing by named and unnamed persons. These allegations are supported by absolutely no evidence in the petition. Far more than this is required for the Court to exercise any authority it might have to appoint independent counsel for the grand jury.

The Court will take no further action on the petition and will close the file.

On 21 May 2018 Haeg filed a Motion for Reconsideration. The Court denied that motion on 18 June 2018.

On 30 May 2018 Thomas Garber filed his own motion seeking a grand jury investigation into the practices of the Office of Children's Services in general and that Office's conduct involving a family member. On 7 August 2018 Garber supplemented his motion with copies of a letter he wrote to John Skidmore, an attorney with the Department of Law, and an affidavit detailing the course of the OCS investigation into his family.

Garber bases his broader concerns on a series of complaints made about OCS. Garber provided the Court with a copy of the report of the State of Alaska Ombudsman, dated 25 February 2016.³ Subsequently there was a complaint from Representative Tammie Wilson. Her concerns were referred to the grand jury in Anchorage in late November 2016.⁴ The grand jury undertook an

³ Ombudsman Report A2013-0776.

⁴ See 3AN-16-09924CR.

investigation and made two sealed recommendations. On 18 January 2017, at the request of the Department of Law, the Court unsealed the recommendations. The grand jury recommended that all of the information provided to the Department of Law concerning OCS be provided to the Ombudsman and to the Chairperson of the Alaska Citizen Review Panel.

Garber reports that both the Ombudsman and the Review Panel considered the information forwarded to each entity and prepared reports. In his filings Garber quoted language from each report but did not provide the reports to the Court. In his affidavit Garber provides a timeline of occurrences beginning in February 2011 involving his son and various investigations various entities including OCS took in response.

Garber is not satisfied with the reports of the Ombudsman and the Review Panel or with the responses of the Department of Law to those reports. Nor is he satisfied with the responses of various governmental agencies to his concerns about the conduct of OCS directed at his family.

The Court's authority to initiate a grand jury referral is limited. When the Court makes such a referral it cannot dictate the response or conclusions of the grand jury. One grand jury has already looked into the general complaints made by Representative Wilson. It made recommendations that two other entities investigate the complaints. Those entities made their investigations. The Court


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finds there is no reason to refer the old complaints (the Wilson complaints and the Ombudsman Complaint A2013-0776) to another grand jury.

The Court finds that Garber's dissatisfaction with the manner in which OCS responded to the concerns about his family does not mandate a grand jury investigation. However, the Court will refer Garber's dissatisfaction about OCS to the Department of Law. The Department of Law remains free to convene the grand jury if it finds there is good cause to do so.

The Motion for Hearing is DENIED. With this referral, this case is CLOSED.

DONE this 4th day of September 2018, at Anchorage, Alaska.

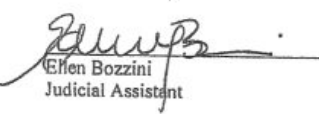

William F. Morse
Superior Court Judge

CERTIFICATE OF SERVICE

I certify that on 5 September 2018
a copy of the above was emailed/mailed to each of the
following at their addresses of record:

R. Henderson

T. Garber
49983 Toloff Rd.
Kenai AK 99611


Ellen Bozzini
Judicial Assistant

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[3]Anchorage Daily News, Class-action lawsuit calls for major reform in Alaska's failing, dangerous foster care system, May 19, 2022. <https://www.adn.com/alaska-news/2022/05/19/class-action-lawsuit-calls-for-major-reform-in-alaskas-failing-dangerous-foster-care-system/>

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