

State of Alaska
FY2021 Governor's Operating Budget

Department of Law
Torts & Workers' Compensation
Component Budget Summary

Component: Torts & Workers' Compensation

Contribution to Department's Mission

The Torts and Workers' Compensation Section provides legal defense and advice in a wide range of tort lawsuits filed against state agencies and state employees, including personal injury, wrongful death, professional malpractice, property damage, and civil rights claims. It also provides advice and training to state agencies and represents the state as an employer before the Alaska Workers' Compensation Board (AWCB) and the Alaska Workers' Compensation Appeals Commission.

Core Services

- Attorneys in the Torts and Workers' Compensation section defend tort claims and civil rights claims for damages under 42 USC §1983 filed in state and federal trial and appellate courts.
- Attorneys in the section represent state agencies in workers' compensation claims filed by state employees where the State of Alaska is the employer. They advocate on behalf of the state at hearings before the AWCB and represent the state as the employer in appeals from board decisions taken to the Alaska Workers' Compensation Appeals Commission and to the Alaska Supreme Court.
- Attorneys in the section advise the Department of Corrections on policy matters and represent it in inmate post-conviction relief and administrative disciplinary appeals in state court and inmate civil rights claims under 42 USC §1983 filed in state and federal trial and appellate courts.
- Attorneys in the section provide advice and training to state agencies on risk management, workers' compensation, and liability issues and provide advice to state adjusters on workers' compensation issues.

Major Component Accomplishments in 2019

On behalf of the self-insured Division of Risk Management in the Department of Administration, the section pursues aggressive motion practice, trial, or negotiation to contain the ultimate costs of tort cases filed against the State of Alaska and its employees and of workers' compensation matters involving state employees. The section also pursues aggressive motion practice, trial or negotiation to contain costs associated with civil and administrative litigation filed by inmates against the Department of Corrections and its employees.

- Investigated and referred a workers' compensation case to the AWCB's fraud investigation unit, leading to a jury conviction of a former employee for defrauding the state out of more than \$250,000 in workers' compensation benefits and a two-year jail sentence. The fraud petition filed by the section with the AWCB is stayed pending appeal of the criminal felony fraud conviction and sentence.
- Defended the state as employer in numerous hearings before the AWCB and in appeals before the Alaska Workers' Compensation Appeals Commission, and participated in reemployment benefits hearings.
- Won an appeal in the Alaska Supreme Court affirming summary judgment and dismissal of civil rights lawsuit filed by several inmates claiming they were not receiving meals consistent with their religious beliefs.
- After years of briefing and remand from the Alaska Supreme Court, won dismissal of the third party allocation of fault claim against the state for alleged sexual assault of a minor. The case is on appeal to the Alaska Supreme Court and the parties are awaiting a decision.
- In 2016, the section won summary judgment of all claims against the state in an Alaska State Trooper excessive force/false arrest case in federal district court. In 2017, the Ninth Circuit affirmed dismissal of all claims except for the First Amendment retaliatory arrest claim. The United States Supreme Court recently granted review and issued a favorable decision, ruling that a First Amendment retaliatory arrest claim against arresting officers is not viable if the officers had probable cause to arrest.
- Won an appeal in the Ninth Circuit Court of Appeals, affirming summary judgment and dismissal of a protracted construction contract dispute about the state's refusal to pay additional money for an asbestos abatement project

in 2007.

- Won summary judgment and dismissal of several medical and dental malpractice cases.
- The section briefed significant issues about the scope of discovery of confidential child protection, mental health, medical, and other records of third parties not directly involved in litigation, and protection of privacy interests.
- Prevailed on dispositive motions to dismiss or for summary judgment in a number of other cases, and obtained attorney fee awards as prevailing party. In addition, motions filed by the section assisted in settlement negotiations and in resolving cases on favorable terms. The section also succeeded in obtaining voluntary dismissal of numerous tort cases, in which the state paid nothing and each side assumed its own expenses.
- Provided training on civil law and liability to multiple training academies for correctional and probation officers, as well as to line supervisors and senior management at the Division of Juvenile Justice. The section also provided training for the state's independent workers' compensation adjusters.

Key Component Challenges

One key component challenge stems from the Alaska standard for summary judgment. Summary judgment is a useful tool for concluding civil litigation short of trial. However, Alaska law precludes the grant of summary judgment if there are any material issues in dispute. The court may not evaluate the overwhelming weight of the evidence in support of the motion, nor may it make credibility judgments even when the plaintiff's assertions as to material facts are unsubstantiated. The result is that where the court denies summary judgment, the section must consider the substantial cost of taking the case to trial in determining whether a settlement might be a more economical use of state resources.

Another continuing key challenge involves defending lawsuits brought by unrepresented plaintiffs. Because these cases take more time, a disproportionate amount of the section's resources is channeled to defending these lawsuits.

The section continues to deal with a high volume of matters referred for legal assistance from the Third-Party Administrator for the workers' compensation program of the Division of Risk Management. Keeping up with the workers' compensation caseload will likely remain a challenge.

Significant Changes in Results to be Delivered in FY2021

No significant changes are anticipated in the next fiscal year.

Statutory and Regulatory Authority

AS 44.23.020

Contact Information
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Torts & Workers' Compensation Personal Services Information				
Authorized Positions			Personal Services Costs	
	<u>FY2020</u> <u>Management</u> <u>Plan</u>	<u>FY2021</u> <u>Governor</u>		
Full-time	31	32	Annual Salaries	2,650,182
Part-time	0	0	COLA	6,788
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	1,484,894
			<i>Less 3.48% Vacancy Factor</i>	<i>(143,964)</i>
			Lump Sum Premium Pay	0
Totals	31	32	Total Personal Services	3,997,900

Position Classification Summary					
Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Associate Attorney I	1	0	1	0	2
Attorney III	3	0	0	0	3
Attorney IV	7	0	1	0	8
Attorney V	3	1	0	0	4
Attorney VI	1	0	0	0	1
Law Office Assistant I	4	1	0	0	5
Law Office Assistant II	2	0	1	0	3
Paralegal I	1	0	0	0	1
Paralegal II	4	1	0	0	5
Totals	26	3	3	0	32

Component Detail All Funds
Department of Law

Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

Non-Formula Component

	FY2019 Actuals	FY2020 Conference Committee	FY2020 Authorized	FY2020 Management Plan	FY2021 Governor	FY2020 Management Plan vs FY2021 Governor	
71000 Personal Services	3,109.1	3,889.5	3,889.5	3,839.5	3,997.9	158.4	4.1%
72000 Travel	29.2	17.2	17.2	17.2	17.2	0.0	0.0%
73000 Services	661.8	243.7	243.7	243.7	93.7	-150.0	-61.6%
74000 Commodities	37.2	33.6	33.6	33.6	33.6	0.0	0.0%
75000 Capital Outlay	6.8	0.0	0.0	0.0	0.0	0.0	0.0%
77000 Grants, Benefits	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
78000 Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
Totals	3,844.1	4,184.0	4,184.0	4,134.0	4,142.4	8.4	0.2%
Fund Sources:							
1004 Gen Fund (UGF)	92.6	0.0	0.0	0.0	0.0	0.0	0.0%
1007 I/A Rcpts (Other)	3,751.5	4,184.0	4,184.0	4,134.0	4,142.4	8.4	0.2%
Unrestricted General (UGF)	92.6	0.0	0.0	0.0	0.0	0.0	0.0%
Designated General (DGF)	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
Other Funds	3,751.5	4,184.0	4,184.0	4,134.0	4,142.4	8.4	0.2%
Federal Funds	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
Positions:							
Permanent Full Time	30	30	30	31	32	1	3.2%
Permanent Part Time	0	0	0	0	0	0	0.0%
Non Permanent	0	0	0	0	0	0	0.0%

Change Record Detail - Multiple Scenarios with Descriptions
Department of Law

Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

Scenario/Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions		NP
										PFT	PPT	
***** Changes From FY2020 Conference Committee To FY2020 Authorized *****												
FY2020 Conference Committee	ConfCom	4,184.0	3,889.5	17.2	243.7	33.6	0.0	0.0	0.0	30	0	0
1007 I/A Rcpts		4,184.0										
Subtotal		4,184.0	3,889.5	17.2	243.7	33.6	0.0	0.0	0.0	30	0	0
***** Changes From FY2020 Authorized To FY2020 Management Plan *****												
Transfer Paralegal II (03-0292) to Human Services to Address Workload Demands	Trout	-50.0	-50.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0	0
1007 I/A Rcpts		-50.0										
Transfer a full-time Paralegal II (03-0292), range 16, located in Juneau, from Torts and Workers' Compensation to Human Services to accommodate workload demands. The remaining staff in Torts and Workers' Compensation are sufficient to cover the anticipated workload.												
Transfer Attorney III (03-1231) from Criminal Justice Litigation for Casework Realignment	Trin	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0	0
Transfer a full-time Attorney III (03-1231), range 22, located in Anchorage, from the Criminal Justice Litigation office to the Torts and Workers' Compensation section to keep pace with the required level of legal expertise needed within the section. The remaining staff within the Criminal Justice Litigation office are sufficient to accommodate anticipated workload.												
Department of Law attorney positions are transferred as needed to align expertise with workload.												
Transfer Associate Attorney I (03-0109) from Commercial and Fair Business to Address Workload Demands	Trin	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0	0
Transfer a full-time Associate Attorney I (03-0109), range 17, located in Juneau, from the Commercial and Fair Business section to the Torts and Workers' Compensation office to accommodate workload demands within the office. The remaining staff within the Commercial and Fair Business section are sufficient to accommodate anticipated workload.												
Department of Law attorney positions are transferred as needed to align expertise with workload.												
Subtotal		4,134.0	3,839.5	17.2	243.7	33.6	0.0	0.0	0.0	31	0	0
***** Changes From FY2020 Management Plan To FY2021 Governor *****												
FY2021 Salary and Health Insurance Increases	SalAdj	8.4	8.4	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1007 I/A Rcpts		8.4										
FY2021 GGU Salary Increases: \$5.8												

Change Record Detail - Multiple Scenarios with Descriptions
Department of Law

Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

Scenario/Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions		NP
										PFT	PPT	
FY2021 increase to GGU Health Insurance from \$1530 to \$1555 per member per month: \$2.6												
Align Authority with Anticipated Expenditures	LIT	0.0	150.0	0.0	-150.0	0.0	0.0	0.0	0.0	0	0	0
Transfer authority from services to cover anticipated personal services costs. The remaining services authority is sufficient to cover anticipated expenditures.												
Add Paralegal I (03-0427) to Address Workload Demands	PosAdj	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0	0
Add a full-time Paralegal I (03-0427), range 14, located in Anchorage, to meet workload demands and provide required paraprofessional support for section attorneys.												
Totals		4,142.4	3,997.9	17.2	93.7	33.6	0.0	0.0	0.0	32	0	0

Line Item Detail (1676)
Department of Law
Travel

Component: Torts & Workers' Compensation (2719)

Line Number	Line Name		FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
2000	Travel		29.2	17.2	17.2
Object Class	Servicing Agency	Explanation	FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
2000 Travel Detail Totals			29.2	17.2	17.2
2000	In-State Employee Travel	Travel for attorneys to interview witnesses and attend court proceedings, as well as for necessary training for both attorneys and paraprofessionals. Includes travel for management purposes.	13.5	13.5	13.5
2001	In-State Non-Employee Travel	Travel costs for witnesses to testify in court.	0.0	1.0	1.0
2002	Out of State Employee Travel	Travel costs and expenses for out-of-state travel for conferences, training, etc.	12.0	1.7	1.7
2006	Other Travel Costs	Travel cost transfers.	3.7	1.0	1.0

Line Item Detail (1676)
Department of Law
Services

Component: Torts & Workers' Compensation (2719)

Line Number	Line Name		FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
3000	Services		661.8	243.7	93.7
Object Class	Servicing Agency	Explanation	FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
3000 Services Detail Totals			661.8	243.7	93.7
3000	Education Services	Conferences, training and memberships.	0.1	0.1	0.1
3002	Legal and Judicial Services	Depositions, research costs, expert witness and consultant fees.	161.4	25.0	25.0
3006	Delivery Services	Freight, courier, postage, and transportation of trial exhibit materials.	1.3	1.3	1.3
3011	Other Services	Cost transfers and miscellaneous items within the services line (commissions, etc.).	499.0	217.3	67.3

Line Item Detail (1676)

**Department of Law
Commodities**

Component: Torts & Workers' Compensation (2719)

Line Number	Line Name		FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
4000	Commodities		37.2	33.6	33.6
Object Class	Servicing Agency	Explanation	FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
4000 Commodities Detail Totals			37.2	33.6	33.6
4000	Business	Reference materials and subscriptions, including statutes, software applications, non-capital desktop refresh, and miscellaneous office supplies.	0.7	1.0	1.0
4022	Commodity Transfer	Commodity cost transfers.	36.5	32.6	32.6

Line Item Detail (1676)

**Department of Law
Capital Outlay**

Component: Torts & Workers' Compensation (2719)

Line Number	Line Name		FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
5000	Capital Outlay		6.8	0.0	0.0
Object Class	Servicing Agency	Explanation	FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
5000 Capital Outlay Detail Totals			6.8	0.0	0.0
5009	Capital Outlay Transfer	Capital cost transfers.	6.8	0.0	0.0

Revenue Detail (1681)
Department of Law

Component: Torts & Workers' Compensation (2719)

Revenue Type (OMB Fund Code) Revenue Source	Component	Comment	FY2019 Actuals	FY2020 Management Plan	FY2021 Governor
5007 I/A Rcpts (1007 I/A Rcpts)			3,751.5	4,134.0	4,142.4
5301 Inter-Agency Receipts	Admin - Department-wide	RSA Administration, Risk Management - legal services regarding personal injury litigation. Program code: CV03214539.	3,446.5	3,829.0	3,862.4
5301 Inter-Agency Receipts	Correct - Department-wide	RSA Corrections, Department-wide - legal services. Program code: CV03214550.	250.0	250.0	225.0
5301 Inter-Agency Receipts	PubSaf - Department-wide	RSA Public Safety, Alaska Police Standards Council - legal services. Program code: CV03214560.	55.0	55.0	55.0

Personal Services Expenditure Detail
Department of Law

Scenario: FY2021 Governor (16414)
Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range / Step	Comp Months	Split / Count	Annual Salaries	COLA	Premium Pay	Annual Benefits	Total Costs	UGF Amount
03-0030	Attorney IV	FT	A	XE	Juneau	N05	24M / N	12.0		130,116	0	0	63,134	193,250	0
03-0043	Attorney IV	FT	A	XE	Anchorage	N00	24F	12.0		106,452	0	0	55,050	161,502	0
03-0089	Attorney VI	FT	A	XE	Anchorage	N00	26P / Q	12.0		153,084	0	0	69,982	223,066	0
03-0109	Associate Attorney I	FT	A	XE	Juneau	N05	17K	12.0		74,544	0	0	44,151	118,695	0
03-0127	Law Office Assistant I	FT	A	GP	Anchorage	200	11E / F	12.0		42,528	571	0	33,318	76,417	0
03-0132	Paralegal II	FT	A	GP	Fairbanks	203	16K	6.0	**	35,028	470	0	21,361	56,859	0
03-0201	Law Office Assistant I	FT	A	GP	Anchorage	200	11B / C	12.0		38,888	522	0	32,074	71,484	0
03-0204	Law Office Assistant I	FT	A	GP	Fairbanks	203	11F	6.0	**	22,271	299	0	17,003	39,573	0
03-0214	Paralegal II	FT	A	GG	Anchorage	200	16A / B	12.0		52,704	707	0	36,794	90,205	0
03-0218	Paralegal II	FT	A	GP	Anchorage	200	16G	12.0		63,264	849	0	40,401	104,514	0
03-0230	Attorney IV	FT	A	XE	Anchorage	99	24M / N	12.0		122,348	0	0	60,480	182,828	0
03-0238	Attorney III	FT	A	XE	Anchorage	N00	22A / B	12.0		81,384	0	0	46,487	127,871	0
03-0241	Attorney V	FT	A	XE	Anchorage	N00	25F	12.0		114,420	0	0	57,772	172,192	0
03-0248	Law Office Assistant II	FT	A	SS	Anchorage	600	13J	12.0		54,768	0	0	37,539	92,307	0
03-0255	Attorney IV	FT	A	XE	Anchorage	N00	24K / L	12.0		114,866	0	0	57,925	172,791	0
03-0286	Attorney IV	FT	A	XE	Anchorage	N00	24D / E	12.0		100,488	0	0	53,013	153,501	0
03-0287	Law Office Assistant II	FT	A	SS	Anchorage	600	13L	12.0		58,380	0	0	38,773	97,153	0
03-0297	Law Office Assistant I	FT	A	GP	Anchorage	200	11G / J	12.0		45,248	607	0	34,247	80,102	0
03-0300	Attorney IV	FT	A	XE	Anchorage	N00	24F / J	12.0		108,756	0	0	55,837	164,593	0
03-0315	Attorney V	FT	A	XE	Anchorage	N00	25N / O	12.0		134,984	0	0	64,797	199,781	0
03-0346	Paralegal II	FT	A	GP	Anchorage	200	16G / J	12.0		63,918	858	0	40,625	105,401	0
03-0347	Law Office Assistant I	FT	A	GP	Anchorage	200	11A / B	12.0		38,093	511	0	31,803	70,407	0
03-0364	Attorney IV	FT	A	XE	Anchorage	N00	24E / F	12.0		105,292	0	0	54,654	159,946	0
03-0375	Attorney III	FT	A	XE	Anchorage	N00	22B / C	12.0		82,632	0	0	46,913	129,545	0
03-0376	Associate Attorney I	FT	A	XE	Anchorage	N00	17J	12.0		68,760	0	0	42,175	110,935	0
03-0384	Attorney IV	FT	A	XE	Anchorage	N00	24D / E	12.0		102,006	0	0	53,532	155,538	0
03-0397	Paralegal II	FT	A	GP	Anchorage	200	16D / E	12.0		58,002	778	0	38,604	97,384	0
03-0427	Paralegal I	FT	A	GG	Anchorage	100	14A / B	12.0		45,918	616	0	34,476	81,010	0
03-1038	Attorney V	FT	A	XE	Fairbanks	N03	25M	12.0		133,932	0	0	64,437	198,369	0
03-1047	Law Office Assistant II	FT	A	SS	Juneau	605	13C / D	12.0		51,282	0	0	36,348	87,630	0
03-1231	Attorney III	FT	A	XE	Anchorage	N00	24F	12.0		106,452	0	0	55,050	161,502	0
06-0517	Attorney V	FT	A	XE	Anchorage	N00	25O / P	12.0		139,374	0	0	66,139	205,513	0

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column. [No valid job title] appearing in the Job Class Title indicates that the PCN has an invalid class code or invalid range for the class code effective date of this scenario.

Personal Services Expenditure Detail
Department of Law

Scenario: FY2021 Governor (16414)
Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

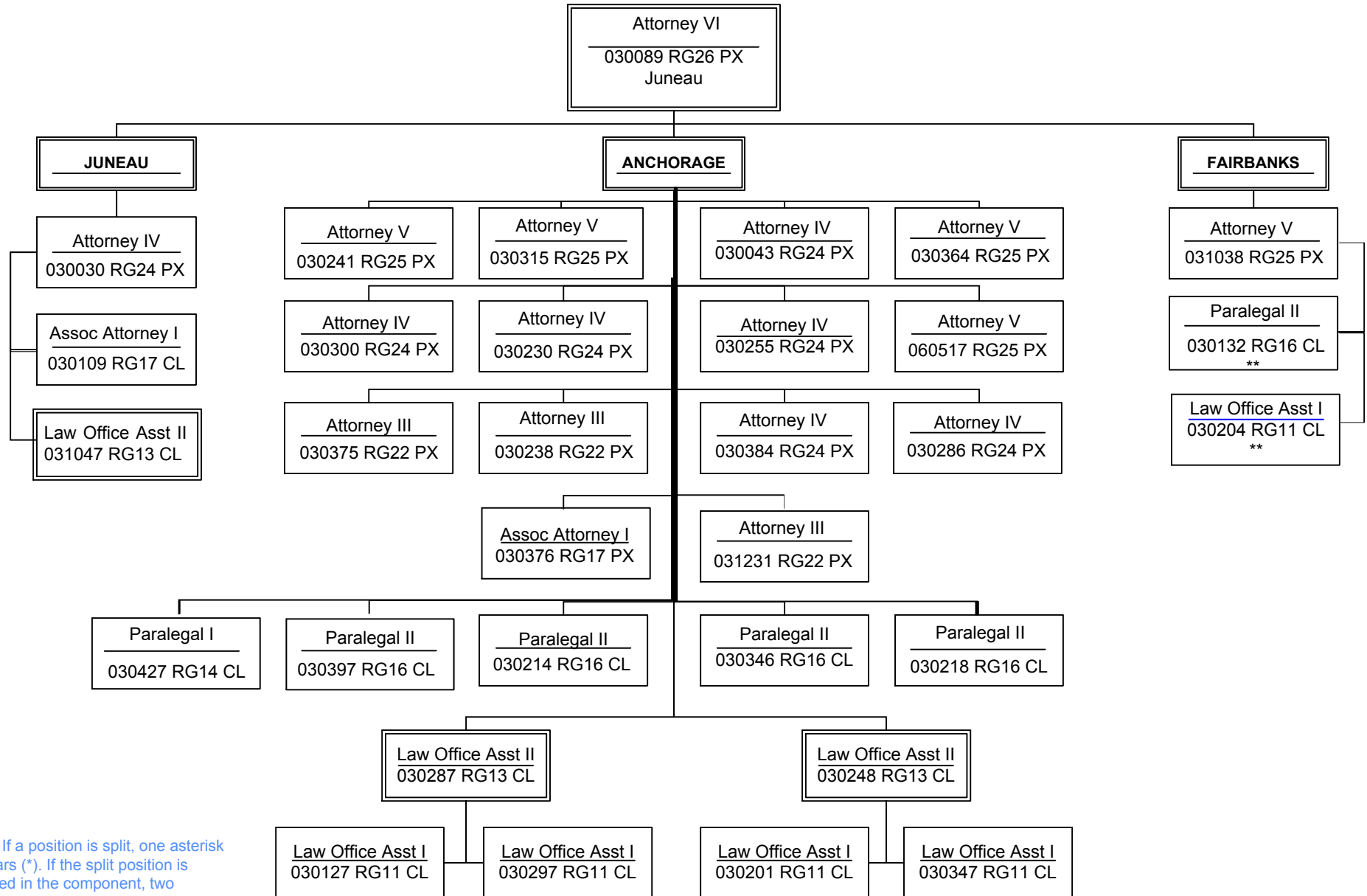
PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range / Step	Comp Months	Split / Count	Annual Salaries	COLA	Premium Pay	Annual Benefits	Total Costs	UGF Amount
		Total Positions	New	Deleted										Total Salary Costs:	2,650,182
														Total COLA:	6,788
	Full Time Positions:	32	0	0										Total Premium Pay:	0
	Part Time Positions:	0	0	0										Total Benefits:	1,484,894
	Non Permanent Positions:	0	0	0											
	Positions in Component:	32	0	0											
	Total Component Months:	372.0													
														Total Pre-Vacancy:	4,141,864
														Minus Vacancy Adjustment of 3.48%:	(143,964)
														Total Post-Vacancy:	3,997,900
														Plus Lump Sum Premium Pay:	0
														Personal Services Line 100:	3,997,900

PCN Funding Sources:	Pre-Vacancy	Post-Vacancy	Percent
1007 Interagency Receipts	4,141,864	3,997,900	100.00%
Total PCN Funding:	4,141,864	3,997,900	100.00%

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column. [No valid job title] appearing in the Job Class Title indicates that the PCN has an invalid class code or invalid range for the class code effective date of this scenario.

CIVIL DIVISION

Torts and Workers' Compensation



Note: If a position is split, one asterisk appears (*). If the split position is counted in the component, two asterisks (**) appear.