

IN THE SUPREME COURT OF THE STATE OF ALASKA

Alaska Public Defender Agency,)
)
 Petitioner,)
)
 v.)
)
 Superior Court,)
)
 Respondent.)

Supreme Court No.: **S-16983**

Court of Appeals No. A-12814
Trial Court Case No. 4SM-16-00002DL

PETITION FOR HEARING FROM THE COURT OF APPEALS
FOURTH JUDICIAL DISTRICT AT BETHEL
HONORABLE DWAYNE W. MCCONNELL, JUDGE

**INTERVENOR'S EXCERPT OF RECORD
(VOLUME 1 OF 1)**

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Filed in the Supreme Court of the State
of Alaska this ____ day of _____, 2018.

Marilyn May, Clerk of Court

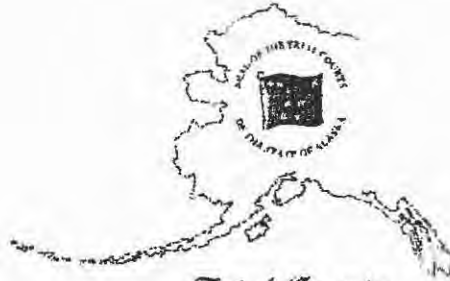
By: _____
Deputy Clerk

VRA and App. R. 513.5 Certification

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

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Trial Courts
State of Alaska
FOURTH JUDICIAL DISTRICT

CHARLES W. RAY, JR.
Superior Court Judge

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March 21, 2016

Joanne Grace, Attorney
Division of Juvenile Justice
1031 W 4th Ave., Ste. 200
Anchorage, AK 99501

Dear Ms. Grace,

In re J.M., Case No. 4SM-15-003 DL, is pending in my court in Bethel. An issue has arisen as framed in the following questions. I invite you to submit a brief setting out your agency's position with respect to those questions. On or before April 4, 2016, would you please file a notice whether you will, or will not, file a memorandum on behalf of your agency? If you notify the court that you will be filing a memorandum, please file it on or before April 22, 2016, and ensure service on the people listed on the attached, which identifies each person to whom this letter is addressed. Here are the questions:

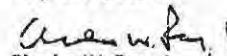
Does a minor charged with a delinquent act have a due process right to be present at her/his trial?

Assume the answer to question no. 1 is, "Yes". If neither the minor nor the minor's parents has the money to travel to the trial site, as for example from McGrath to Bethel, and furthermore does not have the money to pay for food and lodging at the trial site, is the State obligated to fund travel and per diem for the minor? For a parent?

If the State is obligated to fund travel and/or per diem for the minor and/or a parent, which particular agency should bear that expense, and why?

I look forward to your notice, and as appropriate, your memorandum.

Very truly yours,


Charles W. Ray, Jr.

cc: Craig W. Richards AG, Nancy Meade ACS, Quinlan Steiner PDA, Richard Allen OPA, Liz Pederson AVCP, Nicole Borromeo AFN, and Gary Folger DPS.

ATTACHMENT B Page 1 of 1

Exhibit C
Page 1 of 1

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ALASKA PUBLIC DEFENDER
 AGENCY,

Applicant,

vs.

SUPERIOR COURT,

Respondent.

)
)
)
)
) Court of Appeals No. A-____
)
)
)
)

Trial Case No. 4SM-16-00002DL

ORIGINAL APPLICATION

VRA AND APP. R. 513.5 CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court. I further certify, pursuant to App. R. 513, that the font used in this document is Arial 12.5 point.

J.B. lives with his family in Marshall. The Division of Juvenile Justice (DJJ) filed juvenile delinquency charges against J.B. in connection with events occurring in Marshall in February 2016, when he was 16 years old. The trial court determined that J.B. was indigent and appointed the Public Defender Agency ("the Agency") to represent him. The court also approved a "conduct agreement" requiring J.B. to follow conditions similar to probation conditions and giving DJJ a custodial relationship over him. [Att. A]

Since J.B. lives in Marshall but the presumptive site for his adjudication trial is Bethel,¹ J.B. moved for a court order requiring DJJ to pay his and a parent's travel costs to attend his trial. But the trial court denied the motion, concluding that the

¹ See Alaska R. Crim. P. 18.

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2 Agency is required to pay those expenses under its enabling statute. Because the
3 Agency's clients' trial-related travel expenses are not "necessary services and
4 facilities of representation" under the Agency's enabling statute, this court should
5 grant the Agency's original application and reverse the trial court order.
6

7 RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

8 A. Court Proceedings in *M.T.*

9 In *State v. M.T.*,² this court first considered the issue of state-funded
10 transportation to a juvenile adjudication trial. M.T. was an indigent child from Hooper
11 Bay facing juvenile delinquency charges.³
12

13 The trial court ruled that DJJ had to pay M.T.'s travel costs for his trial in
14 Bethel, relying on AS 12.47.120(e), which provides that DJJ "shall pay all court costs
15 incurred in all proceedings in connection with the adjudication of delinquency[.]"⁴
16 DJJ petitioned for review; this court disagreed with the trial court's interpretation of
17 AS 12.47.120(e) and reversed.⁵ This court expressed no opinion about M.T.'s
18 argument that due process required DJJ to pay his and a parent's trial-related travel
19 costs.⁶ This court noted that the trial court was in "the best position to hear . . .
20 evidence regarding how this problem has been handled in other cases in the past."⁷
21

22 On remand, the state submitted an affidavit from Walter Evans, the chief
23

24
25 ² Order, *State v. M.T.*, A-11942/11961, at *1 (Alaska App. July 24, 2014).

26 ³ *Id.*

27 ⁴ *Id.* (quoting AS 12.47.120(e))

28 ⁵ *Id.* at *1-5.

⁶ *Id.* at *4-5.

⁷ *Id.* at *5.

1
2 probation officer for DJJ's northern region. [Att. B] As Evans' affidavit explained, DJJ
3 pays travel costs for "in-custody clients . . . [for whom DJJ] has a greater
4 responsibility to care and provide for the client" and that DJJ "may opt to pay
5 transportation costs for an out-of-custody client on a case-by-case basis, but that is
6 extremely rare." [Att. B at 2] The affidavit set forth some of DJJ's considerations in
7 deciding whether to transport its out-of-custody clients, including "the availability of
8 [DJJ] funds" and "whether [DJJ] has an independent need or desire to interact with
9 the client in person." [Att. B at 2]
10

11 Because *M.T.* resolved before adjudication, the superior court did not have
12 occasion to address M.T.'s argument that due process required DJJ to pay his and
13 a parent's trial-related travel costs.
14

15 B. Court Proceedings in *I.M.*

16 In *State v. I.M.*,⁸ this court again considered the issue of state-funded
17 transportation to a juvenile adjudication trial. I.M. was an indigent child from Pilot
18 Station facing juvenile delinquency charges.⁹
19

20 The trial court directed the parties, and invited other state agencies, to brief
21 several questions, including the questions this court left open in *M.T.*: whether a
22 child facing delinquency charges has a due process right to be present at his or her
23 adjudication trial; whether, if the child's family cannot afford the expense of
24 transportation and per diem to the trial site, the state must pay that expense; and, if
25

26
27 ⁸ Order, *State v. I.M.*, A-12700/A-12739, at *1 (Jan. 6, 2017).

28 ⁹ Opposition to Petition for Review and Cross-Petition, *State v. I.M.*, A-12700/A-12739, at *1, 3 (Nov. 3, 2016).

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1
2 so, which agency should bear that expense. [Att. C]

3 The following parties and agencies submitted memoranda: I.M., the Division
4 of Juvenile Justice (DJJ); the Office of Public Advocacy (OPA); the Department of
5 Law; and the Alaska Court System. [Att. D, E, F, G, H] All memoranda addressing
6 the first and second questions agreed that the child has a right to be present at his
7 or her adjudication trial and that, if the child's family cannot afford travel to the trial
8 site, the state must pay the transportation and per diem expenses for the child to the
9 trial site.¹⁰ And all memoranda addressing a parent's travel suggested that the
10 state's obligation to pay transportation and per diem expenses for a parent is a case-
11 by-case determination.¹¹ [Att. D at 9-11; Att. E at 5-6; Att. F at 13-15] But the
12 memoranda differed as to which agency bears these costs. I.M., OPA, and the
13 Alaska Court System argued that DJJ is the appropriate entity to bear these costs.
14 [Att. D, F, H] DJJ and the Department of Law argued that the agency appointed to
15 represent the child is the appropriate entity to bear these costs. [Att. E, F]

16
17
18
19 The trial court noted that all parties agreed that a child and parent should be
20 provided with trial-related travel costs and concluded that DJJ was responsible for
21 those costs. [Att. I] The court concluded that the statute guaranteeing indigent
22 defendants' right to representation does not encompass these expenses and that
23 the general responsibility of DHSS, through DJJ, to provide "fair legal proceedings
24 during which constitutional and other legal rights are recognized and enforced" does
25

26
27 ¹⁰ The court system memorandum did not address these questions. [Att. H]

28 ¹¹ The Department of Law and court system memoranda did not address the
question of payment for a parent. [Att. G, H]

1
2 encompass these expenses.¹² [Att. I] DJJ petitioned this court for interlocutory
3 review of the trial court's order, I.M. filed a response, and the Alaska Court System
4 filed an amicus brief.¹³ [Att. J] In its amicus brief, the court system again argued that
5 DJJ was the proper entity to pay the child and parent's travel costs. [Att. J at 5-11]
6 This court denied DJJ's petition.¹⁴
7

8 C. Court Proceedings in This Case

9 While *I.M.* was pending, J.B. filed a motion arguing that he had a constitutional
10 right to attend his adjudication trial with a parent and requesting a court order that
11 DJJ must pay his and a parent's travel expenses to attend his adjudication trial. [Att.
12 K] J.B. attached Walter Evans' affidavit and this court's order in *M.T.* [Att. K] The
13 state opposed, arguing that the Public Defender Agency is the appropriate entity to
14 bear those expenses. [Att. L] J.B. filed his reply just after this court denied DJJ's
15 petition for review in *I.M.* and attached the trial court's order in *I.M.* and this court's
16 order denying DJJ's petition. [Att. M] J.B. noted that this court's order "should be all
17 the guidance this court needs to grant [his] motion." [Att. M]
18

19 The trial court appeared to accept that J.B. and his family could not afford the
20 expense of traveling to Bethel.¹⁵ But the court denied J.B.'s motion and directed the
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22

23 ¹² See AS 47.12.010(b)(9).

24 ¹³ See State of Alaska's Petition for Review, *State v. I.M.*, A-12700 (Sept. 19,
25 2016); Opposition to Petition for Review and Cross-Petition, *State v. I.M.*, A-
12700/A-12739, at *1, 3 (Nov. 3, 2016).

26 ¹⁴ Order, *State v. I.M.*, A-12700/A-12739, at *1 (Jan. 6, 2017). I.M. had cross-
27 petitioned to challenge the trial court's ruling that the Public Defender Agency bears
28 the costs if the defense calls I.M. or his parent to testify at trial; this court also denied
the cross-petition. *Id.*

¹⁵ If necessary, this court could remand for explicit factual findings on this point.

1
2 Public Defender Agency, not DJJ, to pay J.B.'s trial-related travel expenses. [Att. N]
3 By concluding that the Agency was statutorily required to pay its clients' trial-related
4 travel costs, the trial court avoided deciding J.B.'s due process claim. The court
5 simply concluded that due process did not "include the right to have another
6 executive branch agency . . . pay for him to get to his trial and expenses during trial."
7 [Att. M at 4]
8

9 The court relied on this court's order in *M.T.* to conclude that DJJ is not
10 statutorily required to pay trial-related travel expenses. [Att. M at 1-2] The court
11 rejected J.B.'s argument that DJJ treats some out-of-custody minors differently from
12 others because Walter Evans' affidavit was signed in December 2014 and the court
13 viewed the affidavit as insufficiently "current." [Att. M at 5] And the court concluded
14 that a minor's trial-related travel expenses are expenses of "representation" that the
15 Agency must pay under its enabling statute, AS 18.85.100. [Att. M. at 2, 5]
16 Regarding *I.M.*, the trial court simply noted, "It is not case law at all when a petition
17 for review is denied." [Att. M at 5 n.18]
18

19 ARGUMENT

20 A. J.B. Has the Constitutional Right To Attend His Adjudication Trial with One of 21 His Parents.

22 In *R.L.R. v. State*,¹⁶ the Alaska Supreme Court held that "children are
23 constitutionally entitled to a jury trial in the adjudicative stage of a delinquency
24 proceeding" and recognized a child's "fundamental right to be present" at
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¹⁶ 487 P.2d 27 (Alaska 1971).

1
2 adjudication.¹⁷ The child's presence at trial affects the child's ability to adequately
3 prepare his defense, consult with his attorney in person, and confront witnesses.¹⁸
4 Alaska Delinquency Rule 3(b) also recognizes a child's "right to be present" by
5 requiring the child's presence unless he waives his right to be present and his
6 presence is excused by the court, or he engages in conduct justifying his exclusion.
7 In *I.M.*, all agencies who briefed this issue agreed that "by rule, statute and/or
8 constitutional due process principles," the state must pay an indigent child's trial-
9 related travel costs. [Att. I] For these reasons, if a child's family is indigent and
10 cannot afford to transport the child to his trial, the state must bear these costs.
11

12
13 Some delinquency cases involving indigent children also require state funding
14 for a parent to attend his or her child's adjudication trial. Parents are considered a
15 "party" in juvenile delinquency proceedings, must be served with a delinquency
16 petition, and must attend all delinquency hearings unless excused for good cause.¹⁹
17 Both the child and parent have significant interests in the parent's presence at the
18 child's trial: A child should consult with parents before invoking his right to a jury
19 trial,²⁰ and parents have a fundamental right to the care and custody of their child.²¹
20 State-funded travel for one of J.B.'s parents allows that parent to protect and care
21
22

23
24 ¹⁷ *Id.* at 35, 41-43.

25 ¹⁸ See *In re Gault*, 387 U.S. 1, 41, 56 (1967); cf. *State v. Hannagan*, 559 P.2d
26 1059, 1063 (Alaska 1977) (explaining that defendant's right to be present at trial is
27 based on his rights to confrontation and due process).

28 ¹⁹ See AS 47.12.050, 155(a); Alaska Delinq. R. 2(n), 3(b), 8(c).

²⁰ *R.L.R.*, 487 P.2d at 35.

²¹ *Seth D. v. State*, 175 P.3d 1222, 1227-28 (Alaska 2008); see also *J.M.R. v. S.T.R.*, 15 P.3d 253, 257 (Alaska 2001).

for him and provides J.B. with the oversight and support he needs while standing trial in Bethel.²²

B. The Public Defender Agency's Enabling Statute Does Not Authorize Payment of Clients' Trial-Related Travel Costs.

Alaska Statute 18.85.100(a)(2) sets forth an indigent defendant's right to representation and right "to be provided with the necessary services and facilities of this representation, including investigation and other preparation." In *M.T.*, this court cited a 1977 Attorney General Opinion²³ stating that if an out-of-custody defendant is represented by the Public Defender Agency ("the Agency") under the statute, the Agency is responsible for any travel at public expense "if the expense is a necessary incident of representation[.]"²⁴ The trial court here incorrectly relied on *M.T.* and the 1977 attorney general opinion when it interpreted AS 18.85.100(a)(2) to require payment of clients' trial-related travel expenses.

Travel expenses are neither "necessary services and facilities of representation" nor "necessary incident[s] of representation." Both of these

²² DJJ admitted in *I.M.* that some cases might require a parent's presence "in order for the juvenile to exercise his or her right to physically attend" and argued that trial courts should make this determination case by case. [Att. E at 6] See State of Alaska's Petition for Review, *State v. I.M.*, A-12700/12739, at 15 (Sept. 19, 2016). If this court agrees that trial courts should make case-by-case determinations before allowing state funding for a parent's travel to the court location, this court should remand for such proceedings in this case.

²³ Order, *State v. M.T.*, A-11942/11961, at *4 (July 24, 2014) (citing Attorney General Opinion, Oct. 7, 1977, 1977 WL 22018).

²⁴ Attorney General Opinion, Oct. 7, 1977, 1977 WL 22018 (emphasis added). The opinion addressed a conflict between the Department of Public Safety and the Department of Health and Social Services regarding who should pay transportation expenses of defendants. The parties to the dispute did not include the Public Defender Agency in its administrative capacity. See *id.*

1
2 descriptions focus on expenses relating to the act of *representation*. Representation
3 involves evaluating the client's legal situation, advising the client about his legal
4 rights and their practical implications, negotiating on behalf of the client, and
5 advocating for the client's position.²⁵ A criminal defense attorney advises the client
6 about his rights and options and makes strategic decisions about how to litigate the
7 case, including which witnesses to call and, by extension in the case of public
8 counsel, which witnesses to pay for.²⁶ These decisions are discretionary, hinging on
9 the attorney's decisions about how to best defend the case and the relative
10 advantages and disadvantages of calling a particular witness.
11

12
13 By contrast, a defendant's right to appear at his own trial is absolute.²⁷ It
14 presents no strategic question and offers no opportunity for the attorney to exercise
15 discretion on behalf of the client. The costs of "necessary services and facilities of
16 . . . representation" in AS 18.85.100(a)(2) thus do not include trial-related travel
17 expenses. Indeed, AS 18.85.100(a)(1) provides that an indigent person "is entitled
18 . . . to be represented, in connection with the crime or proceeding, by an attorney to
19 the same extent as a person retaining an attorney is entitled." (Emphasis added.) A
20
21

22 ²⁵ Alaska R. Prof. Cond. Preamble.

23 ²⁶ Alaska Statute 18.85.100(a)(2) specifically defines "necessary services and
24 facilities of . . . representation" as including "investigation and other preparation."
25 And in *Alaska Public Defender Agency v. Superior Court*, 343 P.3d 914 (Alaska App.
26 2015), this court held that standby counsel, which "assists or advises a criminal
27 defendant," does not "represent" him under AS 18.85.100(a). As this court
28 explained, standby counsel does not exercise the "degree of control" over the
litigation that legal representation requires. *Id.* at 915-16.

²⁷ See, e.g., *Flood v. State*, 304 P.3d 1083, 1085-86 (Alaska App. 2013) (holding
that a defendant has a constitutional right to be present at his trial but not a
constitutional right to waive his presence at trial).

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1
2 person who retains an attorney is not entitled to have that attorney pay his or her
3 costs of travel to trial.

4 The trial court's order also improperly relied on an OPA regulation regarding
5 reimbursement for "extraordinary expenses" and on the criminal rule regarding
6 witness costs. The OPA regulation at issue, 2 AAC 60.040, allows reimbursement
7 for "extraordinary expenses," including "necessary travel and per diem by the
8 defendant," if it is formally authorized by the public advocate.²⁸ But OPA's
9 representation in criminal and juvenile cases is governed by AS 18.85.100;²⁹ thus, if
10 travel is not a necessary service or facility of representation under that statute, the
11 regulation alone does not mandate funding. Moreover, the regulation allows
12 reimbursement only if the public advocate formally authorizes it. This is inconsistent
13 with funding an absolute constitutional right. Last, OPA adopted this regulation in
14 1986, making it more than 30 years old. In OPA's memorandum to the trial court in
15 *I.M.*, it suggested that it had never interpreted AS 18.15.100 (and thus 2 AAC 60.040)
16 as covering a child and parent's trial-related travel costs.³⁰ The OPA regulation thus
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22 ²⁸ 2 AAC 60.040.

23 ²⁹ See AS 44.21.410(a)(5) (providing that the public advocate will provide legal
24 representation "in cases involving indigent persons who are entitled to
25 representation under AS 18.85.100 and who cannot be represented by the public
26 defender agency because of a conflict of interests").

27 ³⁰ The memorandum states: "OPA projects that none of the submissions . . .
28 can point to any time that OPA has interpreted [AS 18.85.100] as covering such
costs. In that light, it is notable that the period of time from 1969 to date is a long
and continuous period in which the enabling statute has not been applied to require
OPA to fund such costs." [Att. F at 9] See *Davis Wright Tremaine LLP v. State*, 324
P.3d 293, 298-99 (Alaska 2014) (explaining that agency interpretations of its own
regulations are reviewed under the reasonable basis standard of review, considering

1
2 does not support the trial court's interpretation.

3 The trial court's order also improperly relied on Criminal Rule 17(b), which
4 provides that "the public agency providing representation" to an indigent client pays
5 "[t]he cost incurred by the process and the fees of the [subpoenaed] witness."³¹ The
6 court noted that defense witnesses "may or may not include the defendant." [Att. N
7 at 3] But for this reason—because defendants can choose not to testify—this
8 criminal rule does not apply to defendants. A defendant's right to be present at his
9 trial is totally independent of whether he testifies. While a public defense attorney
10 makes strategic, discretionary decisions about how to litigate the case (including
11 decisions about which witnesses to call and which witnesses to pay for), those
12 decisions do not apply to defendants. The attorney has no discretion over the
13 defendant's decisions whether to go to trial or testify at trial. The attorney can advise
14 the defendant about his right to testify but must abide by the defendant's decision.³²
15 And the defendant need not make this decision until the state has presented all its
16 evidence and the defense has presented all its other evidence.³³ For these reasons,
17 the trial court's reliance on 2 AAC 60.040 and Criminal Rule 17(b) to require the
18 Agency to pay its clients' trial-related travel expenses was improper.
19
20
21

22 Moreover, because the Public Defender Agency's authorizing statute does not
23

24 _____
25 an interpretation's "consistency with the statute on which it is based" and "giv[ing]
26 more deference to agency interpretations that are longstanding and continuous").

27 ³¹ Delinquency Rule 1(c) applies certain criminal rules, including Criminal Rule
28 17, to delinquency proceedings.

³² See Alaska R. Prof. Cond. 1.2(a).

³³ See Alaska R. Crim. P. 27.1 (requiring inquiry of nontestifying defendant
before defense rests); *LaVigne v. State*, 812 P.2d 217, 222 (Alaska 1991).

1
2 distinguish between children and adults, interpreting "necessary services and
3 facilities of . . . representation" to include trial-related travel could render the Agency
4 responsible for paying the fixed expenses of travel for every indigent client exercising
5 his right to trial. This would "adversely affect the Agency's mission . . . by
6 apportioning scarce resources" to vindicate this right for every client at the expense
7 of funding those things that directly concern indigent defense and the exercise of
8 professional and administrative discretion—i.e., hiring experts, calling witnesses,
9 and employing lawyers, investigators, and paralegals.³⁴

11
12 The potential consequences to the Agency are enormous. If travel to a court
13 site were a service or facility of representation, the Agency could be responsible for
14 travel expenses for every indigent out-of-custody client, not only for airfare from
15 Marshall, Pilot Station, or Hooper Bay to Bethel but even for taxi or bus fare from
16 one part of Anchorage or Fairbanks to another. The legal argument that travel to a
17 court site is a service or facility of representation is thus so broad that it does not
18 distinguish between indigent child and adult defendants or between indigent
19 defendants traveling long and short distances.³⁵

21 C. Constitutional, Policy, and Practical Concerns Make DJJ the Appropriate Entity
22 To Pay J.B. and a Parent's Travel Costs.

23 DJJ should bear the costs of transporting J.B. and one of his parents to his
24 adjudication hearing because of DJJ's custodial relationship over the children it
25 supervises and its history of paying travel expenses for those children, and because
26

27 ³⁴ See *Alaska Public Defender Agency*, 343 P.3d at 917.

28 ³⁵ The court system would also presumably bear these types of expenses when
appointing counsel under Administrative Rule 12(e). [Att. H at 6 & n.11]

1
2 requiring the Agency to pay travel expenses will render its relationships to its clients
3 potentially adversarial.

4 1. DJJ's relationship to the children it supervises makes it the appropriate entity to
5 bear the travel expenses for J.B. and one parent.

6 The legislature has not expressly determined who bears the trial-related travel
7 costs for a child facing delinquency charges and a parent,³⁶ but due process and
8 policy considerations make DJJ the appropriate entity to bear them. DJJ must, per
9 the delinquency statutes, "provide due process through which juvenile offenders,
10 victims, parents, and guardians are assured fair legal proceedings during which
11 constitutional and other legal rights are recognized and enforced."³⁷ Although other
12 agencies help fulfill these goals, DJJ has the greater statutory obligation because it
13 is the state agency specifically charged with initiating delinquency proceedings and
14 then working most closely and most exhaustively with those children.³⁸

15
16
17 DJJ has J.B. under a conduct agreement that indicates supervision beyond
18 that of a typical adult defendant on bail. [Att. A] Under the agreement, J.B. must
19 "remain in the placement designated by my Probation/Intake Officer" and follow
20
21

22 ³⁶ See *supra* Argument Part B; Order, *State v. M.T.*, A-11942/11961 (Alaska
23 App. July 24, 2014) (rejecting argument that child's trial-related travel costs are "court
24 costs" under AS 47.12.120(e)).

25 ³⁷ AS 47.12.010(b)(9).

26 ³⁸ See, e.g., AS 47.12.990(5) (defining "department" in the juvenile delinquency
27 statutes as the Department of Health and Social Services); 7 AAC 52.900(7)-(8)
28 (defining, for the chapter on juvenile detention facilities, "director" and "division" as
the DJJ director and as DJJ, respectively); DJJ Resources and Programs, Division
of Juvenile Justice, available at <http://dhss.alaska.gov/djj/Pages/Programs/programs.aspx> (last visited Mar. 6, 2017) ("DJJ is tasked with meeting national and state standards and goals regarding juveniles [within] the justice system.").

1
2 conditions closely akin to probation conditions. [Att. A] By contrast, an adult criminal
3 defendant who is released from custody has no continuing custodial relationship with
4 the Department of Corrections or the Department of Law.

5 Further, by proceeding to adjudication in this case, DJJ is seeking to make
6 J.B. a ward of the state and assume a relationship of legal custody over him.³⁹ Thus,
7 when parents cannot pay their child's trial-related travel expenses, DJJ's custodial
8 relationship over the child—both the custodial relationship under the pre-adjudication
9 conduct agreement and the relationship of legal custody DJJ seeks to establish at
10 adjudication—should trigger its assumption of those expenses.

11 Although this court has previously concluded that AS 47.12.120(e), which
12 assigns to DJJ "all court costs" in adjudicating delinquency petitions, does not require
13 DJJ to pay minors' travel costs to their adjudication hearings,⁴⁰ this court can still rely
14 on that statute as an indication of legislative intent to assign such travel costs to DJJ,
15 as M.T. argued in his petition response⁴¹ and the Alaska Court System argued in its
16 amicus brief in *State v. I.M.* [Att. J at 6-10]

17 DJJ is also, along with the Department of Law, the prosecuting entity in this
18 case. DJJ decides whether to initiate and, with the Department of Law, can pursue
19

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21
22
23 ³⁹ AS 47.12.120(d) ("A minor found to be delinquent is a ward of the state while
24 committed to the department or while the department has the power to supervise the
25 minor's actions."); AS 47.12.150(a) ("When a minor is committed under AS
26 47.12.120(b)(1) or (3) to the department or released under AS 47.12.120(b)(2) to the
27 minor's parents, guardian, or other suitable person, a relationship of legal custody
28 exists.").

⁴⁰ See Order, *State v. M.T.*, A-11942/11961 (Alaska App. July 24, 2014).

⁴¹ See Opposition to Petition for Review, *State v. M.T.*, A-11942/11961, at 6-10
(June 4, 2014).

1
2 a petition for adjudication of delinquency to trial.⁴² DJJ and the Department of Law
3 can also unilaterally terminate proceedings against the child. These agencies thus
4 determine precisely how many delinquency trials will be held and, if the cost of those
5 trials becomes too burdensome, they can prioritize their cases and dismiss some of
6 them. The costs of pursuing a petition—including the non-negotiable cost of a
7 juvenile's presence at trial—should factor into that decision and be borne by the
8 entity with discretion over the proceeding.

9
10 This court has inherent authority to condition the state's prosecution of J.B. on
11 DJJ's payment of J.B.'s trial-related travel costs. Although Alaska appellate courts
12 have not addressed the issue, at least two cases provide support for this conclusion.
13 A federal court in the Southern District of New York concluded in one case that even
14 though a federal statute did not provide for the defendants' full trial-related travel and
15 subsistence expenses, "the Government is obligated to provide either decent, non-
16 custodial lodging or the cost of obtaining it."⁴³ And in the context of court-appointed
17 counsel, the Minnesota Supreme Court held that if the prosecuting authority did not
18 pay to provide counsel for an indigent defendant appealing a misdemeanor
19 conviction, the defendant's right to counsel would be violated and his conviction
20
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24 ⁴² AS 47.12.040. For example, the petition in this case is signed by Probation
25 Officer Michelle Waters, but prosecutors represent the state in some court
26 proceedings and at trial.

27 ⁴³ *United States v. Badalamenti*, 1986 WL 8309, at *2 (S.D.N.Y. July 22, 1986)
28 ("[I]t is not consistent with fundamental fairness or due process that an accused
defendant, regardless of the crime, be driven to ruin by the expense of attending trial
at a place far from his home, nor that he be required to take refuge in jail because of
an inability to meet the expense of attending trial.").

1
2 vacated.⁴⁴ There, the legislature had not given either the county or state public
3 defender agencies the responsibility to provide appellate counsel for misdemeanor
4 appeals and thus had not "articulated a policy judgment regarding how the right to
5 misdemeanor appellate counsel should be vindicated."⁴⁵ Similarly here, this court
6 can condition continued delinquency proceedings on the DJJ's provision of travel
7 costs.
8

9 The only other state entity with discretion relevant to this legal issue is the
10 Alaska Court System, which determines the locations of superior and district court
11 trial sites and their venue districts.⁴⁶ The court system has not chosen to designate
12 Marshall—or any village near Marshall—as a trial site.⁴⁷ St. Mary's does have a
13 court and is just downriver and accessible from Marshall; however, the court system
14 has not designated St. Mary's as a trial site and no longer staffs it.⁴⁸ And M.T. lived
15 in Hooper Bay, where the court system has recently built a courthouse and has a
16 sitting magistrate judge but has declined to designate a trial site.⁴⁹ The court system
17
18
19

20 ⁴⁴ See *State v. Randolph*, 800 N.W.2d 150, 159-62 (Minn. 2011).

21 ⁴⁵ *Id.* at 154-59 (quoting *Morris v. State*, 765 N.W.2d 78, 85 (Minn. 2009)).

22 ⁴⁶ See Alaska R. Crim. P. 18(a); Alaska Court System Administrative Bulletin
Nos. 27, 28.

23 ⁴⁷ See Alaska R. Crim. P. 18(a); Alaska Court System Administrative Bulletin
Nos. 27, 28.

24 ⁴⁸ See St. Mary's, Alaska Court System, available at
25 <http://courts.alaska.gov/courtdir/4sm.htm> (last visited March 1, 2017) ("St. Mary's
26 court is managed by the staff at Aniak."); Magistrate Judges – Fourth Judicial District,
27 Alaska Court System, available at <http://www.courts.alaska.gov/judges/mj.htm> (last
visited Mar. 6, 2017) (listing Magistrate John McConaughy as serving both Aniak
and St. Mary's).

28 ⁴⁹ See Hooper Bay, Alaska Court System, available at
<http://www.courts.alaska.gov/courtdir/4hb.htm> (last visited Mar. 6, 2017);

1
2 need not establish trial sites in every town to secure juveniles' constitutional rights⁵⁰
3 but could bear the costs of those decisions by paying the trial-related travel costs for
4 a rural child and parent who cannot otherwise afford to attend trial.

5
6 2. The Agency's relationship to its clients is potentially adversarial if the Agency
7 bears their travel costs.

8 The trial court's order in this case puts the Agency's interests at odds with its
9 clients' interests by ordering that the Agency is "statutorily obligated to pay for an
10 indigent, out-of-custody minor to travel to court." [Att. N at 3] Because qualification
11 for public counsel does not necessarily equate to qualification for travel expenses,
12 the order requires the Agency to assess whether its clients (and, with juvenile clients,
13 their parents) are truly so indigent that they cannot afford travel to trial and whether
14 that inability to pay is truly involuntary.⁵¹ It requires the Agency to critically examine
15 its clients' financial circumstances and representations about those circumstances,
16 potentially undermining its client relationships. Just as the Agency does not
17 determine who qualifies for Agency representation,⁵² the Agency should not
18 determine who qualifies for travel expenses.

19
20 Even if the trial court were to make an inquiry similar to the indigency inquiry
21 that accompanies appointment of counsel, the Agency would be in an adversarial
22

23
24 _____
25 Magistrate Judges – Fourth Judicial District, *supra* note 47 (listing Magistrate
26 Michael Osborne as serving Hooper Bay).

26 ⁵⁰ See *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 968-69 (Alaska 2005).

27 ⁵¹ For example, a juvenile client's parents might leave a court location for work
28 in a town without a courthouse or move to the village to live with relatives.

⁵² See AS 18.85.120(a) (providing that the court determines indigency and
eligibility for representation by the Public Defender Agency).

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2 posture with its clients if information later came to light casting doubt on the client's
3 inability to pay. Unlike the requirement under Administrative Rule 12(f) that the
4 Agency "advise the court if the attorney learns of a change in the person's financial
5 status that would make the person financially ineligible for appointed counsel"—
6 which often results in the Agency's complete withdrawal from a case—bringing the
7 travel-expenses issue to the court's attention would result in the Agency taking an
8 adverse position to a client it continues to represent.

9
10 Moreover, if the Agency disagreed with an order to pay travel costs in a
11 particular case, the trial court would have to resolve the issue, including appointing
12 the child independent counsel to help him obtain travel costs. But if DJJ disagreed
13 with an order to pay travel costs, the Agency could continue representing the child
14 on that issue, as on all other issues related to the case.

15
16 As a practical matter, the Agency could avoid an adversarial relationship with
17 its clients only if the court determined the travel-expense eligibility of all out-of-
18 custody Agency clients *and* the legislature fully funded those fixed expenses for all
19 clients deemed eligible. But if the court did not make those decisions or the
20 legislature did not fully fund the travel expenses for all out-of-custody Agency clients
21 deemed eligible, Agency attorneys would have to make detailed, repeated inquiry
22 into their client's financial circumstances. And in light of this financial information,
23 Agency administrators would have to choose some clients' needs over others, *e.g.*,
24 pay for one client's travel expenses or another client's expert witness. Such
25 decision-making creates a potentially adversarial relationship between the Agency
26 and J.B.
27
28

1
2 3. DJJ has previously paid travel expenses for out-of-custody children.

3 In *M.T.*, this court noted that the superior court was in the best position to hear
4 evidence "regarding how this problem has been handled in other cases in the past."⁵³
5 Accordingly, on remand in *M.T.*, the superior court received evidence that DJJ pays
6 to transport all in-custody children and, in DJJ's sole discretion, in rare cases, also
7 pays to transport out-of-custody children. [Att. B at 2] Evans' affidavit set forth some
8 of DJJ's considerations in deciding whether to transport out-of-custody children,
9 including "the availability of [DJJ] funds" and "whether [DJJ] has an independent
10 need or desire to interact with the client in person."⁵⁴ [Att. B at 2]
11

12
13 DJJ's discretion over whether to pay J.B.'s trial-related travel costs poses
14 serious equal protection problems.⁵⁵ All children, in-custody and out-of-custody,
15 urban and rural, are similarly situated in their constitutional rights and in their inability
16 to make certain basic financial decisions about their lives.⁵⁶ But Evans' affidavit
17 shows that DJJ pays trial-related travel costs only when the child is in custody or
18 pursuant to DJJ's sole discretion. If DJJ or any other state agency has discretion to
19
20

21 ⁵³ Order, *State v. M.T.*, A-11942/11961, at *5 (Alaska App. July 24, 2014).

22 ⁵⁴ The trial court here dismissed Evans' affidavit as insufficiently "current." [Att.
23 N at 5] But Evans is still the probation supervisor for DJJ's northern region; his
24 affidavit, signed when M.T.'s case was pending, sets forth DJJ procedure for
25 determining whether to transport out-of-custody children; and the state did not allege
26 any change in DJJ procedures. See Northern Region Probation Services, Division
of Juvenile Justice, available at [http://dhss.alaska.gov/djj/Pages/Programs/](http://dhss.alaska.gov/djj/Pages/Programs/programs.aspx)
programs.aspx (last visited Feb. 26, 2017) (listing Walter Evans as regional
probation supervisor).

27 ⁵⁵ See U.S. Const. XIV; Alaska Const. art. I, § 1.

28 ⁵⁶ Unlike an adult criminal defendant, J.B. has no choice over where to live and
how to prioritize his expenditure of funds.

1
2 grant or deny these costs without a set standard, then the state can chill the exercise
3 of fundamental constitutional rights, including the right to a jury trial and the right to
4 confront witnesses, simply by denying travel costs to indigent village minors who
5 invoke the right to a jury trial.⁵⁷ But beyond these equal protection problems, the fact
6 that DJJ has sometimes paid such expenses, in whole or in part, for other out-of-
7 custody children underscores that DJJ is well-situated to pay those expenses in this
8 case.
9

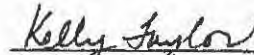
10 In addition, a child charged with committing a delinquent act may not be
11 committed to a detention facility unless there is no less restrictive alternative.⁵⁸ Here,
12 payment of travel costs is the least restrictive alternative to ensure J.B.'s appearance
13 at trial. And those travel costs are likely to be lower than if DJJ had to go to Marshall
14 to take J.B. into custody and keep him in custody during trial.
15

16 CONCLUSION

17 This court should grant the Public Defender Agency's original application and
18 reverse the trial court's decision in this case.
19

20 DATED at Anchorage, Alaska, on March 6, 2017.

21 PUBLIC DEFENDER AGENCY

22 

23 KELLY R. TAYLOR (1011100)
24 ASSISTANT PUBLIC DEFENDER
25
26

27 ⁵⁷ See *State, Dep't of Health & Social Servs. v. Planned Parenthood of Alaska,*
28 *Inc.*, 28 P.3d 904, 909 (Alaska 2001).

⁵⁸ See *Alaska Delinq. R. 12(b)(2); Doe v. State*, 487 P.2d 47, 53 (Alaska 1971).

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4 **IN THE COURT OF APPEALS OF THE STATE OF ALASKA**

5 ALASKA PUBLIC DEFENDER)
6 AGENCY.)

7 Applicant,)

8 v.)

9 SUPERIOR COURT,)

10 Respondent.)

Court of Appeals No. A-12814

11 Superior Court Case No.: 4SM-16-00002DL

12 **PROPOSED INTERVENOR DIVISION OF JUVENILE JUSTICE'S**
13 **RESPONSE TO ORIGINAL APPLICATION**

14 The State of Alaska, Department of Health and Social Services, Division of
15 Juvenile Justice (DJJ) files this response to the Alaska Public Defender Agency's original
16 application of March 6, 2017. Although DJJ is not listed as a party to this original
17 application, it is a party to the underlying superior court case and it has moved to
18 intervene because it has a direct interest in the outcome of this application.

19 DJJ agrees that this Court should review the issue presented by this original
20 application and resolve a recurring inter-agency dispute. But DJJ believes that the
21 superior court in *In re J.B.* correctly concluded that the Public Defender Agency—not
22 DJJ—must pay for an indigent minor who is not in DJJ custody to travel to court for an
23 adjudication trial in a juvenile delinquency case. This expense is part of the cost of
24 representing the minor, which is a task assigned to the Public Defender Agency. The
25 question of which state agency must pay does not implicate the minor's constitutional
26

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rights. The Court should affirm the superior court order in *In re J.B.*

BACKGROUND

The issue presented here has come up at least twice in recent years, with differing results in different cases. In an unpublished 2014 order in *State v. M.T.*, this Court held that the delinquency statute's requirement that DJJ pay "court costs"¹ does not include paying for a minor's transportation to an adjudication trial.² Then, in *State v. I.M.*, a superior court order reached the opposite conclusion and ruled that DJJ must pay for a minor's (and a parent's) transportation to an adjudication trial, and this Court denied DJJ's petition for review of that order.³ [Att. I] The issue thus remains unsettled.

This original application arises from the 2016 juvenile delinquency case *In re J.B.* Counsel for J.B.—a minor not detained in DJJ custody—asked the trial court to require DJJ or the Alaska Court System to pay to transport the minor and one of his parents from Marshall to Bethel for his adjudication trial. [Att. K] The superior court denied the motion, concluding that the Public Defender Agency must pay the expense. [Att. N] The court explained that the Public Defender Agency "is required to pay the cost of representation, whatever that may be." [Att. N at 3] The court rejected the minor's due process argument, reasoning that due process does not "include the right to have another

¹ AS 47.12.120(e).

² Order, *State v. M.T.*, A-11042/11961, at *4 (Alaska App., July 24, 2014) (granting petition for review and reversing superior court). [Att. E at 21-25]

³ Order, *State v. I.M.*, A-12700/A-12739 (Jan. 6, 2017) (denying petition for review). [Att. M at 15]

1
2 executive branch agency to pay for him to get to his trial." [Att. N at 4] And the court
3 rejected the minor's equal protection argument, finding that "[t]here is no current
4 evidence that DJJ is treating out-of-custody minors differently." [Att. N at 5]

5 On March 6, 2017, the Public Defender Agency filed an original application in
6 this Court naming itself as the applicant and the Alaska Superior Court as the respondent.
7 The original application asks this Court to reverse the superior court's order in the J.B.
8 case denying J.B.'s motion to require DJJ or the Alaska Court System to pay his and a
9 parent's transportation costs. DJJ has moved to intervene.
10

11 ARGUMENT

12 I. DJJ agrees that this Court should review and decide the issue presented here.

13 An original application is allowed when relief "cannot be obtained through the
14 process of appeal, petition for review, or petition for hearing."⁴ The application should
15 state "why ... relief is not available in any other court, or by petition for review or by
16 appeal."⁵ The Public Defender Agency does not explain why it has filed an original
17 application rather than a petition for review of the superior court order in *J.B.*
18

19 However, DJJ agrees that this Court should grant review of the issue presented
20 here. Indeed, DJJ filed a petition for review in *I.M.* asking this Court to take up this issue
21 and explaining why review is warranted. [Att. 1 at 3-7] As DJJ explained, a decision from
22 this Court "will provide guidance to the superior court on a recurring yet unsettled issue,
23

24 ⁴ Appellate Rule 404(a)(1).

25 ⁵ Appellate Rule 404(b)(1).
26

furthering the public interest of giving public agencies and juveniles certainty and helping stem repeated litigation at the superior court.” [Att. 1 at 7]

II. This Court should affirm the superior court’s order in *In re J.B.*

A. Because attending an adjudication trial is part of a minor’s representation, the entity funding defense should pay for transportation.

An indigent minor’s right to travel to his or her delinquency adjudication furthers the juvenile’s defense and trial, making travel a necessary service and facility of his or her representation that must be funded by the representing agency—just like any other aspect of the indigent minor’s defense.

The public defense’s funding requirement goes well beyond the “court costs” required of DJJ in AS 47.12.120(e). Under AS 18.85.100(a)(2) an indigent juvenile is entitled to “the necessary services and facilities of [his or her] representation, including investigation and other preparation.”⁶ And “the attorney services and facilities and the court costs shall be provided at public expense.”⁷ The plain meaning of “public expense”

⁶ See *Crawford v. State*, 337 P.3d 4, 41 (Alaska App. 2014) (noting that “the wording of AS 18.85.010 suggests that the legislature intended the Public Defender Agency (and the Office of Public Advocacy, in cases of conflicts) to be the sole source of funding for the legal services given to indigent defendants—including both the services of attorneys and any required ancillary services”); see also AS 18.85.170(3) (noting that expenses include “investigation, other preparation, and trial”).

⁷ AS 18.85.100(b) (emphasis added).

1
2 is for the agency providing defense counsel to pay.⁸ Such broad language encompasses a
3 client's travel to adjudication. In fact, the Office of Public Advocacy regulations
4 authorize reimbursing private appointed counsel for "necessary travel and per diem by
5 the defendant."⁹ Further, the requirement that the representing agency must pay the costs
6 of transportation that is necessary for representation was effectively set out in a 1977

7
8 Alaska Attorney General Opinion:

9 If the individual is represented by the Public Defender Agency
10 pursuant to AS 18.85.100, 18.85.110(d) and 18.85.120 and if the
11 expense is a necessary incident of representation, then any necessary
12 transportation expenses that may properly be authorized at public
expense should be paid by the Public Defender Agency pursuant to
AS 18.85.100.¹⁰

13 A juvenile's attendance at adjudication falls under the "necessary services and
14 facilities of [his or her] representation."¹¹ A juvenile may altogether waive his or her right
15 to attend the adjudication,¹² and thus may choose to exercise the right in consultation

16
17 ⁸ See *Alaska Legal Servs. Corp. v. Thomas*, 623 P.2d 342, 344 (Alaska 1981)
18 ("The plain meaning of the words 'at public expense' as used in AS 18.85 is that either
19 the public defender agency will pay the attorney's fees if it hires private counsel for a
20 defendant, or the court system will pay if it appoints the private counsel.").

21 ⁹ 2 AAC 60.040(3) (authorizing expenses when approved by public advocate). It
22 does not matter if the Office of Public Advocacy has not, in practice, applied this
23 regulation to juvenile transportation. [See O.A. at 10] Even if the regulation has only
24 been applied to adult defendants it still speaks generally to the agency's authority to pay a
client's transportation costs.

25 ¹⁰ Attorney General Opinion, Oct. 7, 1977, 1977 WL 22018, at *3 (Alaska A.G.);
26 see also Attorney General Opinion, Sept. 25, 1978, 1978 WL 18588, at *1 (Alaska A.G.)
(applying Oct. 7, 1977 opinion to juvenile context).

¹¹ See AS 18.85.100(a)(2).

¹² Delinq. R. 3(b)(1).

1
2 with counsel, just as any other right associated with the juvenile's defense. The purpose
3 of allowing a juvenile to attend a delinquency adjudication is to facilitate the juvenile's
4 access to counsel and engagement in his or her defense. Physical attendance allows a
5 juvenile to observe the factfinder's demeanor and to watch the interplay between the
6 judge, counsel, and witnesses.¹³ It gives the juvenile the opportunity "to react to
7 testimony, reports or colloquy, [and] to be available to testify."¹⁴ And it gives a juvenile
8 "a full opportunity to maintain unrestricted communication with [his or her] counsel."¹⁵
9
10 A right to attend is part and parcel of a right to counsel and an element of the juvenile's
11 defense. Likewise, in circumstances where a juvenile must be accompanied by a parent to
12 safely travel to the court site, that parent's accompaniment is also a necessary service and
13 facility of representation. Accompaniment by a parent may help the juvenile participate
14 in his or her defense and communicate with counsel.¹⁶
15
16
17
18

19 ¹³ See *In re Borden*, 546 A.2d 123, 125 (Pa. Super. 1988) (reversing delinquency
20 adjudication where juvenile removed from courtroom and provided audio device for
21 communicating with counsel).

22 ¹⁴ *In re Cecilia R.*, 327 N.E.2d 812, 814 (N.Y. 1975) (applying principle to
23 disposition hearing); see also *In re Hand*, 494 N.Y.S.2d 642, 644 (N.Y. Fam. 1985)
24 (noting juvenile's right to be present "is encompassed within the confrontation clauses of
25 the [New York] and Federal Constitutions").

26 ¹⁵ *In re Borden*, 546 A.2d at 125; *In re Cecilia R.*, 327 N.E.2d at 814 (emphasizing
opportunity to "make suggestions or requests to counsel, to clarify misunderstandings").

¹⁶ See *In re J.E.*, 675 N.E.2d 156, 167 (Ill. App. 1996) (noting parent's presence
"ensure[s] the juvenile his right to counsel").

Also there may be opportunities for the public defense agencies to recover their costs from clients.¹⁷ That places indigent juveniles and parents in the same position as a non-indigent who would be expected to fund transportation, and furthers the delinquency statutes' purposes of creating the "expectation that parents will be held responsible for the conduct and needs of their children."¹⁸ Costs of defense, including those that are guaranteed by right, are placed on the juvenile or his or her parents—including the right to counsel.¹⁹ Parents are also required to pay for costs associated with the proceedings including restitution,²⁰ and the cost of the juvenile's treatment,²¹ maintenance, and care.²²

This Court should reject the argument that requiring the representing agency to fund the transportation places the agency at odds with its client. An agency providing representation regularly must follow a client's wishes to exercise his or her rights—such as choosing a jury trial, testifying, or filing an appeal—even though exercising those

¹⁷ See AS 18.85.120(c) (recover services of representation and court costs); AS 18.85.150 (recover wrongly deeded costs); Admin. R. 12(b)(3) (recover from parent).

¹⁸ AS 47.12.010(b)(7).

¹⁹ Delinq. R. 16(b) (court may appoint counsel under Crim. R. 39 and Admin. R. 12 for juvenile not represented by counsel of choice, and require parent to deposit money); see also Admin R. 12(e)(6) (recovery from parents of child for other constitutionally required attorney appointments); Admin. R. 12(c)(3) (costs assessed against parent when child needs GAL or representation in custody dispute).

²⁰ AS 47.12.155(b)(3); Delinq. R. 22.3.

²¹ AS 47.12.155(c).

²² AS 47.12.230(a).

rights will increase the agency's costs.²³ And the Rules of Professional Conduct allow attorneys of indigent clients to "pay court costs and expenses of litigation on behalf of the client,"²⁴ which must include the cost of exercising the juvenile's right to attend the delinquency adjudication.²⁵ There is no conflict or ethical concern with the representing agency funding that transportation.

B. Because Administrative Rule 7 requires parties to bear their witnesses' travel costs, the Public Defender Agency must pay for the travel of the minor or parent to testify.

Under Alaska Administrative Rule 7, the parties are responsible for their witnesses' travel expenses, even when that witness is also a party.²⁶ In a delinquency proceeding, each party bears its own litigation costs—no rule allows one party to recover

²³ See *Walker v. State*, 578 P.2d 1388, 1389-90 (Alaska 1978) (client decides whether to waive jury trial right); *LaVigne v. State*, 812 P.2d 217, 219 (Alaska 1991) (client decides whether to testify); *Stone v. State*, 255 P.3d 979, 983 (Alaska 2011) (client decides whether to pursue first-tier appellate review).

²⁴ Alaska R. Pro. Conduct 1.8(e)(2).

²⁵ See *id.*; CT Eth. Op. 04-02, 2004 WL 3413887, at *1 (Conn. Bar. Ass'n 2004) (reading "expenses of litigation" in rule identical to Alaska Rule 1.8(e)(2) to authorize "payment of travel and lodging on behalf of an indigent client"); UT Eth. Op. 02-09 ¶¶ 3, 11, 2002 WL 31160051 (Utah St. Bar. 2002) (confirming that by paying travel and other expenses "lawyer is simply advancing court costs and expenses of litigation").

The cost of litigation travel is different than prohibited payments for a client's living expenses. See *Matter of K.A.H.*, 967 P.2d 91, 93-94 (Alaska 1998) (holding Rule 1.8(e) bars paying client's living expenses, but allowing court costs and litigation expenses ensures "courts are open to indigent[s]"); see also Restatement (Third) of the Law Governing Lawyers § 36 cmt. c (2000) (explaining advancing court costs and litigation expenses "enabl[es] poor clients to assert their rights").

²⁶ Alaska R. Admin. P. 7(d), (f).

1
2 costs from another.²⁷ Thus, in addition to bearing travel costs as part of its general
3 representation of a minor, the Public Defender Agency must bear travel costs of a minor
4 or parent as witnesses when the agency calls them to testify.

5 As costs allocated by court rule to the parties, witness travel falls within the Public
6 Defender Agency's obligation under AS 18.85.100 to fund "necessary services and
7 facilities" of representation and "attorney services and facilities and the court costs."²⁸ A
8 litigation expense allocated to a party by court rule²⁹ must be funded by that party.
9 Because Administrative Rule 7(f) treats a party-witness's travel costs the same as costs
10 for other witnesses,³⁰ those costs are properly borne by the Public Defender Agency.

11 This Court should reject the argument that the Public Defender Agency should not
12 pay because the minor has sole discretion to choose to testify. Administrative Rule 7(f)
13 by its plain terms applies to party-witnesses without exception. But more importantly, the
14 phrase "necessary services and facilities" of "representation" in AS 18.85.100(a)(2) does
15
16

17
18 ²⁷ See Alaska Delinquency Rule 1(f) (noting that where Delinquency Rules are
19 silent, courts may look to civil rules, criminal rules, statutes, constitutions, or common
20 law, but "[s]uch a procedure may not be inconsistent with these rules"); see also Delinq.
21 R. 1(e) (expressly incorporating some criminal rules). The exception is the State's ability
22 to recover costs and attorney's fees in restitution proceedings against the minor.
23 AS 47.12.170(a).

24 ²⁸ AS 18.85.100(a)(2), (b).

25 ²⁹ Alaska R. Admin. P. 7(d), (f).

26 ³⁰ Alaska R. Admin. P. 7(f) ("A party to the action or hearing, if a witness, is entitled
to receive the same witness fees, per diem and travel expense as any other witness."); see
also Admin. R. 7(d) (explaining that in all cases except where witnesses are called by the
court or in civil cases where costs are taxed and collected, "these fees and expenses shall
be paid by the parties").

not limit the Public Defender Agency's costs to those controlled by the attorney's discretion. The statute is expressly broader and entitles the client to "facilities" and "court costs," expenses not generally left to the discretion of the attorney.³¹ While the statute provides that a client is to be represented by an attorney "to the same extent as a person retaining an attorney is entitled," that language does not limit the Public Defender Agency's funding obligation.³² Representation necessarily includes carrying out actions that are in the client's sole discretion, such as waiving a jury trial, filing an appeal.³³ or even the most fundamental decision in the proceeding—whether to contest the allegations. These decisions all increase costs for the Public Defender Agency and all are in the client's discretion.³⁴ Therefore the fact that a minor has the choice to testify has no

³¹ AS 18.85.100(b); *see also* AS 18.85.170(3) (" '[E]xpenses,' when used with reference to representation under this chapter, includes an expense of investigation, other preparation, and trial . . . ").

³² AS 18.85.100(a)(2), (b).

³³ *See Walker v. State*, 578 P.2d 1388, 1389-90 (Alaska 1978) (holding court must personally address defendant regarding whether to waive jury trial); *Stone v. State*, 255 P.3d 979, 983 (Alaska 2011) (holding the client decides whether to appeal).

³⁴ The Public Defender Agency can, in some instances, mitigate the impact of those non-controllable costs by recovering them from the clients or parents. AS 18.85.120(c) (allowing recovery for services of representation and court costs); Delinq. R. 16(b) (allowing court require deposit from parent when appointing counsel).

bearing on the Public Defender Agency's obligation to fund his or her transportation to testify.³⁵

C. There is no basis for requiring DJJ to fund a minor's decision to attend his or her adjudication trial.

The delinquency statutes do not require DJJ to fund a juvenile's travel expenses. Alaska Statute 47.12.010, the legislature's statement of purpose in establishing the delinquency system, includes "provid[ing] due process through which juvenile offenders, victims, parents, and guardians are assured fair legal proceedings during which constitutional and other legal rights are recognized and enforced." But that statement of purpose does not mandate DJJ to provide funding to ensure that all the goals of the statutes are met. The delinquency statutes govern more than DJJ's conduct; they set out procedures generally that control both DJJ and the superior court.³⁶ And the statutes' purposes are fulfilled by many agencies, including the public defense agencies.³⁷

Alaska Statute 47.12.120(e) also does not encompass a juvenile's transportation costs. That section states that DJJ shall pay "all court costs." But "court costs" does not

³⁵ This Court's holding in *Alaska Public Defender Agency v. Superior Court*, 343 P.3d 914, 916 (Alaska App. 2015), does not support an argument that the agency's funding obligation is limited to decisions that are in counsel's discretion. [See O.A. at 9 & n.26] There, this Court held that the Public Defender Agency could not be appointed as standby counsel to a pro se defendant—that is, the agency's role is limited to representation. *Id.* But assisting a pro se defendant as standby counsel is different than assuming a cost that is part-and-parcel of litigating a represented client's defense.

³⁶ See, e.g., AS 47.12.040 (investigation procedures required of both DJJ and the court); AS 47.12.090 (guardian ad litem and counsel appointment procedures for court); AS 47.12.110 (hearing procedures).

³⁷ See AS 47.12.090 (appointment of counsel); AS 18.85.100(a).

mean all litigation expenses. In Black's Law Dictionary, "court costs" is a specific usage of "costs" defined as "[t]he charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees."³⁸ The phrase "court costs" should be read more narrowly than phrases such as "litigation costs" or "legal costs" which in addition to charges or fees taxed by a court would include "[t]he expenses of litigation, prosecution, or other legal transaction, esp. those allowed in favor of one party against the other."³⁹

Further, the legislative history of AS 47.12.120(e), as explained in this Court's order in *M.T.*, supports a narrow reading of "court costs." In *M.T.*, this Court rejected an argument that AS 47.12.120(e)'s requirement to pay the "court costs" included the cost of transporting a juvenile.⁴⁰ This Court traced the statute to its pre-statehood predecessor, which required the agency to pay "costs of the court and witnesses and other expenses necessarily incurred."⁴¹ At the time, the statute governed both dependency (now child-in-need-of-aid) and delinquency proceedings. But when the legislature later separated the dependency and delinquency statutes, it retained the language about costs of "witnesses and other expenses" only in the dependency section—it left the language out in delinquency.⁴² The legislature declined to impose broad costs on DJJ.⁴³ Because the

³⁸ Black's Law Dictionary (10th ed. 2014) (*cost*).

³⁹ *Id.*

⁴⁰ *State v. M.T.*, No. A-11042/11961, at *3 (Alaska App., July 24, 2014) (citing AS 47.12.120(e)) [Att. E at 21-25].

⁴¹ *Id.* at *2.

⁴² *Id.* at *2-3.

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2 legislature rejected language that would have imposed more sweeping expenses on DJJ.
3 this Court held it was error to construe AS 47.12.120(e) as including a juvenile's
4 transportation costs.⁴⁴

5 No "special relationship" exists between DJJ and a non-detained minor that would
6 obligate DJJ to fund travel. When a minor is released from detention prior to
7 adjudication, the minor is "released to the care and *custody* of the parent, guardian, or
8 custodian."⁴⁵ Placing a minor under a conduct agreement while a delinquency matter is
9 pending does not bring the minor into DJJ custody. A conduct agreement places
10 conditions on a minor's release, approved and issued by the court.⁴⁶ Unless DJJ again
11 detains the minor and the court "commits [the] minor to the custody of the department,"⁴⁷
12 the minor will remain in the custody of others until adjudication of delinquency. J.B.'s
13 conduct agreement and order for release require him to comply with some conditions set
14 by his DJJ probation/intake officer, but they also require him to comply with rules,
15 instructions, and curfew hours set by his parents. [Att. A] To infer a custodial relationship
16 from the very document that removes a minor from DJJ's custody would make little
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22 ⁴³ *Id.* at *3.

23 ⁴⁴ *Id.* at *4.

24 ⁴⁵ AS 47.12.080.

25 ⁴⁶ Alaska Delinquency Rule 12(c); *see also* AS 47.12.080.

26 ⁴⁷ *See* AS 47.12.240(a)

sense. The adjudication of delinquency is what makes a minor a ward of the State.⁴⁸ DJJ acquires legal custody after adjudication of delinquency when the minor is committed to DJJ.⁴⁹ Until then, DJJ has no "special relationship" with a non-detained minor that could require it to pay for travel costs.

Given that the legislature rejected a broad reading of "court costs" and that this Court has concluded that court costs do not include juvenile transportation, the delinquency statutes do not require DJJ to pay these expenses.⁵⁰

D. Parents need not attend in person in all juvenile delinquency cases.

While the delinquency rules require the in-person presence of a juvenile unless waived or excluded for conduct,⁵¹ there is no corresponding right for parents. The "presence of a parent or guardian is required"⁵² but does not need to be *in person*—the court can allow parents to participate telephonically.⁵³ Under the delinquency statutes a parent's presence is merely "preferred."⁵⁴ Still, there may be times when a parent must accompany a juvenile in order for the juvenile to exercise his or her right to physically

⁴⁸ AS 47.12.120(d) ("A minor *found to be delinquent* is a ward of the state while committed to the department or while the department has the power to supervise the minor's actions." (emphasis added)).

⁴⁹ AS 47.12.150(a); AS 47.12.120(b)(1), (3).

⁵⁰ See *Totemoff v. State*, 739 P.2d 769, 776 (Alaska App. 1987) (holding court should not recognize aggravator or mitigator not listed in statute when legislative history shows legislature had considered and rejected similar factor).

⁵¹ Delinq. R. 3(b), (c)(1).

⁵² Delinq. R. 3(b); see also Delinq. R. 14(b)(1).

⁵³ Delinq. R. 3(e)(1). The court may also subpoena parents. AS 47.12.050(c).

⁵⁴ AS 47.12.050(d).

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2 attend. Whether those circumstances are present require a fact-specific inquiry. In a case
3 where a juvenile cannot travel without a parent, the parent's travel should be funded by
4 the defense as a "necessary service and facility" of the juvenile's representation.

5 **E. The question of which state agency must pay for a minor's**
6 **transportation does not implicate constitutional rights.**


7 Finally, although the Public Defender Agency discusses constitutional due process
8 and equal protection, the issue of which particular state agency must pay an expense does
9 not implicate constitutional concerns. Indeed, the Public Defender Agency has brought
10 this original application on behalf of itself as a state agency, rather than on behalf of any
11 client who would have constitutional rights at stake. The Court need not, and should not,
12 decide any constitutional issues in resolving the question of which agency must pay.
13

14 **CONCLUSION**

15 For these reasons, the Court should affirm the trial court's order denying the
16 minor's motion to require DJJ to pay travel costs.

17 DATED March 20, 2017

18 JAIINA LINDEMUTH
19 ATTORNEY GENERAL

20 By:  for
21 David A. Wilkinson
22 Assistant Attorney General
23 Alaska Bar No. 1211136
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ALASKA PUBLIC DEFENDER
AGENCY,

v.

Court of Appeals No. A-12814

The State of Alaska, Department of Health and Social Services, Division of Juvenile Justice (DJJ) moves to intervene in the case initiated by the Alaska Public Defender Agency's original application filed on March 6, 2017. The original application asks this Court to rule that DJJ must pay certain travel costs for minors in juvenile delinquency cases. DJJ has an interest in the issue of what costs it must pay, and that interest is not adequately represented by either named party.

The Alaska Supreme Court has articulated a four-part test to determine whether a court must grant a motion to intervene as of right:

(1) the motion must be timely; (2) the applicant must show an interest in the subject matter of the action; (3) it must be shown that this interest may be impaired as a consequence of the action; and (4) it must be shown that the

1
2 interest is not adequately represented by an existing party.¹

3 **II. DJJ meets the standard for intervention as of right because DJJ has an**
4 **interest that may be impaired as a consequence of this original application,**
5 **which asks this Court to rule that DJJ must pay certain travel costs.**

6 First, DJJ's motion is timely; indeed, it is being filed within the timeframe for a
7 response to the Public Defender Agency's March 6, 2017, original application.

8 Second, DJJ has an interest in the question presented by the Public Defender
9 Agency's original application. The original application asks this Court to reverse a trial
10 court order that denied a minor's motion asking that DJJ be ordered to pay his and a
11 parent's travel costs to his adjudication trial. [O.A. at 2, 20] Thus, the original application
12 asks this Court to rule that DJJ is required to pay these travel costs. DJJ clearly has an
13 interest in the question of whether it must pay certain travel costs.

14 Third, DJJ's interest may be impaired as a consequence of this action. If the Court
15 accepts the original application and agrees with the Public Defender Agency's position,
16 DJJ will have to pay certain travel costs in the future, impairing its interest.

17 Finally, neither of the named parties—the Public Defender Agency and the
18 Superior Court—can adequately represent DJJ's interest. The Public Defender Agency's
19 interest is directly adverse to DJJ's, given that each agency argues that the other should
20 have to pay the disputed travel costs. And the Superior Court also cannot adequately
21 represent DJJ's interest. Indeed, in a prior case, the Alaska Court System filed briefing
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24
25 ¹ *Hopper v. Estate of Goard*, 386 P.3d 1245, 1247 (Alaska 2017) (quoting *State v.*
26 *Weidner*, 684 P.2d 103, 113 (Alaska 1984)).

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2 essentially agreeing with the Public Defender Agency that DJJ should have to pay the
3 disputed costs. [See Att. II to O.A.]

4
5 **CONCLUSION**

6 For these reasons, DJJ meets the standard for intervention as of right and the Court
7 should accord DJJ full party status in this matter.

8 DATED March 20, 2017

9 JAHNA LINDEMUTH
10 ATTORNEY GENERAL

11 By:  for
12 David A. Wilkinson
13 Assistant Attorney General
14 Alaska Bar No. 1211136
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Public Defender Agency v. Superior Court
DJJ's Motion to Intervene

Court of Appeals Case No. A-12814
Page 3 of 3

In the Court of Appeals of the State of Alaska

Alaska Public Defender Agency,)	
)	Court of Appeals No. A-12814
Applicant,)	
v.)	Order
)	
Superior Court,)	
)	
Respondent.)	Date of Order: April 3, 2017
<hr/>		
Trial Court Case # 4SM-16-00002DL		

The Division of Juvenile Justice has filed a motion to intervene in this litigation, and to file a response to the Public Defender Agency's original application for relief.

The Public Defender Agency has filed a pleading stating that it does not oppose the Division of Juvenile Justice's proposed intervention, but that the Agency wishes to file a reply to the Division's response — as well as a reply to the Superior Court's response (which has not yet been filed).

IT IS ORDERED:

1. The Division of Juvenile Justice's motion to intervene in this litigation is **GRANTED**.

2. The Division of Juvenile Justice's response to the original application for relief is **ACCEPTED** for filing.

3. The motion of the Public Defender Agency to file a reply to the response already filed by the Division of Juvenile Justice, and to the response yet to be filed by the superior court, is **DENIED**. Under Appellate Rule 404(c), when a party has filed an

original application for relief, no reply or other supplemental memorandum is allowed without the permission of this Court. Having considered the proposed content of the Public Defender Agency's reply, this Court concludes that the Agency has failed to show that special circumstances warrant the filing of a reply.

Entered at the direction of Chief Judge Mannheimer.

Clerk of the Appellate Courts



Beth A. Pechota, Deputy Clerk

cc: Court of Appeals Judges
Judge McConnell
Central Staff

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The text of this opinion can be corrected before the opinion is published in the Pacific Reporter. Readers are encouraged to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts:

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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ALASKA PUBLIC DEFENDER AGENCY,

Petitioner,

v.

SUPERIOR COURT,

Respondent.

Court of Appeals No. A-12814
Trial Court No. 4SM-16-002 DL

O P I N I O N

No. 2582 — January 12, 2018

Original Application for Relief from the Superior Court, Fourth Judicial District, Bethel, Dwayne W. McConnell, Judge.

Appearances: Kelly R. Taylor, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Petitioner. Jeffrey W. Robinson, Ashburn & Mason, P.C., Anchorage, for the Respondent. David A. Wilkinson, Assistant Attorney General, Fairbanks, and Jahna Lindemuth, Attorney General, Juneau, for the Alaska Division of Juvenile Justice (intervenor).

Before: Mannheimer, Chief Judge, and Suddock, Superior Court Judge.*

Judge MANNHEIMER.

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

This case arises out of juvenile delinquency proceedings against J.B., a minor who lives in the village of Marshall. J.B.'s family is indigent, and J.B. is represented by the Public Defender Agency.

J.B. has invoked his right to trial and, under the venue rules, J.B.'s trial is to be held in Bethel. But J.B.'s family has no funds to transport him to Bethel. Moreover, because of J.B.'s youth, his parents take the position that one of them must accompany J.B. to Bethel.

The superior court has ordered the Public Defender Agency to pay for this travel expense. Quoting the language of AS 18.85.100(a)(2), the superior court reasoned that this transportation expense was one of the "necessary services and facilities of [the Agency's] representation" of J.B.

The Public Defender Agency now petitions this Court to review and reverse the superior court's order. The Agency takes the position that the transportation expense should be borne either by the Division of Juvenile Justice (*i.e.*, the government entity that is prosecuting J.B.) or, alternatively, by the Court System.

Both the Alaska Court System and the Alaska Division of Juvenile Justice are actively participating in this litigation; they ask this Court to uphold the superior court's ruling.

The parties are in essential agreement that *some* government entity should pay to transport an indigent minor (and, when necessary, a parent or guardian) to the site of the minor's trial. The problem is to identify which government entity that should be.

The Division of Juvenile Justice concedes that they should pay the expense of transporting a minor who is in custody. But with regard to minors who are released from custody pending trial (such as the minor in this case), the Division of Juvenile Justice argues that the expense of transportation should be borne by the legal agency that is representing the minor (*i.e.*, the Public Defender Agency or the Office of Public

Advocacy), just as the agency would bear other necessary expenses of the representation such as the transportation of needed witnesses.

The Division of Juvenile Justice bases its argument on the Public Defender Agency's authorizing statute, AS 18.85.100. Subsection (a) of this statute declares that indigent defendants in criminal proceedings and indigent minors in delinquency proceedings are entitled:

(1) to be represented ... by an attorney to the same extent as a person retaining an attorney is entitled; and

(2) to be provided with the necessary services and facilities of this representation, including investigation and other preparation.

See also AS 44.21.410(a)(5), the parallel authorizing statute of the Office of Public Advocacy.

The Division of Juvenile Justice contends that when the Public Defender Agency or the Office of Public Advocacy is representing an indigent defendant, and when that defendant is not in custody, the cost of transporting the defendant to the site of their trial is a necessary "service" or "facility" of the representation.

This is a plausible interpretation of the statute, but it is by no means the only possible interpretation of the statute. We acknowledge that some people might reasonably conclude that the phrase "necessary services and facilities of [the] representation" does *not* include the cost of transporting the defendant to court.

But we note that the position advocated by the Division of Juvenile Justice was expressly adopted by the Alaska Department of Law some forty years ago.

In 1977 and 1978, the Alaska Attorney General issued two formal opinions dealing with the question of who should pay the transportation expenses of indigent

criminal defendants and indigent juvenile defendants. In those opinions, the Department of Law concluded that when a criminal defendant or a juvenile delinquency defendant is represented at public expense by the Public Defender Agency, the Agency is responsible for paying the defendant's necessary transportation costs.¹

Consistent with these Attorney General Opinions, the Department of Administration has promulgated an administrative regulation, 2 AAC 60.040, which authorizes the Office of Public Advocacy to pay "necessary travel and per diem by the defendant, ... not [to] exceed the rate authorized for state employees."²

According to the Administrative Code, the authority for this regulation is AS 44.21.410. This statute is the authorizing statute for the Office of Public Advocacy, and it requires the Office of Public Advocacy to provide the same legal representation

¹ See Attorney General Opinion dated October 7, 1977 (1977 WL 22018 at *3), (concluding that when it is necessary for a defendant to travel, this expense is a "necessary incident of [the] representation" within the meaning of the Public Defender's authorizing statute, AS 18.85.100); and Attorney General Opinion dated September 25, 1978 (1978 WL 18588 at *1) (concluding that the reasoning of the 1977 opinion applies to juvenile cases).

² The complete text of this regulation is:

2 AAC 60.040. Extraordinary expenses.

Extraordinary expenses for appointed attorneys will be reimbursed only if prior authority has been obtained from the public advocate. In this section, "extraordinary expenses" are limited to expenses for:

- (1) investigation;
- (2) expert witnesses; and
- (3) necessary travel and per diem by the defendant, appointed counsel, and witnesses, which may not exceed the rate authorized for state employees.

that an indigent person would receive from the Public Defender Agency if the Agency did not have a disqualifying conflict.³

Thus, the Department of Administration apparently agrees with (or at least has acquiesced in) the position taken by the Attorney General — the position that the payment of transportation expenses is a necessary incident of a public agency’s representation of its clients if those clients are not in custody.

Our decision in this case is not controlled by the fact that the Attorney General has interpreted the Public Defender Agency’s authorizing statute in this fashion, nor by the fact that the Department of Administration has interpreted the Office of Public Advocacy’s authorizing statute in the same way. Nevertheless, the Alaska Supreme Court has said that an appellate court should accord some deference to Attorney General’s opinions, as well as to interpretations of a statute that are adopted by the executive agency responsible for enforcing or overseeing the operation of that statute.⁴

Because all three parties to this case agree that *some* government entity should be responsible for paying to transport indigent defendants to the site of their trial, this case does not present a question of criminal law or procedure. Rather, it presents issues of budgeting and finances — *i.e.*, administrative questions. In these circumstances, we believe that we should accord substantial weight to the statutory interpretation adopted by the Attorney General and the Department of Administration.

³ See AS 42.21.410(a)(5).

⁴ See, e.g., *State v. Dupier*, 118 P.3d 1039, 1050 n. 62 (Alaska 2005) (“The weight accorded to opinions of the Attorney General is largely within our discretion. In general, they are not controlling but are entitled to some deference.”); *Bullock v. Dept. of Community & Regional Affairs*, 19 P.3d 1209, 1216 (Alaska 2001) (“When an executive [agency] interprets legislation, that interpretation is entitled to be given weight ... in construing the intent of the statute.”).

We accordingly hold that when the Public Defender Agency or the Office of Public Advocacy is representing an indigent defendant who is (1) not in custody and who is (2) unable to afford to travel to the site of their trial, the agency shall pay the necessary expense. And when a delinquency case involves a minor who is not reasonably able to travel alone, the agency shall pay for a parent or guardian to accompany the minor.

We are aware that our decision may have significant financial consequences for the Public Defender Agency and the Office of Public Advocacy — just as a different decision might have significant financial consequences for the Court System or the Division of Juvenile Justice.

But this is a situation where *having* an answer is arguably more important than the specific content of the answer. In the end, this litigation is about money and budgeting. Now that we have identified the government agencies who are responsible for paying these travel expenses, it is the legislature's task to adjust the agencies' budgets to accommodate these expenses.

The decision of the superior court is AFFIRMED.