MEMORANDUM State of Alaska

Department of Law

TO: Charles E. Cole
Attorney General

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FILE NO: 665-92-0136

TEL. NO.: 452-1568

FROM: D. Rebecca Snow, Chief
Assistant Attorney General

SUBJECT: PFD eligibility of state residents married to nonresidents

The Permanent Fund Dividend Division has recently been examining the claimed residency of persons (apparently predominantly women) married to military members and other non-residents. The Division is probably relying on 15 AAC 23.130(g), effective since 1989, which creates a presumption that a person married to a nonresident is not a resident unless that person otherwise meets the regulation's residency requirements. (15 AAC 23.130(a)--15 AAC 23.130(d)). The general residency regulations (subsections (a)-(d)), the statute on which they are based (AS 43.23.095(8)), and the generally applicable definition of residency adopted in 1983 (AS 01.10.055) are all consistent with the Alaska Supreme Court's approved definition of residency. See, e.g., State v. Adams, 522 P.2d 1125, 1132 (Alaska 1974) (conjunction of physical presence and intent to remain permanently or indefinitely).

A problem arises with 15 AAC 23.130(g), however, because of the effort to create a class of presumptively nonresident persons based on marriage. This presumption violates several different legal principles. The one specifically related to residency 1/ is the supreme court's consistent finding that the subjective intent prong of the residency test requires a case-by-case factual assessment. E.g., Perito v. Perito, 756 P.2d 895 (Alaska 1988). The second defect is that the presumption imposes a civil disability on spouses that is inconsistent with the intent of the legislature when it repealed the statutory limits on wives' rights independent of their husbands in 1974. See secs. 95, 96, 97, 99, ch. 127, SLA 1974; AS 25.15.110. Finally, the presumption is inconsistent with a fundamental principle of domicile/residence, that a person may have only one domicile/residence at a time. See AS 01.10.055(c). If a person is a long-time resident of Alaska and marries a nonresident military member while both still live here, the Alaskan cannot obtain the residence/domicile of the new spouse

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1/ In Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977) (local hire law), the court treated domicile and "bona fide resident" as synonymous. The court's working definition of residency is the general definition of domicile.

without being physically present in the spouse's state of residence. Effectively, the presumption would thus create a set of "residenceless" persons, a legal impossibility.

You asked for recommendations.

1) 15 AAC 23.130(g) should be repealed. The residence requirements in subections 15 AAC 23.130(a) -- 15 AAC 23.130(d) provide an adequate basis for identifying nonresidents.

2) The Division should subject to greater scrutiny under 15 AAC 23.130(a) and (d) the intent to remain of applicants whose records indicate they came to Alaska as dependents of nonresidents. Once a person has established residence, and thus eligibility for dividends, that person's residency should be treated as continuing until her/his actions (leaving the state) demonstrate that she/he has exchanged Alaska residency for that of another state.

DRS/ajs

cc: Steve Hole
Joe Holbert