

**HOUSE BILL NO. 349**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE CHENAULT**

**Introduced: 2/4/08**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to an award of attorney fees in frivolous, groundless, or vexatious**  
2 **actions, appeals, and cross-appeals; and amending Rule 82, Alaska Rules of Civil**  
3 **Procedure and Rule 508(e), Alaska Rules of Appellate Procedure."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **\* Section 1.** AS 09.60 is amended by adding a new section to read:

6 **Sec. 09.60.012. Attorney fees in frivolous, groundless, or vexatious actions.**

7 (a) In a civil action and in an appeal or cross-appeal of a civil action, the court shall  
8 award, by judgment or order, reasonable attorney fees against an attorney or party who  
9 brings or defends the civil action, appeal, or cross-appeal if the court finds

10 (1) all or part of the action or defense of the civil action, appeal, or  
11 cross-appeal lacks substantial justification;

12 (2) all or part of the action or defense of the civil action, appeal, or  
13 cross-appeal was interposed for delay or harassment; or

14 (3) an attorney or party unnecessarily expanded the proceeding by

1 improper conduct, including an abuse of discovery procedures available under the  
2 Alaska Rules of Civil Procedure.

3 (b) When a court determines that reasonable attorney fees should be assessed  
4 under this section, the court shall apportion the payment among the offending attorney  
5 or party jointly and severally, as the court considers just, and may charge an attorney  
6 or a party all or part of the fees assessed.

7 (c) The court may not assess attorney fees under this section

8 (1) if a claim or defense is voluntarily dismissed within a reasonable  
9 time after the attorney or party filing the dismissal knew or reasonably should have  
10 known that the party would not prevail on the claim or defense;

11 (2) against a party who appears without an attorney unless the court  
12 finds that the party clearly knew or reasonably should have known that all or part of  
13 the action or defense lacked substantial justification; however, when an attorney  
14 licensed to practice law in this state appears without an attorney, the attorney shall be  
15 held to the standards set out in this section;

16 (3) against an attorney or a party if the court determines that a claim or  
17 defense was asserted in a good faith attempt to establish a new theory of law.

18 (d) In this section, "lacks substantial justification" means substantially  
19 frivolous, substantially groundless, or substantially vexatious.

20 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 DIRECT COURT RULE AMENDMENT. Rule 82(b), Alaska Rules of Civil  
23 Procedure, is amended by adding a new subparagraph to read:

24 (5) In a civil action, the court shall award, by judgment or order,  
25 reasonable attorney's fees against an attorney or party who brings or defends a civil  
26 action, appeal, or cross-appeal.

27 (A) The court shall make an award of attorney's fees under this  
28 subparagraph only if the court finds

29 (i) all or part of the action or defense of the civil action,  
30 appeal, or cross-appeal lacks substantial justification;

31 (ii) all or part of the action or defense of the civil action,

1 appeal, or cross-appeal was interposed for delay or harassment; or

2 (iii) an attorney or party unnecessarily expanded the  
3 proceeding by improper conduct, including an abuse of discovery  
4 procedures available under the Alaska Rules of Civil Procedure.

5 (B) When a court determines that reasonable attorney's fees  
6 should be assessed under this subparagraph, it shall apportion the payment  
7 among the offending attorney or party jointly and severally, as it considers just,  
8 and may charge an attorney or a party all or part of the fees assessed.

9 (C) The court may not assess attorney's fees under this  
10 subparagraph

11 (i) if a claim or defense is voluntarily dismissed within  
12 a reasonable time after the attorney or party filing the dismissal knew  
13 or reasonably should have known that the party would not prevail on  
14 the claim or defense;

15 (ii) against a party who appears without an attorney  
16 unless the court finds that the party clearly knew or reasonably should  
17 have known that all or part of the action or defense lacked substantial  
18 justification; however, when an attorney licensed to practice law in this  
19 state appears without an attorney, the attorney shall be held to the  
20 standards set out in this subparagraph;

21 (iii) against an attorney or a party if the court  
22 determines that a claim or defense was asserted in a good faith attempt  
23 to establish a new theory of law.

24 (D) In this subparagraph, "lacks substantial justification" means  
25 substantially frivolous, substantially groundless, or substantially vexatious.

26 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
27 read:

28 DIRECT COURT RULE AMENDMENT. Rule 82(b)(3)(G), Alaska Rules of  
29 Civil Procedure, is repealed.

30 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1 DIRECT COURT RULE AMENDMENT. Rule 508(e), Alaska Rules of  
2 Appellate Procedure, is amended to read:

3 (e) **Attorney's Fees.** Attorney's fees may be allowed in an amount to be  
4 determined by the court. If such an allowance is made, the clerk shall issue an  
5 appropriate order awarding fees at the same time that an opinion or an order under  
6 Rule 214 is filed **subject to the following:**

7 **(1) In an appeal or cross-appeal, the court shall award, by**  
8 **judgment or order, reasonable attorney's fees against an attorney or party who**  
9 **brings or defends an appeal or cross-appeal if the court finds**

10 **(A) all or part of the appeal or cross-appeal lacks**  
11 **substantial justification;**

12 **(B) all or part of the appeal or cross-appeal was interposed**  
13 **for delay or harassment; or**

14 **(C) an attorney or party unnecessarily expanded the**  
15 **proceeding by improper conduct.**

16 **(2) When a court determines that reasonable attorney's fees should**  
17 **be assessed under (1) of this subsection, the court shall apportion the payment**  
18 **among the offending attorney or party jointly and severally, as the court**  
19 **considers just, and may charge an attorney or a party all or part of the fees**  
20 **assessed.**

21 **(3) The court may not assess attorney's fees under (1) of this**  
22 **subsection**

23 **(A) if, after filing an appeal or cross-appeal, the appeal or**  
24 **cross-appeal is voluntarily dismissed as to any claim or defense within a**  
25 **reasonable time after the attorney or party filing the dismissal knew or**  
26 **reasonably should have known that the party would not prevail on the**  
27 **claim or defense;**

28 **(B) against a party who appears without an attorney unless**  
29 **the court finds that the party clearly knew or reasonably should have**  
30 **known that all or part of the claim or defense lacked substantial**  
31 **justification; however, when an attorney licensed to practice law in this**

1           state appears without an attorney, the attorney shall be held to the  
 2           standards set out in (1) of this subsection;

3                       (C) against an attorney or a party if the court determines  
 4           that a claim or defense was asserted in a good faith attempt to establish a  
 5           new theory of law.

6                       (4) In this subsection, "lacks substantial justification" means  
 7           substantially frivolous, substantially groundless, or substantially vexatious [IF  
 8           THE COURT DETERMINES THAT AN APPEAL OR CROSS-APPEAL IS OR  
 9           THAT IT HAS BEEN BROUGHT SIMPLY FOR PURPOSES OF DELAY,  
 10          ACTUAL ATTORNEY'S FEES MAY BE AWARDED TO THE APPELLEE OR  
 11          CROSS-APPELLEE].

12          \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
 13          read:

14                APPLICABILITY. This Act applies to causes of action commenced on or after the  
 15          effective date of this Act.

16          \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
 17          read:

18                CONDITIONAL EFFECT. AS 09.60.012, enacted by sec. 1 of this Act, takes effect  
 19          only if secs. 2 - 4 of this Act receive the two-thirds majority vote of each house required by  
 20          art. IV, sec. 15, Constitution of the State of Alaska.