HB

335

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 4, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/1/90

The LABOR & COMMERCE Committee considered: HB 335

HOUSE BILL NO. 335 [AMEND COURT RULE 68:COSTS/ ATTORNEY FEES]
"An Act amending Rule 68 of the Alaska Rules of Civil Procedure relating to the award of costs and attorney fees and to the payment of prejudgment interest."

RECOMMENDATIONS:
[✓] be replaced with CS HB 335 (L+C) [✓] the same title [ ] a new title
[ ] have attached amendment(s)
[✓] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal impact _____ [ ] fiscal note(s) _____
[Ø] zero fiscal note AK Court System [ ] zero fiscal note(s) _____
[ ] zero with analysis _____ [ ] zero fn/analysis _____

SIGNING DO PASS:

Finkelstein
Conley
Rosenberg
Bogle

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
		X	
Leman		X	
Collins	X		

Chairman's Signature
Conley

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: HB 335
Publish Date: 5/4/89

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Alaska Court System
Title: An Act amending Rule 68
BRU: Trial Courts

Sponsor: Labor & Commerce
Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 02/26/90

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 02/26/90
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 19, 1990 FURTHER REFERRALS:

Date of Committee Action: 4/24/90

The JUDICIARY Committee considered: HB 335

HOUSE BILL NO. 335 AMEND COURT RULE 68:COSTS/ ATTORNEY FEES

"An Act amending Rule 68 of the Alaska Rules of Civil Procedure relating to the award of costs and attorney fees and to the payment of prejudgment interest."

RECOMMENDATIONS:
[X] be replaced with CSHB 335(JUD) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[ ] do pass
[ ] do not pass
[ ] no recommendation
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[X] zero fiscal note(s) Court System 3/19/90
[ ] zero fn/analysis _____

SIGNING DO PASS:

Chip Davidson DAVIDSON
M. Gruenberg Gruenberg
Jay Ellis Ellis

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Peter Goll Goll		X	
Terry Martin MARTIN		✓	
Allen Davis DAVIS			

M. Gruenberg / Peter Goll
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 335
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act amending Rule 68... relating to the award of costs and attorney fees..."
Sponsor: House Labor and Commerce
Requestor: House Labor and Commerce

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: February 27, 1990

Richard L. Pegues /FOR/

Approved by Commissioner: Douglas B. Baily, Attorney General
Date: February 27, 1990
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 335

This bill repeals and reenacts Rule 68(b) of the Alaska Rules of Civil Procedure in a way that increases the likelihood that a party who unreasonably offers, or unreasonably refuses an offer, for the settlement of a claim, will have to pay the other side's reasonable, actual costs and attorney's fees. Currently, costs and fees are determined on the basis of a portion of the reasonable fees, usually about 50 percent of actual costs, or on the basis of the sliding scale percentage of the value of a claim as provided by Rule 82. It appears that the bill is intended to serve as an incentive for the reasonable, timely settlement of claims and as a disincentive for prolonged and costly litigation. In this respect, the bill would increase the penalty for unreasonably rejecting a settlement offer, and it would increase the penalty for making an unreasonable settlement offer.

The settlement process, in lieu of continued litigation, may often be somewhat more complicated than is generally understood. This process may involve substantial bargaining on both sides, with several offers and counter-offers made by each of the parties over a long period of time. Although some claims are clear-out, making them amenable to the process proposed by this legislation, in the majority of cases the issues and facts usually present varying degrees of weakness and strength for all the parties to a claim requiring a flexible settlement process. Consequently, the bill's attempt to quantify, or simplify an oftentimes complex process may not provide the intended incentive to settle a claim.

It has been the department's experience that only about one in fifty personal injury claims made against the state ever reaches trial. Of this number, about thirty claims are unmeritorious and are either dropped or settled for small sums due to their nuisance value. Of the remaining twenty meritorious claims, one will probably proceed to trial and perhaps nineteen will be settled without going to trial. Viewed in this light, a change in the current process is probably not necessary, at least insofar as the state is a claims' litigant.

To the extent that the state as a defendant may run afoul of the limitations contained in the bill, the cost might be as high as $50,000 per year. These costs are not reflected in this fiscal note because the cost of personal injury claims is borne by the Division of Risk Management. To the extent that the plaintiffs against the state run afoul of the proposed limitations, the state will probably not receive much additional benefit because such plaintiffs often do not have the ability to pay.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSHB 335(L&C) No. 1
Publish Date: HOUSE 3/19/90

FISCAL NOTE

cc

REQUEST:

Revision Date:
Agency Affected: Alaska Court System
Title: An Act amending Rule 68
BRU: Trial Courts

Sponsor: Labor & Commerce
Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 02/26/90

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 02/26/90
Agency: Alaska Court System

Distribution (by preparer):
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Department of Commerce & Economic Development / POSITION PAPER

CSSSSB 335 (Fin): "An Act relating to health maintenance organizations; and providing for an effective date."

The department is in favor of this legislation. HMO's provide or arrange for basic health care services to persons on a prepaid basis. This form of organization combines some of the functions of an insurer with those of traditional health care providers. In this way, the providers of medical care share in the financial risk of health care and, therefore, have an incentive to reduce health care costs and to promote preventative medicine. This kind of organization is not possible under our present statutes. This proposal will provide a framework for the establishment of these hybrid organizations. It is based on a National Association of Insurance Commissioners model statute.

The attached commentary will provide an analysis of CSSSSB 335 (Fin).

Linda Wild for
Larry Merculieff, Commissioner

Date: 4-9-90

LM/DK/dgl6381D
040990c

Introductory Comment:

The rising cost of health services in recent years has led government agencies, private organizations, and legislative bodies to seek alternatives to the traditional medical delivery system which will provide improved health care at a lower cost. The health maintenance organization is a concept which has received such attention as one means through which an improvement in delivery might be achieved.

Shortcomings of Existing Health Care Delivery System

The health care delivery system as it is now constituted presents several problems. First, many people are unable to obtain health care when they need it and in the form they need it. This problem can be divided into three subareas:

1. In many areas of the country, the availability of health care in terms of the quantity of manpower and facilities is inadequate.

2. Even where physicians, nurses, clinics, and hospitals do exist, they may lack accessibility due to poor location, poor management, lack of transportation, language or racial barriers, inconvenient hours, etc.

3. Even if health care is available and accessible, it may not be continuous: that is, a single patient may not be treated as a person with a continuing or a variety of problems but rather as a single isolated health care problem incident. The problems of viability, accessibility, and continuity, at least in part, have been attributed to the lack of responsibility vested in one person, group, or organization to assure the delivery of health care.

A second problem is the escalating cost of health care services. This stems from the limited supply of health care service facilities which is confronted by an expanded and fragmented financing mechanism and the consequent tremendous increase of demand for such services. This is the classic model for inflation. Traditional reimbursement of providers by the federal government, insurance plans, and hospital and medical service corporations, because of the inherent difficulties involved, has been accompanied by uneven efforts toward ineffective cost review or control. Furthermore, services or facilities are often duplicated or used inefficiently. A basic cause of inflation and inefficiency rests with the improper structuring of incentives. Where no individual group, or organization is responsible for the use of more economical services and facilities, including those relating to preventive care, greater income is generated for providers by the more frequent use of services and facilities and by the use of the more expensive facilities and services available.

A third problem is the quality of health care delivered. Throughout various parts of the country, the quality of health care can range from the very best to the very poor. Generally speaking, there is no locus for quality assessments either as to health care processes or health care results. In the absence of a means to measure quality, it is virtually impossible to design and implement effective programs to rectify defects.

This brief discussion in no way attempts to provide a comprehensive discussion of the problems of the health care delivery system in the United States nor does it give adequate recognition to the strenuous efforts of many to improve the existing system. However, it does highlight some of the major problems prevailing today. Development of the health maintenance organization (HMO) concept offers one alternative means to help alleviate some of these problems.

Nature of the Health Maintenance Organizations:

A health maintenance organization may be described as an organization which brings together a comprehensive range of medical services in a single organization to assure a patient of convenient access to health care services. It furnishes needed services for a prepaid fixed fee paid by or on behalf of the enrollees. An HMO can be organized, operated and financed in a variety of ways. For example, an HMO may be organized by physicians, hospitals, community groups, labor unions, government units, insurance companies, etc. Generally speaking, an HMO delivery system is predicated on three principles:

1. It is an organized system for the delivery of health care which brings together health care providers.

2. Such an arrangement makes available basic health care which the enrolled group might reasonably require, including emphasis on the prevention of illness or disability.

3. The payments will be made on a prepayment basis, whether by the individual enrollees, medicare, medicaid, or through employer-employee arrangements.

An HMO can directly address itself to the problems of availability, accessibility, and continuity since it is a health care delivery system. It assumes responsibility for actually furnishing to its enrollees those health care services necessary to meet the obligations it undertakes. Thus, the HMO occupies a position through which both the accessibility and continuity of care may be affected.

An HMO, by its very nature, may provide incentives toward lessening costs in delivering health care. It has a limited membership prepaying fixed sums of money. The providers are obligated to deliver a specified set of health care services. The fixed amount of income provides incentive to control expenses and costs. The HMO provides a mechanism to analyze costs, expenses and utilization of services, and affords a means to implement measures to enhance efficiency.

The problem of the quality of health care is not susceptible to an easy solution. An HMO is in a position to assess the quality of care provided since it is a closed system. It can study the health of its members, review the records of treatment, and, in general, provide a monitoring mechanism.

A variation of the HMO concept is seen in some medical care foundations. Although individual foundations differ greatly in detail, a foundation for medical care is usually sponsored and organized by a county or state medical society. The membership consists of physicians who apply to and are accepted by the foundation.

Those medical care foundations which can be considered as a variant of the HMO concept often contract with an insurer or other prepayment plan (e.g., hospital or medical service corporations) to provide coverage meeting certain minimum criteria consistent with the delivery of quality medical care. The insurer collects the premiums, promotes, markets, and underwrites the program. The enrollee may seek physician services from any member of the foundation who then bills either the insurer or the foundation, not the enrollee. Although such billings are on a fee-for-service basis, the amount charged the enrollee is fixed and prepaid without regard to the number or type of services used. The foundation establishes some form of peer review to monitor not only the level of charges but also the type and quality of care rendered. Since the amount of income does not vary with the number or type of services provided, incentives exist to maintain costs at as low a level as possible. However, unlike the HMO concept described above, even though physician services are prepaid from the patients' viewpoint, from the physicians' viewpoint, the fee-for-service practice is maintained. under the federal HMO Act, this type of organization is called an Individual Practice Association Type HMO.

The Need for State Authorizing and Regulatory Legislation

From 1970 to 1973, the administration and committees in both houses of Congress spent much time analyzing the health maintenance organization alternative in connection with national health insurance and federal assistance bills for HMO's. This analysis resulted in the enactment of the federal HMO Act in 1973. Since then, the number of health maintenance organizations and the number of HMO enrollees has grown rapidly. Prior to 1972, however, few states had a statutory framework tailored to the supervision of health maintenance organizations. Chartering, licensing, contract and rate regulation and other supervision was being carried out under general insurance laws, hospital and medical service corporation statutes, other special statutes, or not at all. Because the HMO is a unique type of organization, many provisions of such state laws were inapplicable, highly restrictive or prohibitive to the formation and operation of an HMO. Therefore, in 1972, the National Association of Insurance Commissioners (NAIC) adopted the Model Health Maintenance Organization Act which accommodates the unique features of HMO's. CSSSSB 335 (Fin) substantially tracks that model act.

Purpose of CSSSSB 335 (Fin)

CSSSSB 335 (Fin) clearly authorizes the establishment and operation of HMO's. Restrictive provisions in other laws which are inappropriate to HMO's are rendered inapplicable. Appropriate grants of authority are established to enable the HMO's to fulfill the function envisioned for them. At the same time, however, the public has a vital interest in the fiscally sound, efficient, and ethical operation of HMO's. As is the case with insurance and hospital and medical service corporations, HMO's are "affected with the public interest." Thus, the purpose of this bill is twofold.

First, it attempts to provide a legal framework enabling the organization and functioning of HMO's of a wide variety, including those based upon the medical care foundation or individual practice association concept. The legal environment is designed to permit a high degree of flexibility. No one form of organization or one type of modus operandi is required. Instead the HMO concept can be refined and subjected to further experimentation. Second, the bill attempts to provide a regulatory monitoring system not only to prevent or remedy abuse, but also to assist in the future improvement and development of this alternative form of a health care delivery system.

Since the model bill on which CSSSSB 335 (Fin) was approved, the federal HMO Act has been enacted and amended four times. The model, or substantial portions of it, has been enacted in 27 states and substantial experience has been gained in implementing and regulating HMO's under its terms. In addition, a few HMO's have become insolvent and commissioner have had to deal with the results of those insolvencies. Therefore, the model act has been revised to reflect changes which have occurred in the federal law, to reflect experience gained in administering the law and to clarify and strengthen the provisions relating to HMO agency.

AS 21.86.010

This section requires the licensing of an HMO in order to provide health care services on a prepaid basis. The legal entity, in which the responsibilities imposed by this Act are vested, serves as a focus of regulatory attention to assure that the consuming public is well served.

AS 21.86.020

A health maintenance organization combines several characteristics of an insurance operation (including the need for financial responsibility, the assumption of risk and similarity in marketing activities) with the characteristics of a health care delivery system. This section provides for the authorization and regulation of health maintenance organizations to be carried out through existing state agencies. The creation of a new agency specifically for health maintenance organizations would unnecessarily duplicate existing functions in the Insurance Division and the Department of Health and Social Services. It is felt that the expertise of the Alaska Insurance Division on fiscal and other regulatory matters and the familiarity of the Alaska Department of Health and Social Services with regard to health matters should both be utilized in the regulation of health maintenance organizations. To minimize administrative problems, the prime responsibility for administration is vested in one agency - the Insurance Division. However, to the extent possible, the responsibilities of the two agencies are clearly defined with the Insurance Division obligated to rely on the Department of Health and Social Services with respect to the latter's sphere of expertise.

Subsection (b)(2) makes explicit the requirement that an HMO must provide a minimum package of services on a prepaid basis. Reasonable co-payments, however, are permitted and do not violate the requirement for prepayment. Such co-payments may be used to (a) reduce the amount of prepayments; and (b) minimize frivolous utilization of services. In addition, an HMO may have more than one benefit package involving different levels of co-payments.

Under subsection (b)(3), to grant a certificate of authority, the director should be satisfied that the health maintenance organization will have the financial resources to provide the health care services for which it is obligated to its enrollees. However, it is recognized that requiring an HMO to have more than a minimum capitalization as set forth in AS 21.86.140(h) might prevent the organization or implementation of an otherwise viable HMO. Furthermore, with various possible insurance and surety arrangements available to back up the HMO's promise of performance, reserve requirements such as those found in the insurance laws are not deemed necessary.

AS 21.86.030

The exercise of authority granted in this section is subject to disapproval by the director within 30 days of a filing by a health maintenance organization. The director may promulgate rules and regulations exempting certain contracts from the filing requirement where exercise of the authority granted in the section would have little or no effect on the financial condition and ability to meet obligations of the organization.

AS 21.86.040

This section makes explicit the permissible membership of such a group. CSSSSB 335 (Fin) does not, however, require that a health maintenance organization be consumer controlled. It is expected that HMO's controlled in a variety of ways will be organized. Where organizations are not consumer controlled, it is believed that some means for enrollee participation should be provided. For example, such matters as availability, accessibility and continuity of health care services are factors which directly confront the consumers and in which they have a particular interest. The disclosure of information under other sections is also designed to assist the consumers.

Arguments against a role for the consumer include: (1) such participation is unnecessary and perhaps even harmful to the efficient and professional delivery of health care services; (2) a consumer role will impede the initiation of an HMO since more people must be involved; and (3) consumers can always seek alternative health care. The arguments for a consumer role seem more persuasive. These include: (1) consumer participation results in a more responsive organization; and (2) consumer participation is not the same as lay control over the rendering of professional service.

AS 21.86.050

This section provides a level of fidelity protection for the consumer by requiring a bond.

AS 21.86.060

This section requires that services be provided through appropriately licensed persons. It allows the HMO to provide services directly or through other arrangements.

AS 21.86.070

Subsection (a) requires that every enrollee be provided with evidence of coverage and allocates the responsibility for providing that evidence.

Subsection (b) and (e) requires that evidences of coverage and forms are subject to filing with and approval by the director.

Subsection (c) establishes requirements which evidence of coverage must meet.

Subsection (d) provides that filing is required under subsection (b) unless the form is already subject to filing requirements under existing filing statutes.

Subsection (f) provides for the filing of charges for health care services, i.e., that part of the benefit package which is provided in the form of service vis-a-vis indemnity or service benefits. Those parts of the package providing benefits under agreement with an insurance company or hospital or medical service corporation will be subject to regulation in accordance with existing laws.

Paragraph (f) neither requires nor prohibits community rating. Reasonable underwriting classifications are permitted for the purpose of establishing the charges. Different charges may be imposed on different groups of enrollees. Such a rigid requirement as community rating would appear to be inappropriate when the competing financing mechanisms are not subject to such a constraint. The competitive disadvantage which such requirement might impose could impeded the development of HMO's.

Because of its somewhat different nature, an HMO is not required by this Act to meet reserve requirements similar to those imposed on insurance companies. Thus, it is important that the charges be set at an adequate level. The requirement for certification by an actuary or other qualified person, along with supporting information, is intended to assist the director in determining adequacy. In applying the standard of excessive, inadequate, or unfairly discriminatory, it is contemplated that the director may consider the amount necessary to assure a reasonable return on the initial and subsequent capital invested and an amount needed to accumulate adequate funds to stabilize the level of charges against fluctuation due to inflation, changes in medical technology and related causes.

AS 21.86.080

This section provides the director with the authority to require reports considered necessary to carry out his duties. The reports could include:

- a financial statement of the organization;
- any material changes in the information submitted pursuant to AS 21.86.010(b)(3);
- the number of persons enrolled at the beginning and end of the year; and
- the amount of uncovered and covered expenditures that are payable and more than 90 days past due.,

In establishing filing requirements, the director will be cognizant of the fact that HMO's that are qualified under the federal HMO Act must submit detailed reports to the Department of Health and Human Services. The director will make use of such reports when they are relevant and avoid the imposition of duplicate reporting requirements.

AS 21.86.090

This section requires the HMO to provide notice to enrollees of changes in operation affecting them.

AS 21.86.100

Every health maintenance organization is required to establish a complaint system to provide reasonable procedures for the disposition of complaints. The organizations may be expected to receive two types of complaints. One type is related to the basic health care services or additional services furnished by it. The other type is related to that portion of the coverage in addition to basic health care services which is provided by insurance, hospital or medical service corporations, or some means other than being furnished by the organization. For complaints arising from health care services, the administrative procedure to handle complaints should provide the mechanism through which enrollees receive a fair and proper opportunity to have their cases heard, including the use of binding arbitration as a means of resolving claims concerning coverage. For complaints regarding benefits over which the health maintenance organization has no direct control such as those portions of the benefit package which are covered by insurance, the health maintenance organization is responsible only for maintaining statistical information and transmitting the complaints to the persons responsible.

AS 21.86.110

This section avoids duplication of benefits.

AS 21.86.120

This section provides a ten-day free look.

AS 21.86.130

Life and health insurers are subject to statutory investment requirements designed to assure conservatism and liquidity in the handling of the insurer's funds. Sound financial management is an important element in the variable operation of an HMO. Furthermore, it is contrary to the intent of this bill to foster conditions which would enable an HMO to be used as a "front" for a speculative investment operation. At the same time, however, it is recognized that for an HMO to fulfill its expected functions, it may be both desirable and necessary for the HMO to invest a portion of its capital funds in facilities and services to better enable it to meet its obligations. Such investments may not conform to the traditional insurance law investment limitations. Consequently, this section excepts this type of investment when approved by the director in accordance with the standards set out in AS 21.86.030(b).

AS 21.86.140

Even though very serious problems can arise if a health maintenance organization defaults on its contracts, fiscal control of health maintenance organizations in a manner comparable to that applied to insurance companies appears inappropriate in view of the service nature of such organizations. The best protection for enrollees is a financially sound organization that generates net income. However, beginning health maintenance organizations are often small businesses with limited financial resources that will sustain operating losses in their early years. Unreasonably high starting capital or reserve requirements may prevent some organization from starting or may unreasonably tie up the capital of those that do. Therefore, this section provides for a structured but flexible approach to protecting against insolvency. It requires the maintenance of a minimum capital account, a deposit of cash or securities in a minimum account, and the organization's generation of additional amounts annually as a source of funds to meet its contractual obligations to the enrollees in the event of insolvency. The director may waive all or part of these requirements when satisfied that the organization has sufficient net worth or an adequate history of generating net income to assure its viability. The requirements may also be waived if the health maintenance organization's performance is guaranteed by another financially strong organization.

The section relates the deposit requirements to the amount of the health maintenance organization's uncovered expenditures. This amount will vary depending upon the type of organization and the nature of its arrangements with providers. For example, the physicians of the staff of the organization or a contracting medical group of individual practice association may agree to look only to the organization for payment of services provided to the organization's enrollees and agree not to bill them in the event of insolvency. An organization could have insurance for all or part of its hospitalization expense or another organization could agree to guarantee that the liabilities of the health maintenance organization are met.

In all such cases, it is recommended that the contractual provision require the provider or guarantor to notify the director if the provision or insurance is modified or no longer in effect or if payment on the contract or policy has not been made in a reasonable period of time. This can provide an early warning of possible adverse changes in the health maintenance organization's financial position. In addition, the status of such provisions or policies should be covered in annual interrogatories to the organization.

In (b), the Finance Committee has increased the deposit amount required of a new HMO from 5% of its estimated expenditures for health care services and not less than $100,000 to 10% of its estimated expenditures for health care services and not less than $250,000. This strengthens the solvency protection for consumers substantially, particularly during its first year of operation.

AS 21.86.150

Subsection (a) requires licensing.

Subsection (b) addresses false or defective advertising and solicitation.

Subsection (c) applies the insurance Unfair Trade Practices Act to the degree applicable.

Subsection (d) is designed to foster continuance of coverage to the extent possible.

Subsection (e) addresses potential deception through name utilized.

Subsection (f) requires a certificate of authority to use the phrase "Health Maintenance Organization" or "HMO."

AS 21.86.160

Provides for regulation of assets.

AS 21.86.170

This section overrides the group laws to permit an insurer or a hospital or medical service corporation to provide coverage protecting enrollees of an HMO. This authority is intended to permit insurers and the service corporations to write coverage (1) to fill the gaps which the providers of health care services do not provide, (2) to provide coverage in excess of the services provided, (3) to cover catastrophe situations, (4) to provide protection to the enrollees in the event the HMO becomes insolvent, and (5) to provide coverage against the cost of health care services as the health maintenance organization deems necessary.

AS 21.86.180

The director is provided authority to examine health maintenance organizations as is reasonably necessary. However, any determination related to the quality of health care services is the exclusive responsibility of the commissioner of health and social services.

AS 21.86.190 - .200

These sections list the reasons for suspension or revocation of the HMO's certificate of authority. They also set forth a process for such action.

AS 21.86.210

This section provides for the rehabilitation, liquidation, or conservation of health maintenance organizations to be carried out by the director under the statute applicable to insurance companies.

AS 21.86.220

This section provides authority to adopt regulations.

AS 21.86.230

Proper administration of the HMO program by the Division of Insurance and the Department of Health and Social Services will impose additional financial burdens on the respective agencies. For this reason, it is appropriate to establish a fee system through which HMOs are required to bear the expenses associated with their regulation by the state.

AS 21.86.240

This section provides for taxation of the HMO.

AS 21.86.250

This section authorizes the director to issue a cease and desist order and to apply for injunctive relief. It also provides penalties for violations.

AS 21.86.260

This section clarifies the relationship of HMOs to other insurance statutes.

AS 21.86.270

This section provides that filings and reports are public documents.

AS 21.86.280

This section provides that medical information on an enrollee is confidential.

AS 21.86.290

This section authorizes the Department of Health and Social Services to draw upon outside expertise where appropriate. One alternative would be to contract with Professional Standards Review Organizations established pursuant to Public Law 92-604.

AS 21.86.300

This section provides protection for HMOs from acquisitions which would run counter to this chapter.

AS 21.86.310

This section is similar to section 1310 of the federal HMO Act, but extends the dual choice requirement to state licensed HMOs. The licensing requirements of this act are less stringent than the federal requirements, so this provision will assist in the development and growth of state licensed HMOs. The Finance Committee has clarified the language on page 27, lines 14-17, to assure that rights in collective bargaining are preserved. The option of enrolling in an HMO is an item that, if approved by the bargaining representative, then is offered to the membership. Previous language would have required the offer without first going to the bargaining table.

AS 21.86.900

Definition section.

Paragraph (6) defines an HMO to be any person that undertakes to provide or arrange for at least basic health care services on a prepaid basis. This can achieve either (a) by providing the services directly through physician or other providers actually employed by the HMO and through hospitals or facilities owned or directly operated by the HMO, or (b) by contracting or arranging with physicians, hospitals or other facilities to provide such services The term "arrange" does not contemplate those traditional arrangements which hospital or medical service corporations make in conjunction with their prepayment service plans pursuant to hospital or medical service corporation laws. If it were otherwise, the traditional hospital and medical service corporation prepayment service plan, by itself, would be an HMO.

Paragraph (2) defines basic health care services. This definition, combined with the requirement that an HMO provide for basic health care services in AS 21.86.020(b)(2) and AS 21.86.190(a)(3) establishes a minimum package of health care services which an HMO must provide or arrange for. This is intended to assure that the enrollees obtain at least a sufficiently broad range of services to meet a reasonable amount of their health care needs. At the same time, however, the definition should not be so broad as to be financially prohibitive to a substantial number of enrollees.

Since no HMO may function without either a certificate of authority and since an HMO must furnish basic health care services, no health care services may be provided or arranged for on a prepaid basis without the minimum package of basic health care benefits. This serves two purposes: (a) it requires the provision of adequate protection and (b) it prevents the avoidance of the applicability of the Act by the mere expediency of failing to meet the minimum package requirements.

In addition, the HMO may furnish additional services, certain limited indemnity benefits and more comprehensive indemnity benefits. These additional services and benefits can be put together in any one of a variety of ways. The indemnity or service benefits might cover such situations as out-of-area emergency services, out-of-area benefits for dependents away at college, or services which the affiliate providers lack the capacity to make available. This flexibility in piecing together the package of coverage through direct and indirect services and indemnity benefits enables an HMO type operation to meet health care needs in a wide variety of circumstances.

The definition of an HMO affords wide latitude for different arrangements. This highly flexible approach seems best suited to our diverse and pluralistic society with problems varying from locality to locality. Flexibility will allow continued innovation and experimentation with different organizational structures. It may be easier to recruit health personnel if a number of alternative approaches are available. Consistent with this philosophy is the absence of any requirement of a minimum number of employees or of a mandate as to whether or not the HMO should be a profit or nonprofit organization. Permitting both profit and nonprofit organizations will broaden the financial and managerial resources which can be drawn upon in developing the HMO concept.

Paragraph (J) defines uncovered expenditures. These are expenditures for health care services for which the HMO is at risk. They will vary in type and amount, depending on the arrangements of the HMO. They may include out-of-area services, referral services and hospital services. They do not include expenditures for services when a provider has agreed not to bill the enrollee even though the provider is not paid by the HMO, or for services that are guaranteed, insured or assumed by a person or organization other than the health maintenance organization.

Section 2 and Section 3

Includes reference to HMOs in related statutes.

Section 4

This is a temporary grandfather clause for existing HMOs.

Section 5

This section provides for applying AS 21.86.310(a) to new or renewal contracts or agreements but not those existing.

Section 6

Provides for an immediate effective date.

6-1321M

Original sponsor(s): Labor & Commerce Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 335 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act repealing a provision of state law applicable to offers of judgment; and amending Rule 68 of the Alaska Rules of Civil Procedure."

BE IT ENACTED BY THE LECISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.30.065 is repealed.

* Sec. 2. Rule 68(a) of the Alaska Rules of Civil Procedure is amended to read:

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party a written [AN] offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. The time during which the offer may be accepted may be extended in the offer. If within the time allowed for acceptance [10 DAYS AFTER SERVICE] of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within the time allowed for its acceptance [10 DAYS] is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

* Sec. 3. Rule 68(b) of the Alaska Rules of Civil Procedure is repealed

and reenacted to read:

(b) If the judgment finally rendered by the court is at least as favorable to the offeror as the offer, the offeree must pay the offeror's actual reasonable costs incurred after the offer was refused or terminated under (a) of this rule, and may be required by the court to pay the actual reasonable attorney's fees incurred after the date the offer was refused or terminated.

* Sec. 4. Rule 68 of the Alaska Rules of Civil Procedure is amended by adding a new subsection to read:

(d) If the judgment finally rendered by the court is at least as favorable to the offeror as the offer, the prejudgment interest accrued before judgment is entered shall be adjusted as follows:

(1) if the offeror is the party making the claim, the interest rate will be increased by five percent a year;

(2) if the offeror is the party defending against the claim, the interest rate will be reduced by five percent a year.

6-1321M

Original sponsor(s): Labor & Commerce Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 335 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

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(d) If the judgment finally rendered by the court is at least as favorable to the offeror as the offer, the prejudgment interest accrued before judgment is entered shall be adjusted as follows:

(1) if the offeror is the party making the claim, the interest rate will be increased by five percent a year;

(2) if the offeror is the party defending against the claim, the interest rate will be reduced by five percent a year.

6-1321D
Chenoweth
4/24/90

Original sponsor(s): Labor & Commerce Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 335 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act repealing a provision of state law applicable to offers of judgment; amending Rule 11 of the Alaska Rules of Civil Procedure concerning sanctions; and amending Rule 68 of the Alaska Rules of Civil Procedure relating to [the award of costs and attorney fees offers of judgment and to the payment of prejudgment interest]."

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

* Section 1. AS 09.30.065 is repealed.

* Sec. 2. Rule 11 of the Alaska Rules of Civil Procedure is amended to read:

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted

by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless expense in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleadings, motion, or other paper, including a reasonable attorney's fee.

* Sec. 3. Rule 68(a) of the Alaska Rules of Civil Procedure is amended to read:

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party a written [AN] offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. The time during which the offer may be accepted may be extended in the offer. If within the time allowed for acceptance [10 DAYS AFTER SERVICE] of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within the time allowed for its acceptance [10 DAYS] is considered withdrawn and evidence of the offer is not admissible except in a proceeding to

determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

* Sec. 4. Rule 68(b) of the Alaska Rules of Civil Procedure is repealed and reenacted to read:

(b) If the judgment finally rendered by the court is at least as favorable to the offeror as the offer, the offeree must pay the offeror's actual reasonable costs incurred after the offer was refused or terminated under (a) of this rule, and may be required by the court to pay the actual reasonable attorney's fees incurred after the date the offer was refused or terminated.

* Sec. 5. Rule 68 of the Alaska Rules of Civil Procedure is amended by adding a new subsection to read:

(d) If the judgment finally rendered by the court is at least as favorable to the offeror as the offer, the prejudgment interest accrued before judgment is entered shall be adjusted as follows:

(1) if the offeror is the party making the claim, the interest rate will be increased by five percent a year;

(2) if the offeror is the party defending against the claim, the interest rate will be reduced by five percent a year.

6-1321J
Chenoweth
4/19/90

Original sponsor(s): Labor & Commerce Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 335 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act [relating to civil practice in state court;] repealing a provision of state law applicable to offers of judgment; amending Rule 11 of the Alaska Rules of Civil Procedure concerning sanctions; and amending Rule 68 of the Alaska Rules of Civil Procedure relating to the award of costs and attorney fees and to the payment of prejudgment interest."

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

* Section 1. AS 09.30.065 is repealed.

* Sec. 2. Rule 11 of the Alaska Rules of Civil Procedure is amended to read:

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed

after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless expense in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleadings, motion, or other paper, including a reasonable attorney's fee.

* Sec. 3. Rule 68(a) of the Alaska Rules of Civil Procedure is amended to read:

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. The time during which the offer may be accepted may be extended in the offer. If within the time allowed for acceptance [10 DAYS AFTER SERVICE] of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within the time allowed for its acceptance [10 DAYS] is considered withdrawn and

evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

* Sec. 4. Rule 68(b) of the Alaska Rules of Civil Procedure is repealed and reenacted to read:

(b) If the judgment finally rendered by the court is at least as favorable to the offeror as the offer, the offeree must pay the offeror's actual reasonable costs incurred after the offer was refused or terminated under (a) of this rule, and may be required by the court to pay the actual reasonable attorney's fees incurred after the date the offer was refused or terminated.

* Sec. 5. Rule 68 of the Alaska Rules of Civil Procedure is amended by adding a new subsection to read:

(d) If the judgment finally rendered by the court is [not more favorable to the offeree than] at least as favorable to the offeror as the offer, the prejudgment interest accrued before judgment is entered shall be adjusted as follows:

(1) if the [offeree] offeror is the party making the claim, the interest rate will be [reduced] increased by five percent a year;

(2) if the [offeree] offeror is the party defending against the claim, the interest rate will be [increased] reduced by five percent a year.

restraining order. Ostrow v. Higgins, Op. No. 3085, 722 P2d 936 (Alaska 1986).

Rule 66. Receivers.

An action wherein a reciever has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by the other similar officers appointed by the court shall be in accordance with the practice set forth by statute. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by law and these rules.

(Adopted by SCO 5 October 9, 1959)

Cross References

CROSS REFERENCES: AS 09.40.240, AS 09.40.250

Annotations

Cases

Where Rule 66, [Federal] R. Civ. P., which governs the practice in the territorial district court does not expressly provide for the verification of the petition for appointment of a receiver, the rule does provide that the practice in the administration of estates by receiver shall be in accordance with the practice theretofore filed in the federal courts, and that practice required the complaint to be verified. Wood v. Gray, Op. No. 29, 359 P2d 951, 952 (Alaska 1961).

Rule 67. Deposit in Court—Collection and Enforcement of Child Support Payments.

(a) Upon notice to every other party and upon leave of court, a party may deposit with the court all or any part of any sum of money or any other thing capable of physical delivery which is the subject of the action or due under a judgment. Money deposited with the court under this rule shall be managed in accordance with the provisions of Rule 5, Rules Governing the Administration of All Courts. The court shall release the deposit to the party entitled to it when that party becomes entitled to it. No interest shall accrue against a party making a deposit, to the extent of that deposit, after it is made.

(b) In any action where the court orders the payment of monies for child support to be paid to the child support enforcement agency pursuant to AS 47.23.080, the order shall contain the following:

(1) The names of the parties and of the children for whom support payments are ordered; the home addresses of the parties together with their mailing addresses, if different from their home addresses and the name and address of the employer, if any, of the party ordered to make child support payments;

(2) A provision directing each party to inform the child support enforcement agency in writing of any change in his or her residence or mailing address within five days after any such change. The order shall also state the address of the agency; and

(3) A provision directing transmittal of a copy of the order to each party to the action and to the agency.

(Adopted by SCO 5 October 9, 1959; amended by SCO 251 effective July 1, 1976; by SCO 465 effective June 1, 1981; and by SCO 474 effective July 1, 1981)

Annotations

Cases

Isolated in itself a payment document filed by defendant in a personal injury case in the superior court which was not served upon the plaintiffs and which stated in substance that the full policy amount plus $1,000 as costs to date were paid into registry of court with a request that the court notify plaintiffs of such tender and relieve the defendant of liability for costs and attorney's fees, was neither a confession of judgment under Civil Rule 57(b) nor an offer of judgment under Civil Rule 68 but could at most, be considered a deposit in court under Civil Rule 67(a). Albritton v. Estate of Larson, Op. No. 413, 428 P2d 379 (Alaska 1967).

Rule 68. Offer of Judgment.

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(b) If the judgment finally rendered by the court is not more favorable to the offeree than the offer, the prejudgment interest accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate will be reduced by the amount specified in AS 09.30.065 and the offeree must pay the costs and attorney's fees incurred after the making of the offer (as would be calculated under Civil Rules 79 and 82 if the offeror were the prevailing party). The offeree may not be awarded costs or attorney's fees incurred after the making of the offer.

(2) if the offeree is the party defending against the claim, the interest rate will be increased by the amount specified in AS 09.30.065.

(c) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment.

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which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

(Adopted by SCO 5 October 9, 1959; amended by SCO 818 effective August 1, 1987)

Annotations

Cases

I. In General
II. Payment of Costs
  A. Construction
  B. Prejudgment Interest

I. In General

A payment document which, in itself, did not have the criterion of an offer of judgment and could, at most, be considered as a deposit in the superior court, made under the provisions of Civil Rule 67(a), was by virtue a stipulation of the parties as reasonably construed converted into an offer of judgment which plaintiffs accepted under the stipulation. **Albritton v. Estate of Larson**, Op. No. 413, 428 P2d 379 (Alaska 1967).

The purpose of this rule is to encourage settlement of civil litigation as well as to avoid protracted litigation. **Miklautsch v. Dominick**, Op. No. 538, 452 P2d 408 (Alaska 1969).

An offer of judgment and acceptance thereof is a contract and the amount of the offer of judgment must be definite so that it is clear there is a meeting of the minds on an essential term of the contract. **Davis v. Chism**, Op. No. 919, 513 P2d 475 (Alaska 1973).

This rule does not apply to eminent domain proceedings. **Anchorage v. Schavenius**, Op. No. 1183, 539 P2d 1169 (Alaska 1975).

The purpose of this rule is to encourage settlement and to avoid protracted litigation. **Continental Ins. Co. v. U.S. Fid. & Guar. Co.**, Op. No. 1298, 552 P2d 1122 (Alaska 1976).

Offer of judgment that paralleled Form 128, Forms for Rules of Civil Procedure, differing only in that it supplied defendant's identities and filled in blank spaces, was valid compliance with Civil Rule 68. **Farnsworth v. Steiner**, Op. No. 1955, 601 P2d 266 (Alaska 1979).

This rule applies not only when the offeree obtains judgment in his favor but also when the offeree does not prevail at all. **Wright v. Vickaryous**, Op. No. 2075, 611 P2d 20 (Alaska 1980).

A contract for an entry of judgment is not formed if the written notice of acceptance of an offer under this rule is not served within the ten days limit. **Gumese v. Interior Credit Bureau**, Op. No. 2339, 627 P2d 647 (Alaska 1981).

A defendant is not bound under this rule to make an offer of judgment commensurate with any degree of compensation. **Rules v. Stern**, Op. No. 2640, 661 P2d 615 (Alaska 1983).

An offer of judgment under this rule must be in writing to be valid. **Rules v. Stern**, Op. No. 2640, 661 P2d 615 (Alaska 1983).

An offer of judgment made pursuant to this rule is irrevocable for 10 days after it is served on the adverse party. **Rules v. Stern**, Op. No. 2640, 661 P2d 615 (Alaska 1983).

Where written offer of judgment by defendant was silent as to an offset for sums which had been advanced to plaintiff for medical treatment, defendant was required to pay the full amount of the offer without the offset. **Rules v. Stern**, Op. No. 2640, 661 P2d 615 (Alaska 1983).

Joint offers are excluded from the penal cost provisions of this rule. **Brinkerhoff v. Sacramento Anesthesia Corp.**, Op. No. 2998, 661 P2d 615 (Alaska 1983).

The cost provision of this rule refers to those costs permitted by the Civil Rules and the Administrative Rules. **Hayes v. Xerox Corp.**, Op. No. 3045, 718 P2d 929 (Alaska 1986).

This rule awards actual costs although it does not award actual attorney's fees. **Hayes v. Xerox Corp.**, Op. No. 3045, 718 P2d 929 (Alaska 1986).

Where settlement offer to plaintiffs specifically designated the amount offered to each plaintiff individually, did not contain a proviso mandating joint acceptance, and could be construed as permitting one plaintiff to accept and the other to go to trial, the settlement offer came within the penal cost provisions of this rule. **Hayes v. Xerox Corp.**, Op. No. 3045, 718 P2d 929 (Alaska 1986).

Joint offers of settlement are generally excluded from the penal cost provisions of this rule. **Hayes v. Xerox Corp.**, Op. No. 3045, 718 P2d 929 (Alaska 1986).

Because an offer of a lump sum presents problems of apportionment between offerees, it is treated as a joint offer and excluded from the penal cost provisions of this rule. **Hayes v. Xerox Corp.**, Op. No. 3045, 718 P2d 929 (Alaska 1986).

Failure of court, which made an award of attorney fees at variance with the schedule in the Civil Rules, to state its specific reasons for the amount awarded, required reversal. **Hayes v. Xerox Corp.**, Op. No. 3045, 718 P2d 929 (Alaska 1986).

Offer of judgment was not invalid as indefinite regarding the amount for attorney's fees. **Hayes v. Xerox Corp.**, Op. No. 3045, 718 P2d 929 (Alaska 1986).

Trial court did not err in refusing to deduct the amount of worker's compensation benefits received by plaintiff from his judgment against defendant in computing the "judgment finally obtained" for purpose of comparing plaintiff's judgment with the prejudgment offer made by defendant. **Alyeska Pipeline Service Co. v. Beadles**, Op. No. 3151, 731 P2d 572 (Alaska 1987).

To the extent that the trial court concluded that defendant prevailed because much of his attorney fees were incurred after his offer of judgment was made, the trial court considered an impermissible factor, while consideration of that factor is relevant in determining the amount of attorney fees to be awarded under this rule, it is irrelevant to the determination of which party prevailed in the action. **Mitchell v. Smith**, Op. No. 3220, 742 P2d 220 (Alaska 1987).

Offer of settlement made by multiple defendants, one of which was counterclaiming against the plaintiff, was sufficient to trigger the penal cost sanctions of this rule where the settlement offer clearly indicated that all claims between the parties would be resolved if the offer were accepted. **Taylor Const. Services, Inc. v. URS Co.**, Op. No. 3364, 758 P2d 99 (Alaska 1988).

Judgment of $162,000 for plaintiff, offset by an award of $223,700 to a counterclaiming defendant, was clearly less favorable than a joint and several settlement offer to all of the defendants of $70,000 which included dismissal of the counterclaim; thus award of costs to defendants pursuant to this rule was proper. **Taylor Const. Services, Inc. v. URS Co.**, Op. No. 3364, 758 P2d 99 (Alaska 1988).

II. Payment of Costs

A. Construction

The provision of this rule that a party who made an offer of judgment which was not accepted is not responsible for costs incurred after the making of the offer did not apply to a case where judgment finally obtained was more favorable than the offer and where the offeror was an insurance company which had offered the insurance policy limit and was not a party to the main cause, but had appealed from a garnishment proceeding. **Liberty National Insurance Company v. Eberhart**, Op. No. 281, 398 P2d 997 (Alaska 1965).

Even if it may be assumed that appellants were "prevailing parties" within the meaning of Civil Rules 54(d) and 82(a) (1), the trial court's determination as to denial of attorney's costs where the action was settled pursuant to Civil Rule 68 was not disturbed on

appeal in the absence of a showing of clear abuse of the wide discretion allowed under this rule. Albritton v. Estate of Larson, Op. No. 413, 428 P2d 379 (Alaska 1967).

Where in a personal injury action the defendant had filed a payment document which, in itself, could be considered at best a deposit in court under Civil Rule 67(a) but by stipulation between the parties was converted into an offer of judgment, and by virtue of such stipulation and the court's order appended thereto, plaintiff's causes of action were dismissed with prejudice, the action had been settled pursuant to Civil Rule 68 and under the "with costs then accrued" portion of said rule the trial court was vested with wide discretion in determining award of attorney's fees. Albritton v. Estate of Larson, Op. No. 413, 428 P2d 379 (Alaska 1967).

If the judgment recovered at trial is less than an offer of judgment, the offeree is liable for the costs incurred by the offeror subsequent to the time the offer was made. Miklautsch v. Dominick, Op. No. 538, 452 P2d 438 (Alaska 1969).

For purposes of this rule, an offer of judgment that specifies only a total sum must be construed as including the defendant's assessment of all the damages that the plaintiff is entitled to, including that occasioned by the loss of the use of the money. Davis v. Chism, Op. No. 919, 513 P2d 475 (Alaska 1973).

An offer of judgment will be construed as including the defendant's assessment of all the damages that plaintiff is entitled to, including costs and attorney's fees. Bayly, Martin & Fay, Inc. v. Arctic Auto Rental, Inc., Op. No. 993, 517 P2d 1406 (Alaska 1974).

An award of costs and attorney's fees to both the plaintiff and the defendant are properly computed as of the date the offer of judgment is made and not at a later time when accepted. Bayly, Martin & Fay, Inc. v. Arctic Auto Rental, Inc., Op. No. 993, 517 P2d 1406 (Alaska 1974).

Where radically different standards of partial compensation are applied in awarding attorney's fees to the parties, the award will be considered an abuse of discretion unless there are findings or an explanation by the trial court supporting such disparate treatment. Irving v. Bullock, Op. No. 1291, 549 P2d 1184 (Alaska 1976).

This rule does not require that costs incurred prior to an offer of judgment be awarded; such awards are within the trial court's discretion. Continental Ins. Co. v. U.S. Fid. & Guar. Co., Op. No. 1298, 555 P2d 1122 (Alaska 1976).

An award of $5,000.00 for attorney's fees to defendant, a "limited prevailing party" under Civil Rule 68, was not manifestly unreasonable when actual attorney's fees were $14,053.12, considering that Rule 68 is designed to encourage reasonable settlement after a lawsuit is filed. Scott v. Robertson, Op. No. 1674, 583 P2d 188 (Alaska 1978).

An award of attorney's fees under Civil Rule 68 is designed to "partially" compensate the prevailing party. Scott v. Robertson, Op. No. 1674, 583 P2d 188 (Alaska 1978).

Court should make factual determination of offeror's actual expenses incurred after offer of judgment, then take into account the partial recovery principles of Civil Rule 82 in awarding offeror reasonable partial attorney's fees and costs based on such factual determination. Farnsworth v. Steiner, Op. No. 1955, 601 P2d 266 (Alaska 1979).

Where a judgment on offer and acceptance was signed January 18, but the action was not dismissed by court order until July 24 a request by counsel filed August 1 for a hearing on the amount of attorney fees was timely, July 24 being the proper date from which the request period should have been calculated. Salmon v. Keagan, Op. No. 2301, 645 P2d 148 (Alaska 1982).

Partial attorney's fees, not actual attorney's fees, are to be awarded to a prevailing party after an offer of judgment. Truckworld Equipment Co. v. Sorenson Trucking, Op. No. 2943, 649 P2d 231 (Alaska 1982).

When counsel requests attorney's fees, other than based on the schedule in the Civil Rules, accurate records of the hours expended and a brief description of the services reflected by those hours would be submitted. Hayes v. Xerox Corp., Op. No. 3045, 718 P2d 929 (Alaska 1986).

Prevailing defendant was entitled to costs incurred after date of his offer of judgment. Hutchins v. Schwartz, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

As the prevailing party at trial, defendant could receive the maximum amount of attorney fees under Civil Rule 82, the fact that defendant had made an offer of judgment under Civil Rule 68 would not increase or diminish the award of attorney fees. Hutchins v. Schwartz, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

A defendant who ultimately fares better than his offer of judgment is entitled only to partial compensation for post-offer attorney's fees. Wickwire v. State, Op. No. 3116, 725 P2d 695 (Alaska 1986).

In an action against the State for wrongful termination of an assistant attorney general, trial court, in awarding attorney's fees, improperly considered additional expenses incurred by the State resulting from plaintiff's decision to sue several individual defendants as well as the State, where a stipulation dismissing the individual defendants provided that each side would pay its own attorney's fees. Wickwire v. State, Op. No. 3116, 725 P2d 695 (Alaska 1986).

B. Prejudgment Interest

The phrase "judgment finally obtained by the offeree" within this rule includes the amount assessed as prejudgment interest but does not require the prejudgment interest to be tacked onto the offer of judgment if the offer is accepted and does not require the trial court to compare the jury's verdict plus prejudgment interest with the defendant's offer of judgment plus prejudgment interest. Davis v. Chism, Op. No. 919, 513 P2d 475 (Alaska 1973).

Prejudgment interest is in the nature of compensatory damages. It is reasonable for the trial court to include that figure in the "judgment finally obtained by the offeree" and to compare that total to the amount of the offer of judgment in order to determine whether the offeree should pay the costs. Davis v. Chism, Op. No. 919, 513 P2d 475 (Alaska 1973).

The date of the offer, not the date of the ultimate judgment, is the critical time in determining whether the offer, including prejudgment interest, is sufficient to avoid the operation of this rule. Davis v. Chism, Op. No. 919, 513 P2d 475 (Alaska 1973).

Trial judge may properly, as an exercise of discretion, refuse to award offeree interest on a judgment from the date of the offer through date of judgment when offeree ultimately recovers less than amount offered. Continental Ins. Co. v. U.S. Fid. & Guar. Co., Op. No. 1298, 555 P2d 1122 (Alaska 1976).

A party who succeeds at trial but who rejected an offer of judgment which exceeded his trial recovery, is permitted to recover expenses and fees — including prejudgment interest, only from the date the cause of action accrues to the date of the rejected offer of judgment. Farnsworth v. Steiner, Op. No. 1955, 601 P2d 266 (Alaska 1979).

Since interest is not "costs," a successful offer of judgment does not terminate the running of prejudgment interest. Farnsworth v. Steiner, Op. No. 2454, 638 P2d 181 (Alaska 1981).

Rule 69. Execution—Examination of Judgment Debtor— Restraining Disposition of Property—Execution After Five Years.

(a) **Execution — Discovery.** Process to enforce a judgment shall be by a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with these rules and

Rule 68. Offer of Judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

CROSS REFERENCES: Civ. Forms 128, 129, 130

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(Adopted by SCO 5 October 9, 1959; amended by SCO 251 effective July 1, 1976; by SCO 465 effective June 1, 1981; and by SCO 474 effective July 1, 1981)

Annotations

Cases

Isolated in itself a payment document filed by defendant in a personal injury case in the superior court which was not served upon the plaintiffs and which stated in substance that the full policy amount plus $1,000 as costs to date were paid into registry of court with a request that the court notify plaintiffs of such tender and relieve the defendant of liability for costs and attorney's fees, was neither a confession of judgment under Civil Rule 57(b) nor an offer of judgment under Civil Rule 68 but could at most, be considered a deposit in court under Civil Rule 67(a). **Albritton v. Estate of Larson**, Op. No. 413, 428 P2d 379 (Alaska 1967).

Rule 68. Offer of Judgment.

(a) At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. The offer may not be revoked in the 10 day period following service of the offer. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(b) If the judgment finally rendered by the court is not more favorable to the offeree than the offer, the prejudgment interest accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate will be reduced by the amount specified in AS 09.30.065 and the offeree must pay the costs and attorney's fees incurred after the making of the offer (as would be calculated under Civil Rules 79 and 82 if the offeror were the prevailing party). The offeree may not be awarded costs or attorney's fees incurred after the making of the offer.

(2) if the offeree is the party defending against the claim, the interest rate will be increased by the amount specified in AS 09.30.065.

(c) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

(Adopted by SCO 5 October 9, 1959; amended by SCO 818 effective August 1, 1987)

Annotations

Cases

I. In General
II. Payment of Costs
  A. Construction
  B. Prejudgment Interest

I. In General

A payment document which, in itself, did not have the criterion of an offer of judgment and could, at most, be considered as a deposit in the superior court, made under the provisions of Civil Rule 67(a), was by virtue a stipulation of the parties as reasonably construed converted into an offer of judgment which plaintiffs accepted under the stipulation. **Albritton v. Estate of Larson**, Op. No. 413, 428 P2d 379 (Alaska 1967).

The purpose of this rule is to encourage settlement of civil litigation as well as to avoid protracted litigation. **Miklautsch v. Dominick**, Op. No. 538, 452 P2d 438 (Alaska 1969).

An offer of judgment and acceptance thereof is a contract and the amount of the offer of judgment must be definite so that it is clear there is a meeting of the minds on an essential term of the contract. **Davis v. Chism**, Op. No. 919, 513 P2d 475 (Alaska 1973).

This rule does not apply to eminent domain proceedings. **Anchorage v. Schavenius**, Op. No. 1183, 539 P2d 1169 (Alaska 1975).

The purpose of this rule is to encourage settlement and to avoid protracted litigation. **Continental Ins. Co. v. U.S. Fid. & Guar. Co.**, Op. No. 1298, 552 P2d 1122 (Alaska 1976).

Offer of judgment that paralleled Form 128, Forms for Rules of Civil Procedure, differing only in that it supplied defendant's identity and filled in blank spaces, was valid compliance with Civil Rule 68. **Farnsworth v. Steiner**, Op. No. 1955, 601 P2d 266 (Alaska 1979).

This rule applies not only when the offeree obtains judgment in his favor but also when the offeree does not prevail at all. **Wright v. Vickaryous**, Op. No. 2079, 611 P2d 20 (Alaska 1980).

A contract for an entry of judgment is not formed if the written notice of acceptance of an offer under this rule is not served within the ten day limit. **Gumear v. Interior Credit Bureau**, Op. No. 2339, 627 P2d 647 (Alaska 1981).

A defendant is not bound under this rule to make an offer of judgment commensurate with any degree of compensation. **Rules v. Sturn**, Op. No. 2640, 661 P2d 615 (Alaska 1983).

An offer of judgment under this rule must be in writing to be valid. **Rules v. Sturn**, Op. No. 2640, 661 P2d 615 (Alaska 1983).

An offer of judgment made pursuant to this rule is irrevocable for 10 days after it is served on the adverse party. **Rules v. Sturn**, Op. No. 2640, 661 P2d 615 (Alaska 1983).

Where written offer of judgment by defendant was silent as to an offset for sums which had been advanced to plaintiff for medical treatment, defendant was required to pay the full amount of the offer without the offset. **Rules v. Sturn**, Op. No. 2640, 661 P2d 615 (Alaska 1983).

Joint offers are excluded from the penal cost provisions of this rule. **Brinkerhoff v. Saratinga Aviation Corp.**, Op. No. 2644, 661 P2d 632 (Alaska 1983).

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