

SCOMM

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PEER REVIEW PANEL RESULTS, ETC.

- 1) Letter: 10/24/1989 To: David Rogers From: William Cotton
- 2) Civil Rules 72-74
- 3) Alaska Rules of Court, Rules 7-9
- 4) Letter: 11/15/1989 To: David Rogers From: William Cotton
- 5) Letter: 11/17/1989 To: David Rogers From: William Cotton,
enclosures

SET 1 #1

PEER REVIEW PANEL RESULTS, ETC.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

WILLIAM T. COTTON
Court Rules Attorney

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October 24, 1989

Mr. David E. Rogers
Special Counsel
P.O. Box 33932
Juneau, Alaska 99803

Dear Mr. Rogers:

Arthur Snowden asked me to answer your October 9, 1989 letter to him concerning statistics in medical malpractice cases. We hope to acquire a computer system in the next few years which would allow us to compile this type of information. Unfortunately, the court system simply does not now have the information you requested. The Alaska Medical Association may have some statistics since their organization has worked with the courts in selecting panel members. I have attached copies of the two court rules adopted by the supreme court for the purpose of implementing the medical malpractice expert advisory panel statute.

I also thought I would pass on some very subjective impressions from the trial courts. There is an occasional case, either when the panel finds there is or is not malpractice, which seems to be knocked out of court because of the panel's report. However, there seems to be substantial dissatisfaction with the procedure generally and it seems to have little effect on litigation. In addition the procedure can be expensive and time-consuming. There have in many cases been problems with finding experts willing to serve on the panel.

Please feel free to give me a call if you have any questions.

Very truly yours,

William T. Cotton
Court Rules Attorney

cc: Arthur H. Snowden, II
Presiding Judge Brian Shortell

Costs incurred by the owner in a defense to a condemnation proceeding are compensable under this rule only to the extent they are reasonable, i.e. necessarily incurred. *Badger Construction Co. v. State*, Op. No. 2365, 628 P2d 921 (Alaska 1981).

Only costs which are necessarily incurred should be awarded under the "10 percent" rule of Civil Rule 72(k)(2), although only Civil Rule 72(k)(4) expressly requires that the award appear necessary for just compensation. *State v. Alaska Continental Develop. Corp.*, Op. No. 2254, 630 P2d 977 (Alaska 1980).

While full attorney's fees are the norm under Civil Rule 72(k), fees awarded under Civil Rule 72(k)(2) must be reasonable as well as necessary. *Triangle, Inc. v. State*, Op. No. 2405, 632 P2d 965 (Alaska 1981).

If there is a reduction from actual attorney's fees in the amount awarded under this rule, it is incumbent upon the court to state the reasons for the reduction. *Triangle, Inc. v. State*, Op. No. 2405, 632 P2d 965 (Alaska 1981).

Trial court did not abuse its discretion in awarding attorney's fees under this rule which were less than the property owner's actual fees. *Resource Investments v. State, Dept. of Transportation*, Op. No. 2853, 687 P2d 280 (Alaska 1984).

Civil rule authorizing attorney's fees and costs in condemnation actions is limited to situations in which the defendant prevails. *Stewart v. State, Dept. of Transportation*, Op. No. 2895, 693 P2d 827 (Alaska 1984).

Although property owners were entitled to fees and costs incurred prior to State's agreement to dismiss condemnation action, they were not entitled to attorney fees and costs incurred thereafter with respect to their unsuccessful attempt to prevent the State from removing trees and from building a retaining wall on the State's own property, since those fees and costs were not incurred in seeking dismissal of the condemnation action. *Stewart v. State, Dept. of Transportation*, Op. No. 2895, 693 P2d 827 (Alaska 1984).

Although full attorney's fees are the norm under this rule, those fees must be both reasonable and necessarily incurred to obtain just compensation; thus the trial court may award less than the full amount of the charges when it finds the amount unreasonable in view of the nature and extent of the services rendered. *State v. Doyle*, Op. No. 3167, 735 P2d 733 (Alaska 1987).

Considering the issues involved and the length of trial, as well as the fact that the compensation awarded to plaintiff's in their inverse condemnation action was \$715,000.22, the trial court did not abuse its discretion in awarding plaintiff's less than the actual \$357,500.10 in attorney's fees owed under a negotiated fee agreement, awarding instead an amount commensurate with the time committed by counsel. *State v Doyle*, Op. No. 3167, 735 P2d 733 (Alaska 1987).

Attorney's fees are awarded in condemnation actions to compensate the landowner for expenses incurred in connection with the condemnation of his property, since the landowner, without compensation, would pay an unfairly large portion of the costs of a public project; attorney's fees are not compensation for lost future earning capacity. *Bocek Bros. v. Anchorage*, Op. No. 3270, 750 P2d 335 (Alaska 1988).

Trial court was not required to award prejudgment interest on award of attorney's fees in condemnation action. *Bocek Bros. v. Anchorage*, Op. No. 3270, 750 P2d 335 (Alaska 1988).

In determining whether attorney's fees were necessarily incurred by the landowner in an eminent domain action, the trial court should have taken into consideration the landowner's rejection of the state's offer of settlement. *State, Dept. of Transp. v. 4.085 Acres*, Op. No. 3292, 752 P2d 1008 (Alaska 1988).

In an eminent domain proceeding, if the condemning authority appeals and the landowner does not, then, ordinarily, the landowner's reasonable expenses are necessarily incurred and therefore are awardable. *State, Dept. of Transp. v. 4.085 Acres*, Op. No. 3292, 752 P2d 1008 (Alaska 1988).

Rule 72.1. Expert Advisory Panels in Health Care Provider Malpractice Actions.

(a) **Identification of Action.** Either party in a health care malpractice action subject to AS 09.55.536 may request that the court appoint an expert advisory panel to evaluate the claim. The request should identify the specialty of the health care provider named as defendant. Either party may recommend that the court appoint specific professions or specialties to the expert advisory panel.

(b) Appointment of Panel.

(1) After the case is at issue and a party has requested the appointment of an expert advisory panel (or the court has raised the issue), the court shall nominate a three person panel and notify the parties of the names, professions and specialties of the persons so nominated. The court may initially nominate alternate panel members if it believes nominees may be disqualified. Within 10 days after service of this notice, either party may move to disqualify a nominee, citing the reasons for the motion. The other party may submit an opposition within five days after service of the motion for disqualification. No reply may be filed.

(2) The nominated panel members must inform the court within 10 days of the notice of appointment of any financial relationship with a party or party's attorney, of any other reason which would cause the nominee to be biased in the case or present an appearance of bias, and of any other reason why the nominee cannot serve on the panel. The court shall disqualify a nominee if the nominee is biased for or against a party or if a conflict of interest raises a substantial appearance of bias.

(3) If additional nominees are required, the parties must be given the opportunity to recommend nominees' professions or specialties and move to disqualify as provided above.

(c) Submission of Medical Records.

(1) Within 30 days after service of the court's initial panel nominations, the plaintiff and each health care provider defendant shall serve on other parties one legible copy of all discoverable medical records in such party's possession, custody, or control. Original exhibits which are impractical or impossible to copy must be made available to all parties for review. Medical reports of consultants retained by a party for the advancement or defense of the case and medical literature must also be served on other parties if such literature or reports is to be submitted to the panel.

(2) Each party shall file with the Clerk and serve on each other party a list of all medical records, medical reports and medical literature which the party will transmit or make available to the panel.

(3) Medical records include medical records of hospitals, physicians, or other health care providers, addressing an issue of health relevant to the plaintiffs' complaint, whether generated before or subsequent to the event giving rise to the claim and whether generated by the health care provider named in the complaint or by other health care providers. Medical records also include autopsy reports and exhibits such as x-rays and slides.

(4) Upon agreement of the parties or order of the court, and after a reasonable time for inspection, each party shall submit to each member of the panel one legible copy of such party's medical records, medical reports and medical literature, and notify the panel members of the availability and location of original exhibits for which submission to the panel is impractical or impossible. If the plaintiff serves the defendant with medical reports of consultants, the defendant has 30 days to serve medical reports of its consultants on the plaintiff. Thereafter, the reports may be submitted to the panel. Any additional reports may be submitted only with leave of the court.

(5) A party may file and serve on each member of the panel a notice advising the panel of further relevant medical records of which the noticing party does not have possession, custody or control.

(6) In the event a party fails or is unable to submit relevant medical records to the panel, and the panel is unable to obtain access to such records by reason thereof, any party or the panel may apply to the court for leave to obtain such records by court order. The court may delay further proceedings until the panel is provided with the additional medical records.

(d) **Preliminary Findings of Fact and Conclusions of Law.** A party may move the court to resolve issues of fact or law prior to submission of the case to the panel, or to furnish instructions of fact or law to the panel. Submission of the case to the panel will be deferred pending determination of the motion by the court.

(e) **Instructions to Panel.** The court shall provide the panel with a written order which states:

(1) The questions listed in AS 09.55.536, clarified or changed as the court deems appropriate to the case.

(2) That the panel is to prepare and submit to the court a list of all persons interviewed, a list of treatises or medical literature used by the panel in its deliberations, and a list of exhibits it examined (such as X-rays, slides, and other items which are not reproducible on paper).

(3) The general nature of the allegations made against each health care provider and of the answer

to those allegations. Alternately, the court may submit a copy of the complaint and the answer and advise the panel that they are to address only the medical issues.

(4) That the panel or the Alaska State Medical Association is to retain copies of medical records submitted to them until further notice from the court. The court may make special provision for the safekeeping or retention by the Clerk of Court of X-rays or other original exhibits.

(5) That the panel must maintain a record of any testimony or oral statements of witnesses and shall keep copies of all written statements the panel may receive or take, whether from witnesses, consultants, or other sources.

(6) That the panel is to review the case of each health care provider individually and render an individual, separate opinion with regard to the allegations against each health care provider.

(7) The name and location of the court personnel who might assist the panel, and that the panel may communicate with the court concerning any questions it may have, or make any requests for assistance.

(8) Any matters of fact or law on which the court has ruled, and that the panel is to review the matter in light of the court's finding and instructions on the law.

(9) That in the event parties are named as defendants who are not health care providers, the panel's consideration is to be directed to the health care providers only.

(10) That the panel is not to communicate with the parties or their attorneys, except to arrange to obtain or review an original exhibit in the possession of one of the parties, or to arrange an examination of the plaintiff, or to arrange an interview with the plaintiff or health care provider, or to arrange the scheduling of the testimony of a panel member at a deposition or at trial.

(f) **Interviews by the Panel.**

(1) If an attorney desires to be present at an interview of his or her client by the panel, the attorney must give reasonable notice of an intent to do so to the other parties so they may also appear at the interview. If the attorney for the person being interviewed does not appear, no other attorney or party may appear. An attorney appearing before the panel may not question his or her client or any other persons appearing before the panel, nor may an attorney or party cross-examine witnesses or ask questions of the panel. A person being interviewed by the panel may not be accompanied by any representative other than the person's attorney.

(2) Any party may request the panel to interview any person or party.

(g) Discovery may be ordered by the panel from the defendant, but only if the discovery is necessary for the fair and equitable resolution of the case.

(Added by)

PAR

Rule 73

(a) The clerk of the court shall be open to the public during the hours of judicial holidays.

(b) Orders of the court shall be entered by the clerk of the court without the presence of the parties.

(1) Orders of the court shall be entered by the clerk of the court without the presence of the parties.

(2) Orders of the court shall be entered by the clerk of the court without the presence of the parties.

(3) Orders of the court shall be entered by the clerk of the court without the presence of the parties.

(4) Orders of the court shall be entered by the clerk of the court without the presence of the parties.

(5) Any order of the court shall be entered by the clerk of the court without the presence of the parties.

The clerk of the court shall be open to the public during the hours of judicial holidays.

(c) Judgment of the court shall be entered by the clerk of the court without the presence of the parties.

(1) Default judgment shall be entered by the clerk of the court without the presence of the parties.

(2) Judgment of the court shall be entered by the clerk of the court without the presence of the parties.

(d) Notice of the entry of judgment shall be given to the parties.

(g) **Discovery.** Except by leave of court, no discovery may be conducted until the report of the panel has been filed or until 80 days have elapsed from the date the case is at issue, whichever is first to occur, unless discovery is further stayed for good cause by order of the court.

(Added by SCO 837 effective August 1, 1987)

PART XI. SUPERIOR COURT AND CLERKS

Rule 73. The Clerk.

(a) **When Clerk's Office Is Open.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except judicial holidays and Saturdays.

(b) **Orders by Clerk.** The clerk is authorized to enter the following orders of the superior or district court without further direction by the court:

(1) Orders on consent for the substitution of attorneys.

(2) Orders on consent satisfying a judgment or an order for the payment of money, withdrawing stipulations, annulling bonds and exonerating sureties.

(3) Orders entering default for failure to plead or otherwise defend as provided in Rule 55(a).

(4) Orders upon motions and applications for issuing mesne process and issuing final process to enforce and execute judgments.

(5) Any other orders which do not require allowance or order of the court.

The clerk must forthwith notify the judge before whom the action is pending of his action in entering any such order. Any order so entered may be suspended, altered or rescinded by the court for cause shown.

(c) **Judgments by Clerk.** The clerk is authorized to enter the following judgments of the superior or district court forthwith without further direction from the court.

(1) Default judgments under Rule 55(b) upon the following proof: an affidavit that the person against whom judgment is sought is not an infant or an incompetent person, and an affidavit under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, that defendant is not in the armed forces of the United States.

(2) Judgments on offers of judgment in the circumstances set forth in Rule 68.

(d) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment, the clerk shall give notice by distributing a copy to each party

who is not in default for failure to appear.

(Adopted by SCO 5 October 9, 1959; amended by SCO 77 effective July 30, 1965; by SCO 258 effective November 15, 1976; by SCO 289 effective January 15, 1978; by SCO 447 effective November 24, 1980; by SCO 499 effective January 18, 1982; by SCO 500 effective January 18, 1982; and by SCO 554 effective April 4, 1983)

Note: AS 10.06.658, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 73 by requiring the clerk of the superior court to send a copy of an order dissolving a corporation to the commissioner of commerce and economic development.

Annotations

Cases

Notice mailed by the clerk to all counsel of the entry of judgment constituted timely notice to parties. *Whitney Bros. Plumbing & Heating, Inc. v. Industrial & Commercial Concr., Inc.*, Op. No. 438, 432 P2d 533 (Alaska 1967).

Rule 74. Books and Records Kept by Clerk and Entries Therein.

(a) **Civil Case File and Index.** All papers filed with the clerk shall be marked with the case number and the date of filing and shall be placed in the case file in chronological order. The clerk shall maintain an alphabetical index of every civil case filed. All parties in each case shall be included in the index.

(b) **Civil Judgments and Orders.** The clerk shall keep, in such form and manner as the administrative director of courts may prescribe, a record of every final judgment or order.

(c) **Civil Calendar.** The clerk shall prepare a calendar listing all cases scheduled for hearings and trials. The calendar shall indicate the type of proceeding and shall distinguish jury actions from nonjury actions. A copy of the calendar shall be posted in a public place within the court building.

(d) **Other Books and Records of the Clerk.** The clerk shall also keep such other books and records as may be required from time to time by the administrative director of the courts.

(e) **Records to Remain in Custody of Clerk.** Except as otherwise provided by these rules or by order of the court, no record or paper belonging to the files of the court may be taken from the office or custody of the clerk.

(f) **Use of Records by Court Officers.** If it is necessary for a judge, master, examiner, magistrate or court reporter to use pleadings or other papers for purposes of the action or proceeding, at places other than the clerk's office, courtroom or judge's chambers, the same may be taken from the office of the clerk upon the delivery to him of a receipt signed by the officer who desires the use of said papers.

(g) **Records After Final Determination.**

point so far removed from his residence as to necessarily prohibit return thereto from day-to-day shall receive per diem at the rate allowed for state employees.

(b) **Travel Expense.** Every witness who is required to travel in excess of 30 miles from his residence is entitled to receive reimbursement for round-trip travel from the witness' residence to the place of court at the rate allowed for state employees.

(c) **Expert Witnesses.** Recovery of costs for a witness called to testify as an expert is limited to the time when the expert is employed and testifying and shall not exceed \$50.00 per hour, except as otherwise provided in these rules. A party may not recover costs for more than three expert witnesses as to the same issue in any given case, unless the judge permits recovery for an additional number of expert witnesses.

(d) **Payment.** Witness fees, travel expense and per diem shall be paid from the appropriation to the judiciary only for witnesses called or appointed by the court or in coronor's cases. In all other cases, these fees and expenses shall be paid by the parties, and in civil cases, shall be taxed and collected as other costs.

(e) **Demand of Payment in Advance in Civil Cases.** Witnesses in civil cases, except when subpoenaed by the state, a municipality, a borough, a city, or an officer or agency thereof, may demand the payment in advance of their travel expense and their per diem fee for one day, and when so demanded shall not be compelled to attend until the allowances are paid.

(f) **Parties and Attorneys as Witnesses.** A party to the action or hearing, if a witness, is entitled to receive the same witness fees, per diem and travel expense as any other witness. A person appearing as an attorney for any party to an action or hearing, who also testifies as a witness therein, is not entitled to receive any witness fee, per diem or travel expenses.

(Amended by SCO 559 effective May 2, 1983; and by SCO 791 effective March 15, 1987)

Annotations

Cases

Court erred in basing award of expert witness fees on the time the expert spent in court observing and testifying rather than only on the time the expert was actually testifying. *Eagle Air v. Corroon, Etc.*, Op. No. 2538, 648 P2d 1000 (Alaska 1982).

Trial judge did not abuse his discretion in denying fees for one of prevailing party's expert witnesses on ground that no timesheet was submitted for the witness. *Truckweld Equipment Co. v. Swenson Trucking*, Op. No. 2545 649 P2d 234 (Alaska 1982).

The taxing of costs for witness fees is governed by Civil Rule 83 and Administrative Rule 7(c) rather than the general provisions of Civil Rule 79(b). *Miller v. Sears*, Op. No. 2447, 636 P2d 1183 (Alaska 1981).

Expert witness fees in excess of state limits were proper where awarded pursuant to a federal act, 15 U.S.C. § 2310, rather than state law. *Universal Motors, Inc. v. Waldeck*, Op. No. 3060, 719 P2d 254 (Alaska 1986).

Trial court's finding that losing party acted in bad faith was clearly erroneous, thus award of expert witness fees to prevailing party in excess of the twenty-five dollars per hour limit of this rule was invalid. *Fairbanks North Star Borough v. Tundra Tours*, Op. No. 3052, 719 P2d 1020 (Alaska 1986).

A party may not recover costs for experts' preparation time nor any costs associated with the experts if they do not testify. *Atlantic Richfield Co. v. State*, Op. No. 3096, 723 P2d 1249 (Alaska 1986).

Trial court could award prevailing defendant expert witness fees, not to exceed \$25.00 per hour, for the time the expert actually spent testifying, but not for time spent in trial preparation. *Hutchins v. Schwartz*, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

Where experts testified by deposition at trial, prevailing party was entitled to recover only fees for the time spent actually reading the depositions in court, since the depositions were taken prior to previewing party's offer of judgment. *Hutchins v. Schwartz*, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

Rule 8. Physicians' Fees.

Physicians shall be allowed a reasonable fee for performing the following services:

(a) An examination under order of court pursuant to AS 47.30.700 or such other examination as may be ordered by the court upon its own motion;

(b) Giving medical expert testimony at a hearing when ordered by the court in relation to such examination or in relation to an autopsy or post mortem examination ordered pursuant to AS 12.65.020.

Fees for such services shall be paid from funds appropriated to the judiciary. Claims for compensation shall be submitted for approval to the judicial officer ordering the examination or testimony, subject to final approval by the administrative director. In all other cases, physicians' fees shall be paid by the requesting party or parties.

The administrative director may authorize a fee under (a) of this rule to be computed other than on an hourly basis, provided that such computation results in a fee that is substantially the same as if computed hourly.

(Amended by SCO 813 effective August 1, 1987)

Annotations

Cases

Admin. Director Instructions 60-2 (Fee Schedule)

Rule 8.1. Health Care Provider Expert Advisory Panel Fees.

(a) **Compensation by Court.** Expert advisory panel members appointed pursuant to AS 09.55.536 will be reimbursed by the court for the reasonable expenses of transportation outside the panel member's city of residence which are necessary for the preparation of the panel's report. Panel members

ADMINISTRATIVE RULES

Rule 8.1

will be reimbursed for other expenses of preparing their report at the rate of \$18.00 per hour, not to exceed \$90.00 per day. If the panel member's reasonable and necessary actual expenses other than transportation expenses exceed this hourly rate, the panel member will be compensated for reasonable and necessary actual expenses in lieu of the hourly compensation. Panel members are not entitled to compensation from the court for any professional fees for service on the panel.

(b) **Request for Compensation.** In order to qualify for reimbursement, a panel member must submit to the trial court within thirty days after the submission of the expert report a written request for reimbursement which specifies by date and by nature of the item any transportation expenses, time spent preparing the report, and, if reimbursement for actual expenses is sought, all expenses. Claims for reimbursement must be submitted for approval to the assigned judge and are subject to final approval by the administrative director.

(SCO 814 effective August 1, 1987)

Rule 9. Fee Schedule.

The fees specified in this rule shall be charged for the services designated herein:

(a) **In the Supreme Court and the Court of Appeals:**

(1) **Filing Fees:**

- (i) Upon filing a written notice of appeal or cross-appeal (Appellate Rule 204(b) or Rule 215(b)) [70.00] 100.00
- (ii) Upon filing a petition for review or cross-petition for review (Appellate Rule 403(a)) [70.00] 100.00
- (iii) Upon filing original proceedings (Appellate Rule 404) [70.00] 100.00

(2) **Miscellaneous Fees:**

- (i) For preparation of case record for review by the Supreme Court of the United States [70.00] 100.00
- (ii) For copies of documents on file with the supreme court or the court of appeals, whether or not certified: Each page or fraction thereof20
- (iii) For copies of court opinions, per opinion 1.00
- (iv) Subparagraphs (e)(2) and (e)(6) of this rule apply to certification and notary public services in the appellate courts.

- (3) No person shall be charged a filing fee upon filing a written notice of appeal or a petition for review of a decision involving a claim for benefits under AS 23.20 (Employment Security Act).

(b) **Filing Fees — Superior Court:**

- (1) Upon filing any civil case, including a petition for deposition before action ... [70.00] 100.00
 - (2) For probate matters:
 - (i) Initial filing fee [70.00] 100.00
 - (ii) For depositing a will with the court for safe keeping [15.00] 25.00
 - (iii) For registration of a trust document [15.00]
 - (iv) Upon filing a petition for court approval of a minor's settlement, when it involves opening a new file [45.00] 70.00
 - (3) Upon filing of an adoption proceeding, without regard to the number of minors involved [45.00] 70.00
 - (4) Upon filing any guardianship, conservatorship or other protective proceedings to include all services in the first year 45.00
 - (5) Upon filing annual guardianship reports in each succeeding year [15.00] 25.00
 - (6) Upon filing an appeal, including a sentence appeal, or petition for review from district court, except in forma pauperis cases 20.00
 - (7) Upon filing an action to enjoin or enforce orders of the Alaska Workmen's Compensation Board [70.00]
 - (8) Upon filing an action for review of a decision by the Department of Labor under AS 23.20 (Employment Security Act) no fee
 - (9) Upon filing an appeal or petition for review from an administrative order (AS 44.62.560) [70.00] 100.00
 - (10) In cases arising under the Uniform Reciprocal Enforcement of Support Act, all ordinary fees shall be charged, subject to the waiver provisions of Supreme Court Order No. 19*
 - (11) Upon filing a petition for injunctive relief from domestic violence [15.00] 25.00
- (c) **Filing Fees — District Court:**
- (1) Filing fees, district court jurisdiction . . . [35.00] 50.00
 - (2) Filing fees, small claims actions [15.00] 25.00
- No additional filing fee is due when a small claims case is removed to district or superior court.
- (3) Filing fees where magistrates accept for filing civil cases beyond their jurisdiction, but within the jurisdiction of the district court (Rule 30(a) Administrative Rules) [35.00] 50.00
 - (4) Filing fees, petitions for injunctive relief from domestic violence [15.00] 25.00
 - (5) There shall be no fee for filing a presumptive death petition.
- (d) **Transcript and Related Fees:**



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

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Court Rules Attorney

303 K Street
Anchorage, Alaska 99501

(907) 264-8239

November 15, 1989

Mr. David E. Rogers
P.O. Box 33932
Juneau, Alaska 99803

Dear Mr. Rogers:

You asked whether the court system has information regarding the number and result of actions in state court under Civil Rule 11. Unfortunately, we do not have any such statistics.

I have referred your followup request for information on medical malpractice actions to Dick Delaplain, the court administrator in charge of statistics. I will be getting back to you on this request as soon as I hear from him.

Very truly yours,

William T. Cotton
Court Rules Attorney

WTC:pjs



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

WILLIAM T. COTTON
Court Rules Attorney

303 K Street
Anchorage, Alaska 99501

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November 17, 1989

Mr. David E. Rogers
P.O. Box 33932
Juneau, Alaska 99803

Dear Mr. Rogers:

As it turns out, Dick Delaplain was able to come up with some statistics concerning medical and other malpractice actions filed since 1987. I have attached the reports that he gave me. The first page explains the initials and the remaining pages list the malpractice actions in the various court locations.

Please feel free to give me a call if you have any questions.

Very truly yours,

William T. Cotton
Court Rules Attorney

WTC:pjs

Attachment

Judge	Initials	Location
Anderson	GCA	3AN
Andrews	EMA	3AN
Ashman	PZA	3PA
Asper	LZA	1JU 1HA
Beckwith	MZB	3AN
Bosshard	JZB TxB	3VA
Brown	AZB	3AN
Carlson	VDC	3AN
Carpeneti	WLC	1JU
Christensen	LHC	3KN
Cranston	CKC	3KN
Craske	DKC	1SI
Crutchfield	HEC	4FA
Cutler	BWC	3PA
Engle	MZE	3HO
Fabe	DAF	3AN
Finn	NKF	3AN
Fuld	VHF	3AN
Gater	BAG	2NO
Gonzalez	RJG	3AN
Greene	MEG	4FA
Gucker	GLG	1KE
Hanson	JAH	3KN
Harrington	KZH	3AN
Hitchcock	WZH	3AN
Hodges	JZH FTH	4FA
Hunt	KLH	3AN
Jahnke	TMJ	1PE
Jeffery	MIJ	2BA
Johnstone	KSJ	3AN
Jones	PBJ	2KB
Katz	JMK	3AN
Kauvar	JZK	4FA
Madsen	RHM	3KO
Mason	JDM	3AN
McBurney	LZM	3AN
Michalski	PAM	3AN
Paterson	SZP	4FA
Peques	RZP	1JU
Reese	JER	3AN
Ripley	JJR	3AN
Rowland	MCR	3AN
Savell	RDS	4FA
Schulz	TES	1KE
Shortell	BCS	3AN
Souter	MZS mms	3AN
Steinkruger	NJS	4FA
Stemp	RRS	3AN
Stewart	DCS	3AN
Tunley	CRT	2NO
Wielkopolski	RZW	3AN
Wolverton	MLW	3AN
Zervos	LCZ	4FA
Zimmerman	CEZ	4FA

STAGE CODES

BA = Before Answer
 PT = Pre Trial
 NJ = Non Jury Trial
 JU = Jury Trial

Dispo Codes

DS = Dismissed
 DJ = Default Judgment
 ST = Settled -
 OT/OS = OTHER
 CU = change of Venue
 JU = Jury verdict -

Gone:

Fraties GRF 4BE
 Funk RMF 4FA
 Hornaday JCH 3HO
 Sevelsky DJS 3AN

ANCHORAGE cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Dispo
3AN-87-00162CV	MMP	01/08/87	DJS	07/13/88	ST
3AN-87-00377CV	MMP	01/15/87	RJG	01/20/89	JU
3AN-87-01055CV	MMP	02/03/87	BCS	02/23/89	JU
3AN-87-01408CV	OMP	02/13/87	BCS	05/04/88	ST
3AN-87-04065CV	MMP	05/04/87	KLH	04/18/89	ST
3AN-87-04307CV	MMP	05/12/87	DJS	09/12/88	ST
3AN-87-04723CV	MMP	05/22/87	MMS	05/09/89	OT
3AN-87-04832CV	LMP	05/27/87	Z	03/17/88	ST
3AN-87-04933CV	OMP	05/29/87	JJR	08/24/88	ST
3AN-87-05119CV	LMP	06/04/87	DJS	01/17/89	ST
3AN-87-06352CV	LMP	06/30/87	DJS	08/26/87	DS
3AN-87-07011CV	OMP	07/27/87	KLH	02/24/88	ST
3AN-87-07945CV	OMP	08/06/87	BCS	05/31/89	ST
3AN-87-08096CV	OMP	08/11/87	RJG	03/13/89	JU
3AN-87-08256CV	OMP	08/17/87	KLH		
3AN-87-08304CV	MMP	08/18/87	BCS		
3AN-87-08419CV	MMP	08/21/87	JJR	05/24/88	DS
3AN-87-08423CV	MMP	08/21/87	RJG	11/30/88	DS
3AN-87-08438CV	LMP	08/21/87	KLH		
3AN-87-08517CV	MMP	08/25/87	BCS	09/14/88	DS
3AN-87-08818CV	MMP	09/03/87	DJS		
3AN-87-08935CV	LMP	09/09/87			
3AN-87-08936CV	OMP	09/09/87	DJS	05/26/88	DS
3AN-87-09264CV	MMP	09/18/87	KLH		
3AN-87-09611CV	OMP	09/30/87	BCS		
3AN-87-10037CV	MMP	10/12/87	BCS		
3AN-87-10095CV	OMP	10/13/87	BCS		
3AN-87-10122CV	OMP	10/14/87	KLH		
3AN-87-10460CV	LMP	10/22/87			
3AN-87-11079CV	OMP	11/10/87	RJG		
3AN-87-11192CV	MMP	11/13/87	DJS	12/22/87	OT
3AN-87-11779CV	MMP	12/07/87	MMS		
3AN-88-00130CV	MMP	01/08/88	KLH		
3AN-88-00237CV	OMP	01/13/88	BCS	10/14/88	ST
3AN-88-00414CV	LMP	01/20/88	BCS		
3AN-88-00417CV	MMP	01/20/88	DJS		
3AN-88-00604CV	LMP	01/25/88	RJG		
3AN-88-00665CV	LMP	01/27/88	KLH	06/16/89	ST
3AN-88-00937CV	OMP	02/01/88	KLH		
3AN-88-01072CV	LMP	02/04/88	RJG		
3AN-88-01335CV	MMP	02/09/88	DJS		
3AN-88-02685CV	OMP	03/08/88	DJS		
3AN-88-02827CV	MMP	03/14/88	DJS		
3AN-88-03082CV	MMP	03/21/88	BCS		
3AN-88-03406CV	LMP	03/30/88	DJS		
3AN-88-03691CV	LMP	04/07/88	KLH		
3AN-88-03692CV	MMP	04/07/88	BCS		
3AN-88-03986CV	MMP	04/12/88	KLH		
3AN-88-04010CV	LMP	04/12/88			

ANCHORAGE cases filed between 1/1/87 - 7/1/89 where clerks identified (2) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Dispo
3AN-88-04296CV	MMP	04/20/88	DAF		
3AN-88-04321CV	LMP	04/21/88	BCS	12/27/88	DS
3AN-88-04560CV	MMP	04/27/88	JJR	05/16/88	CV
3AN-88-04645CV	LMP	04/29/88	RJG		
3AN-88-04646CV	LMP	04/29/88	RJG		
3AN-88-04740CV	LMP	05/03/88	BCS	08/11/88	SJ
3AN-88-04817CV	MMP	05/05/88	KLH		
3AN-88-04825CV	MMP	05/05/88	KLH		
3AN-88-04844CV	OMP	05/05/88	BCS		
3AN-88-05102CV	MMP	05/12/88	RJG		
3AN-88-05343CV	LMP	05/19/88	RJG		
3AN-88-05523CV	OMP	05/24/88	RJG		
3AN-88-05558CV	MMP	06/15/88	RJG		
3AN-88-05774CV	LMP	06/02/88	RJG		
3AN-88-05784CV	OMP	06/02/88	DJS	08/10/88	DS
3AN-88-06069CV	LMP	06/08/88	RJG		
3AN-88-06085CV	LMP	06/08/88			
3AN-88-06241CV	MMP	06/13/88	KLH	01/30/89	ST
3AN-88-06370CV	MMP	06/17/88	DJS		
3AN-88-06637CV	MMP	06/24/88	DJS		
3AN-88-07121CV	LMP	07/13/88	DJS		
3AN-88-07172CV	LMP	07/13/88	DJS		
3AN-88-07208CV	MMP	07/14/88	RJG		
3AN-88-07352CV	LMP	07/19/88	DJS		
3AN-88-07730CV	MMP	08/01/88	RJG		
3AN-88-07895CV	OMP	08/04/88	KLH		
3AN-88-08061CV	MMP	08/09/88	DJS	12/02/88	ST
3AN-88-08648CV	LMP	08/29/88	JJR		
3AN-88-08687CV	MMP	08/30/88	RJG		
3AN-88-08735CV	OMP	08/31/88	KLH		
3AN-88-08864CV	LMP	09/02/88	MMS		
3AN-88-09141CV	MMP	09/14/88	BCS		
3AN-88-09546CV	LMP	09/26/88	RJG		
3AN-88-09871CV	MMP	10/05/88	KLH		
3AN-88-09894CV	LMP	10/05/88	RJG		
3AN-88-09961CV	MMP	10/07/88	DJS		
3AN-88-09977CV	MMP	10/07/88	RJG		
3AN-88-10478CV	LMP	10/25/88	BCS		
3AN-88-10613CV	OMP	10/26/88	DJS		
3AN-88-10893CV	LMP	11/03/88	DJS		
3AN-88-11324CV	LMP	11/17/88	BCS		
3AN-88-11394CV	LMP	11/18/88	DJS		
3AN-88-11454CV	OMP	11/22/88	DJG		
3AN-88-11541CV	LMP	11/25/88	KLH		
3AN-88-11742CV	LMP	12/02/88	RJG		
3AN-88-12156CV	MMP	12/15/88	KLH		
3AN-88-12361CV	MMP	12/23/88	BCS		
3AN-88-12398CV	MMP	12/23/88	DJS		
3AN-88-12538CV	LMP	12/30/88	KLH		

ANCHORAGE cases filed between 1/1/87 - 7/1/89 where clerks identified (3) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Dispo
3AN-89-00333CV	MMP	01/17/89	RJG		
3AN-89-00741CV	MMP	01/27/89	BCS		
3AN-89-00985CV	MMP	02/07/89	RJG		
3AN-89-01106CV	LMP	02/08/89	RJG		
3AN-89-01201CV	OMP	02/10/89	JJR		
3AN-89-01262CV	MMP	02/14/89	BCS		
3AN-89-01525CV	OMP	02/23/89	JJR		
3AN-89-01690CV	MMP	03/01/89	KLH		
3AN-89-01763CV	MMP	03/03/89	RJG		
3AN-89-01907CV	LMP	03/08/89	BCS		
3AN-89-02003CV	OMP	03/10/89	RJG		
3AN-89-02119CV	OMP	03/15/89	RJG		
3AN-89-02265CV	MMP	03/20/89	RJG		
3AN-89-02354CV	MMP	03/21/89	KLH		
3AN-89-02636CV	MMP	03/30/89	BCS		
3AN-89-03081CV	MMP	04/14/89	RJG		
3AN-89-03205CV	OMP	04/19/89	BCS		
3AN-89-03267CV	LMP	04/21/89	KLH	05/15/89	OT
3AN-89-03617CV	LMP	05/02/89	KLH		
3AN-89-03706CV	MMP	05/04/89	KLH		
3AN-89-03903CV	MMP	05/11/89	BCS		
3AN-89-03950CV	LMP	05/12/89	RJG		
3AN-89-04403CV	MMP	05/25/89	KLH		
3AN-89-04605CV	MMP	06/02/89	KLH		
3AN-89-04790CV	LMP	06/08/89	KLH		
3AN-89-04793CV	MMP	06/07/89	RJG		
3AN-89-04924CV	MMP	06/13/89	RJG		

Total Records Reported By Anchorage Clerks During Period = 125

BARROW cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By BARROW Clerks During Period = 0

BETHEL cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By BETHEL Clerks During Period = 0

FAIRBANK cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
4FA-87-00241CI	MMP	02/06/87	FJH	04/08/87	BA	DS
	KIRCHER HEATHER V DENALI MED					
4FA-87-00304CI	OMP	02/17/87	CEZ	06/22/87	PT	DS
	OSBORN PAT V MONETTI					
4FA-87-00376CI	LMP	02/27/87	MEG	12/27/88	JU	OJ
	OK LUMBER V BELLAND					
4FA-87-00519CI	LMP	03/23/87	RDS	09/07/88	PT	SJ
	CARLSON V ROBSON					
4FA-87-00525CI	MMP	03/23/87	FJH			
	MORMON JAMES H V FBKS MEM HOSP					
4FA-87-00689CI	LMP	04/16/87	JFK	12/02/87	PT	DS
	BEZY FRANK V FLEEK					
4FA-87-00748CI	MMP	04/22/87	NJS	03/23/89	JU	OJ
	MONROE LOTTIE V BROWN M.D.					
4FA-87-00826CI	MMP	05/01/87	RDS	12/10/87	PT	DS
	ENGBRETSON ROBERT V MCCONKEY					
4FA-87-01809CI	MMP	09/21/87	MEG			
	JOHNSON LOUIS V TILBY					
4FA-87-01961CI	MMP	10/12/87	MEG			
	CREVELING K V STERLING DRUGS					
4FA-87-02105CI	LMP	11/02/87	NJS			
	WALKER LORIN V BELLAND					
4FA-88-00062CI	LMP	01/13/88	RDS			
	SHAW JOHN V ALASKA DOA					
4FA-88-00221CI	MMP	02/11/88	NJS			
	PEEP ERIC V DINGEMAN					
4FA-88-00294CI	MMP	02/25/88	FJH			
	BROOKS FLOYD V HOGAN					
4FA-88-00342CI	MMP	03/02/88	MEG			
	LINDSOE SHERRIE V FMH					
4FA-88-00663CI	OMP	04/15/88	NJS			
	ALASKA DOT V FRANKLIN & ALLEN					
4FA-88-00726CI	MMP	04/26/88	NJS			
	HURN LISA V THORNLEY					
4FA-88-00908CI	MMP	05/27/88	FJH	06/14/89	JU	OJ
	SNYDER JENNIFER V FOOTE					
4FA-88-01001CI	MMP	06/13/88	MEG			
	BERNHARDT DONNA V FMH					
4FA-88-01029CI	MMP	06/17/88	RDS	01/26/89	BA	DS
	ALVAREZ INES V WOLF					
4FA-88-01111CI	LMP	07/01/88	HEC			
	SEMMLER LORNA V COLEMAN					
4FA-88-01115CI	MMP	07/01/88	FJH			
	LINK MILDRED V CAMMACK					
4FA-88-01360CI	OMP	08/09/88	FJH			
	PENDERGRAST P V AK 100 INS					
4FA-88-01392CI	LMP	08/15/88	FJH			
	SHAW JOHN V B H BITTNER INC					
4FA-88-01631CI	LMP	09/19/88	MEG			
	MICHEL JOHN V HOPPNER					

FAIRBANK cases filed between 1/1/87 - 7/1/89 where clerks identified (2) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
4FA-88-01821CI	MMP	10/17/88	NJS			
	LAWRENCE SUSANV FBKS CLINIC					
4FA-88-01958CI	MMP	11/08/88	MEG			
	PEDERSON EINAR V FLANNERY					
4FA-88-02074CI	LMP	12/05/88	JXB			
	WILSON THOMAS V ASCHENBRENNER					
4FA-89-00359CI	OMP	03/06/89	NJS			
	HARPER JAMES V COLETTE					
4FA-89-00464CI	MMP	03/23/89	NJS			
	PAUL LLOYDENE V HANLEY					
4FA-89-00777CI	MMP	05/12/89	FJH			
	TEEL MARY V TANANA VALLEY GRP					
4FA-89-01029CI	MMP	06/19/89	MEG			
	VINCENT ELAINE V F M H					
4NE-85-00110CI	LMP	11/12/85	FJH	06/06/86	BA	DJ
	GROBER MARC V FRUEHAN					

Total Records Reported By Fairbanks Clerks During Period = 33

KETCHIKAN cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
1KE-88-00303CI	MMP	05/06/88		04/26/89	PT	DS
			MOORE V SE AK ANESTH & ZEIDNER			
1KE-88-00487CI	MMP	12/19/86	TES			CV
			DUNNAGAN V BABCOCK ET AL			

Total Records Reported By KETCHIKAN Clerks During Period = 2

JUNEAU cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By JUNEAU Clerks During Period = 0

KENAI cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
3KN-87-00957CI	LMP	10/27/87	CKC	12/28/88	PT	DS
		TOWSLEY V ESCH, ESQ.,				
3KN-87-01113CI	OMP	12/15/87	CKC	02/08/88	PT	DS
		RICHARD ET AL V GAEDE ET AL				
3KN-88-00384CI	MMP	05/17/88	CKC			
		GRAINGER V MEESIS & COBB				
3KN-88-00681CI	MMP	08/18/88	CKC			
		BUTLER V BELL				
3KN-88-00825CI	MMP	09/29/88	CKC			
		OLSEN V SANGSTER ET				
3KN-89-00170CI	LMP	03/01/89	CKC	04/19/89		CV
		JOHNSON V MANN III				
3KN-89-00615CI	LMP	07/24/89	CKC			
		HAWKINS V PATEL, HAWKINS ET AL				

Total Records Reported By KENAI Clerks During Period = 7

KODIAK cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
3KO-87-00351CI	MMP	09/11/87	RHM			
	CATHEY V LUTHERAN HOSP/JOHNSON					
3KO-87-00486CI	LMP	12/30/87	RHM	04/28/88	PT	DS
	THOMAS V ST OF AK/PD/WALL					
3KO-88-00081CI	MMP	03/09/88	RHM	12/23/88	PT	CV
	DIANE BEHM V BRAD BRINGGOLD MD					
3KO-88-00147CI	MMP	04/13/88	RHM			
	CAPACILLO V LUTHERAN HOSPITAL					
3KO-88-00552CI	MMP	12/09/88	RHM			
	ROBERT CASEY V CLYDE DEAL, MD					
3KO-89-00283CI	MMP	07/07/89	RHM			
	PILAR HENLEY V CLYDE DEAL					

Total Records Reported By KODIAK Clerks During Period = 6

KOTZEBUE cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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2KB-88-00060CI	LMP	07/01/88	CRT			
	WELCH,ED & PD; WM HOWARTH SR V					

Total Records Reported By KOTZEBUE Clerks During Period = 1

NOME cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
2NO-88-00287CI	MMP	08/17/88	CRT	02/24/89		CV
	KITCHEN V NS HEALTH CORP. INC.					

Total Records Reported By NOME Clerks During Period = 1

PALMER cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By PALMER Clerks During Period = 0

PETERSBURG cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By PETERSBURG Clerks During Period = 0

SITKA cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
1SI-88-00215CI	LMP	06/07/88				
		FEIGHT ETAL V STAHLA ETAL				
1SI-88-00405CI	MMP	11/29/88	TES			
		FOX VS WHITE				

Total Records Reported By SITKA Clerks During Period = 2

VALDEZ cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By VALDEZ Clerks During Period = 0

SOURCE UNKNOWN
(LOST IN THE
SHUFFLE)

EXPERT ADVISORY PANEL DATA

December 22, 1989

The following information requested concerns statistics dealing with the expert advisory panel process and the medical malpractice suits.

Total number of claims processed since the inception of AS 09.55.536

338 Claims

Annual Claims:

1977	12
1978	6
1979	15
1980	12
1981	16
1982	27
1983	32
1984	37
1985	55
1986	31
1987	37
1988	29
1989	30 to date

Total number of claims presented to the panel that have been settled:

This information is not available, since records of such activities have not been supplied by the court. The following information however, might be helpful concerning the final results of some cases:

Dismissed	27
Cases Dropped	10
Excused expert advisory panel members	20
Panel ruled fault and jury ruled against plaintiff	1
Plaintiff ordered to pay settlement	2

Expert Advisory Panel Determination

Defendant - No Fault	138
Defendant - Fault	40
No Report Available	93

The number of judgements entered in favor of the plaintiff is unknown.