

HCR

8

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HCR 8

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "Relating to economic and scientific data...Exxon Valdez litigation." BRU: Exxon Valdez Litigation  
 Component: Exxon Valdez Litigation  
 Sponsor: Representative Navarre  
 Requestor: House Judiciary COMPONENT SERIAL NO. 

|   |   |   |   |
|---|---|---|---|
| 1 | 1 | 7 | 5 |
|---|---|---|---|

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| REVENUE FUND SOURCE: |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|                    |     |     |     |     |     |     |
|--------------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND       | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS      |     |     |     |     |     |     |
| OTHER FUND SOURCE: |     |     |     |     |     |     |
| TOTAL              |     |     |     |     |     |     |

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
 Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: January 21, 1992  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: January 21, 1992

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No.         HCR 8        

House Concurrent Resolution No. 8 urges that any settlement agreement of the civil or criminal litigation arising from the Exxon Valdez spill provide that all economic and scientific studies generated by the litigation be open to public inspection and not treated as confidential material. While the approved settlement agreement does not include bar to the state releasing the data that it has developed, the Memorandum of Agreement between the governments does bar such a release unless the release is approved in writing between the Department of Law and the U.S. Department of Justice.

In addition to the requirements of the Memorandum of Agreement, the state should not release the data at this time because its liability claims are still being pursued against the Alyeska Pipeline Services Company and its owner pipeline companies. Moreover, the State of Alaska and the United States of America have agreed to make this data available to other plaintiffs for their civil litigation against Exxon. This information must therefore be kept confidential until the other plaintiffs' litigation has been resolved. The department will seek to have the information released to the public as speedily as these circumstances permit.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HCR 8

Revision Date: \_\_\_\_\_ Department Affected: Legislative Affairs Agency  
 Title: Relating to economic and scientific data developed as a result of the Exxon Valdez litigation. BRU: \_\_\_\_\_  
 Sponsor: Representative M. Navarre Component: \_\_\_\_\_  
 Requestor: House Resources COMPONENT SERIAL NO. 

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|--|--|--|--|

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING         | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|               |     |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND  |     |     |     |     |     |     |
| FEDERAL FUNDS |     |     |     |     |     |     |
| OTHER         |     |     |     |     |     |     |
| TOTAL         | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME |     |     |     |     |     |     |
| TEMPORARY |     |     |     |     |     |     |

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Rep. Cliff Davidson, Chairman Phone: 465-2487  
 Division: House Resources Date: March 13, 1991

Approved by Commissioner: Rep. Cliff Davidson, Chairman *(Signature)*  
 Agency: \_\_\_\_\_ Date: March 13, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

March 10, 1991

TO: Representative Cliff Davidson, Chair, House Resources Committee

FROM: Representative Mike Navarre *Mike*

SUBJECT: Sponsor Statement for HJR 25 & HCR 8, resolutions relating to the Exxon Valdez settlement data.

.....

House Joint Resolution 25 and House Current Resolution 8 are essentially the same in content. The only difference in the resolutions is in the last paragraph where directions are given to whom is to receive the resolutions. The Uniform Rules of the Alaska State Legislature in Rule 49 specifies the type of resolution and the appropriate manner in which the resolution is to be handled.

The essence of both resolutions is to require that the economic and scientific data collected from the studies of Exxon Valdez tragedy be released. It is unthinkable that some entity, individual, or organization would desire to lock-up data from an ecological mishap. The economic and scientific data is relevant and needed to avoid future mishaps or, if another mishap does occur society will be better able to handle the disasters aftermath.

Why does the Legislature need to ensure the release of the scientific and economic data from the Exxon spill?

1. Other entities that may litigate in the future may find the data useful.
2. To ensure proper resource management the data would be useful in determining the evolutionary happenings in the waters of Alaska.
3. Both the U.S. Congress and the Alaska Legislature need to know the effects on the marine environment, in order to determine the future of drilling and transport of oil in the Alaskan environment.
4. Long term policy involving the use double-hull tankers.
5. Release of the data to only Exxon should be unacceptable.
6. The public paid directly or indirectly for these studies, therefore it is unacceptable not to allow public access to the data generated as a result of the Exxon spill.

DISTRICT 5

34824 K-Beach Road • Soldotna, Alaska 99669 • (907) 262-7842



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**ALASKA STATE LEGISLATURE**  
**REPRESENTATIVE MIKE NAVARRE**

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

7. To properly continue the restoration of Prince William Sound and other areas of the State data on what has been accomplished needs to be available.

It is difficult to see the downside of these two resolutions, but in order to be overly cautious one could consider the potential legal exposure that the State may have. The balance between blocking access and open information to any data in a free society must be carefully weighed as to its outcomes.

DISTRICT 5

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# HOUSE COMMITTEE REPORT

(9)  
Date Referred: February 20, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3/10/91

The RESOURCES Committee considered:

HCR 8

HOUSE CONCURRENT RESOLUTION NO. 8 DISCLOSURE; EXXON VALDEZ SETTLEMENT DATA

Relating to economic and scientific data developed as a result of the Exxon Valdez litigation.

- RECOMMENDATIONS:
- be replaced with \_\_\_\_\_  the same title
  - \_\_\_\_\_  a new title
  - have attached amendments(s)
  - do pass
  - do not pass
  - no recommendations
  - individual recommendations
  - additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

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

fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note H RES  zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

|                                      | Check appropriate column:    | Do Not Pass | No Rec | Amend |
|--------------------------------------|------------------------------|-------------|--------|-------|
| <i>Cliff Davidson</i> DAVIDSON       | <i>Bill Hudson</i> HUDSON    |             | X      |       |
| <i>Lincoln</i> LINCOLN               | <i>Steven A. Lemar</i> LEMAR |             | ✓      |       |
| <i>Tom Moyer</i> MOYER               |                              |             |        |       |
| <i>John E. Ivan</i> IVAN             |                              |             |        |       |
| <i>Frank Einkelstein</i> EINKELSTEIN |                              |             |        |       |
|                                      | <i>Jim Zawacki</i> ZAWACKI   |             | X      |       |
|                                      | <i>Pat Carney</i> CARNEY     |             | ✓      |       |
|                                      |                              |             |        |       |
|                                      |                              |             |        |       |
|                                      |                              |             |        |       |

*Cliff Davidson*  
Chairman's Signature

ANCHORAGE SCHOOL  
DISTRICT, Appellant,

v.

ANCHORAGE DAILY NEWS, Appellee.

No. S-3148.

Supreme Court of Alaska.

Sept. 1, 1989.

Newspaper brought action against school district seeking declaratory and injunctive relief granting access to settlement documents to which school district was a party. The Superior Court, Third Judicial District, J. Justin Ripley, J., ordered district to disclose terms of settlement agreement. School district appealed. The Supreme Court, Burke, J., held that settlement provision prohibiting disclosure of terms of settlement was unenforceable as violating public records disclosure statutes.

Affirmed and remanded with instructions.

1. Records ¶ 54

Public records disclosure statutes apply to records maintained by municipalities. AS 09.25.110, 09.25.120.

2. Records ¶ 64

Question of whether municipality must disclose particular document under public records disclosure statutes is resolved by balancing fundamental public interest in disclosure against municipal interest in confidentiality, and trial court may also consider interest of third party in preventing disclosure. AS 09.25.110, 09.25.120.

3. Records ¶ 65

In recognition of fundamental nature of public right to know, municipality seeking to prevent disclosure of records has burden of proving that records should not be disclosed.

4. Records ¶ 53

Exceptions to statutory public record disclosure requirements are narrowly con-

strued and doubtful cases are resolved by permitting public inspection. AS 09.25.110, 09.25.120.

5. Records ¶ 53

Public agency may not circumvent statutory public record disclosure requirements by agreeing to keep terms of settlement agreement confidential. AS 09.25.110, 09.25.120.

6. Records ¶ 54

Settlement provision prohibiting disclosure of terms of settlement involving school district was unenforceable as violating public records disclosure statutes. AS 09.25.110.

7. Courts ¶ 493(2)

Superior court had jurisdiction over newspaper's action against school district for injunctive and declaratory relief granting access to settlement documents, even though federal court had entered a protective order; newspaper was not a party to federal litigation, and federal court had not addressed confidentiality issue when superior court entered its judgment.

Kermit E. Barker, Jr., Lane, Powell & Barker, Anchorage, for appellant.

D. John McKay, Middleton, Timme & McKay, Anchorage, for appellee.

Before MATTHEWS, C.J., and  
RAPINOWITZ, BURKE, COMPTON,  
and MOORE, JJ.

OPINION

BURKE, Justice.

This appeal presents two questions. The first is whether Alaska's public records disclosure statutes, AS 09.25.110-09.25.120, require a municipal school district to produce for public inspection documents settling a school district lawsuit, despite the district's agreement to keep the settlement terms confidential. The second question is whether the plaintiff below may obtain the relief it seeks while there remains outstanding a United States District Court order prohibiting disclosure of the settlement

terms, obtained after entry of the superior court judgment which is the subject of this appeal.

### I. FACTS AND PROCEEDINGS BELOW

In 1985, the Anchorage School District sued W.R. Grace & Co. for damages equal to the cost of removing and replacing fireproofing installed in an Anchorage high school. Although the action was filed in superior court, Grace removed the case to the United States District Court for the District of Alaska, based on diversity of citizenship.

In December 1988, a reporter for the Anchorage Daily News learned that the parties had agreed to settle. School district officials, however, refused to provide the reporter with copies of the settlement documents, because the settlement agreement contained a confidentiality provision. The Daily News sued the school district in superior court, seeking declaratory and injunctive relief granting access to the settlement documents.<sup>1</sup> On December 13, 1988, the superior court ordered the district to disclose the terms of the settlement agreement. Following entry of final judgment, the school district filed this appeal. The superior court stayed enforcement of its production order pending the announcement of our decision.

While the appeal was pending, Grace filed a motion in the United States District Court for an order sealing the settlement documents. Grace did not disclose to the federal court the existence of the state

1. Grace accepted the school district's tender of defense of the public records act claim.
2. The school district did not oppose Grace's motion.
3. AS 09.25.110 provides:

Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

AS 09.25.120 provides in part:

court judgment, or the fact that there was an appeal pending in this court. On January 20, 1989, United States District Court Judge H. Russel Holland ordered that the terms of the settlement not be disclosed.<sup>2</sup>

This court and the Daily News first learned of the federal protective order when the school district appended a copy of the order to its reply brief. We permitted the Daily News and the school district, thereafter, to submit supplemental briefs on the effect of the federal court's order.

On February 16, 1989, following oral argument, we issued an order affirming the decision of the superior court. We instructed the court, however, not to enforce its judgment unless and until the United States District Court vacates or modifies its protective order.

### II. THE PUBLIC RECORDS DISCLOSURE STATUTES

The school district argues that it should not be required to produce the settlement documents because the confidentiality agreement was material to the settlement. According to the district, public interest in promoting settlements, coupled with the need for efficiency in conducting government business, outweighs the public interest in disclosure.

[1-4] Alaska's public records disclosure statutes<sup>3</sup> apply to records maintained by municipalities. *City of Kenai v. Kenai Peninsula Newspapers*, 652 P.2d 1316, 1318-23 (Alaska 1982). In general, they provide broad public access to municipal

Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the original.

"books, records, papers, writings, and transactions. The question whether to disclose a particular record is to be determined by balancing the fundamental public interest in disclosure against the individual's interest in confidentiality." 642 P.2d at 1323. "The fundamental nature of the right to know, the municipal government's interest in protecting that record, and the public interest in disclosure require the government to disclose. *Doe*, 721 P.2d 104. Cases are resolved by the public records act. *City of Kenai*

[5,6] We recognize the public policy served by the public records act to encourage settlements. *Airlines v. Sweat*, 559 P.2d 104 (Alaska 1977); *Interior v. Alaska*, 559 P.2d 104. We recognize also that the public interest in settlements is willing to settle unless the public interest in confidentiality's inability to negotiate a settlement may, therefore, advise the specific statute which the Daily News determination favors disclosure of records over the government's interest in settling through their employees. *City of Kenai*, 642 P.2d 104. *City of Kenai* has stated in the past that confidentiality is more important to this type of information than to remain confidential. *City of Kenai*, 642 P.2d 104. A public agency may

4. The court may allow a third party in previous cases. *City of Kenai*, 642 P.2d 104. Reputation interest in settlements applications for order entitled them with *Doe v. Alaska*, 624 (Alaska 1986) doctrine to exclude settlements).
5. The school district meetings act, AS 4-10-10, confidential settlements permits a public session matters.

"books, records, papers, files, accounts, writings, and transactions." AS 09.25.110. The question whether a municipality must disclose a particular document is resolved by balancing the fundamental public interest in disclosure against the municipal interest in confidentiality.<sup>4</sup> *City of Kenai*, 642 P.2d at 1323. In recognition of the fundamental nature of the public right to know, the municipality has the burden of proving that the record should not be disclosed. *Id.* Exceptions to the statutory disclosure requirements are narrowly construed. *Doe*, 721 P.2d at 622. Doubtful cases are resolved by permitting public inspection. *City of Kenai*, 642 P.2d at 1323.

[5, 6] We recognize the important public policy served by those measures which encourage settlement. See, e.g., *Alaska Airlines v. Sweat*, 568 P.2d 916, 930 (Alaska 1977); *Interior Credit Bureau v. Bussing*, 559 P.2d 104, 106 (Alaska 1977). We recognize also that some litigants are unwilling to settle unless the terms of settlement remain confidential, and that a municipality's inability to assure confidentiality may, therefore, adversely affect its ability to negotiate a settlement. Nevertheless, the specific statutory provisions upon which the Daily News relies reflect a policy determination favoring disclosure of public records over the general policy of encouraging settlement. *The people of this state, through their elected representatives, have stated in the clearest of terms that it is more important that they have access to this type of information than that it remain confidential.* Thus, we hold that a public agency may not circumvent the

4. The court may also consider the interest of a third party in preventing disclosure. Compare *City of Kenai*, 642 P.2d at 1323-24 (privacy and reputation interests of persons whose employment applications were subject to the disclosure order entitled them to withdraw applications) with *Doe v. Alaska Superior Court*, 721 P.2d 617, 624 (Alaska 1986) (limiting executive privilege doctrine to exclude unsolicited public comments).
5. The school district also argues that the public meetings act, AS 44.62.310-44.62.312, authorizes confidential settlement agreements because it permits a public body to discuss in executive session matters "which would clearly have an

statutory disclosure requirements by agreeing to keep the terms of a settlement agreement confidential. Under Alaska law, a confidentiality provision such as the one in the case at bar is unenforceable because it violates the public records disclosure statutes.<sup>5</sup>

### III. THE FEDERAL PROTECTIVE ORDER

The school district argues that the federal court's protective order deprives us of jurisdiction over the Daily News' public records act claim. The Daily News contends that we may affirm the decision of the superior court in its entirety, notwithstanding the conflicting federal order. Neither argument is entirely correct.

Federal and state courts often have concurrent jurisdiction and, as a general rule, try not to interfere with each other's proceedings. *Donovan v. Dallas*, 377 U.S. 408, 413, 84 S.Ct. 1579, 1582, 12 L.Ed.2d 409 (1964). Instead,

[e]ach court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court. Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of res judicata by the court in which the action is still pending in the orderly exercise of its jurisdiction, as it would determine any other question of fact or law arising in the progress of the case.

*Kline v. Burke Constr. Co.*, 260 U.S. 226, 230, 43 S.Ct. 79, 81, 67 L.Ed. 226 (1922);

adverse effect upon the finances of the government unit," AS 44.62.310(c)(1). The purpose of the open meetings act is to assure that government units transact business openly. The people have not delegated to their representatives the power to decide what the public may or may not know. AS 44.62.312(a)(2), (4). Assuming that the district may discuss a proposed settlement in closed session, the act specifically prohibits taking any action during executive session. AS 44.62.310(b); see also *City of Kenai*, 642 P.2d at 1326 n. 29. The open meetings requirement is intended to further the same purpose as the public records disclosure statutes, not to decimate it.

the fact that there was in this court. On January 1989, the District Court ordered that the settlement not be disclosed.

The Daily News first sought a federal protective order. The district court appended a copy of its order to the brief. We permitted the school district to file supplemental briefs in support of the federal court's order. In 1989, following oral argument, the court affirmed the order. We have, however, not to enforce it and until the United States Supreme Court vacates or modifies

### PUBLIC RECORDS ACT STATUTES

The school district argues that it should be required to produce the settlement agreement and the confidentiality agreement to the settlement. The public interest in the settlement, coupled with the public interest in conducting government affairs, outweighs the public interest

in public records disclosure. The public records maintained by the school district, *City of Kenai v. Kenai School District*, 642 P.2d 1316, 1322. In general, they have access to municipal

records. The right to inspect a public record, including public records in recorders' offices, shall be treated in the same manner as AS 18.50; (2) records of medical and related records; (4) records required by a federal law or a law. Every public official shall permit the inspection and on payment of a certified copy of the record and the copy shall in all cases be the original.

see also *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296, 90 S.Ct. 1739, 1798, 26 L.Ed.2d 234 (1970) ("lower federal courts possess no power whatever to sit in direct review of state court decisions").

In certain instances, however, a state court must refrain from exercising its jurisdiction. In *Anchorage Daily News v. Anchorage Times Publishing Co.*, 631 P.2d 500 (Alaska 1981), we held that the superior court erred when it enjoined an arbitration proceeding scheduled by the United States District Court. Although the superior court had jurisdiction, under state law, to determine whether the parties had an arbitration agreement, it erred when it granted injunctive relief which interfered with the defendant's effort to obtain arbitration in a federal forum. *Id.* at 503-05. We viewed as "dispositive of the jurisdictional issue" the following statement by the United States Supreme Court:

[A state court] is without power under the United States Constitution to interfere with efforts by [a litigant] to obtain arbitration in federal forums on the ground that [the litigant] is not entitled to arbitration or for any other reason whatsoever. [Such litigant] has an absolute right to present its claims to federal forums.

*Id.* at 504 (quoting *General Atomic Co. v. Felter*, 436 U.S. 493, 497, 98 S.Ct. 1939, 1941, 56 L.Ed.2d 480 (1978)).

[7] In the case at bar, the Daily News sought a declaratory judgment that the settlement documents which ended the liti-

gation in federal court were open to public inspection under state law.<sup>6</sup> The Daily News was not a party to the federal litigation and the federal court had not addressed the confidentiality issue when the superior court entered its judgment. Thus, we hold that the superior court had personal and subject matter jurisdiction. The court did not abuse its discretion in exercising its jurisdiction to determine that the Daily News had the right under state law to inspect the settlement documents. The court's declaratory judgment was, therefore, valid.<sup>7</sup>

Had Grace or the school district informed Judge Holland of the state court's judgment, he could have decided whether the substantive law of Alaska precluded him from ordering the settlement documents sealed.<sup>8</sup> Grace and the school district, however, induced Judge Holland to enter his order while still ignorant of the judgment.<sup>9</sup> We believe, nevertheless, that the principles discussed in *Anchorage Daily News v. Anchorage Times Publishing Co.*, dictate that the superior court not attempt to enforce that part of its judgment requiring production of the settlement documents, unless and until the federal protective order is vacated or modified.

The Daily News has moved to intervene in the federal case, asking Judge Holland to reconsider his decision. Accordingly, the federal court is now aware of the proceeding in state court. No doubt, it will be made aware of our decision as well. We are confident that Judge Holland will evaluate the Daily News' motions in light of all

*Chemicals*, 671 P.2d 1273, 1275-76 (Alaska 1983); Alaska R.Civ.P. 54(b).

8. Federal jurisdiction in the litigation between Grace and the school district was based on diversity of citizenship. Therefore, Alaska law governed the substantive legal issues even though the case was removed to federal court. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78-80, 58 S.Ct. 817, 822-823, 82 L.Ed. 1188 (1938).

9. See DR 7-106(B)(1) (lawyer shall disclose "[l]egal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel").

6. AS 22.10.020(g) provides:

In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

7. A Civil Rule 54(b) judgment is final for purposes of res judicata. *Vertec Corp. v. Reichhold*

applicable principles.

The superior court FIRMED, and the court with instructions to the court to enforce its judgment, unless and until the order is vacated or modified.



Nancy R. CARP

David A. NOVAK

Nos. S-26-

Supreme Court

Sept. 2

Rehearing Granted

Minor child's mother from two orders of Third Judicial District. C. Stewart, J. pro tempore shared legal custody with aunt and child's father in father, and second custody transferred with joint legal custody to Supreme Court, Commissioner Superior Court had such award, and (2) of discretion.

Second order affirmed

1. Divorce  $\S$  312.6(c)

Father failed to order modifying custody insufficiently of evidence properly before Supreme Court.

10. After we issued the decision below, Judge Holland asked the Daily News to intervene in the case. We denied the motion on June 20 protecting the state's interest in the United States

779 P.2d--27

...urt were open to public  
...state law.<sup>6</sup> The Daily  
...rty to the federal litiga-  
...ral court had not ad-  
...ntiality issue when the  
...ed its judgment. Thus,  
...perior court had person-  
...tter jurisdiction. The  
...its discretion in exercis-  
...to determine that the  
...right under state law  
...ment documents. The  
...judgment was, there-

...chool district informed  
...he state court's judg-  
...decided whether the  
...Alaska precluded him  
...settlement documents  
...l the school district,  
...dge Holland to enter  
...ignorant of the judg-  
...nevertheless, that the  
...in *Anchorage Daily  
Times Publishing Co.*,  
...rior court not attempt  
...f its judgment requir-  
...the settlement doc-  
...ntil the federal protec-  
...or modified.

...s moved to intervene  
...sking Judge Holland  
...cision. Accordingly,  
...ow aware of the pro-  
...No doubt, it will be  
...ecision as well. We  
...ge Holland will eval-  
...notions in light of all

1273, 1275-76 (Alaska  
54(b)).

...the litigation between  
...istrict was based on di-  
...Therefore, Alaska law  
...ive legal issues even  
...moved to federal court.  
...s, 304 U.S. 64, 78-80, 58  
...Ed. 1188 (1938).

(lawyer shall disclose  
...controlling jurisdiction  
...irectly adverse to the  
...i which is not disclosed

applicable principles of law.<sup>10</sup>

The superior court's judgment is AF-  
FIRMED, and the case is REMANDED  
with instructions to the superior court not  
to enforce its judgment requiring produc-  
tion, unless and until the federal protective  
order is vacated or modified.



Nancy R. CARTER, Appellant,

v.

David A. NOVOTNY, Appellee.

Nos. S-2645, S-3049.

Supreme Court of Alaska.

Sept. 8, 1989.

Rehearing Granted Oct. 9, 1989.

Minor child's maternal aunt appealed  
from two orders of the Superior Court,  
Third Judicial District, Anchorage, David  
C. Stewart, J. pro tem., which first award-  
ed shared legal custody of child to both  
aunt and child's father, with physical custo-  
dy in father, and second, ordered physical  
custody transferred from father to aunt  
with joint legal custody retained. The Su-  
preme Court, Compton, J., held that: (1)  
Superior Court had jurisdiction to make  
such award, and (2) award was not abuse  
of discretion.

Second order affirmed.

1. Divorce ⇐312.6(1)

Father failed to file cross appeal from  
order modifying custody and, thus, father's  
inafficiency of evidence claim was not  
properly before Supreme Court.

10. After we issued the order affirming the deci-  
sion below, Judge Holland permitted the Daily  
News to intervene in the federal case and vacat-  
ed the June 20 protective order. Grace appeal-  
ed to the United States Court of Appeal, Ninth

779 P.2d-27

2. Parent and Child ⇐2(12)

Parent is entitled to custodial prefer-  
ence over nonparent, unless there is clear  
evidence that parent is either unfit or wel-  
fare of child requires that child be placed in  
custody of nonparent.

3. Parent and Child ⇐2(18)

Burden of proving that parent's custo-  
dy of child would be clearly detrimental to  
child is on nonparent seeking to modify  
custody.

4. Parent and Child ⇐2(17)

Superior court had jurisdiction to  
award shared custody of minor to both  
parent and nonparent. AS 25.20.060.

5. Parent and Child ⇐2(17)

Superior court did not abuse its discre-  
tion in awarding parent and nonparent  
shared custody of minor child with physical  
custody in nonparent, even though court  
had determined that it would be detrimen-  
tal to child to continue physical placement  
with father, insofar as such award was in  
best interest of child. AS 25.20.060, 25.24-  
150.

Charles Hagans, Hagans, Brown, Gibbs  
and Moran, Anchorage, for appellant.

William T. Ford, Anchorage, for appellee.

Ame Ivanov, Anchorage, Guardian Ad  
Litem.

Before MATTHEWS, C.J., and  
RABINOWITZ, BURKE, COMPTON  
and MOORE, JJ.

OPINION

COMPTON, Justice.

The principal issue presentd in this ap-  
peal is whether the superior court erred in  
awarding shared custody of Heidi Novotny  
to David A. Novotny, her father, and Nan-  
cy R. Carter, her maternal aunt, after hav-  
ing determined that it would be detrimental

Circuit, but dismissed the appeal when the cir-  
cuit court refused to grant a stay pending ap-  
peal. The settlement documents were released  
for public inspection.