

SCOMM

122:46

ALASKA COURT SYSTEM BACKGROUND INFORMATION

I. *Branch of Government*

Alaska Court System

II. *BRU and Component Names as Listed in State Budget*

See attached

III. *Total Budget, all Funds*

See attached

Fund Sources

See attached

IV. *Total Revenue Derived*

See attached

V. *Constitutional Provisions Governing Court System Operations*

Article IV of the Constitution of the State of Alaska

VI. *Court System Mission Statement*

The mission of the Alaska Court System is to provide an accessible and impartial forum for the just resolution of all cases that come before it, and to decide such cases in accordance with the law, expeditiously and with integrity.

VII *Number of Employees*

648	permanent full-time
48	permanent part-time
21	non-permanent
717	Total

VIII. *Court System Technology*

- Case management system

The case management system technology is based on a distributed network of Pentium class computers running SCO Unix operating system and

**Alaska Court System
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supporting FALCO terminals (a brand of terminal no longer manufactured). The computers are located in the 28 largest court locations and 24 are connected via the state's wide area network (WAN). Four locations are not connected to the WAN because the state has not tied those locations into the WAN. The courts in those locations are connected via dial-up modems. Another 15 court locations are running standalone Pentium PC's using Windows95 as the operating system and dial-up communications to tie to the rest of the court locations.

The court locations running under Unix have a case management application (RUG) that is an in-house designed and written program from the late 1980's. It is not a true relational database and suffers from the resultant shortcomings. It was made Y2K compliant as of July 1, 1999. The court locations running on PC's have a very limited in-house developed case management application that is designed for low volume magistrate courts, and it also is Y2K compliant.

- **Courtroom Recording Systems**

The court is currently in the process of upgrading the courtroom recording systems. The legacy system is an analog tape recorder and sound reinforcement system built by GYYR, a company no longer in existence. Parts are no longer available and must be manufactured or retrofitted by the court's technical staff. The court is currently deploying a new digital recording and sound amplification system in the 15 largest courts - 88 courtrooms/hearing rooms. The digital recording systems are supported by local area networks (LAN) that tie the computer-based recording in the courtrooms/hearing rooms and the individual workstations in each location together. In addition to the digital recording systems, the court is replacing the sound reinforcement systems with newer mixer/amplifier technology to improve telephonic communications.

- **Hearing Assistance Devices**

Each of the courtrooms is equipped with infrared hearing assistance devices (similar to those utilized in theaters) to provide better service to the court's hearing-impaired users. The hearing devices consist of a transmitter that connects to the sound reinforcement system and individual headsets worn by court customers during court hearings.

- **Video Conferencing**

The courts utilize video conferencing capabilities to conduct arraignments and other allowed hearings between jail facilities and the arraignment courtrooms in three locations.

- **Micrographics**

The court utilized microfilm cameras and reader/printers to archive and access closed court case files. The reader/printer devices are over 12 years

old and badly in need of replacement. The machines use thermal paper to reproduce microfilmed images and the manufacturer of the paper will cease production January 1, 2000 making them only capable of reading. The court is evaluating the most cost-effective alternatives to these machines.

- **Telephones**

The court system relies heavily on telephonic communication to conduct court business with litigants and other court customers throughout the state. The court has upgraded telephones with known Y2K compliance issues and is attempting to find the funding to continue the upgrade of telephone systems in all court locations to digital switches.

IX. *Court System Contracts*

See attached

X. *Privatized Services*

- **Security**

Private contractors provide perimeter security services in Anchorage and Fairbanks. No other courts have perimeter security.

- **Janitorial**

Janitorial services are provided by the lessor in most leased facilities and by separately procured private contractors in all state owned court facilities. In some of the smaller communities the magistrate provides janitorial services.

- **Snow removal**

In most facilities snow removal services are provided by either the lessor or a separately procured private contractor. Starting this winter, snow removal for the court's administrative offices in Anchorage will be provided by the Anchorage Parking Authority (APA). In exchange, the APA uses the lot for fee parking during non-work hours.

- **Transcripts**

Private contractors do transcription of court proceedings.

- **Interpreters for the deaf**

Federal law requires the state to pay for interpreter services for the deaf in all court proceedings. The court system hires local interpreters on an as-needed basis.

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- **Language interpreters**

Although generally provided by the parties, language interpreters are hired from the local community.

- **Building design and construction**

Building design and construction is provided by private firms/contractors.

- **Building maintenance**

Building maintenance is provided by the state in all state owned facilities and by the lessor in all leased facilities.

- **Mediators for pilot mediation programs**

Private mediators provide mediation for the pilot programs in Child in Need of Aid and custody dispute mediation.

- **Other**

Within the last few years the court system has looked at both the micrographics and printing shops to see if privatization would be economical. Although in the past it has been cheaper to keep both services in-house, they will each be reassessed within the next year.

Alaska Court System FY2000 Budget Information

BRU - Alaska Court System:

FY2000 Budget

Component - Appellate Courts (767)	3,980.4
Component - Trial Courts (768)	38,840.1
Component - Administration & Support (769)	<u>6,285.2</u>
TOTAL Operating Budget	<u>49,105.7</u>

Funding Sources:

General Fund (1004)	48,726.4
General Fund/Mental Health (1037)	79.3
Federal Receipts - Grants (1002)	<u>300.0</u>
TOTAL Funding Sources	<u>49105.7</u>

Revenues:

Filing Fees (64050)	1,600.6
Fines & Forfeitures (65004)	3,749.3
Cost Recovery (65020)*	47.2
Service Fees (64030)**	21.1
Interest Earned on Bank Accounts (65770)	374.6
Miscellaneous (64060)***	303.5
Restricted Revenues (Grant Funds)	<u>300.0</u>
TOTAL Projected Revenues	<u>6,396.3</u>

*Cost Recovery includes revenues from recovery of Public Defender & Public Advocacy costs.

**Service Fees are revenues derived from processing traffic and minor offense citations for local governments.

***Miscellaneous revenues are from notary services, transcription service, and other miscellaneous activities.

**Alaska Court System
FY 99 Contracts > \$5,000**

Contract Type	Vendor	Location	99 Total Amount	How Acquired
Courier	John Hastie & Co.	Bethel	\$7,700	3 or More Quotes
Courier	Express Delivery	Anch Admin/Trial Court	\$8,715	3 or More Quotes
Copier/Rental	Xerox	Anch Admin	\$9,576	State Contract #27703
Snow Removal	Starr Trucking	Palmer	\$9,880	RFP/2 Yr Option/Final 8/99
Snow Removal/Lawn Care	ASSETS	Anch Admin	\$10,242	Negotiated/2 Yr Option
Landscaping	Mike's Landscaping	Palmer	\$10,406	RFP/2 Yr Option /Renewal 3/00
Snow Removal/Lawn Care	ASSETS	Anch Nesbett Bldg	\$12,366	RFP/2 Yr Option/Renewal 3/00
Snow Removal/Lawn Care	ASSETS	Anch Boney Bldg	\$21,021	RFP/2 Yr Option/Renewal 3/00
Snow Removal	Currier's Asphalt	Anch Admin/Trial Court	\$21,496	RFP/2 Yr Option/Renewal 6/00
Janitorial	Universal Floor Care	Palmer	\$31,700	RFP/2 Yr Option/Renewal 12/31/99
Janitorial	Frontier Training	Kenai	\$35,182	RFP/1 Yr Option/Renewal 10/99
Janitorial	ASSETS	Anch Admin	\$59,700	RFP/Renegotiated 5/99
Security	Guardian Security	Fairbanks	\$90,275	RFP-001-95/5 Yr Option
Janitorial	ASSETS	Anch Boney Bldg	\$138,866	RFP/Renegotiated 10/99
Transcription Svcs	All Vendors	All Courts	\$205,342	RFP's
Security	Guardsmark	Anch Admin/Trial Court	\$283,033	RFP-002-94/5 Yr Option
Janitorial	ASSETS	Anch Nesbett Bldg	\$350,754	RFP/Renegotiated 1/99

Capital Leases as of June 30, 1999

 Date 6-Aug-99

Alaska Court System

 Completed By Linda Creed

Vendor	Description of Item	Prior Year Balance	Increases	Decreases / Payments	Balance of Payments Remaining
Xerox	Copier 5028 68H-493903	663.00	1,325.00	1,325.00	663.00
Xerox	Copier 5028 68H-497484	1,260.00	1,890.00	1,731.00	1,419.00
Xerox	Copier 5065, 6W6-011682	6,150.00	8,300.00	8,300.00	6,150.00
Xerox	Copier 5065, 6W6-200504	6,150.00	8,300.00	8,300.00	6,150.00
Xerox	Copier 5052, 6W6-106584	3,181.00	2,360.00	2,361.00	3,180.00
Xerox (replaced 6W6-10655)	Copier 5065, 6W6-013068	3,967.00	3,932.00	3,933.00	3,966.00
Xerox	Copier 5065, 6W6-106540	3,967.00	3,932.00	3,933.00	3,966.00
Xerox	Copier 5065, 6W6-010735	4,294.00	3,932.00	3,932.00	4,294.00
Xerox	Copier 5065, 6W6-200436	3,966.00	3,932.00	3,932.00	3,966.00
Xerox	Copier 5065, 6W6-106567	2,846.00	1,450.00	1,450.00	2,846.00
Copy Star	Copier 2340, 37016846	2,339.00		2,339.00	-
Xerox	Copier 5322, 1M2-471867	1,497.00	2,241.00	2,241.00	1,497.00
Sharp	Copier 2050, 56200486	5,626.00		5,626.00	-
Sharp	Copier 2040, 66604836	7,772.00		5,486.00	2,286.00
Sharp	Copier 2040, 66602956	7,315.00		5,485.00	1,830.00
Ikon Office	Copier 4527, 3716831034	7,768.00		4,660.00	3,108.00
Ikon Office	Copier 4527, 3716830995	7,768.00		4,660.00	3,108.00
Ikon Office	Copier R400, 39161200061	9,085.00		5,737.00	3,348.00
Mita Financial	Copier 2340, 37021855	3,638.00		3,117.00	521.00
Pitney Bowes	Copier C320, 6092494	4,369.00		3,276.00	1,093.00
Xerox	Copier 5021, OMW052964	2,984.00		1,723.00	1,261.00
Xerox	Copier 5021, OMW048939	2,303.00		1,631.00	672.00
Ikon Office	Copier 4522, 3727830241	9,257.00		4,443.00	4,814.00
Ikon Office	Copier R401, 7207100140	14,226.00		5,866.00	8,340.00
Ikon Office	Copier R400, 7208020255	16,256.00		5,737.00	10,519.00
Ikon Office	Copier 3213, 7418810346	3,509.00		1,238.00	2,271.00
EKCC	Reader Printer, 32131296	13,707.00		3,655.00	10,052.00

Capital Leases as of June 30, 1999

 Date 6-Aug-99

Alaska Court System

 Completed By Linda Creed

Vendor	Description of Item	Prior Year Balance	Increases	Decreases / Payments	Balance of Payments Remaining
Xerox	Copier 5100, 5TC-100691	57,645.00		26,605.00	31,040.00
Xerox	Stapler 100, 7MO-011162	11,872.00		5,276.00	6,596.00
Xerox	Copier 5365, 6W6-204160	21,546.00		9,575.00	11,971.00
Xerox	Copier 5365, 6W6-310646	24,737.00	1.00	9,575.00	15,163.00
Xerox	Copier DC230, COH-016999	14,557.00		6,238.00	8,319.00
Xerox (replaced COH-01716)	Copier DC230, COH-041659	16,136.00		6,677.00	9,459.00
Xerox	Copier DC220, G8M-042391	12,680.00		5,246.00	7,434.00
Xerox	Copier DC220, G8M-040883	10,668.00		4,571.00	6,097.00
Xerox	Copier DC230, COH-021992	15,213.00		5,532.00	9,681.00
Xerox	Copier 5614, 1KU-055442	4,513.00		1,547.00	2,966.00
Xerox	Docutech NP135, W11-037697	164,968.00		44,991.00	119,977.00
GE Capital	Copier 2120, 7650585X		8,655.00	2,644.00	6,011.00
IOS Capital	Copier 401, 7208070327		17,212.00	1,434.00	15,778.00
IOS Capital	Copier 401, 7208120316		17,212.00	1,434.00	15,778.00
IOS Capital	Copier 401, 7208120324		17,212.00	1,434.00	15,778.00
IOS Capital	Copier 401, 7208120325		17,212.00	1,434.00	15,778.00
IOS Capital	Copier 401, 7208120317		17,212.00	1,434.00	15,778.00
Pitney Bowes	Copier C550, 7120244		16,672.00	5,094.00	11,578.00
Pitney Bowes	Copier C550, 8070107		16,672.00	2,778.00	13,894.00
Pitney Bowes	Copier C550, 8060142		16,672.00	3,705.00	12,967.00
Xerox	Copier 5614, 2KU-0077192		5,088.00	1,696.00	3,392.00
Xerox	Duplex 230, COH-031307		22,249.00	1,236.00	21,013.00
					-
	Totals	510,398.00	213,663.00	256,293.00	467,768.00

Location	Dist	Lessor	Responsible for		Lease #	Collo.	CPI ESC.	Lease Status	Original Lease Date	Expiration Date	Next Action Date	Renewal Options		Termination		Area				Rent per Month	Rent per Year	Cost Per Square Foot
			Maint.	Janitorial & other svcs								# Remain- ing	Period In Years	Notice In Days	Funding Clause	Building GSF	ACS GSF	ACS NSF	ACS N/G Ratio			
Ambler	2	Ambler Traditional Council P. O. Box 47 Ambler AK 99786 Truman Cleveland Sr. ph 445-3196			None	225												120		250.00 + utilities	3,000.00	2.083
Anchorage Snowden	3	Court System	DMVA	ACS	NA	610	NA	NA	NA	NA	NA	NA	NA	NA	NA		56,000			0.00	0.00	0.000
Anchorage Nesbett	3	Court System	DMVA	ACS	NA	310	NA	NA	NA	NA	NA	NA	NA	NA	NA		206,000			0.00	0.00	0.000
Anchorage Boney	3	ASHA	DOT	ACS	NA	310			NA	NA	NA	NA	NA	NA	NA		147,960		0%	0.00	(a)	0.000
Anchorage Parking	3	ASHA	DOT	ACS/DOT?	NA	310		NA	NA	NA	NA	NA	NA	NA	NA		68,400			0.00	(a)	0.000
Angoon	1	City of Angoon P. O. Box 189 Angoon, AK 99820 Maxine Thompson, Mayor ph 788-3853 fax 788-3821	Landlord		1857	135	Y-A	Current	8/7/85	6/30/00	4/1/00	5	1	30	NO			887		1,163.37	13,960.44	1.312
Aniak	4	Doyle Cheek P. O. Box 226 Aniak, AK 99557 ph 467-6161	Landlord/Magistrate		1882	450	Y-A	Current	10/1/93	9/30/00	7/2/00	4	1	30	YES			950		1,038.50	12,462.00	1.093
Barrow	2	Arctic Slope Regional Corp. P. O. Box 129 Barrow, AK 99723 Jeslie Kaleak, Sr. Ph 852-8633	Landlord		1851	220	Y	Current	12/19/1984 * new lease commences 7/1/00 with UIC	6/30/00	4/1/00	3	5	30	I YES (non-substitution)			9,910		64,821.33	777,855.96	6.541
Bethel	4	City of Bethel P. O. Box 388 Bethel, AK 99559 Bob Herron City Manager ph 543-2297 fax 543-4171	Landlord		1885	415	N	Current		Phase one 2-29-00	6/1/08	(see contract)		30	YES			5771		12,858.92	154,307.04	2.228
Bethel	4	Same as above								Phase Two 11-30-09	6/1/08	2	5		YES			8,702		17,823.25	213,879.00	2.048

Location	Dist	Lessor	Responsible for		Lease #	Collo.	CPI ESC.	Lease Status	Original Lease Date	Expiration Date	Next Action Date	Renewal Options		Termination		Area				Rent per Month	Rent per Year	Cost Per Square Foot
			Maint.	Janitorial & other svcs								# Remain-ing	Period In Years	Notice In Days	Funding Clause	Building GSF	ACS GSF	ACS NSF	ACS N/G Ratio			
Chevak	2	City of Chevak P. O. Box 136 Chevak AK 99563 Gregory Alorelea Administrator ph 858-7128 fax 858-7245			1880	235	Y-A	Current	5/1/93	10/31/99	8/1/99	5	1	120	YES			288		519.25	6,231.00	#DIV/0!
Cold Bay	3	Vacant			ADA-05783	355	N			NA	NA	Indefinite		NA	NA		7,000			0.00	0.00	0.000
Cordova	3	John Wilson Wilson Enterprises P. O. Box 813 Cordova, AK 99574 ph 424-3452	Landlord		1855	360	Y-A	Overdue	8/1/85	7/31/00	3/1/00	3	5	30	YES			4,330		8,413.60	100,963.20	1.943
Craig	1	Paul Thibodeau Thibodeau's Mini Mall P. O. Box 58 Craig, AK 99901 ph 826-3370	Landlord Check sent to: National Bank of Alaska Comm Real Estate P. O. Box 100600 Anchorage, AK 99510-0600 Bett Parks 276-1132		1868	140	CA	Current	6/1/89	5/31/04	2/1/03	2	5	30	YES			3,377		8,273.65	99,283.80	2.450
Delta Junction	4	ASHA	DOT		NA	445	NA			NA	NA	NA	NA	NA	NA	1,989	1,648	1,017	62%	0	(a)	0.000
Dillingham	3	Choggiung Limited P. O. Box 330 Dillingham AK 99576 Tim Troll ph 842-5218	Landlord		1200	345	ESC	Current	4/6/00 (new) 5/4/78 (orig.)	4/5/00	4/5/10	2	5	30	YES			4990 (new) 4549 (orig.)		10,000 (new) 7992.6 (orig.)	95,911.20	1.757
Emmonak	2	City of Emmonak P. O. Box 9 Emmonak AK 99581 Walter Kloepper City Manager ph 949-1227 fax 949-1926	Landlord		1861	225	Y-A	Current		6/30/00	4/1/00	3	1	30	NO			1,040		1,031.00	12,372.00	0.991
Fairbanks	4	ASHA	DOT		NA	410	NA			NA	NA	NA	NA	NA	NA	128,620	69,531 78,504 T			0	(a)	0.000
Ft. Yukon	4	ASHA	DOT		NA	435	NA			NA	NA	NA	NA	NA	NA		3,500			0	(a)	0.000

Location	Dist	Lessor	Responsible for		Lease #	Collo.	CPI ESC.	Lease Status	Original Lease Date	Expiration Date	Next Action Date	Renewal Options		Termination		Area				Rent per Month	Rent per Year	Cost Per Square Foot
			Maint.	Janitorial & other svcs								# Remain- ing	Period in Years	Notice in Days	Funding Clause	Building GSF	ACS GSF	ACS NSF	ACS N/G Ratio			
Galena	4	Gana-a' Yoo Ltd. Box 38 Galena, AK 99741 Bruce Kling General Manager ph 656-1606 fax 656-1609		Landlord	1884	440	Y	Current	7/1/84	6/30/00	4/1/00	4	1	30	YES			1,078		1,542.52	18,510.24	1.431
Gambell	2	City of Gambell P. O. Box 189 Gambell, AK 99742 Edith Tungliyan Mayor ph 985-5112 fax 985-5927		Landlord	1853	230	Y	Current	4/1/85	3/31/00	12/31/99	1	1	30	NO			461		400.00	4,800.00	0.868
Glennallen	3	Ahtna Inc P. O. Box 649 Glennallen AK 99588 Darryl Jordan Pres (Anch loc.) 272-7961 or 274-7662 Susan Sherman (Glen. Location) ph 822-3476 fax 822-3495 Emergency reporting 272-8884		Landlord	1875	365	Y	Current	5/1/91	4/30/00	1/30/00	1	1	30	YES			2,873		6,860.00	82,320.00	2.388
Haines	1	Lynn Canal Corp. P. O. Box 149 Haines, AK 99817 Debra Schnabel ph 766-2228		Landlord Tenant	1879	145	Y-A	Current	5/1/93	4/30/03	12/1/02	5	1	120	YES			2,600		2,826.90	33,922.80	1.087
Healy	4	Tri-Valley Vol. Fire Dept. P. O. Box 20 Healy, AK 99743 Debra Killian ph 683-2223		Landlord	1478	430	Y	Current	7/23/81	6/30/00	3/1/00	1	1	30	YES			1,220		1,654.44	19,855.28	1.356
Homer	3	John & Mary Ellen Tramontin P. O. Box 1766 Homer, Ak 99603 235-4087 Winter: c/o Smith Barney, 9311 San Pedro Ste 1400 San Antonio, TX 78216		Landlord	1878	310	Y-A	Current	5/1/93	4/30/03	12/1/02	5	1	120	YES			4,750		5,824.98	69,899.76	1.226

Location	Dist	Lessor	Responsible for		Lease #	Collo.	CPI ESC.	Lease Status	Original Lease Date	Expiration Date	Next Action Date	Renewal Options		Termination		Area				Rent per Month	Rent per Year	Cost Per Square Foot
			Maint.	Janitorial & other svcs								# Remain- ing	Period in Years	Notice in Days	Funding Clause	Building GSF	ACS GSF	ACS NSF	ACS N/G Ratio			
Hoonah	1	City of Hoonah P. O. Box 360 Hoonah, AK 99829 Albert Dick, Mayor ph 945-3663 fax 945-3445	Landlord		1340	150	Y-A	Current	3/11/80	3/31/00	12/31/99	0	1	30	YES			320		667.00 692.12 T (\$25 - copier)	7,968.00	2.075
Juneau	1	ASHA	DOT		NA	110	NA			NA	NA	NA	NA	NA	NA	68,813	47,517	23,727	50%	0	(a)	0.000
Kake	1	City of Kake P. O. Box 500 Kake, AK 99830 Lonnie Anderson Mayor ph 785-3804 fax 785-4815	Landlord		1877	155	Y-A	Current	7/1/92	6/30/02	2/1/02	5	1	30	Yes			1,320		1,359.15	16,309.80	1.030
Kenai	3	Cert. Of Participation Financing	DMVA/ACS		Na	320	NA		10/22/94	NA	NA	NA	NA	NA	Na			31,800		0.00	(a)	0.000
Ketchikan	1	ASHA	Dot		NA	115	NA			NA	NA	NA	NA	NA	NA	58,693	36,218	18,812	52%	0.00	(a)	0.000
Kiana	2	City of Kiana P. O. Box 150 Kiana AK 99749 Brad Reich, Mayor Hazel Apok, City Administrator ph 475-2136 fax 475-2174	Landlord		1854	240	Y-A	Current		12/31/99	9/1/99	1	1	30	NO			270		726.74	8,720.88	2.692
Excludes parking/storage and the courtyard																						
Kodiak	3	ASHA	DOT		NA	315	NA			NA	NA	NA	NA	NA	NA	13,090	11,362	6,960	61%	0.00	(a)	0.000
Kotzebue	2	State-owned	DOT		NA	2	5	NA			NA	NA	NA	NA	NA		5,647			0.00	0.00	0.000
McGrath	4	City of McGrath P. O. Box 30 McGrath, AK 99627 Glen Hanway, Mayor ph 524-3825 fax 524-3536	Landlord		1858	495		Current	10/29/85	6/30/00	4/1/00	3	1	30	NO			356		300.00	3,600.00	0.843
Naknek	3	Bristol Bay Borough Box 189 Naknek, AK 99833 Glen Vernon, Mayor ph 246-4224 246-6633	Landlord		1585	370	Y	Current	4/16/82	2/29/00	11/30/99	2	1	30	YES			1,968		1,968.00	23,616.00	1.000

Location	Dist	Lessor	Responsible for		Lease #	Collo.	CPI ESC.	Lease Status	Original Lease Date	Expiration Date	Next Action Date	Renewal Options		Termination		Area				Rent per Month	Rent per Year	Cost Per Square Foot
			Maint.	Janitorial & other svcs								# Remain-ing	Period in Years	Notice in Days	Funding Clause	Building GSF	ACS GSF	ACS NSF	ACS N/G Ratio			
Nenana	4	John Coghill Box 58120 Fairbanks AK 99711 ph 488-6116 fax 488-6992	Landlord		1881	425	Y-A	Current	11/1/93	10/31/99	8/2/99	4	1	30	YES			1,236		1,084.63	13,015.56	0.878
Nome	2	GSA P. O. Box 70697 Chicago, IL 60673 (alt addr: GSA Region 10 400 15th St SW Auburn, WA 98001-6599 Lorane Parham Contracting Officer Real Estate Services ph 253-931-7718	Landlord		GS-10 PES-OL	210	N	Current	6/1/97	10/31/01	10/31/01			30	NO			6,125		12,244.53	146,934.36	1.999
Noorvik	2	City of Noorvik P. O. Box 146 Noorvik, AK 99763 Glenn Skin ph 636-2100 fax 636-2135	Landlord		981	250	Y-A	Expire	11/1/74	10/1/99	Now	?	?	30	NO			190		202.00	2,424.00	1.063
Palmer	3	Cert. Of Participation Financing	DMVA	ACS		325			12/10/88								25,080					0.000
Pelican	1	City of Pelican Box 737 Pelican AK 99832 Keith Heller Administrator ph 735-2202 fax 735-2258	Landlord		1860	160	Y	Current	12/30/85	12/15/99	9/16/99	4	1	30	NO			180		300	3,600.00	1.667
Petersburg	1	White Construction P. O. Box 861 Wrangell, AK 99929 Clifford White ph 874-3057 Address to copy: NBA c/o Commercial Real Estate P O Box 100600 Anchorage AK 99510	Landlord		1863	130	Y	Current	5/23/86	5/22/01	2/21/01	2	5	30	YES			5,027		11,159.18	133,910.16	2.220

Location	Dist	Lessor	Responsible for		Lease #	Collo.	CPI ESC.	Lease Status	Original Lease Date	Expiration Date	Next Action Date	Renewal Options		Termination		Area				Rent per Month	Rent per Year	Cost Per Square Foot
			Maint.	Janitorial & other svcs								# Remain- ing	Period in Years	Notice in Days	Funding Clause	Building GSF	ACS GSF	ACS NSF	ACS N/G Ratio			
Pt. Hope	2	City of Point Hope P. O. Box 169 Pt. Hope, Ak 99766 Mayor Hank ph 368-2836 fax 368-2835		Landlord	1867	255	Y	Current	1/1/89	4/30/99	2/28/99	3	1	Cisd				140			6,000.00	3.571
Quinhagak	2	No space lease at this time																				0.000
Sand Point	3	City of Sand Point P. O. Box 249 Sand Point, AK 99661 Mayor Martin Gunderson ph 383-2696 Fax 383-2698 Alt Address: 1600 A St Ste 103 Anchorage AK 99501 ph 274-7555 fax 276-7569			1871	380	Y-A	Overdue	9/1/89	8/31/00	4/30/00	4	1	30	YES			644		716.13	8,593.56	1.112
Savoonga	2	City of Savoonga P O Box 40 Savoonga, AK 99769 Jerry Wongittlin, Sr Mayor ph 984-6614 fax 984-6411			983	260	Y	Current	11/15/74	9/30/00	7/2/00	1	1	30	NO			400		292.27	3,507.24	0.731
Selawik	2	Selawik IRA Box 59 Selawik, AK 99770 Tommy Ballox ph 484-2165		Landlord	1862	265	Y	Expired	4/22/86	6/4/92 M to M	6/30/93	0	1	30	NO			336		431.94	5,183.28	1.286
Seward	3	City of Seward P O Box 167 Seward, AK 99664 ph 224-3331 fax 224-4038		Landlord	NA	330			In Perpetuity	NA			NA	NA	NA		2,436			(a)	0.00	0.000
Shungnak	2	City of Shungnak P O Box 59 Shungnak, AK 99773 Levi Cleveland Mayor ph 437-2161 fax 437-2176			1640	275	Y	Current	7/1/82	10/31/99	7/29/99	2	1	30	NO			440		135.00	1,620.00	0.307

Location	Dist	Lessor	Responsible for		Lease #	Collo.	CPI ESC.	Lease Status	Original Lease Date	Expiration Date	Next Action Date	Renewal Options		Termination		Area				Rent per Month	Rent per Year	Cost Per Square Foot
			Maint.	Janitorial & other svcs								# Remain- ing	Period in Years	Notice in Days	Funding Clause	Building GSF	ACS GSF	ACS NSF	ACS N/G Ratio			
Sitka	1	City & Borough of Sitka 100 Lincoln St Sitka, AK 99835 Mayor Pete Hallgren ph 747-3294 fax 747-7403	DOT	City	NA	120	NA			NA	NA	NA	NA	NA	NA	28,138	12,654	6,595	52%	0.00	(a)	0.000
Skagway	1	City of Skagway P O Box 415 Skagway AK 99480 Mayor Sioux Plummer ph 983-2297 fax 983-2151 Current year addr: St. Preston's Lodge P O Box 538 Skagway, AK 99840 Alexandria Grunow ph 938-3177		Landlord	1886	165	N		9/15/89	9/30/99	8/31/99	0	1	30	NO			244		750.00	9,000.00	#DIV/0!
St. Mary's	2	State of Alaska Dept of Military & Vet's Affairs P. O. Box 5-549 Ft. Richardson AK 99505 Harold Riley ph 428-6772 fax 428-6791	Magistrate	Magistrate		270	Y	definite	1/1/96	NA	NA			NA	NA			890		\$1/year + M & O costs	1.00	0.000
Tanana	4	City of Tanana P O Box 77249 Tanana, AK 99777 Mayor Donna Folger ph 366-7159 fax 366-7169		Landlord	1414	465	Y	Expired M to M	12/3/80	11/30/85				30	YES			460		300	3,600.00	#DIV/0!
Togiak	3	City of Togiak P O Box 99 Togiak AK 99678 Marie Paul City Administrator ph 493-5820		Landlord	1876	345	N	current	10/2/91	6/1/03	1/1/03	0	0	see lease	NO			650		0.00 pd in advance	0.00	0.000
Tok	4	Wilson Enterprises P O Box 813 Cordova, AK 99574 John Wilson 424-3452		Landlord/Tenant						9/30/01		1	5	90	YES			2,416		3,092.00	37,104.00	1.280

Tok= rent plus utilities

Location	Dist	Lessor	Responsible for		Lease #	Collo.	CPI ESC.	Lease Status	Original Lease Date	Expiration Date	Next Action Date	Renewal Options		Termination		Area				Rent per Month	Rent per Year	Cost Per Square Foot
			Maint.	Janitorial & other svcs								# Remain-ing	Period in Years	Notice in Days	Funding Clause	Building GSF	ACS GSF	ACS NSF	ACS N/G Ratio			
Unalakleet	2	City of Unalakleet P O Box 28 Unalakleet, AK 99684 Nancy Cannington Administrator ph 624-3531 fax 624-3130	Landlord		1873	280	Y-A	Current	5/2/90	6/30/99	3/20/99	4	1	30	YES			164 +324 conf rm		353.97	4,247.64	2.158
Unalaska	3	Ounalashka Corp P O Box 149 Unalaska, Ak 99685 Richard Davis, CEO ph 581-1276	Landlord		1399	350	Y-A	Current	1/1/96	12/31/02	8/1/02	5	1	30	YES			2,400		5,000.00	60,000.00	2.083
Valdez	3	ASHA	DOT		NA	335	NA			NA	NA	NA	NA	NA	NA	16,065	9,881	5,144	52%	0.00	(a)	0.000
Whittier	3	City of Whittier P O Box 608 Whittier AK 99693 ph 472-2337 fax 472-2404	Landlord		NA	NA	NA	NA	NA	NA	NA	0	0	0	0		729			0.00	0.00	0.000
Wrangell	1	City of Wrangell P. O. Box 531 Wrangell AK 99929 Scott Seabury City Manager ph 874-2381 fax 874-3952 scotsea@aol.com	Landlord		1885	125	Y	Current	7/1/96	6/30/01	2/1/01	5	1	30 90 any reason	YES			6,197		6,295.00	75,540.00	1.016
Yakutat	1	City of Yakutat P O Box 6 Yakutat AK 99689 Tom Armour City Manager ph 784-3323 fax 784-3281	Landlord		1869	170	CA	Current	7/1/88	6/30/05	12/1/04	4	5	30	YES			1,159		1,738.59	20,862.00	1.500

COURT SYSTEM SUBCOMMITTEE
COMMISSION ON PRIVATIZATION AND DELIVERY
OF GOVERNMENT SERVICES

AGENDA
October 20, 1999

- 1) Roll call
- 2) Review minutes: corrections / updates on info?
- 3) Report -- all areas, SUGGESTIONS FOR ACTUAL WORDING FOR REPORT
- 4) NEW BUSINESS? Any more areas that we need to include?
- 5) FOCUS ON AREAS:

Budget--- need a statement re: Making it more user friendly / easier to read and know the break down. Update from Al.

Alternative Dispute Resolution: Need a statement.

Standing Committees: Need a statement, also committee discussion on this topic.

Computer System:

Pro Se interaction:

Statutes / Joyco -- need committee discussion, material included

Child Custody investigator: need committee discussion

Fees for court appointed attorneys: are we including this area? Need statement

Fines and collections of fees: need a statement

Interaction with Probation: need a statement

Discussion of any new areas added under New Business.

Adjourn

NEXT MEETING OCTOBER 27TH Please bring sharp pencils to mark changes to first draft of report.

Court System Subcommittee
Commission on Privatization and Delivery of Government Services
Minutes
October 13, 1999 Meeting

Roll Call:

Marco

Al

Don

Joyce

Doug

Observer in Juneau - Robin Zimmerman

The sub-committee members began with an interesting discussion of the computer networking for the court system. Steve Botch, presented an interesting discussion on past, present and future plans. Steve started with a brief history of the computer system beginning in 1980.

The court system appropriated \$400,000 for a case management system, however with the coming of the year 2000, the decision was made to utilize approx. \$200,000 of that in making the system Y2K compliant and replace servers. This has been accomplished, however the system, as we know is still out dated with hardware and software which is no longer in existence and parts are difficult if not impossible to get. The current system continues to operate as separate systems and is not a true data base. The current State network will not handle the data for an integrated court computer system. Cost of full integrated system was projected at \$2,500 - 3,000 per user with 600 users in the court system. This would provide the infrastructure, hardware, digital recording ability etc. Cost estimate 2.5 - 3.0 million.

The maintenance of the upgrades was also discussed with a projection of 5% annually to maintain an updated system. This would be 5% of the 2.5 - 3.0 million. This would have to be worked into the court system budget. If we recommend an upgrade, we should also recommend the court system establish some mechanism to maintain the system. The software packages being looked at currently are such that they can be updated by court employees/ private contractors and not written specifically so that only the designer has the ability to upgrade at a more expensive cost. This is more expensive to establish, however more cost effective in the long run.

There was some limited discussion on the ability to privatize the function of this department. The immediate response was that Information systems cannot be out-sourced successfully due to private sector vendors not understanding the needs of the public. This was discussed in that most committee members believe that the private sector is the public and all systems should be such that the private sectors can understand it. It was conceded

that, given time and materials to study, the private sector should be able to take this function over. However we have not cost/benefit analysis and were not able to get this information for our discussions. Quote of the day "If the public doesn't understand the public process then we're in real trouble" Marco.

The possibility of looking to lease equipment with an ongoing upgrade contract was discussed. My notes are sketchy here, it doesn't look like we got any significant feedback (or I was daydreaming through it -- if anyone has more complete notes on this segment, let me know, or fill in when we review the minutes please).

It doesn't look like an updated / integrated system will reduce jobs initially, however, as it is put into use, it is expected to significantly reduce new hires due to an increase in the efficiency of the workers.

If given the \$3 million, the system could be in place and running by July 1st with the major court systems. Within 20 months to hood up all 43 court locations.

Joyce discussed the recommended outline for the report. Our timeline is getting shorter

THE REPORT IS DUE BEFORE NOVEMBER 10TH.

First draft by the 27th (NEXT WEEK) with updated drafts each week until we're all in agreement. Joyce agreed to attempt to put this in report format, however, everyone has to get their recommendations in ---- IN FORMAL FORMAT. We will continue to re-work the drafts, however, we need a starting point and the time has come.

There was some limited discussion regarding 1/2 day jury trials vs. the full day format. This format appears to be the best liked by jurors and judges alike. The 1988 polls showed that jurors liked the full day better, however we have no figures on the updated jury polling. That information is to be provided to AI by Doug for an update.

We finally got to leave at 1:35pm adjourned.

THANKS EVERYONE WHO ATTENDED FOR YOUR INSIGHTS AND FOR KEEPING THE MEETING MOVING IN A POSITIVE DIRECTION.

WHO'S DOING WHAT?????

Al -- detailed break down of proposed budget request for 98/99. Purchasing, discounts, how bills are paid (how timely) etc.

Don -- Alternative dispute resolution and court system standing committees (do we need more are the ones we have adequate -- what's going on with the committees?)

Ed Leon -- Computer system

Chuck Rollins and Susan (Kenai) -- Pro Se system and how it's working

Susan -- interviews with court system employees and what they feel are problem areas.

Joyce -- Family court and stupid statute research.

"B" -- fees for court appointed attorneys -- how is this determined and who collects?

Shirley -- Fines and collections of fines, how effective is the current system? Outstanding warrants - how is this are being handled?

Colleen -- the court system interaction with the probation officers, how can this be stream lined, how's it working?

Mike -- Computerized system, how to update and the general computer venue currently in existence.

Ken -- Alternative Dispute Resolution.

IF I MISSED ANYONE, COULD YOU PLEASE LET ME KNOW WHO

The following four statutes illustrates an on going problem for the court system:

In this case, the first three statutes are conflicting. A narrative is the easiest way to describe this. A young man is convicted of a sex offense. He then marries and fathers children. The couple divorce and the courts, following the child custody investigation, award shared custody. Now, based on one statute, should the mother leave the children with the father, as court ordered -- then she is a criminal for leaving her children in the care of a known sex offender. However, should she follow one statute, then she violates another regarding the custody and orders for that. She is a criminal is she leaves her children with the father, or if she doesn't.

This is but one instance. The judges can come up with many. However, due to the separation of the arms of the government -- judicial and legislative branches, the judges cannot talk to the legislators or lobby the legislature in any way. Some are reluctant to speak with us on the the sub-committee.

Here is my suggestion: We make the recommendation that the court system be required to report to the legislature on an annual basis regarding statutes which are
1)Conflicting; 2)whose intent it is impossible to achieve due to whatever reasons which would also have to be clearly stated in the report; and 3) statutes which are too expensive to implement as written (see example statute 43.31.290 where it would be much more cost effective to have the personal representatives of estates to meet this requirement).

I was able to discuss this with a couple of judges who like the idea, that way, they can have input without crossing any boundaries or appearing in any way to lobby.

If you have any questions, feel free to call me:

Joyce

§ 11.51.100

CRIMINAL LAW

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Cross references. — For increase in classification of misdemeanors committed in connection with a criminal street gang, see AS 12.65.137.

Collateral references. — 10 Am. Jur. 2d, Bigamy, § 1 et seq.; 42 Am. Jur. 2d, Infants, §§ 16, 17, 55,

65-74; 47 Am. Jur. 2d, Juvenile Courts, etc., §§ 63-70; 59 Am. Jur. 2d, Parent and Child, §§ 45, 50-57, 10 C.J.S., Bigamy, § 1 et seq.; 43 C.J.S., Infants, §§ 10, 24, 98; 67 C.J.S., Parent and Child, §§ 41, 165-178.

Article 1. Offenses Against the Family.

Section

100. Endangering the welfare of a child in the first degree

110. Endangering the welfare of a child in the second degree

120. Criminal nonsupport

Section

122. Aiding the nonpayment of child support

125. Failure to permit visitation with a minor

130. Contributing to the delinquency of a minor

140. Unlawful marrying

Sec. 11.51.100. Endangering the welfare of a child in the first degree. (a) A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person

(1) intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child;

(2) leaves the child with another person who is not a parent, guardian, or lawful custodian of the child knowing that the person

(A) is registered or required to register as a sex offender under AS 12.63 or a law or ordinance in another jurisdiction with similar requirements;

(B) has been charged by complaint, information, or indictment with a violation of AS 11.41.410 — 11.41.455 or a law or ordinance in another jurisdiction with similar elements; or

(C) has been charged by complaint, information, or indictment with an attempt, solicitation, or conspiracy to commit a crime described in (B) of this paragraph; or

(3) leaves the child with another person knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury or engages in sexual contact with the child.

(b) In this section, "physically mistreated" means

(1) having committed an act punishable under AS 11.41.100 — 11.41.250; or

(2) having applied force to a child that, under the circumstances in which it was applied, or considering the age or physical condition of the child, constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation because of the substantial and unjustifiable risk of

(A) death;

(B) serious or protracted disfigurement;

(C) protracted impairment of health;

(D) loss or impairment of the function of a body member or organ;

(E) substantial skin bruising, burning, or other skin injury;

(F) internal bleeding or subdural hematoma;

(G) bone fracture; or

(H) prolonged or extreme pain, swelling, or injury to soft tissue

(c) Endangering the welfare of a child in the first degree under (a)(1) or (2) of this section is a class C felony.

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OFFENSE

(3) class A misdemeanor
§ 5 ch 99 SLA 1998)

Effect of amendments. — Tt effective September 14, 1998, rev Legislative history reports

Quoted in Michael v. State, 7 Ct. App. 1988).

Collateral references. — Li injury to unemancipated child: negligence — modern cases, f.

Sec. 11.51.110. Enda. person commits the crime person, while caring for a

(1) causes or allows the controlled substance is stc

(2) is impaired by an ir 17.30, and there is no third intoxicant present to care

(b) In this section,

(1) "impaired" means th affected so that the person needs of a child with the c

(2) "intoxicant" has the

(c) Endangering the we SLA 1998)

Effective dates. — Sect. which enacted this section, too, 14, 1998.

Legislative history reports

Sec. 11.51.120. Crimis nonsupport if, being a per of age, the person fails wi

(b) As used in this sect medical attention, and ed child if the child is provi accordance with the tenets by an accredited practitior

(c) Criminal nonsupport restriction of a recreations § 4 ch 132 SLA 1998)

Delayed amendment of sul der § 54(b), ch. 132, SLA 199

2

§ 11.51.125

CRIMINAL LAW

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(d) Aiding the nonpayment of child support is a class A misdemeanor. (§ 3 ch 86 SLA 1994)

Effective dates. — Section 3, ch. 86, SLA 1994, which enacted this section, took effect on September 4, 1994.

Sec. 11.51.125. Failure to permit visitation with a minor. (a) A custodian commits the offense of failure to permit visitation with a minor if the custodian intentionally, and without just excuse, fails to permit visitation with a child under 18 years of age in the custodian's custody in substantial conformance with a court order that is specific as to when the custodian must permit another to have visitation with that child.

(b) The custodian may not be charged under this section with more than one offense in respect to what is, under the court order, a single continuous period of visitation.

(c) In a prosecution under this section, existing provisions of law prohibiting the disclosure of confidential communications between husband and wife do not apply, and both husband and wife are competent to testify for or against each other as to all relevant matters, if a court order has awarded custody to one spouse and visitation to the other.

(d) As used in this section,

(1) "court order" means a decree, judgment, or order issued by a court of competent jurisdiction;

(2) "custodian" means a natural person who has been awarded custody, either temporary or permanent, of a child under 18 years of age;

(3) "just excuse" includes illness of the child which makes it dangerous to the health of the child for visitation to take place in conformance with the court order; "just excuse" does not include the wish of the child not to have visitation with the person entitled to it.

(e) Failure to permit visitation with a minor is a violation. (§ 5 ch 166 SLA 1978)

Cross references. — For action for failure to permit visitation with minor child, see AS 25.20.140.

Sec. 11.51.130. Contributing to the delinquency of a minor. (a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed for general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child

(1) under 18 years of age to do any act prohibited by state law unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(2) under 18 years of age to enter or remain in the same room in a building where the unlawful sale of a drug occurs unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(3) under 16 years of age to be repeatedly absent from school, without just cause; or

(4) under 18 years of age to be absent from the custody of a parent, guardian, or custodian without the permission of the parent, guardian, or custodian or without the knowledge of the parent, guardian, or custodian, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative defense to a prosecution under this paragraph that, at the time of the alleged offense, the defendant

(A) reasonably believed that the child was in danger of physical injury or in need of temporary shelter; and

(B) within 12 hours after taking the actions comprising the alleged offense, notified a peace officer, a law enforcement agency, or the Department of Health and Social Services, of the name of the child and the child's location.

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OFFER

(b) Contributing to the delinquency of a minor is a class A misdemeanor. (§ 3 ch 86 SLA 1994; am § 16 ch 11 SLA 1994; am § 2 ch 120 SLA 1994)

Cross references. — For contact with a minor, see AS 1 for legislative purpose related to (a)(4) of this section, see § 1 Temporary and Special Acts.

For offenses involving sexual contact with a minor, see AS 11.41.434 — 11.41.440; related to the 1996 amendment, see § 1, ch. 120, SLA 1996 Special Acts.

Effect of amendments. — effective August 6, 1994, in sub introductory language and former paragraph (3) and red graph (2), rewrote former paragraph (3), added (4), and made a related stylistic change.

The 1996 amendment, effective August 6, 1994, in subsection (a), in paragraph (4), added "the permission of the parent, guardian, or without the knowledge of the

Annotation's notes. — Most the notes below were decided 11.40.130 and 11.40.150.

Alaska's revised Criminal Code changed and narrowed the co Helton v. State, 602 P.2d 1228 (Alaska 1980). As to constitutionality of United States v. Moyers, 16 Alaska 1 (D. Alaska 1956); Etherton v. Alaska 274, 249 F.2d 410 (9th Cir. 355 U.S. 919, 78 S. Ct. 349, 2 L. Anderson v. State, 384 P.2d 669 (Alaska 1963), overruled on cert. v. State, 479 P.2d 486 (Alaska 1971). 602 P.2d 1228 (Alaska 1979).

Purpose. — This section contains the individual child. Unit 16 Alaska 214, 139 F. Supp. 724.

The object of this section is to under the age of eighteen. Anders 669 (Alaska 1963), overruled on cert. v. Guent, 583 P.2d 836 (Alaska 1979). This section was written to prevent as well as punish delinquency 479 P.2d 486 (Alaska 1970).

Obscenity. — Statutes punish the delinquency of a minor may purpose of forbidding obscene material. Hanby v. State, 479 P.2d 486 (Alaska 1970).

The state has the power to ena the access of juveniles within the Such statutes may make it a criminal display obscene materials to minors 479 P.2d 486 (Alaska 1970).

The material need not be so proscribed for the general population forbidden to minors. Hanby v. St (Alaska 1970).

What constitutes delinquency largely from the language of the definitions as it may contain. Unit 16 Alaska 368, 143 F. Supp. 1 (D. Alaska 1956).

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ALASKA ESTATE TAX

§ 43.31.300

executor makes distribution of estate to the heirs, next of kin, secured the tax due the state from the lien of the tax thereon, or so much of it as remains in property belonging to the person of the executor. (§ 2 ch 24

y tax. Every executor has the and dispose of real estate as this chapter as the executor 2 ch 24 SLA 1970)

s may be brought within the to recover the amount of taxes, shall be brought in the superior or if no administration is had on where any of the property 32 SLA 1971)

paid. No final account of an a resident where the value of allowed by any court until the imposed by the provisions of has been paid. The certificate the amount of tax certified is of the tax to the extent of the

: purpose of facilitating the is department may, on behalf ue or to become due from the ent in accordance with the :ment relates. (§ 2 ch 24 SLA

ch 94 SLA 1976. For current

it appears upon the exami- mitted to the department by

4

executor, that an amount of estate tax has been paid in excess of the tax legally due under this chapter, then the amount of overpayment, together with any overpayment of interest on it shall be refunded to the executor and this refund shall be made by the department as a matter of course regardless of whether the executor has filed a written claim for it, except that upon request of the department, the executor shall file with the department a conformed copy of any written claim for refund of federal estate tax which has been filed with the United States.

(b) Notwithstanding (a) of this section, no refund of estate tax may be made nor is any executor entitled to bring an action for refund of estate tax after the expiration of two years from the date of payment of the tax to be refunded unless there has been filed with the department written notice of administrative or judicial determination of the federal estate tax liability of the estate, whichever occurs last, and notice shall have been so filed not later than 60 days after determination has become final.

(c) In this section, an administrative determination shall be considered to have become final on the date of receipt by the executor or other interested party of the final payment to be made refunding federal estate tax or upon the last date on which the executor or any other interested party receives notice from the United States that an overpayment of federal estate tax has been credited by the United States against any liability other than federal estate tax of the estate. A final judicial determination shall be considered to have occurred on the date on which a judgment entered by a court of competent jurisdiction and determining that there has been an overpayment of federal estate tax becomes final.

(d) Nothing in this section prevents an executor from bringing or maintaining an action in a court of competent jurisdiction within a period otherwise prescribed by law to determine any question bearing upon the taxable situs of property, the domicile of a decedent, or otherwise affecting the jurisdiction of the state to impose an inheritance or estate tax with respect to a particular item of property. (§ 2 ch 24 SLA 1970)

Revisor's notes. — Enacted as AS 43.30.280. Re-numbered in 1970.

Sec. 43.31.290. Superior court judge to furnish names of decedents. Each superior court judge shall, on or before the 10th day of every month, notify the department of the names of all decedents, the names and addresses of the respective executors, administrators or curators appointed, the amount of the bonds, if any, required by the court, and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before the judge or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding months. The report shall contain any other information which the judge may have concerning the estate of these decedents. The judge shall also furnish immediately further information, from the records and files of the judge's office in regard to the estates, which the department may from time to time require. (§ 2 ch 24 SLA 1970)

Revisor's notes. — Enacted as AS 43.30.290. Re-numbered in 1970.

Sec. 43.31.300. Corporate executors of nonresident decedents. If the executor of the estate of a nonresident is a corporation duly authorized, qualified and acting as an executor in the jurisdiction of the domicile of the decedent, it is under the duties and obligations as to the giving of notices and filing of returns required by this chapter, and may bring and defend actions and suits as authorized or permitted by this chapter, to the same extent as an individual executor, notwithstanding that the corporation may be prohibited from exercising, in this state, any powers as executor, but nothing in this section authorizes corporations not authorized to do business in this state to qualify or act

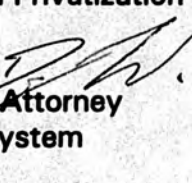
MEMORANDUM

ALASKA COURT SYSTEM

Telephone: (907) 264-8265

Facsimile: (907) 264-8291

TO: Commission on Privatization and the Delivery of Government Services

FROM: Doug Wooliver 
Administrative Attorney
Alaska Court System

DATE: November 17, 1999

RE: Supplemental Report on Computerization Efforts

During last week's commission hearing the commission requested a supplemental report on the specifics of the court system's computerization efforts. Because the person most knowledgeable about that effort (Deputy Director Steve Bouch) is out of town this week, I will submit the report to the commission by November 24th.

**ALASKA COURT SYSTEM'S RESPONSE TO RECOMMENDATIONS BY THE COURT
SYSTEM SUBCOMMITTEE TO THE COMMISSION ON PRIVATIZATION AND THE
DELIVERY OF GOVERNMENT SERVICES**

The following are the Alaska Court System's responses to the recommendations made by the Court System Subcommittee of the Commission on Privatization and the Delivery of Government Services. Although the court system opposes some of the recommendations, it supports many others and supports the commendable efforts made by the subcommittee. The subcommittee met weekly for well over two months and invested a considerable amount of time and effort working to understand the court system and to come up with its recommendations.

RECOMMENDATION 1: BUDGET AND OPERATIONAL RECOMMENDATIONS

The court system is already actively engaged in most of the recommendations made under this section and has no objections to them. However, the court system opposes the creation of a tier three for judicial retirement.

Policy Rationale for a Strong Judicial Retirement System

One of the principal rationales for a strong judicial retirement system is the type of attorneys it helps attract. Judges come from two pools of applicants; government attorneys and private sector attorneys. It is essential that both be represented on the bench. The prospect of a significant loss of income already makes it difficult to attract successful private attorneys to the bench. A sound retirement system helps offset that loss. Reducing judicial retirement benefits will make it even more difficult to attract private attorneys and will likely result in a judiciary comprised almost exclusively of former government attorneys. Although the backgrounds and perspectives of government attorneys are necessary to a well-rounded bench, so are the backgrounds and perspectives of private sector attorneys.

Cost Savings

Given that only a handful of judges are appointed each year, any cost savings associated with a tier three retirement plan would be extremely small and not sufficient to justify the chilling effect it would have on the willingness of private attorneys to serve.

Comparison to Other Compensation Packages

Although the subcommittee compared the state's contribution to judicial retirement to the state's contribution to general state retirement, it did not investigate some of the other differences between the various state compensation packages. For example:

- Judges typically receive smaller cost of living differentials than other state employees. The cost of living differentials for judges in rural areas is limited to a maximum of 17.5% while other state employees receive adjustments of up to 42%.
- Cost of living differentials are not included as compensation for purposes of calculating judicial retirement. The differentials are included as compensation for retirement purposes for other state employees if they received the differential for at least 50% of their service.

- Peace officers, fire fighters, and teachers can retire with full benefits after 20 years of service regardless of their age. Judges receive full benefits only at 60 years of age.
- All state employees other than judicial officers may receive credit toward retirement for up to five years of military service.
- With the exception of judges, retired state employees who are at least 65 and who remain in Alaska receive a retirement supplement of an additional 10% for a cost of living allowance.
- Under both the statutes and the Code of Judicial Conduct judges are more limited than other state employees in the types of investments they can make to supplement their future retirement.

The subcommittee also compared the employer contribution for judicial retirement to the employer contribution for private sector plumbers and other trades people. The utility of that comparison is not immediately obvious. The judges who move from the private sector to the bench do not come from the plumber's union; they come from private law firms. If comparisons to private sector retirement packages are to be made, it might be more helpful to look at the retirement packages of private attorneys.

Comparisons to Judicial Retirement in Other States.

The subcommittee did not compare Alaska's judicial retirement system to the judicial retirement systems in other states. If it had it would have found that Alaska is in line with judicial retirement systems around the country.

- Judicial retirement benefits in Alaska are similar to the benefits in other states including California, Delaware, Georgia, Hawaii, New Hampshire and many others.
- Alaska judges contribute a higher percentage of their salary towards their retirement than do judges in most states.
- Annual cost of living adjustments are also part of many judicial retirement benefits (see e.g. Arizona, Colorado and others). They are not part of Alaska's.

When Alaska's judicial retirement system (which is average) is combined with Alaska's judicial salaries (which are generally at or below the national averages) Alaska judges end up with a compensation package that is well within the national norm.

Conclusion

Given the policy rationale behind judicial retirement, the negligible cost savings of a tier three, and comparisons with other retirement systems, there is little to support a reduction in judicial retirement benefits.

RECOMMENDATION 2: ALTERNATIVE DISPUTE RESOLUTION

The court system supports legislative efforts to develop the private ADR market and to assist the court in its on-going efforts to move appropriate cases to mediation. Although the current court mediation projects are supported by federal grants, legislative support would provide a more stable funding source and help ensure the continuation of these programs.

RECOMMENDATION 3: FEE COLLECTION

The problem statement and recommendations under this section deal with two separate but related issues; indigency determinations for purposes of publicly funded counsel and the recoupment of fees for those services.

Indigency Determinations

An indigency determination is made prior to appointment of counsel in the vast majority of cases. In some probate cases (which represent a small percentage of attorney appointments) the judge will not have any information about the finances of a person who is not present but is entitled to an attorney by law. In those cases the appointment must be made prior to an indigency determination. It is for this limited practical reason that the court system objects to the recommendation that an indigency determination be made in all cases prior to the appointment of counsel.

Although the court system has no objection to a follow-up determination of indigency following appointment (this is already done in most cases) the recommendation of a formal review may be more time consuming and costly than necessary.

Fee Collection

There is a standardized procedure for the collection of attorney fees for the overwhelming majority of public appointments. Most public counsel appointments are made on behalf of criminal defendants. There are uniformly followed statutes and court rules (advocated for and developed by the court system) that govern reimbursement for that representation. Court initiated reform in this area has improved fee collection dramatically over the past several years.

In response to the specific recommendation about fee collections in probate cases, the court system supports efforts to improve the collection procedures in these cases as well.

Although privatizing the collection of delinquent court fees owed the state may or may not produce savings (the subcommittee did not specifically investigate the cost or efficiencies of the current system or the potential for savings through privatization) the court system has long been a champion of the reimbursement of public counsel fees. In fact, last year the supreme court asked that a bill be introduced in the legislature to expand the category of people required to reimburse the state for public counsel appointments. That bill (SB 100) is currently awaiting a hearing in the House Finance Committee.

RECOMMENDATION 4: STATUTES

The court system opposes this proposal to direct the manner in which judges communicate with the supreme court and the legislature. The supreme court has adopted procedures for judicial input on both proposed legislation and suggestions for new legislation. Although the court system is sensitive to the problem of judges being limited in their direct contact with the legislature, there are good reasons for keeping a respectful distance. Any time judges get personally involved in the law making process there is the risk that they will be helping to craft the very laws they will be called upon to interpret. They also run the risk of getting involved in policy issues that are more appropriately left to the legislature. Finally, judges assume the risk that they will be viewed as an advocate of one position or another and the goal of impartiality will be undermined.

It is with an eye towards the balance between valuable judicial input on statutory problems and protecting impartiality that the supreme court, as the head of a separate and coequal branch of government, has developed its policies on how the institution will communicate with judges and interact with the legislature.

RECOMMENDATION 5: PRO SE

The court system is engaged in several projects designed to accommodate the increasing number of pro se litigants and supports legislative efforts that would help in that process.

One of court's efforts in this area was the establishment of the Equal Access to Civil Justice Task Force. That task force was established to study access problems associated with the legal system and to make recommendations to the court system, the Alaska Bar Association, and others. One of the task force's specific areas of inquiry was pro se litigation and the access needs of pro se litigants. It is currently preparing the final draft of its recommendations.

RECOMMENDATION 6: COMPUTER SYSTEM

The court system strongly supports the committee's recommendation that the legislature appropriate the funds needed to complete its ongoing computerization efforts.

The court system is actively engaged in the long and costly process of improving its antiquated computer and technology systems. It is a top priority because the limitations of the current systems severely limit the court's ability to manage its business and to monitor areas for improvement and efficiencies. As part of its technology improvement efforts the court system deals extensively with the private sector. There are commercially developed case management systems available that would not only benefit the court system but other justice related agencies as well, all that is needed are appropriations sufficient to obtain them.

RECOMMENDATION 7: CHILD CUSTODY INVESTIGATORS

Private sector custody investigators have always been used for non-indigent parents in the first, second, and third judicial districts. Pursuant to a recent policy decision by the supreme court that practice will now be followed in the fourth district as well. Although the court system will continue to evaluate the possibility of privatizing custody investigations for indigent parents (which the state pays for), at the present time private custody investigations are considerably more costly than in-house custody investigations.

RECOMMENDATION 8: VICTIM RESTITUTION

The court system supports efforts to improve the collection rate of victim restitution.

RECOMMENDATION 9: LEGISLATIVE BUDGET AND AUDIT

The court system has responded separately to the LB&A audit. A copy of that response is available upon request.

**Alaska Court System
Subcommittee Report****FIRST DRAFT****I. Branch of Government
Alaska Court System****11. BRU and Component Names as Listed in State Budget**

Component	FY2000 Budget
Appellate Courts(767)	3,980.4
Trial Courts (768)	38,840.1
Administration and Support (769)	<u>6,285.2</u>
Total Operating Budget	48,726.4

III. ALL FUND SOURCES**FUNDING SOURCES:**

General Fund (1004)	48,726.4
General Fund / Mental Health (1037)	79.3
Federal Receipts - Grants (1002)	<u>300.0</u>
Total Funding Sources	49,105.7

IV. ALL REVENUE DERIVED**Revenues:**

Filing Fees (64050)	1,600.6
Fines and Forfeitures (65004)	3,749.3
Cost recovery (65020)*	47.2
Service Fees (64030)**	21.1
Interest Earned on Bank Accounts(65770)	374.6
Miscellaneous (64060)***	303.5
Restricted Revenues (Grant Funds)	<u>300.0</u>

Total Projected Revenues 6,396.3

* Cost recovery includes revenues from recovery of Public Defender and Public Advocacy cost.

** Service fees are revenues derived from processing traffic and minor offense citations for local governments.

***Miscellaneous revenues are from notary services, transcription services, and other miscellaneous activities.

V. **CONSTITUTIONAL PROVISIONS GOVERNING COURT SYSTEM OPERATIONS.**

Article IV of the Constitution of the State of Alaska.

VI. **COURT SYSTEM MISSION STATEMENT**

The mission of the Alaska Court System is to provide an accessible and impartial forum for the just resolution of all cases that come before it, and to decide such cases in accordance with the law, expeditiously and with integrity.

VII. **NUMBER OF EMPLOYEES**

648	permanent full-time
48	permanent part-time
21	non-permanent

717 Total

VIII. **COURT SYSTEM TECHNOLOGY**

Case management system

The case management system technology is based on a distributed network of Pentium class computers running SCO UNIX operating system and supporting FALCO terminals (a brand of terminal no longer manufactured). The computers are located in the 28th largest court locations and 24 are connected via the state's wide area network (WAN). Four locations are not connected to the WAN because the state has not tied those locations into the WAN. The courts in those locations are connected via dial-up modems. Another 15 court locations are running standalone Pentium PC's using Windows95 as the operating system and dial-up communications to tie to the rest of the court locations.

The court locations running under UNIX have a case management application (RUG) that is an in-house designed and written program from the late 1980's. It is not a true relational database and suffers from the resultant shortcomings. It was made Y2K compliant as of July 1, 1999. The court locations running of PC's have a very limited in-house developed case management application that is designed for low volume magistrate courts, and it also is Y2K compliant.

Courtroom Recording Systems.

The court is currently in the process of upgrading the courtroom recording systems. The legacy system is an analog tape recorder and sound reinforcement system built by GYYR, a company no longer in existence. Parts are no longer available and must be manufactured or retrofitted by the court's technical staff. The court is currently deploying a new digital recording and sound amplification system in the 15 largest courts

-- 88 courtrooms/hearing rooms. The digital recording systems are supported by local area networks (LAN) that tie the computer-based recording in the courtrooms/hearing rooms and the individual workstations in each location together. In addition to the digital recording systems, the court is replacing the sound reinforcement systems with newer miner/amplifier technology to improve telephonic communications.

Hearing Assistance Devices

Each of the courtrooms is equipped with infrared hearing assistance devices (similar to those utilized in theaters) to provide better service to the court's hearing-impaired users. The hearing devices consist of a transmitter that connects to the sound reinforcement system and individual headsets worn by court customers during court hearings.

Video Conferencing

The court utilizes video conferencing capabilities to conduct arraignments and other allowed hearings between jail facilities and the arraignment courtrooms in three locations.

Micrographics

The court utilized microfilm cameras and reader/printers to archive and access closed court case files. The reader/prINTER devices are over 12 years old and in need of replacement. The machines use thermal paper to reproduce microfilmed images and the manufacturer of the paper will cease production January 1, 2000 making them read only capable. The court is evaluating the most cost-effective alternatives to these machines.

Telephones

The court system relies heavily on telephonic communication to conduct court business with litigants and other court customers throughout the state. The court has upgraded telephones with known Y2K compliance issues and is attempting to find the funding to continue the upgrade of telephone systems in all court locations to digital switches.

IX. COURT SYSTEM CONTRACTS:

See attached for now -- I will enter this data for the next draft.

X. PRIVATIZED SERVICES

Security - perimeter security in Anchorage and Fairbanks, the only two courts with these services.

Janitorial

Snow Removal

(a reciprocal use agreement has been recently entered with the Anchorage court will the Anchorage Parking Authority will remove snow in exchange for the use of the lot for fee parking during non-work hours.)

Transcripts

Interpreters for the deaf (federal law requires the state to pay for these services)

Language Interpreters

Building design and construction

Building maintenance (limited provided by the lessor in leased facilities, by the state in all state owned buildings)

Mediators for pilot mediation programs -- federal grant programs.

Ongoing assessment at privatizing micrographics and printing.

XI. RECOMMENDATIONS OF THE SUBCOMMITTEE:

1) Budget and Operational Recommendations:

A. *Make a record of the ~~equipment~~ ^{and for}* ~~Explore~~ lease vs. purchase on all equipment, in particular electronic and technological modes. This would allow most technological equipment to be updated on a 3, 4, or 5 year period.

B. Hold line on additional personnel, *as approved by the legis* ~~except technological until conversion is made to new state wide computer system modalities.~~

C. *fees should be reviewed each year but should not be* Increase Recording fees; Last change was made in March 1991.

D. *increased more than the cost increase for my given year.* Increase all uniform commercial code filing fees: Last change was in March 1991.

E. Legislature should periodically review all fines and assessments for inflation considerations.

F. Court System, upon installation of new computer system modalities, should implement use of credit card transactions in all courts, and related entities for all types of service. This should be reviewed as to installation and maintenance by the private sector. *(This should reduce man hours, transaction time and cost, and increase cash investment return sufficient to offset cost of the program.)*

G. Legislature should review Judicial Retirement System as to implement a new tier, currently those benefits exceed 25% of Salary in relationship to other employees of about 8%.

H. The Appellate and Superior Courts need to reduce the backlog of cases in a more timely manner to meet national standards and provide better services to the public. This can be accomplished while still maintaining prudence and quality.

1 need a statement regarding making the budget easier to read --

2) Alternative Dispute Resolution:

The Alaska Court System supports the use of alternative resolution in limited civil and criminal cases.

SEE ATTACHED -- WE REALLY NEED TO REVIEW THESE RECOMMENDATIONS AS A COMMITTEE TO SEE IF WE WANT TO USE ANY OF THEM OR ALL OF THEM!!!

3) Fee Collection:

Discussion of privatization for the purposes of fee collection was held in sub-committee.

1) Collection of Court Appointed Legal Representation.

The court generally appoint licensed attorneys to represent indigent or incapacitated individual in:

Guardianship / Conservatorship cases - Probate Court

Public Defenders / Office of Public Advocacy - Criminal cases

Child Custody and Representation of Minors - Probate and Civil

Collection Process: It was disturbing to note that the Probate Court seems to act in a manner that is not entirely consistent with the other courts within the system. In large part, this is due to the fact that court appointed attorneys in the probate arena are more likely as not to be under contract with the Office of Public Advocacy. This agency is under the Department of Administration and since the sub-committee deals with the court system itself, no information could be gathered without invading another sub-committee area of focus.

Generally, court fees are recovered costs, including attorneys not under contract with the OPA, are collected by the local Court Clerk. The accounts which present difficulty of collection are referred to the Attorney General's office, where a 9-member staff handles the collections on a state-wide basis. Information gathered by sub-committee members indicates that 75% of fines and fees are collected locally by the court clerks, leaving only 25% referred to the AG collection department.

Eligibility determination for consumers: Although no in-depth study was made of the eligibility determination process, this may be an area for further scrutiny by the legislature. In other states, there is a court process where stringent criteria must be met

before a finding of indigency. While Alaska does have such a qualification process, it is selectively applied between agencies providing these services.

Privatization of the fee collection services: It is difficult to assess the actual savings due to the cross over of several departments (Attorney General - Law : Public Advocate - Administration). However due to the lack of consistency in the determination of indigency and therefore the lack of follow through in collection of these fees, even providing for the percentage necessary to outsource this service, this is an area that the legislature should explore in depth.

Recommendations: Enact measures to ensure:

a) Insure a true finding of indigency before court appointed attorneys are paid by the State, regardless of court rotation basis or contract appointment basis (Public Defender / Court Rotation Board / Office of Public Advocacy)

b) Standardize the collection of fees process throughout the court system by contracting out the collection process.

c) Provide a mechanism where the service provider can initiate court action to collect -- this may require the removal of the current requirement that corporations, however small, cannot represent themselves without hiring an attorney. This would provide a means for contracting at a more reasonable bid figure if attorney fees were not part of the picture and would enable such collection services to provide more insurance safeguards.

e. each agency report on fees owing / paid etc.

4. **Statutes:** While there appears to be an attempt to communicate between the legislative and judicial branches of government, this communication appears to be one which overwhelms the judicial branch with it's limited abilities to communicate regarding statutes that are conflicting, outmoded or very expensive to implement. Should there be some more easily accessible mode of communication from the front line, to include magistrates, district court judges and standing masters as well as superior court judges, these statutes may come before the legislature in a more timely manner, thereby relieving the judicial of a backlog resulting from statutes which cannot be informed for various reasons.

The legislature should provide some mechanism whereby all judicial officers can by anonymous form, list all statutes which they believe are 1) Conflicting 2) Whose intent it is impossible to achieve 3) Statutes which are too expensive to implement as written.

In order for this to work, there must be a specific Legislative committee which will receive and evaluate these forms on an annual basis.

5. ProSe — *COMING*

6. Computer System — *J-ICE*

7. Court Standing Committees — *TAMAGUI*

8. Child Custody Investigator — *J-ICE*

9. Court System Interaction with Probation — *Colleen*

*Filing
or
Recording*

REPORT TO THE COMMITTEE ON PRIVATIZATION

SUBJECT: MEDIATION

1. METHODOLOGY:

The feasibility of using mediation and professional mediators to lessen the work load of the courts was discussed in sub-committee meetings. The distinction between mediation and arbitration was defined. Separate reports on each were decided upon.

Appointments were arranged with two private professional mediators in Fairbanks who shared their ideas about certification, training and effectiveness of mediation from the prospective of personal experience as service providers.

On the tour of the courthouse, conducted by Judge Steinkruger, the subject of mediation and ADR was brought up. It was Judge Steinkruger's opinion that either or both of these held great potential for helping to "unclog" the courts and possibly to help preserve the family unit in some cases.

2. CATEGORIES OF MEDIATION SERVICES:

Professional mediators fall into both the non-profit and for-profit categories. However, both of them charge for their services.

The non-profit mediators will usually charge on a sliding scale; i.e., covering costs by adjusting charges on the ability to pay which translates into financially secure individuals paying a higher tab than those with limited ability to pay. In addition, grants pick up some of the costs.

The for-profit professional mediators will charge a flat fee for services but at their discretion, can and do enter into payment agreements that will span a period of time. They also do some pro bono work for those who do not have the ability to pay.

Attorneys are offering mediation services as well as ADR services; most at their regular hourly rate. Exceptions are when the services are contracted for by insurance companies and the Bar Association itself, when a contractual rate is applied.

3. AREAS WHERE MEDIATION SERVICES COULD BE EFFECTIVELY EMPLOYED:

Some of the areas where mediation could be successfully employed:

- a. Child Custody
- b. Civil Cases
 - 1. Contract Disputes
 - 2. Fee Disputes
 - 3. Restitution
- c. Domestic Relations
 - 1. Property division
 - 2. Child Support
 - 3. Spousal Support

- d. Probate:
 - 1. Estate Distribution
 - 2. Guardianship/Conservatorship Appointments
 - 3. Parental Support Issues
- e. Juvenile:
 - 1. Restitution
 - 2. Parental Control Issues

4. POTENTIAL COST SAVINGS TO THE COURT SYSTEM:

It is difficult to pinpoint the cost savings to the court system because there is no way to determine exactly what it costs to run the court system itself. In many sectors of the court system, fees are collected which are designed to offset the costs of administration. However, the recovered funds are put into the General Fund, as opposed to being allocated to the court system to defray expense of operation. In other words, there is no net operating cost available with regard to court system operation.

However, professional mediators put the potential cost savings to the court system at anywhere from 20% to 70% decrease in costs of court administration.

5. LEGISLATION REQUIRED TO EFFECT USE OF MEDIATION

Legislation with regard to professional mediation services should:

- a. Set forth the qualifications for certification as a provider of mediation services.
- b. Provide penalties for failure to comply with certification requirements and for malfeasance.
 - 1. Attorneys who provide mediation services should be precluded from representing either party in litigation or from representing either party in a court proceeding directly related to the mediation.
- c. Provide statutory protection for consumers of services by setting forth the duties and role of the mediator.

Also important is for the court system itself to recognize mediation as a cost-saving mechanism and to implement its use.

Submitted by:


"B" Jarvi
Fairbanks

Don Rogers

RESOURCES

Suggested Outline for Subcommittee Reports

I. Agency & Department Name

II. BRU and Component Names as listed in state budget

III Total Budget, all funds

- Identify fund sources

IV. Total Revenue derived

- Net cost/income to state

V. Identify Constitutional and Statutory Provisions Governing Agency Operation

VI. Agency Mission, Goals and Objectives

- Do reality check

VII. Number of Employees

- Identify Specialized Expertise Needed for Mission

VIII. Describe Technology Used to Perform Mission

- Identify Specialized Equipment Needed for Mission

IX. List Existing Agency Contracts including amount, contractor, purpose, term, and procurement method

X. Identify Existing Privatization Practices, if any. Evaluate them for effectiveness and public accountability

XI. Make Recommendations per Section 5 in SB 33, including suggestions for new legislation.

XII. Explain rationale for each recommendation, the number of votes for and against it.

XIII. List problems or barriers to implementing proposed privatization.

1 of 2 To - Rules of Court Review Committee - During our tenure on the privatization committee, one member had occasion to discuss the 2 inch thick ^{rule} book with a practicing attorney. He had many examples of inefficiencies that prolong litigation. Suggest that the RJC Comm not only notify attorneys of its meetings, but actively solicit private attorney participation.

10/13/99 7:13 AM

Memorandum

Alaska Court System

820 W. 4th Avenue, Anchorage, AK 99501-2005

Phone: 264-0785 Fax: 264-0881

TO: Dr. Don Rogers
Privatization Task Force

DATE: October 19, 1999

FROM: Susanne DiPietro
Alaska Court System

SUBJ: ADR Recommendations

Thank you for the opportunity to suggest recommendations for encouraging the private use of alternative dispute resolution procedures in Alaska. As we discussed at the Task Force meeting on September 8, most of the ADR services in the state currently are privately provided, including those associated with the Alaska Court System. The following recommendations are aimed at fostering and supporting emerging private-sector mediation and ADR businesses.

I. Introduction

The Alaska Court System supports the use of alternative dispute resolution in appropriate civil and criminal cases. While increased use of mediation and other forms of alternative dispute resolution are not expected to result in significant cost savings to the courts, the ACS supports ADR because of the potential benefits it offers compared to traditional litigation.

Currently, mediation is the form of ADR that is most in demand. Mediation can reduce the time to disposition and decrease parties' litigation costs by facilitating earlier settlement. Mediation also is associated with high levels of user satisfaction and durable agreements compared to traditional litigation. Third, mediation can help resolve disputes while preserving the relationships of the parties involved (an important benefit in family cases and disputes between businesses that will have a continuing relationship).

II. Recommendations

The following recommendations are directed to the Alaska Legislature. If implemented, they would significantly increase the private use of ADR in Alaska.

YES Recommendation 1: The Alaska Legislature ^{by the Court System should support} ~~should support ongoing, court-~~
~~connected mediation programs, by providing funding for private mediators and~~
~~mediation coordinators.~~ ^{the use of private mediation & arbitrator program.}

Commentary: The Alaska Court System currently is developing court-connected mediation pilot programs for child custody cases and child protection cases. In both of these pilot programs the ACS contracts with private-sector mediators to provide mediation services and to administer the programs. The mediators and administrators are paid with federal grant funds. This federal grant money will run out in the next three years, leaving the ACS with no way to continue to administer the programs and no way to pay for mediation services for indigents.

X Recommendation 2: The Alaska Legislature should provide funds for the ACS to develop and evaluate other ADR pilot projects.

Commentary: In 1997 the Alaska Legislature asked the Alaska Judicial Council to submit a report on ADR in the Alaska Court System. The report recommended that the Alaska Court System receive funding to implement an Early Neutral Evaluation pilot project for business and commercial cases. It also recommended that the ACS develop a pilot project to mediate probate and guardianship cases. Both of these projects would use private-sector service providers. These programs are described in the Alaska Judicial Council's REPORT TO THE ALASKA LEGISLATURE: ALTERNATIVE DISPUTE RESOLUTION IN THE ALASKA COURT SYSTEM (Dec. 1997) (see attached pages). The Legislature did not fund the projects as requested.

X Recommendation 3: The Alaska Legislature should fund the ongoing work of private, nonprofit alternative dispute resolution service providers.

Commentary: While some people have the means to pay for their own mediator or ADR provider, in reality few people who use the courts can afford even reduced fees. Alaska has a handful of nonprofit mediation organizations that respond to this market reality by using volunteer community mediators to provide services for free; however, even these nonprofit organizations need some funding to recruit and train the volunteer mediators and to screen cases to make sure they are appropriate for mediation. These nonprofits currently are funded by short-term grants, a situation which limits their ability to meet the ongoing demand and plan for future development. For a minimal investment of public

money, these community mediation organizations could provide top-quality mediation services to people who could not afford for-profit providers.

YES
Recommendation 4: The Alaska Legislature should appoint a task force to establish minimum qualifications for court-connected mediators, early neutral evaluators and ~~perhaps~~ arbitrators.

The Alaska Judicial Council's 1997 report noted that most state and federal courts have established minimum qualifications for private mediators appointed in court-connected cases. Establishing such standards is a complex task and should be approached as a collaborative effort among lawyers, non-lawyers, community mediators, for-profit mediators, the court system, and other stakeholders. The goal of establishing minimum qualifications is to ensure as much as possible that mediators or other ADR providers appointed in court cases are qualified to help the parties resolve their dispute and are ethical practitioners. The Legislature should fund one of the state's nonprofit mediation organizations to staff the task force and provide technical assistance.

FAX COVER SHEET

Joyce Harris
Harris Household
P.O. Box 71925
Fairbanks, Alaska

(907) 456-8702

Fax (907) 457-8702 - may need to call ahead

SEND TO Company name <i>Maico</i>	From Joyce A. Harris
Attention	Date <i>10/17/99</i>
Office location	Office location Fairbanks, Alaska
Fax number <i>269-0223</i>	Phone number (907) 456-8702

☐ Urgent☐ Reply ASAP☐ Please comment☐ Please review☐ For your informationTotal pages, including cover: *7*

COMMENTS

Court System Sub-Committee -
What else do I owe you?

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Thank-You

WHO'S DOING WHAT?????

Al -- detailed break down of proposed budget request for 98/99. Purchasing, discounts, how bills are paid (how timely) etc.

Don -- Alternative dispute resolution and court system standing committees (do we need more are the ones we have adequate -- what's going on with the committees?)

Ed Leon -- Computer system

Chuck Rollins and Susan (Kenai) -- Pro Se system and how it's working

Susan -- interviews with court system employees and what they feel are problem areas.

Joyce -- Family court and stupid statute research.

"B" -- fees for court appointed attorneys -- how is this determined and who collects?

Shirley -- Fines and collections of fines, how effective is the current system? Outstanding warrants - how is this are being handled?

Colleen -- the court system interaction with the probation officers, how can this be stream lined, how's it working?

Mike -- Computerized system, how to update and the general computer venue currently in existence.

Ken -- Alternative Dispute Resolution.

IF I MISSED ANYONE, COULD YOU PLEASE LET ME KNOW WHO

The following four statutes illustrates an on going problem for the court system:

In this case, the first three statutes are conflicting. A narrative is the easiest way to describe this. A young man is convicted of a sex offense. He then marries and fathers children. The couple divorce and the courts, following the child custody investigation, award shared custody. Now, based on one statute, should the mother leave the children with the father, as court ordered -- then she is a criminal for leaving her children in the care of a known sex offender. However, should she follow one statute, then she violates another regarding the custody and orders for that. She is a criminal is she leaves her children with the father, or if she doesn't.

This is but one instance. The judges can come up with many. However, due to the separation of the arms of the government -- judicial and legislative branches, the judges cannot talk to the legislators or lobby the legislature in any way. Some are reluctant to speak with us on the the sub-committee.

Here is my suggestion: We make the recommendation that the court system be required to report to the legislature on an annual basis regarding statutes which are
1)Conflicting; 2)whose intent it is impossible to achieve due to whatever reasons which would also have to be clearly stated in the report; and 3) statutes which are too expensive to implement as written (see example statute 43.31.290 where it would be much more cost effective to have the personal representatives of estates to meet this requirement).

I was able to discuss this with a couple of judges who like the idea, that way, they can have input without crossing any boundaries or appearing in any way to lobby.

If you have any questions, feel free to call me:

Joyce

§ 11.51.100

CRIMINAL LAW

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OFFENSES

Cross references. — For increase in classification of misdemeanors committed in connection with a criminal street gang, see AS 12.55.137.

Collateral references. — 10 Am. Jur. 2d, Bigamy, § 1 et seq.; 42 Am. Jur. 2d, Infants, §§ 16, 17, 55,

65-74; 47 Am. Jur. 2d, Juvenile Courts, etc., §§ 63-70; 59 Am. Jur. 2d, Parent and Child, §§ 45, 50-57, 10 C.J.S., Bigamy, § 1 et seq.; 43 C.J.S., Infants, §§ 10, 24, 98; 67 C.J.S., Parent and Child, §§ 41, 165-176.

Article 1. Offenses Against the Family.

Section

100. Endangering the welfare of a child in the first degree

110. Endangering the welfare of a child in the second degree

120. Criminal nonsupport

Section

122. Aiding the nonpayment of child support

125. Failure to permit visitation with a minor

130. Contributing to the delinquency of a minor

140. Unlawful marrying

Sec. 11.51.100. Endangering the welfare of a child in the first degree. (a) A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person

(1) intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child;

(2) leaves the child with another person who is not a parent, guardian, or lawful custodian of the child knowing that the person

(A) is registered or required to register as a sex offender under AS 12.63 or a law or ordinance in another jurisdiction with similar requirements;

(B) has been charged by complaint, information, or indictment with a violation of AS 11.41.410 — 11.41.455 or a law or ordinance in another jurisdiction with similar elements; or

(C) has been charged by complaint, information, or indictment with an attempt, solicitation, or conspiracy to commit a crime described in (B) of this paragraph; or

(3) leaves the child with another person knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury or engages in sexual contact with the child.

(b) In this section, "physically mistreated" means

(1) having committed an act punishable under AS 11.41.100 — 11.41.250; or

(2) having applied force to a child that, under the circumstances in which it was applied, or considering the age or physical condition of the child, constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation because of the substantial and unjustifiable risk of

(A) death;

(B) serious or protracted disfigurement;

(C) protracted impairment of health;

(D) loss or impairment of the function of a body member or organ;

(E) substantial skin bruising, burning, or other skin injury;

(F) internal bleeding or subdural hematoma;

(G) bone fracture; or

(H) prolonged or extreme pain, swelling, or injury to soft tissue

(c) Endangering the welfare of a child in the first degree under (a)(1) or (2) of this section is a class C felony.

(3) class A misdemeanor i
§ 5 ch 99 SLA 1998)

Effect of amendments. — The effective September 14, 1998, rewording of Legislative history reports.

Quoted in Michael v. State, 76 Ct. App. 1988).

Collateral references. — Li. injury to unemancipated child; negligence — modern cases.

Sec. 11.51.110. Enda. person commits the crime of endangering the welfare of a child in the second degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person

(1) causes or allows the controlled substance is stored in the home of the person, while caring for a

(2) is impaired by an intoxicant present to care

(b) In this section,

(1) "impaired" means the person is affected so that the person needs of a child with the

(2) "intoxicant" has the

(c) Endangering the welfare of a child in the second degree under (a)(1) or (2) of this section is a class C felony.

Effective dates. — Section 11.51.110, which enacted this section, took effect September 14, 1998.

Legislative history report

Sec. 11.51.120. Criminal nonsupport if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person fails to provide for the child's basic needs, including medical attention, and a child if the child is provided for in accordance with the terms of a court order by an accredited practitioner

(b) As used in this section, "medical attention" means medical attention, and a child if the child is provided for in accordance with the terms of a court order by an accredited practitioner

(c) Criminal nonsupport is a class C felony if the child is provided for in accordance with the terms of a court order by an accredited practitioner

(d) Criminal nonsupport is a class C felony if the child is provided for in accordance with the terms of a court order by an accredited practitioner

(e) Criminal nonsupport is a class C felony if the child is provided for in accordance with the terms of a court order by an accredited practitioner

(f) Criminal nonsupport is a class C felony if the child is provided for in accordance with the terms of a court order by an accredited practitioner

Delayed amendment of AS 11.51.120, ch. 132, SLA 1998

2

§ 11.51.125

CRIMINAL LAW

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(d) Aiding the nonpayment of child support is a class A misdemeanor. (§ 3 ch 85 SLA 1994)

Effective dates. — Section 3, ch. 85, SLA 1994, which enacted this section, took effect on September 4, 1994.

Sec. 11.51.125. Failure to permit visitation with a minor. (a) A custodian commits the offense of failure to permit visitation with a minor if the custodian intentionally, and without just excuse, fails to permit visitation with a child under 18 years of age in the custodian's custody in substantial conformance with a court order that is specific as to when the custodian must permit another to have visitation with that child.

(b) The custodian may not be charged under this section with more than one offense in respect to what is, under the court order, a single continuous period of visitation.

(c) In a prosecution under this section, existing provisions of law prohibiting the disclosure of confidential communications between husband and wife do not apply, and both husband and wife are competent to testify for or against each other as to all relevant matters, if a court order has awarded custody to one spouse and visitation to the other.

(d) As used in this section,

(1) "court order" means a decree, judgment, or order issued by a court of competent jurisdiction;

(2) "custodian" means a natural person who has been awarded custody, either temporary or permanent, of a child under 18 years of age;

(3) "just excuse" includes illness of the child which makes it dangerous to the health of the child for visitation to take place in conformance with the court order; "just excuse" does not include the wish of the child not to have visitation with the person entitled to it.

(e) Failure to permit visitation with a minor is a violation. (§ 5 ch 166 SLA 1978)

Cross references. — For action for failure to permit visitation with minor child, see AS 25.20.140.

Sec. 11.51.130. Contributing to the delinquency of a minor. (a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed for general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child

(1) under 18 years of age to do any act prohibited by state law unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(2) under 18 years of age to enter or remain in the same room in a building where the unlawful sale of a drug occurs unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(3) under 16 years of age to be repeatedly absent from school, without just cause; or

(4) under 18 years of age to be absent from the custody of a parent, guardian, or custodian without the permission of the parent, guardian, or custodian or without the knowledge of the parent, guardian, or custodian, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative defense to a prosecution under this paragraph that, at the time of the alleged offense, the defendant

(A) reasonably believed that the child was in danger of physical injury or in need of temporary shelter; and

(B) within 12 hours after taking the actions comprising the alleged offense, notified a peace officer, a law enforcement agency, or the Department of Health and Social Services of the name of the child and the child's location.

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OFFENSES

(b) Contributing to the SLA 1978; am § 16 ch 105 am § 2 ch 120 SLA 1996)

Cross references. — For offense contact with a minor, see AS 11 for legislative purpose related to (a)(4) of this section, see § 1. Temporary and Special Acts.

For offenses involving sexual see AS 11.41.434 — 11.41.440; for related to the 1996 amendment, see § 1, ch. 120, SLA 1996; Special Acts.

Effect of amendments. — T. effective August 6, 1994, in subintroductory language and par former paragraph (3) and redef graph (2), rewrote former paragraph it as paragraph (3), added (4), and made a related stylistic

The 1996 amendment, effective 1996, in subsection (a), in paragraph "the permission of the parent, or without the knowledge of the

Annotator's notes. — Most the notes below were decided 11.40.130 and 11.40.150.

Alaska's revised Criminal changed and narrowed the co Holton v. State, 602 P.2d 1228 (Alaska 1980). As to constitutionality of United States v. Meyers, 16 Alas 1 (D. Alaska 1956); Etherton v. State, 249 F.2d 410 (9th Cir. 355 U.S. 919, 78 S. Ct. 349, 2 L. Anderson v. State, 384 P.2d 669 (Alaska 1963). v. State, 479 P.2d 486 (Alaska 1971). 602 P.2d 1228 (Alaska 1979).

Purpose. — This section contains the individual child. Unit 16 Alaska 214, 139 F. Supp. 724

The object of this section is to under the age of eighteen. Anderson 669 (Alaska 1963), overruled on v. Guest, 583 P.2d 836 (Alaska 1979).

This section was written to prevent as well as punish delinquency 479 P.2d 486 (Alaska 1970).

Obscenity. — Statutes punish the delinquency of a minor for purpose of forbidding obscene material. Hanby v. State, 479 P.2d 486 (Alaska 1970).

The state has the power to restrict the access of juveniles within the state. Such statutes may make it a crime to display obscene materials to minors 479 P.2d 486 (Alaska 1970).

The material need not be as prescribed for the general population forbidden to minors. Hanby v. State, 479 P.2d 486 (Alaska 1970).

What constitutes delinquency largely from the language of the definitions as it may contain. Unit 16 Alaska 348, 143 F. Supp. 1 (D.

400

ALASKA ESTATE TAX

§ 43.31.300

executor makes distribution of the estate to the heirs, next of kin, or to the persons entitled to the estate, secured the tax due the state from the lien of the tax the estate, or so much of it as remains in the estate belonging to the person or persons of the executor. (§ 2 ch 24 SLA 1970)

Every executor has the duty to pay the tax and dispose of real estate as provided in this chapter as the executor. (§ 2 ch 24 SLA 1970)

A claim for a refund may be brought within the time prescribed to recover the amount of taxes, and shall be brought in the superior court or if no administration is had on where any of the property is located. (§ 2 ch 24 SLA 1971)

A final account of an executor shall be allowed by any court until the tax has been paid. The certificate of the amount of tax certified is of the tax to the extent of the

The purpose of facilitating the payment of the tax by the department may, on behalf of the estate, or to become due from the estate in accordance with the provisions of this chapter. (§ 2 ch 24 SLA 1970)

4 ch 94 SLA 1976. For current

in it appears upon the examination of the department by

executor, that an amount of estate tax has been paid in excess of the tax legally due under this chapter, then the amount of overpayment, together with any overpayment of interest on it shall be refunded to the executor and this refund shall be made by the department as a matter of course regardless of whether the executor has filed a written claim for it, except that upon request of the department, the executor shall file with the department a conformed copy of any written claim for refund of federal estate tax which has been filed with the United States.

(b) Notwithstanding (a) of this section, no refund of estate tax may be made nor is any executor entitled to bring an action for refund of estate tax after the expiration of two years from the date of payment of the tax to be refunded unless there has been filed with the department written notice of administrative or judicial determination of the federal estate tax liability of the estate, whichever occurs last, and notice shall have been so filed not later than 60 days after determination has become final.

(c) In this section, an administrative determination shall be considered to have become final on the date of receipt by the executor or other interested party of the final payment to be made refunding federal estate tax or upon the last date on which the executor or any other interested party receives notice from the United States that an overpayment of federal estate tax has been credited by the United States against any liability other than federal estate tax of the estate. A final judicial determination shall be considered to have occurred on the date on which a judgment entered by a court of competent jurisdiction and determining that there has been an overpayment of federal estate tax becomes final.

(d) Nothing in this section prevents an executor from bringing or maintaining an action in a court of competent jurisdiction within a period otherwise prescribed by law to determine any question bearing upon the taxable situs of property, the domicile of a decedent, or otherwise affecting the jurisdiction of the state to impose an inheritance or estate tax with respect to a particular item of property. (§ 2 ch 24 SLA 1970)

Revisor's notes. — Enacted as AS 43.30.280. Renumbered in 1970.

Sec. 43.31.290. Superior court judge to furnish names of decedents. Each superior court judge shall, on or before the 10th day of every month, notify the department of the names of all decedents, the names and addresses of the respective executors, administrators or curators appointed, the amount of the bonds, if any, required by the court, and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before the judge or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding months. The report shall contain any other information which the judge may have concerning the estate of these decedents. The judge shall also furnish immediately further information, from the records and files of the judge's office in regard to the estates, which the department may from time to time require. (§ 2 ch 24 SLA 1970)

Revisor's notes. — Enacted as AS 43.30.290. Renumbered in 1970.

Sec. 43.31.300. Corporate executors of nonresident decedents. If the executor of the estate of a nonresident is a corporation duly authorized, qualified and acting as an executor in the jurisdiction of the domicile of the decedent, it is under the duties and obligations as to the giving of notices and filing of returns required by this chapter, and may bring and defend actions and suits as authorized or permitted by this chapter, to the same extent as an individual executor, notwithstanding that the corporation may be prohibited from exercising, in this state, any powers as executor, but nothing in this section authorizes corporations not authorized to do business in this state to qualify or act

4

Welcome and Thank You New Members

Advocates: The Arbitration Group, Kevin & Kris Selman, Karen Largent, Sidney Billingslea, Betty Butizis, Joan M. Unger. **Collaborators:** Max Gruenberg, Jeanette Adams, South-Central Timber Development, Inc., Kenneth Kirk, Marla Greenstein, Barbara Hood, Odette Foster, Anita Laurence, Charlotte Phelps. **Mediators:** Margaret King, Robert Jones/Toni Kahklen-Jones, Hughes Thorsness Powell Huddleston and Bauman, LLC, Anchorage Mediation Services, Cynthia Ednsley, Jennifer Wells, Cathy Satterfield, Vicki Doster, Paul Wilcox. **Diplomats:** Dolores Coates, John Matus and Niki Stewart, Berchams and Cynthia Wick, Mark Begich, Susanne DiPietro and Thomas Pease, Rebecca and Steven O'hara, Glen Cravez.

Board of Directors

Susanne Di Pietro, President, Director of Magistrate Services for the Alaska Court System, Cynthia Wick, Vice President, Alyeska Pipeline Service Co., Dr. Patrick Cunningham, Treasurer, University of Alaska, Social Work Dept., Drew Peterson, Attorney and Private Mediator, Eric Kahklen, University of Alaska, Student Services, Pat Parnell, Private Mediator, Toni Kahklein-Jones, Alyeska Pipeline Service Co., Emery Rashad, International Marketer, Ethan Berkowitz, Alaska House of Representatives.

Our Mission:

Conflict is an unavoidable part of our lives that can tear the fabric of our families and communities. *The Resolution Center* believes conflict presents both a challenge and an opportunity to heal and restore relationships. We promote peaceful conflict resolution that empowers the parties, generates open and honest communication, results in mutually agreeable solutions, and encourages respect for others. *The Resolution Center* is founded on principles of restorative justice and collaboration.

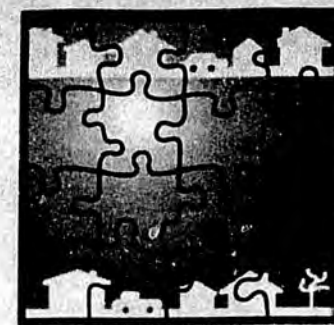


**the
RESOLUTION CENTER**
Finding peaceful solutions for family & community problems
505 W. Northern Lights Blvd., Suite 210, Anchorage, AK

Address Correction Requested

John Cowdery
716 W. 4th Ave, Suite 320
Anchorage, AK 99501

Mediation
Helping people solve their own problems



**the
RESOLUTION CENTER**
Finding peaceful solutions for family & community problems

"Say What You Really Mean- Congruent Sending"

Congruent sending means making the content of your message correspond with what you are feeling. Sometimes we attempt to lessen the risk of saying what we really think or feel by changing our message, softening or distorting it, and thus becoming incongruent. We are not saying what we really mean.

Congruent Sending is a way of enhancing the power and effectiveness of our communication and reducing misunderstandings and conflicts. If we are trying to hide strong feelings they will tend to "leak out" anyway through non-verbal communications (voice tone, gestures, eye contact). If our verbal and non-verbal messages are not congruent, our listeners will begin to distrust our message and us. Say what you mean by focusing on the problem and not the person. State the problem in terms of its effect on you, rather than in terms of the other person's failures.

Thank You!

Thank You To:

- All of our mediators for their dedication and patience!
- Internet Alaska for providing our Internet service
- Bill's Copier Service for servicing our copier
- Cathy Satterfield for writing a grant!
- Herbert Lee, Jr. for our office and conference room space.
- Connie Taylor of Fathom Graphics for accounting assistance.
- Cynthia Ednsley for teaching Conflict Management Training

The Resolution Center is only able to offer its services through the generosity of others.

505 W. Northern Lights Blvd., Suite 210, Anchorage, AK 99503 • (907) 274-1542 • cdrc@alaska.net

From the Director

What a busy summer! Our membership drive is off to a good start. We are pleased with the initial interest and are actively recruiting members. Please ask your friends to become members and support our important work. Just call or email me and I'll send you the membership forms.

We are so fortunate to have the renowned Dr. Mark Umbreit helping us with our pilot adult victim offender program with the Municipal Prosecutor's Office. The Municipal Prosecutor, John Roberts and Al Patterson, the Restorative Justice Coordinator are working closely with us to develop appropriate case screening criteria and case processing procedures. Dr. Umbreit is returning in October to assess our progress and provide additional assistance.

Something else that's new and exciting – *Victim Empathy* training. In December we will be piloting a 6-hour Victim Empathy training class for youth offenders. We have been working with Juvenile Intake Supervisor, Linda Moffitt and Juvenile Probation Officer, Ernie Alvarez to design the curriculum and participant selection process. This training is designed as a diversion program for repeat offenders. The objective is to increase the youth offender's feelings of empathy for victims and understanding of the impact of crime on victims and the community. In some situations, youth will be required to attend this training before participating in victim offender mediation.

And last but certainly not least, I want to express a very special thank you to Debbie Hassell and Jessie Kullberg, our case managers. They share a demanding and challenging job and they make it look easy. They work tirelessly to make sure that our clients are served and the work gets done. Thank you Debbie and Jessie!

Kris Conquergood,
Executive Director

Are You Really Listening?

Most of us do not really hear everything others are telling us. We make the mistake of framing our conversation with our own opinions and remarks. We are often too busy framing our own reply to hear the facts or observations that are being given to us. Here are some helpful behaviors to improve our listening:

- **Attending:** Truly being with another; give them your total attention; make level eye contact; focus your attention on them.
- **Silence:** Be quiet while another talks. Silence is very powerful.
- **Acknowledgment:** Make non-evaluative response, letting another know you heard what he or she said (e.g., "Hmmm," "Really," "Yes," "I see," etc.) Acknowledgment lets the other know you're with him/her.
- **Door Openers:** Give open-ended invitations for the other to send more (i.e., "Would you like to talk about it?" "I'd like to hear more," "Say more about that." Door openers are very effective in creating an opportunity for another to talk more.

Active Listening Is Not:

- Giving Advice
- Telling our own story
- One Up ManShip
- Trying to "Fix It"
- Trying to change the situation
- Asking a question that would lead to a "yes or no" answer

Dr. Mark Umbreit Visits The Resolution Center

This July, Dr. Mark Umbreit, a nationally recognized expert in victim offender mediation from the University of Minnesota - The Center for Restorative Justice and Mediation, spent two days helping us with our new pilot adult victim offender mediation program. The National Institute of Corrections is funding his technical assistance visits. As part of his visit he taught a one-day training seminar for volunteer mediators along with several additional guests from the Department of Correction and the Municipal Prosecutor's Office. This training focused on a state-of-the art review of the growth and development of the field of restorative justice and victim offender mediation. He also discussed issues related to case management procedures, victim sensitive practice and humanistic "dialogue driven" mediation.

Dr. Umbreit met with the Municipal Prosecutor, our partner in the adult victim offender program and our staff. This was an extremely productive meeting with a good deal of time spent on very specific procedures of referral and processing of cases. Dr. Umbreit is highly complementary of The Resolution Center and believes that we have an excellent foundation for development and management of an adult VOMP. He noted that we have a very good relationship with the Municipal Prosecutor, Department of Corrections and other community agencies.

Monthly Mediator Meeting

Mark your calendar Here is an opportunity to dialog with Dr. Mark Umbreit from the University of Minnesota. He will be at our next mediator meetings to discuss victim offender and transformative mediation. The meeting will be October 28, 1999 from 6:00 p.m. to 8:00 p.m. at United Way Conference Room (1057 W. Fireweed Lane).

"The telling and hearing of each other's stories about the conflict, the opportunity for maximum direct communication with each other, and the importance of honoring silence and the inner wisdom and strength of the participants are all central to humanistic mediation practice."

Mark Umbreit

Summer Intern Profile

Hello! My name is Lynda Plummer and I join Raquel Villegas and Maggie Price as interns this school year at The Resolution Center. Maggie and I are Human Service majors and Raquel is a Social Work major at the University of Alaska. We all feel terribly fortunate to have been placed within an agency whose mission is so important and whose staff is so dedicated.

As a practicum student in Human Services, I am required to complete four outside practicums within agencies. This offers the opportunity for the student to fuse together the knowledge of the classroom and the reality of the real world! In addition, the practicum offers the student exposure to a wide variety of agency missions and populations.

My time spent at the agency so far has been largely focused on learning the basics and standing back in awe as I watch Jessie, our case manager, handle five different things at once with such ease and professionalism. Meanwhile, I am struggling over such basic matters as how to retrieve, save, and erase messages on the telephone!

Telephone struggles aside, I plan to be up and running soon and working with the staff on many exciting projects. One of the projects I am most excited about is meeting with school counselors and developing strategies to recruit teen mediators. Being the mother of a teenage daughter myself, I recognize the power of peer groups and the misguided perceptions that kids have of each other. This often creates a wide range of problems. Communication, accountability, responsibility, and acceptance of diversity are critical towards healing relationships.

Mediation offers positive solutions to a wide variety of conflicts. I, for one, am excited to be a part of it!

A Big Welcome to Our New Student Interns

Linda Plummer is in the Human Services Bachelor Program and is completing her Senior Practicum. She is interested in helping The Resolution Center without outreach efforts with the schools and recruitment of teen mediators.

Maggie Price is in the Human Services Bachelor Program and is completing her junior year Practicum. She is very

interested in alternative dispute resolution and is looking forward to learning how to mediate.

Raquel Villegas is in the Social Work Bachelor Program and is working with us for her senior year Practicum. She is especially interested in helping families and our parent adolescent mediation.

Professional Mediation Training

The Resolution Center is sponsoring a 40-hour basic mediation workshop November 11-13 and 19-20 as a fundraiser. The training will be presented by Wingspan Training and Consulting. Drew Peterson, an attorney, mediator, and a Resolution Center board member, is the lead presenter for all five days. We are excited that each day Drew will be assisted by a highly qualified volunteer co-presenter. The co-presenters are:

Kris Conquergood, Executive Director of The Resolution Center, **Joan Woodward**, retired Alaska Superior Court Judge and private mediator, **Dr. Lucretia Collins**, Principal at Klatt Elementary, **Glen Cravez**, Attorney and Chair of the Alternative Resolution Dispute Section of the Alaska Bar Association, **Susanne Di Pietro**, Attorney and Director of Magistrate Services for the Alaska State Court System.

Call 274-1542 for additional information or reservations.

Volunteer Mediators Contribute

Our volunteer mediators play a vital and essential role at The Resolution Center. In FY99, they contributed over \$33,000 in Inkind services alone. They work in teams of two to co-mediate victim offender and parent adolescent mediations. Volunteer mediators make it possible for us to provide our services at no-cost or low-cost. They respond to our requests on a moment's notice and work evenings and weekends to help others.

"Model the world you want."

Gandhi

THE RESOLUTION CENTER

First Annual Membership Drive

Help The Resolution Center expand our services! We want people who need help to get it. Right now there are neighborhoods that are being torn apart by warring neighbors who are locked in ugly, unproductive disputes. We want to reach out help them develop peaceful solutions.

Your membership donation will allow The Resolution Center to develop and fund a new neighbor to neighbor mediation program. Become a member of *The Resolution Center*; make a difference in your community. Your donation will support our programs, and we'll keep you informed through our quarterly newsletter.

We have several giving levels:

<i>Advocate</i>	<i>\$10.00</i>
<i>Facilitator</i>	<i>\$15.00</i>
<i>Collaborator</i>	<i>\$25.00</i>
<i>Mediator</i>	<i>\$50.00</i>
<i>Peacemaker</i>	<i>\$75.00</i>
<i>Diplomat</i>	<i>\$100.00+</i>

Make a difference today.....

Families in Anchorage need your help. Our community needs your help.
Foster peaceful solutions to harmful disputes by becoming a member of

The Resolution Center

Yes, I believe peaceful solutions are possible. Here is my membership donation:

\$10.00 ____ ***\$15.00*** ____ ***\$25.00*** ____ ***\$50*** ____ ***\$75.00*** ____ ***\$100.00+*** ____

You may list my name as a member of The Resolution Center. ____

I am interested in volunteer opportunities. Please contact me at ____.

Donations are tax deductible.

THANK YOU!



☆ ☆ ☆ ☆
☆ ☆ ☆ **Alaska State Legislature**

Legislative Research Services

130 Seward Street, Room 218

Juneau, AK 99801

465-3991

463-3351 (fax)

www.legis.state.ak.us/research/home.htm

Attached is the information you requested. We hope you find it useful. If you have questions or need additional information, please contact us.

9/24/99

Marco -

Here is some information on public dependees from CSG. The ones with addresses are ^{state} government offices - the others are county or non-profit. I'm out of the office next week at a meeting, but when I get back I can dig a little further if you want more detail. Please just email me -

Lairden Wakefield

PS I'm also expecting some info from NCSL

AT - MAR 20

Public Defender

Represents indigent criminal defendants who desire to appeal their convictions to the state's intermediate appellate court or court of last resort.

ALABAMA

ALASKA

Barbara Brink
Director
Public Defender Agency
Dept. of Administration
900 W. 5th Ave., Ste. 200
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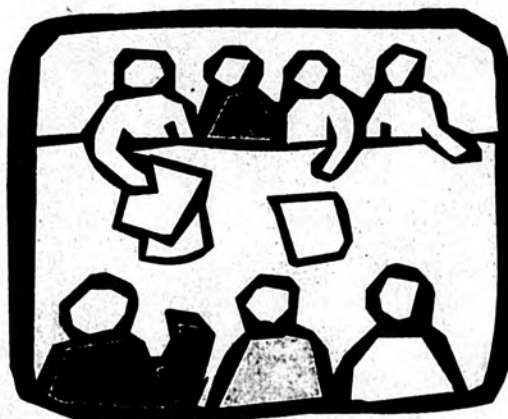
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SPECIAL COMMITTEES AND TASK FORCES



**ALASKA COURT SYSTEM
Office of the Administrative Director
(907) 264-0548**

January 1999

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I. Name of Committee/Task Force

Fairness and Access Implementation Committee

II. Purpose/Charge

To continue the work of the Alaska Supreme Court Advisory Committee on Fairness and Access and to implement the recommendations of the committee's October 31, 1997 report, as feasible. The original eight member committee spent 20 months examining racial and ethnic bias issues in the Alaska state court system, and made 21 recommendations.

III. Date Formed

April 1998

IV. Chaired By

Supreme Court Justice Robert L. Eastaugh and Superior Court Judge Mary E. Greene

V. Committee Members

Supreme Court Justice Robert L. Eastaugh; Superior Court Judges Mary E. Greene, Brian Shortell, Eric Smith, Larry Zervos; District Court Judge Patricia Collins, Administrative Director Stephanie Cole; Teresa White Carns and Susanne Di Pietro, Alaska Judicial Council; Senior Justice Jay A. Rabniowitz, ex-officio.

VI. Staff Support Provided By

Karla Oates, Administrative Secretary - 264-8232

VII. Current Status of Work

Subcommittees are working on projects in five areas: rural services, public education, local dispute resolution, language and interpreters and juries. Work is also continuing on court employment issues. Projects completed or underway include a cultural navigator/court facilitator pilot project; diversity training for all court staff and a two-day conference/retreat for judges and court staff linking the findings in the Fairness and Access Committee's report to the Trial Court Performance Standards. Projects planned for the immediate future include development of a new Affirmative Action Plan and an "On-Line Encyclopedia of Resources for Criminal and Family Courts." A grant request is pending which would fund additional judicial resources for the Yukon-Kuskokwim Delta. The Human Resources Department is continuing a variety of efforts to encourage members of minority groups to apply for jobs with the court system, increase minority hires and support minority in-house promotions.

VIII. Contact Person (name, title, address, phone, fax and e-mail) for Committee/Task Force

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I. Name of Committee/Task Force

Statewide Task Force on Access to Civil Justice

II. Purpose/Charge

To investigate, plan and recommend methods to increase the delivery of civil legal assistance and improve access to justice for the people of Alaska.

III. Date Formed

February 1998

IV. Chaired By

Justice Dana Fabe

V. Committee Members

See attached list

VI. Staff Support Provided By

Alaska Bar Association

VII. Current Status of Work

Six subcommittees have developed reports and recommendations and sent them to the task force steering committee (pro se litigants, Non-Alaska Legal Services Corporation eligible, pro bono, ADR, community legal support and education, and Alaska Legal Services). The task force at large will meet in February 1999. Recommendations will be included in a final report sent to the supreme court. The goal for the submission of the report is spring 1999.

VIII. Contact Person (name, title, address, phone, fax and e-mail) for Committee/Task Force

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Alaska Task Force on Access to Civil Justice Membership

(Rev. 5/19/98)

Chair - Justice Dana Fabe

Task Force Steering Committee:

Name	Representing
Sen. Al Adams	State Senate
Danny Bolden	ALSC elig. clients
Magistrate Judge Harry Branson	Federal Courts
Robin Bronen	Non-ALSC elig. clients
David Bundy	Alaska Bar Assoc.
David Call	Fairbanks attorneys
Michele Christiansen	Alaska Native clients
Stephanie Cole	Court System
Anne Marie Cotter	ALSC-rural
Seth Eames	Pro Bono Program
Nancy Gordon	Governor's appointee
Carol Heyman	Business Community
Mark Kroloff	Corporate attorneys
Brant McGee	Public sector attorneys
Rep. Irene Nicholia	State House
Art Peterson	ALSC Board
Marcia Rom	ALSC-urban
Bryan Timbers	2nd Judicial District
Jim Valcarce	Bethel attorneys
Lach Zemp	Southeast attorneys

Task Force At-large members:

Lynn Allingham	IOLTA Commission
Joan Connors	M.O.A. Ombudsman
Jim Decker	Corporate attorneys
Robert Hickerson	Alaska Legal Services
Rep. Reggie Joule	Alaska State House
Allison Mendel	Private attorneys
Jim Minnery	ALSC Fundraising
Judge John Reese	State trial courts
Lisa Rieger	UAA Justice Center
Mark Rindner	Pro Bono Services
Diane Smith	Federal Pro Se cases
Diane Vallentine	Alaska Bar Assoc.
Donna Willard	American Bar Assoc.

Members of AK Bar Pro Bono Services Committee not previously named

Members of AK Bar Board of Governors not previously named

Presiding Judges not previously named

Others (serving as volunteer staff)

Ilona Besseney - author
Susanne Di Pietro
Nancy Shaw
Seth Eames
Deborah O'Regan

I. Name of Committee/Task Force

Criminal Justice Assessment Commission

II. Purpose/Charge

See attached Mission Statement and Goals

III. Date Formed

July 1997

IV. Chaired By

Attorney General Bruce Botelho and Arthur Snowden (former Administrative Director of the Alaska Court System)

V. Committee Members

See attached list

VI. Staff Support Provided By

Executive Director Teri Carns and staff of the Alaska Judicial Council.

VII. Current Status of Work

Subcommittees (see attachment) have submitted recommendations.

VIII. Contact Person (name, title, address, phone, fax and e-mail) for Committee/Task Force

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Criminal Justice Assessment Commission

Co-Chairs: Bruce Botelho, Attorney General and Arthur H. Snowden II

Membership: Representatives from executive branch agencies, House and Senate, judiciary, and public criminal justice-related organizations

Mission: The Criminal Justice Assessment Commission shall use a collaborative process to:

review, develop, recommend, and implement strategies within the criminal justice system so that all offenders are held appropriately accountable for their conduct;

promote responsible alternative options or community solutions for pre-trial and post-conviction incarceration for misdemeanants and felons;

work to make the criminal justice system more cost-effective to the extent this may be achieved without compromising public safety;

promote system efficiencies to relieve prison overcrowding

Committees:

Decriminalizing the Mentally Ill - Chair, Judge Stephanie Rhodes

- ◆ Develop proposals and strategies to reduce the number of mentally ill offenders incarcerated;
- ◆ Design projects to provide treatment options for mentally ill offenders;
- ◆ Monitor and evaluate projects and strategies approved by CJAC.

Parole and Probation - Co-Chairs, Larry Jones and Lynda Zaugg

- ◆ Develop proposals and strategies to improve the management of offenders on parole and probation, and to assist victims and offenders on parole and probation with their needs;
- ◆ Design projects to provide more effective parole and probation supervision and revocation;
- ◆ Monitor and evaluate projects and strategies approved by CJAC.

Pretrial - Chair, John Richard

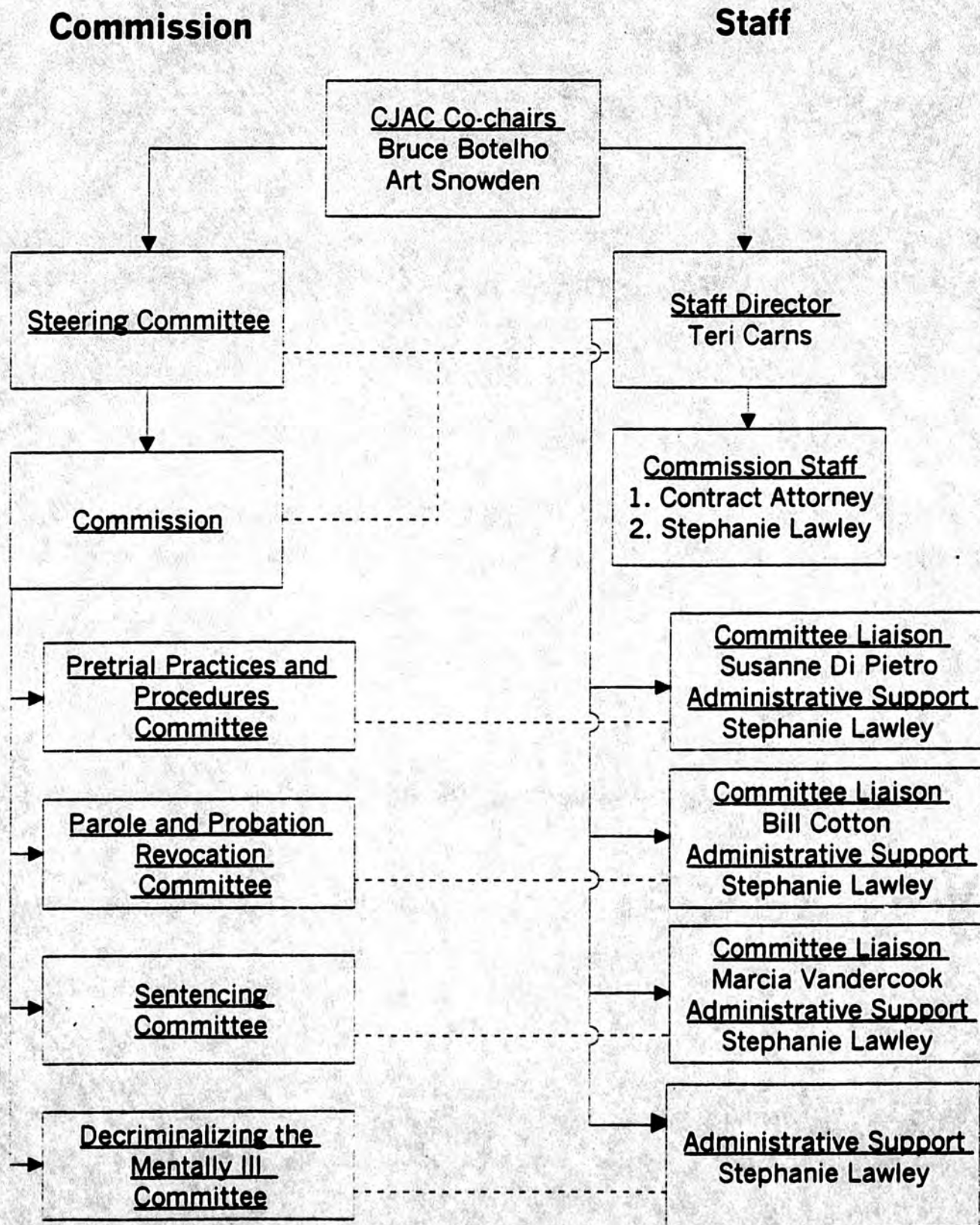
- ◆ Develop proposals and strategies to reduce the number of persons incarcerated prior to trial and conviction;
- ◆ Design projects to monitor defendants on pretrial release and to make the trial process more efficient while maintaining fairness;
- ◆ Monitor and evaluate projects and strategies approved by CJAC.

Sentencing - Chair, Cindy Cooper

- ◆ Develop proposals and strategies to provide alternatives to incarceration for sentenced offenders;
- ◆ Design projects to implement these proposals and to help the criminal justice system deal with offenders more effectively;
- ◆ Monitor and evaluate proposals and strategies approved by CJAC.

Criminal Justice Assessment Commission

Organizational Chart



Criminal Justice Assessment Commission

Governor Tony Knowles, Chief Justice Warren Matthews, Senate President Mike Miller, and House Speaker Gail Phillips have established the Criminal Justice Assessment Commission to review, develop, and implement strategies within the criminal justice system so that all offenders are held appropriately accountable for their conduct.

The commission is co-chaired by Arthur Snowden and Bruce Botelho. Teri Carns of the Alaska Judicial Council is the Commission's staff director. The Commission also is supported by assistant attorney general Margot Knuth. The National Institute of Corrections and the Corrections Program Office of the Justice Department's Office of Justice Programs are supporting the Commission with a technical assistance grant.

◆ Mission Statement

◆ Membership

◆ Commission Minutes

- July 21, 1997
- September 16, 1997
- December 15, 1997
- January 19, 1998
- March 26, 1998
- June 26, 1998
- September 28, 1998

◆ Subcommittees

◆ Next Commission Meeting:

April 9, 1999
Juneau

Send comments to bill@ajc.state.ak.us or stephanie@ajc.state.ak.us

Criminal Justice Assessment Commission

Mission Statement and Goals

[Home](#)

The Criminal Justice Assessment Commission shall use a collaborative process to:

review, develop, recommend, and implement strategies within the criminal justice system so that all offenders are held appropriately accountable for their conduct;

promote responsible alternative options or community solutions for pre-trial and post-conviction incarceration for misdemeanants and felons;

work to make the criminal justice system more cost-effective to the extent this may be achieved without compromising public safety;

and promote system efficiencies to relieve prison overcrowding.

Criminal Justice Assessment Commission

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Criminal Justice Assessment Commission

Subcommittees

[Home](#)

The Criminal Justice Assessment Commission has appointed several subcommittees to find ways in specific areas to meet the Commission's goals.

◆ **Pretrial Practices and Procedures**

- [Membership](#)
- [Minutes](#)
- **Next Meeting:**

◆ **Parole and Probation Revocation**

- [Membership](#)
- [Minutes](#)
- **Next Meeting:**

◆ **Sentencing**

- [Membership](#)
- [Minutes](#)
- **Next Meeting:**

◆ **Decriminalizing the Mentally Ill**

- [Membership](#)
- [Minutes](#)
- **Next Meeting:**

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Sentencing Subcommittee Membership

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I. Name of Committee/Task Force

Time Standards Committee

II. Purpose/Charge

To develop time standards for the trial courts for general civil, domestic and criminal cases.

III. Date Formed

In process of being formed, expect to be in place by February 1999.

IV. Chaired By

V. Committee Members

VI. Staff Support Provided By

VII. Current Status of Work

VIII. Contact Person (name, title, address, phone, fax and e-mail) for Committee/Task Force

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I. Name of Committee/Task Force

Alaska State-Federal Courts Gender Equality Task Force

II. Purpose/Charge

To promote gender equality within the state and federal court systems and the larger legal community.

III. Date Formed

Original task force established in October 1993 as an arm of the Joint State-Federal Judicial Council.

IV. Chaired By

U.S. District Court Judge James Singleton and Justice Dana Fabe, Alaska Supreme Court

V. Committee Members

See attached list

VI. Staff Support Provided By

When funds have been available, by contract staff. Currently not staffed.

VII. Current Status of Work

The final report of the original task force was issued in 1996. The task force then moved into implementation work. Recent projects have included a republishing of an Alaska Women's Rights Handbook, the development and display of a "Women in Alaska Law" historical archive, and training programs.

In January 1999, the task force will formally request that the Board of Governors of the Alaska Bar Association establish a new "Joint State-Federal Gender Equality Section" to carry on the work of promoting gender equality. If this request is approved, the task force will cease to exist in its current form, but all members will be encouraged to join the new section and continue work in that format.

VIII. Contact Person (name, title, address, phone, fax and e-mail) for Committee/Task Force

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**ALASKA JOINT STATE-FEDERAL COURTS
GENDER EQUALITY TASK FORCE****MEMBERSHIP ROSTER
December 1998**

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Hon. Dana Fabe, <i>Co-Chair</i> Alaska Supreme Court 303 K Street, Fifth Floor Anchorage, AK 99501	264-0622	264-0878
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Leroy Barker <i>Chair, Program Committee</i> Robertson, Monagle & Eastaugh 550 West 7 th Avenue, Suite 1200 Anchorage, AK 99501	277-6693	279-1959
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Susan Cox <i>Program Committee</i> Supervising Attorney, Special Litigation Office of the Attorney General P.O. Box 110300 Juneau, AK 99811-0300	465-3600	465-6735
Hon. Michael Jeffery <i>Program Committee</i> Alaska Superior Court P.O. Box 2700 Barrow, AK 99723	852-4800	852-4804
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264-0406

264-0504

Gina Tabachki
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488-1534

474-5515

Executive Director:

Barbara Hood
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Anchorage, AK 99517

248-7374

248-8387

I. Name of Committee/Task Force

Child Support Guidelines Review Committee

II. Purpose/Charge

Review Civil Rule 90.3 and recommend changes to the supreme court. Federal law requires the states to review their child support guidelines every four years. Ours (in Civil Rule 90.3) were last revised effective July 15, 1995.

III. Date Formed

The committee was appointed by Chief Justice Matthews in October 1997.

IV. Chaired By

William T. Cotton, Executive Director, Alaska Judicial Council

V. Committee Members

Executive Director William T. Cotton, Alaska Judicial Council; Clerk of the Appellate Courts Marilyn May, Superior Court Judge Beverly Cutler; Ken Kirk; and Dan Callahan.

VI. Staff Support Provided By

Special Projects Manager Susan Miller

VII. Current Status of Work

The committee has finished meeting and sent its proposal to Chief Justice Matthews. However, the background material (public comments, etc.) have not been sent to the court, so it has not yet been scheduled for discussion.

Expected effective date of any rule changes that are adopted: July 15, 1999.

VIII. Contact Person (name, title, address, phone, fax and e-mail) for Committee/Task Force

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I. Name of Committee/Task Force

Indigency Guidelines Committee

II. Purpose/Charge

The purpose of this project is to develop standards or guidelines for judges to use in determining a person's eligibility for appointment of counsel at public expense.

III. Date Formed

Chief Justice Allen Compton appointed the committee in April 1996.

IV. Chaired By

District Court Judge Peter Ashman

V. Committee Members

Superior Court Judge Larry Zervos; District Court Judges Peter Ashman and John Lohff; Magistrate Bradley Gator; Brenda Mew, Fairbanks Pretrial Services; Special Projects Manager Susan Miller; Court Rules Attorney Christine Johnson and (Melvin Torres and Ethan Windahl - no longer employed by the court system)

VI. Staff Support Provided By

Special Projects Manager Susan Miller and Court Rules Attorney Christine Johnson

VII. Current Status of Work

The committee's final report was sent to the supreme court in late November 1998. The court reviewed and revised the committee's proposed new Criminal Rule 39.1 in meetings in December 1998. A final draft of Rule 39.1 and proposed revisions in current Criminal Rule 39 will be sent to the court the first week in January 1999. The effective date of the new rule has not been decided.

Still to do: Develop forms, procedures, instructions, etc., to implement the new rule and follow-up on other recommendations of the committee (proposed legislation and directory of defense attorneys).

VIII. Contact Person (name, title, address, phone, fax and e-mail) for Committee/Task Force

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The Honorable Peter Ashman
District Court Judge
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I. Name of Committee/Task Force

Interagency Child Support Committee

II. Purpose/Charge

Improve communication between the three entities involved in enforcement of child support orders (Alaska Court System, Department of Law and Child Support Enforcement Division) and improve the efficiency of the systems for modifying and enforcing these orders.

III. Date Formed

January 1997 (In response to Ombudsman complaint concerning delays in modification of child support orders.)

IV. Chaired By

Special Projects Manager Susan Miller

V. Committee Members

Alaska Court System

Special Projects Manager Susan Miller
Anchorage Clerk of Court Charlene Dolphin
Anchorage Chief Deputy Clerk Cindy Marshall
Anchorage Civil Division Supervisor Julie Monson
Third District Area Court Administrator Gwendolyn Lyford
Anchorage Superior Court Judge John Reese
Clerk of the Appellate Courts Marilyn May

Child Support Enforcement Division

Dallas Cox
Jackie Robinson
Darrell Watson

Department of Law

Diane Wendlandt

VI. Staff Support Provided By

No staff

VII. Current Status of Work

This committee meets almost monthly. Its main focus has been on improvements in modification procedure. In November 1998, the supreme court approved the third district's standing order to provide income information, which was originally developed in this committee. Among the projects the committee is currently working on are: revision of the child support orders due to a change in CSED policy; review of the necessity of court ordered child support in CP cases; a reference guide for judges containing a variety of information about the child support process and CSED; a parent's guide about children in the court system; training/assistance for court employees (and eventually the public) in calculation of child support; pro se forms and instructions for modification of child support, modification of custody, and modification or enforcement of visitation.

VIII. Contact Person (name, title, address, phone, fax and e-mail) for Committee/Task Force

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I. Name of Committee/Task Force

Access and Visitation Committee

II. Purpose/Charge

Apply for funding and administer federal grants received (through Child Support Enforcement Division) to establish "programs to support and facilitate non-custodial parents' access to and visitation of their children." This federal program was adopted as part of the welfare reform act.

III. Date Formed

September 1997

IV. Chaired By

Special Projects Manager Susan Miller

V. Committee Members

Special Projects Manager Susan Miller, Court Rules Attorney Christine Johnson and Third District Area Court Administrator Gwendolyn Lyford

VI. Staff Support Provided By

None

VII. Current Status of Work

\$50,000 in first year (September 1997 - September 1998) funding was obtained and earmarked for a new program in the Anchorage court to provide mediation services for custody and visitation disputes. New forms and procedures were developed for this program and contracts were entered into with four private mediators. The deadline for liquidating these funds has been extended to September 11, 1999.

Our application for second year funding (September 1998 - September 1999) has also been approved and the Legislative Budget and Audit Committee has approved transfer of the funds (\$50,000) from CSED to the court system. Plans for using this money have not been finalized.

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I. Name of Committee/Task Force

Court Improvement Project Committee

II. Purpose/Charge

To implement the recommendations contained in the assessment of the CINA case process prepared by the Judicial Council entitled "Improving the Court Process for Alaska's Children in Need of Aid."

III. Date Formed

Originally formed in the fall of 1996 and reappointed in June 1998.

IV. Chaired By

Supreme Court Justice Alexander Bryner and Superior Court Judge Niesje Steinkruger

V. Committee Members

Alaska Court System

Supreme Court Justice Alexander Bryner
Superior Court Judge Niesje Steinkruger
Superior Court Judge Richard Erlich
Superior Court Judge John Reese
Presiding Judge Elaine Andrews
Superior Court Judge Michael Wolverton
Superior Court Judge Larry Weeks
Standing Master Bill Hitchcock
Third District Area Court Administrator Gwendolyn Lyford
Deputy Director Stephen Bouch

Susanne Di Pietro, Alaska Judicial Council; Barb Malchick, Office of Public Advocacy; Becky Snow, Department of Law; Mick Schiffer, CFCRB; Doris Bergeron and Kathy Tibbles, Department of Family and Youth Services; Linda Beecher, Public Defender's Office; and Kimberly Martus

VI. Staff Support Provided By

Federal Compliance Attorney Nancy Shaw
Clerical assistance provided by the Alaska Judicial Council support staff

VII. Current Status of Work

In the second year on implementation. Current year projects include:

1. ADR training for judicial officers;
2. training on the new CINA legislation for judges, magistrates, clerks, calendar

3. staff, secretaries, and counter staff;
3. development of pilot mediation projects in CINA termination cases and pre-adjudication cases;
4. preparation of a judicial bench book for CINA cases;
5. analysis of case processing times for appellate CINA cases;
6. revision of case management software to better track CINA cases; and
7. joint sponsorship of multi-disciplinary ICWA training for the south central region.

The committee is in the process of developing improvement plans and budgets for the third year of program funding.

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Judge Michael I. Jeffery
Shannon O'Fallon
Brock Shamberg

Christine Johnson, Reporter

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Marcia E. Holland
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Master John E. Duggan
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Christine Johnson, Reporter

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Richard Friedman
Barbara Jones
Frank S. Koziol
James N. Leik

Timothy A. McKeever
Ann Resch
Kirsten Tinglum
Richard Todd

Christine Johnson, Reporter

Criminal Pattern Jury Instructions Committee

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**Justice Alexander O. Bryner
Judge Larry D. Card
Judge Beverly Cutler
James D. Gilmore
Marcia E. Holland
Eric Johnson**

**Bonnie Lembo
Bob Linton
Blair McCune
~~Judge Stephanie Rhodes~~
David Wallace
Matthew W. Claman**

Christine Johnson, Reporter

Citation/Title

ADMIN Rule 44, RULE 44. RULEMAKING

Rules Governing the Administration of All Courts, Rule 44

**WEST'S ALASKA COURT RULES
RULES GOVERNING THE ADMINISTRATION OF ALL COURTS**

Current with amendments received through 7-1-98.

RULE 44. RULEMAKING

(a) **Uniform Policy.** The supreme court shall make and promulgate rules governing administration of all courts, and practice and procedure in civil and criminal cases in all courts. The rules shall be uniform throughout the Alaska Court System.

(b) **Request for Rulemaking.** Any person may propose new rules or changes in present rules to the supreme court. Each proposal must:

- (1) Be in writing;
- (2) Include the language proposed for change;
- (3) Include the reason for the suggested rule or change;
- (4) Be submitted to the court rules attorney at the Anchorage Office of the Administrative Director of Courts.

The court rules attorney shall review each proposal. If the proposal is unclear or in need of further documentation, the rules attorney shall contact the person submitting the proposal and seek clarification.

(c) **Preliminary Analysis.** The rules attorney shall then prepare a preliminary legal analysis of each proposal. This shall include an examination of the present Alaska rule including adoption and amendment history, as well as a comparison with the federal rule where appropriate.

(d) **Meritless Proposal.** In the unusual case where no further consideration seems merited, the rules attorney shall forward such opinion and the reason for it along with all pertinent supporting information to the chief justice. If the chief justice concurs, a letter shall be sent by the rules attorney to the person submitting the proposal stating the reason it was not accepted.

(e) **Notice.** In all other cases notice that a rule is being considered for change, including the nature of the proposed change, shall be published in the Monthly Activity Report of the appellate courts.

(f) **Major or Minor Change.** The rules attorney shall determine whether a proposal is a major or minor rule change. All proposals for new rules and all proposals affecting substantial rights of litigants are major. Minor rules changes are those which are technical in nature.

(g) **Minor Change.** Minor rules change proposals shall be submitted to the supreme court along with the preliminary legal analysis and appropriate orders in both signature and legislative form. The chief justice shall calendar a review of the proposal at an appropriate law conference. Following review, the supreme court may adopt or reject the proposal, or refer it to a standing or advisory committee to be treated as a major rules change.

ADMIN Rule 44, RULE 44. RULEMAKING

***1037 (h) Major Change.** Major rules change proposals shall be referred by the rules attorney to the appropriate standing or advisory committee. The committee shall review the proposal, determine if a draft should be circulated to the bar or other interested persons for comment, and prepare a written recommendation supporting or opposing the change. If no circulation was made, the reason for this decision shall be stated in the recommendation. Where appropriate, the recommendation shall also include proposed orders in signature and legislative form, as well as advisory notes suitable for publication stating the rationale for the rule change. All committee written recommendations shall be forwarded to the supreme court. The chief justice shall calendar a review of the recommendation at an appropriate administrative conference. Following review, the supreme court may adopt or reject the proposal in whole or in part, or refer the proposal to the same or a different committee for further study or additional circulation.

(i) Public Information. The original proposal, preliminary legal analysis, circulation material, proposed order and advisory notes shall be made available to the public upon request. Committee minutes, reporter's notes, and other preparatory drafts or memoranda shall not be made public.

(j) Standing and Advisory Committees. Standing committees shall be established to review Civil Rules, Criminal Rules and Appellate Rules. The administrative senior staff shall act as the standing committee to review Administrative Rules. Advisory committees shall be appointed as needed to review all other rules. All committees shall receive major rules change proposals from the rules attorney or the supreme court. In addition, the standing committees shall carry on a continuous study of the operation and effect of the rules of procedure and administration. When specific proposals for change initiate in a committee, notice that the proposal is being considered must be published in the Monthly Activity Report under subsection (e) of this rule. Changes to those rules found by the committees to promote: 1) Simplicity in procedure; 2) Fairness in administration; 3) The just determination of litigation; and 4) The elimination of unjustifiable expense and delay, shall be periodically recommended to the supreme court for its consideration.

(k) Appointment. The chief justice shall appoint such members of the judiciary, Alaska Bar Association, and other qualified persons to the committees as it deems advisable. Nominees shall be considered from any source, but solicitation for nominee recommendations shall also be made to the board of governors of the state bar association and the statewide court clerks conference. Where possible, terms of the committee members will be staggered to preserve committee continuity. The members of the committees shall serve without compensation. However, with prior approval the members may be reimbursed for per diem and travel expenses incident to their duties as members of the committees.

***1038 (l) Emergency Rule Action.** Whenever the supreme court determines that an emergency exists requiring the immediate promulgation of a procedural or administrative rule, the court may take any action required by the circumstances. The court shall follow all of the requirements of this rule consistent with meeting the nature of the emergency circumstances.

(m) Effective Date. The effective date for each rule change order shall be stated in the order. Normally, the effective date shall be the same as the publisher's distribution date, in order to provide adequate notice to those affected by the rule change. Where this is not possible, the effective date shall be set as determined by the supreme court. When this occurs, the supreme court shall determine what additional notice, if any, shall be provided to those affected by the rule change. Adoption or rejection of a rules change proposal shall be published in the Monthly Activity Report.

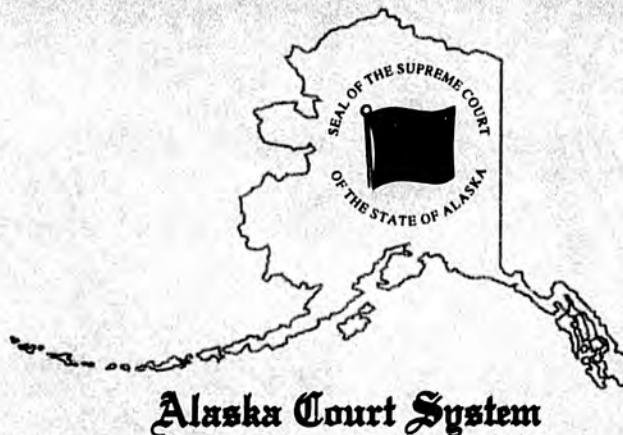
(n) Rule Application. All rules and orders in effect on the date of the adoption of this rule remain in effect.

[Amended effective December 16, 1987.]

ALASKA COURT SYSTEM



STEPHANIE J. COLE
Administrative Director



303 K STREET
ANCHORAGE, ALASKA
99501

(907) 264-0548
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A MESSAGE FROM THE ADMINISTRATIVE DIRECTOR

I am pleased to transmit the Alaska Court System's Annual Report for fiscal year 1998.

In fiscal year 1998, close to 150,000 new cases were filed in Alaska's trial courts. Overall, caseload increased by approximately 16,000 cases from fiscal year 1997. These are cases filed by the state, municipalities, businesses and individuals. These cases represent a huge variety of disputes brought to the court for resolution—including large and small civil actions, criminal cases, domestic relations and domestic violence cases, cases involving children, and probate matters. Large or small, these 150,000 cases represent issues of vital importance to the citizens involved in them. The court system endeavors to handle all these cases in accordance with the law, expeditiously and with integrity.

We continued to see felony, domestic violence, and children's cases climb in fiscal year 1998. Last year, we experienced a 7% overall increase in felony filings, with some larger courts reporting considerable increases: Anchorage reported a 15% increase, and Kenai reported a 59% increase. Between fiscal year 1995 and fiscal year 1998 we have seen a 28% increase in domestic violence cases statewide. Children's cases (a combination of delinquency and child in need of aid cases) have been skyrocketing. These filings increased by 31% between fiscal year 1995 and fiscal year 1998, and have increased by 14% statewide just this last year.

We continue to work towards our goal of providing the citizens of Alaska with an efficient and just forum for the resolution of disputes.

Sincerely,

Stephanie J. Cole
Administrative Director

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This twelve and one half foot high Eagle totem is one of two totem poles at the entrance of the Nesbett Courthouse in Anchorage. The totems were designed and carved by artist Lee Wallace from the Tsimshian Nation, and his assistant carver Edwin DeWitt from the Tlingit Nation. The Eagle and Raven totems represent the refined sense of balance which governs the clans, denotes integrity, and adheres to the law of reciprocity.

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Profile of the Alaska Court System



PROFILE OF THE ALASKA COURT SYSTEM

July 1, 1997 - June 30, 1998

INTRODUCTION

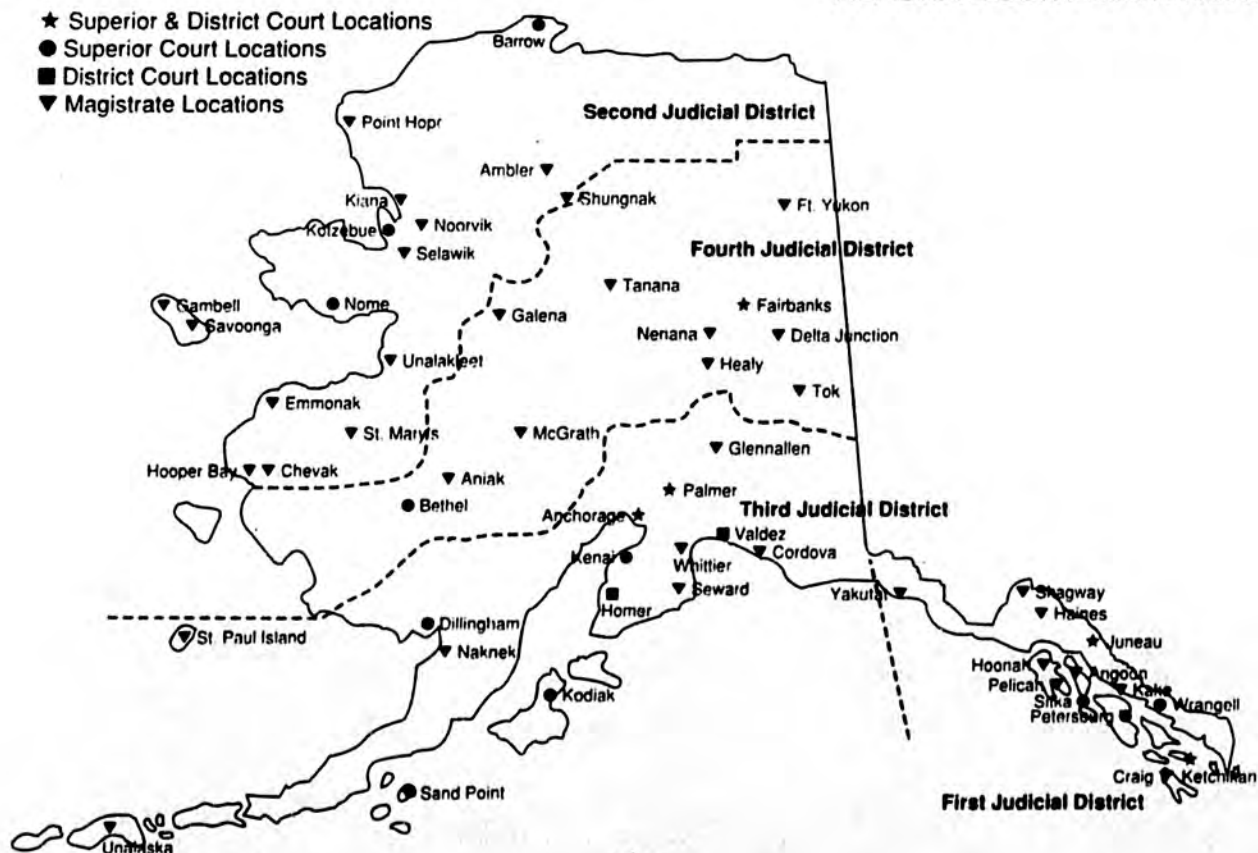
There are four levels of courts in the Alaska Court System, each with different powers, duties and responsibilities. Alaska has a unified, centrally administered, and totally state-funded judicial system. Municipal governments do not maintain a separate court system.

The four levels of courts in the Alaska Court System are the supreme court, the court of appeals, the superior court and the district court. The supreme court and the superior court were established in the Alaska Constitution. In 1959, the legislature created a district court for each judicial district. The legislature granted power to the supreme court to increase or decrease the number of district court judges within each judicial district. In 1980, the legislature created a court of appeals. Jurisdiction and other areas of judicial responsibility for each level of court are set out in Title 22 of the Alaska Statutes.

The chief justice of the Alaska Supreme Court is the administrative head of the Alaska Court System. An administrative director is appointed by the chief justice with concurrence of the supreme court. The director supervises the administration of all courts in the state.

Rules governing the administration of all courts and the rules of practice and procedure for civil and criminal cases are promulgated by the supreme court.

ALASKA COURT LOCATIONS



ALASKA COURT SYSTEM ORGANIZATION

ALASKA SUPREME COURT

The supreme court is the appellate court of final authority in Alaska. It consists of a panel of five justices.

COURT OF APPEALS

The court of appeals hears appeals in criminal and quasi-criminal cases (such as juvenile delinquency cases). It consists of a panel of three judges.

ADMINISTRATIVE OFFICE

The supreme court is charged with the responsibility of administering the statewide system. The supreme court delegates most of the administrative matters to the administrative director and her staff.

SUPERIOR COURT

The superior court is the trial court of general jurisdiction. It has appellate jurisdiction over district court appeals and appeals from administrative agency decisions. There are 32 superior court judgeships.

DISTRICT COURT

The district court has limited civil and criminal jurisdiction. The district court consists of 17 district court judges and 36 magistrates.

ALASKA COURT SYSTEM
(Information as of June 30, 1998)

Fiscal Year:	July 1 - June 30	
Geographical Area Served	586,413 square miles	
Number of Judges	5	supreme court judges
	3	court of appeals judges
	32	superior court judges
	17	district court judges
	36	magistrates
Number of Court Locations:	15	combined superior and district court
	44	district courts only (judge and/or magistrate)
Number of Authorized Positions:	648	permanent full-time
	48	permanent part-time
	21	non-permanent
	717	total

FIVE LARGEST TRIAL COURTS
(by number of permanent full-time employees)

Anchorage	210
Fairbanks	82
Juneau	30
Palmer	25
Ketchikan	22

THE ALASKA SUPREME COURT

The Alaska Supreme Court is the highest level of state court in Alaska. The supreme court is comprised of the chief justice and four associate justices.

The five justices, by majority vote, select one of their members to be the chief justice. The chief justice holds that office for three years and may not serve consecutive terms.

The supreme court hears cases on a monthly basis in Anchorage and Fairbanks, approximately semi-annually in Juneau, and on the basis of workload in other Alaska communities. The court prefers to hear argument in the city where the case was heard in the trial court.

The court meets after oral argument and on a weekly basis to confer on cases argued orally and on cases submitted on the briefs. The court decides the cases and announces its decisions in one of three ways:

- 1) opinions for publication in the Pacific Reporter, 2d series, and in the Alaska Reporter;
- 2) memorandum opinions and judgments (MO&J's); and
- 3) orders summarily ruling on the merits of cases or dismissing them.

Though the MO&J's and most orders are not published, the MO&J's are available for public inspection at the Anchorage, Fairbanks, and Juneau offices of the clerk of the appellate courts, and the orders are filed in the clerk's Anchorage office.

Under the Alaska Constitution, the supreme court establishes rules for the administration of all courts in the state and for practice and procedure in civil and criminal cases. The supreme court has further adopted rules for the practice of law in Alaska and procedural rules for children's matters, probate, and appeals. The Alaska Legislature may change the court's procedural rules by passing an act expressing its intent to do so by a two-thirds majority of both houses.



THE ALASKA SUPREME COURT



Chief Justice
Warren W. Matthews

Chief Justice Warren W. Matthews has served on the court for 21 years. He was born in Santa Cruz, California. He holds a B.A. degree from Stanford University and a J.D. degree from Harvard University Law School. He was in the private practice of law in Anchorage from 1965 - 1977. Chief Justice Matthews served as a member of the Board of Governors of the Alaska Bar Association, the Supreme Court Criminal Rules Revision Commission, the Alaska Sentencing Commission and as chairman of the Alaska Bar Ethics and Unauthorized Practices Commission. He was appointed to the Alaska Supreme Court in 1977 and served as chief justice 1987 - 1990. He is married to Donna Matthews and has two children. Chief Justice Matthews began his second term as chief justice in 1997.

Justice Allen T. Compton has served on the court for 22 years. Justice Compton was born in Kansas City, Missouri. He received a B.A. degree from the University of Kansas and a law degree from the University of Colorado. He moved to Juneau in 1970 and served as supervising attorney for Alaska Legal Services. He was also in the private practice of law in Juneau until he was appointed to the superior court bench in February 1976. He was appointed to the Alaska Supreme Court in 1980. Justice Compton served as Chief Justice October 1995 - July 1997. He is married to Sue Ellen Tatter and has three children.

Justice Compton retired November 2, 1998.



Justice Allen T. Compton
Retired November 2, 1998



Justice Robert L. Eastaugh

Justice Robert L. Eastaugh has served on the supreme court for four years. Justice Eastaugh was born in Seattle, Washington, and raised in Juneau. He holds a B.A. degree from Yale University and a J.D. degree from University of Michigan Law School. He was first admitted to the practice of law in 1968. He was in private practice for 22 years, after having served as an assistant district attorney in Anchorage and assistant attorney general in Juneau. He has two children.

THE ALASKA SUPREME COURT continued



Justice Dana Fabe

Justice Dana Fabe has served on the supreme court since March 1996 and is the first woman to serve on the court. Justice Fabe was born in Cincinnati, Ohio. She holds a B.A. degree from Cornell University and a J.D. degree from Northeastern University School of Law. Justice Fabe clerked for Justice Edmond W. Burke of the Alaska Supreme Court in 1976-77. She served as a staff attorney for the Alaska Public Defender Agency from 1977-81, and in 1981 she was appointed by the governor to be Chief Public Defender for Alaska. She was a member of the Board of Governors of the Alaska Bar Association in 1987-88. Justice Fabe was appointed to the superior court bench in Anchorage in 1988. She was deputy presiding judge of the third judicial district from 1992-95, as well as a training judge for the third judicial district and has served as chairperson of the Alaska Supreme Court's Committee on Criminal Pattern

Jury Instructions and its Special Committee on Contempt of Court. She is co-chair of Alaska's Joint State and Federal Court Commission on Gender Equality and chair of the Alaska Supreme Court's Access to Civil Justice Task Force. She also serves as the judicial representative to the Alaska Bar Association's Continuing Legal Education Committee. Justice Fabe is married to Randall Simpson, and they have a daughter, Mia.

Justice Alexander O. Bryner has served on the court since February 1997. He was born in Tientsin, China. Justice Bryner moved to Alaska in 1969. He holds a B.A. degree and a degree in law from Stanford University. He served as law clerk to Alaska Supreme Court Chief Justice George Boney from 1969 to 1971. He moved to San Francisco in 1971 and was legal editor for Bancroft Whitney Company. After returning to Alaska in 1972, he worked for the Public Defender Agency in Anchorage. In 1974 he entered private practice as a partner in the firm Bookman, Bryner and Shortell. He was appointed to the district court bench in Anchorage in 1975 and served until 1977. In 1977, he was appointed U.S. Attorney for Alaska and held that position until his appointment to the Court of Appeals in 1980. He served as Chief Judge of the Court of Appeals from 1980-1997.



Justice Alexander O. Bryner

He is married to Carol Crump Bryner and has two children, Paul and Mara.



Justice Walter L. Carpeneti
Appointed November 5, 1998

On November 5, 1998 Governor Tony Knowles named Juneau Superior Court Judge **Walter L. Carpeneti** to the Alaska Supreme Court. Justice Carpeneti was appointed to the superior court in 1982.

SUPREME COURT JURISDICTION

The term "jurisdiction" means a court's legal power and authority to hear particular types of cases.

The supreme court has final state appellate jurisdiction in civil and criminal matters:

1. CIVIL APPEALS. The supreme court must accept appeals from final decisions by the superior court in civil cases (including cases which originated in administrative agencies).
2. The supreme court may exercise its discretion to accept:
 - a. CRIMINAL APPEALS, from decisions of the court of appeals or upon certification from the court of appeals that the case involves a significant question of constitutional law or an issue of substantial public interest; and
 - b. PETITIONS, from non-final decisions by the superior court in civil cases and from final decisions of the superior court on review of the district court's decisions in civil matters.
3. ORIGINAL APPLICATIONS. The supreme court may also exercise its discretion to hear matters in which relief is not otherwise available, including bar admission and attorney discipline matters and questions of state law certified from the federal courts.

THE COURT OF APPEALS

The court of appeals is a three-judge panel consisting of a chief judge (appointed by the chief justice for a two-year term) and two associate judges. The court of appeals was created in 1980 by the Alaska Legislature.

Robert G. Coats was appointed chief judge for 1997 and 1998.

The court of appeals regularly meets in Anchorage, traveling to Fairbanks as caseload demands.

The court of appeals has the authority to hear appeals from judgments in criminal cases and certain other quasi-criminal cases in which a minor is accused of committing a crime (juvenile delinquency cases), cases in which prisoners are challenging the legality of their confinement (habeas corpus matters), and cases involving probation and parole decisions.

Criminal appeals from the district court can be taken to the superior court or to the court of appeals, at the option of the defendant. A defendant who appeals from district court to superior court can ask the court of appeals to review the resulting decision of the superior court, but the court of appeals may, in its discretion, refuse to hear the appeal.



Judge David Mannheim



Chief Judge Robert G. Coats



Judge David Stewart

THE COURT OF APPEALS **continued**

COURT OF APPEALS JURISDICTION

The court of appeals has jurisdiction to hear appeals in cases involving criminal prosecutions, post-conviction relief, juvenile delinquency, extradition, habeas corpus, probation and parole, bail, and the excessiveness or leniency of a sentence:

1. **MERIT APPEALS** (issues concerning the merits of a conviction) or **SENTENCE APPEALS** (the excessiveness or leniency of a sentence) - The court of appeals must hear appeals from final decisions by the superior court or the district court.
2. **PETITIONS** - The court of appeals may exercise its discretion to hear appeals of non-final decisions from the superior court or the district court or from final decisions of the superior court on review of the district court's decisions.
3. **ORIGINAL APPLICATIONS** - The court of appeals may exercise its discretion to hear cases in which relief cannot be obtained from the court through one of the above types of appeals.

THE CLERK OF THE APPELLATE COURTS

The clerk's office of the appellate courts, which includes the supreme court and the court of appeals, is located in Anchorage. The clerk is required to be an attorney. Responsibilities of the clerk include monitoring the caseflow through the supreme court and the court of appeals as well as making recommendations for improvements in appellate procedure. The clerk is also responsible for all case filing and calendaring, publishing opinions and related tasks. Deputy clerks are located in Juneau, Anchorage and Fairbanks.

Jan Hansen was appointed Clerk of the Appellate Courts in July 1991. Ms. Hansen served as Clerk of the Appellate courts until her death in June 1998.

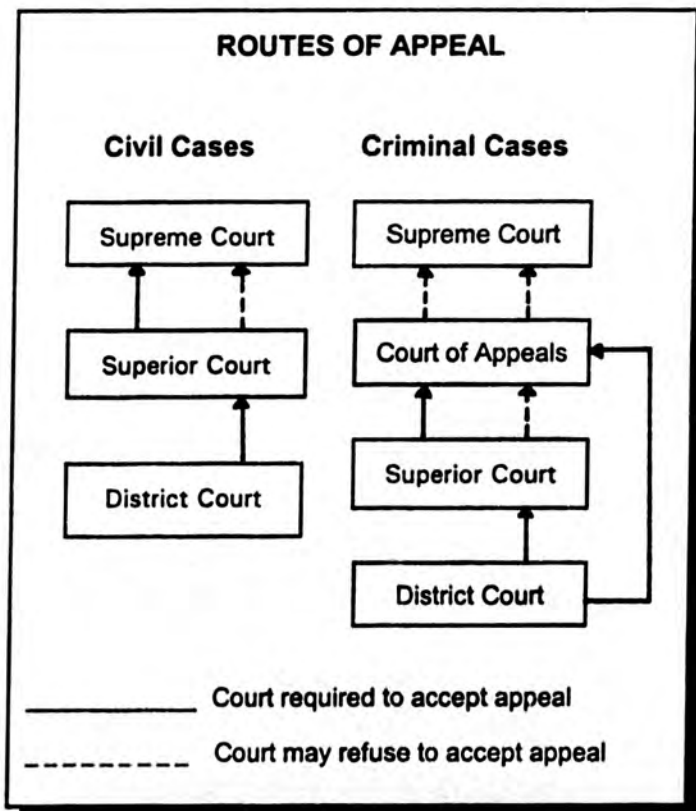
Marilyn May was appointed Clerk of the Appellate Courts in October 1998.



Jan Hansen
Clerk of the Appellate Court
July 1991 - June 1998



Marilyn May
Clerk of the Appellate Court
October 1998 - Present



THE SUPERIOR COURT

SUPERIOR COURT JURISDICTION

The superior court is the trial court of general jurisdiction. The superior court has the authority to hear all cases, both civil and criminal, properly brought before the state courts (with the very limited exception of matters taken directly to the supreme court). However, the superior court does not routinely hear cases which may be brought in the district court (a court of limited jurisdiction).

The superior court:

- ▶ is a trial court for both criminal and civil cases.
- ▶ serves as an APPELLATE COURT for appeals from civil and criminal cases which have been tried in the district court
- ▶ hears cases involving CHILDREN who have committed crimes or who are abused or neglected
- ▶ hears cases involving the PROPERTY OF DECEASED OR INCOMPETENT PERSONS
- ▶ hears cases involving INVOLUNTARY COMMITMENT of persons to institutions for the mentally ill
- ▶ handles DOMESTIC RELATIONS matters

Alaska is divided into four judicial districts. The boundaries of the districts are defined by state statute. The judicial districts define the boundaries for judicial retention elections at which voters indicate their approval or rejection of judges and justices.

In January of each year, the chief justice of the supreme court designates a superior court judge from each of Alaska's four judicial districts to serve as presiding judge for a term of one calendar year. The presiding judge, in addition to regular judicial duties, is responsible for the administration of the trial courts within the district, including assignment of cases, supervision of court personnel, efficient handling of court business and appointment of magistrates.

New Appointment: Fairbanks District Court Judge Charles Pengilly was appointed to the Fairbanks superior court by Governor Tony Knowles on November 7, 1997. Judge Pengilly had served as a district court judge since 1990.

SUPERIOR COURT JUDGES

FIRST JUDICIAL DISTRICT



Presiding Judge Larry Weeks
Juneau Superior Court
Appointed 1990



Judge Walter Carpeneti
Juneau Superior Court
Appointed 1981



Judge Thomas Jahnke
Ketchikan Superior Court
Appointed 1985



Judge Larry Zervos
Sitka Superior Court
Appointed 1990



Judge Michael Thompson
Ketchikan Superior Court
Appointed 1993

SECOND JUDICIAL DISTRICT



Presiding Judge Michael Jeffery
Barrow Superior Court
Appointed 1982



Judge Richard Erlich
Kotzebue Superior Court
Appointed 1991



Judge Ben Esch
Nome Superior Court
Appointed 1996

SUPERIOR COURT JUDGES continued

THIRD JUDICIAL DISTRICT



Presiding Judge Elaine Andrews
Anchorage Superior Court
Appointed 1991



Judge Milton Souter
Anchorage Superior Court
Appointed 1978



Judge Brian Shortell
Anchorage Superior Court
Appointed 1980



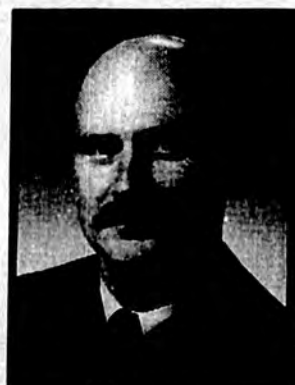
Judge Rene Gonzalez
Anchorage Superior Court
Appointed 1984



Judge Karen Hunt
Anchorage Superior Court
Appointed 1984



Judge Peter Michalski
Anchorage Superior Court
Appointed 1985



Judge John Reese
Anchorage Superior Court
Appointed 1989



Judge Larry Card
Anchorage Superior Court
Appointed 1993



Judge Michael Wolverton
Anchorage Superior Court
Appointed 1996

SUPERIOR COURT JUDGES
continued

THIRD JUDICIAL DISTRICT - continued



Judge Dan Hensley
Anchorage Superior Court
Appointed 1996



Judge Eric T. Sanders
Anchorage Superior Court
Appointed 1996



Judge Sen K. Tan
Anchorage Superior Court
Appointed 1996



Judge Donald Hopwood
Kodiak Superior Court
Appointed 1990



Judge Jonathan Link
Kenai Superior Court
Appointed 1990



Judge Harold Brown
Kenai Superior Court
Appointed 1996



Judge Beverly Cutler
Palmer Superior Court
Appointed 1982



Judge Eric Smith
Palmer Superior Court
Appointed 1996

Not pictured:
Dillingham Superior Court
Judge Fred Torrasi
Appointed 1997



SUPERIOR COURT JUDGES **continued**

FOURTH JUDICIAL DISTRICT



Presiding Judge Ralph Beistline
Fairbanks Superior Court
Appointed 1992



Judge Mary E. Greene
Fairbanks Superior Court
Appointed 1985



Judge Richard D. Savell
Fairbanks Superior Court
Appointed 1987



Judge Niesje Steinkruger
Fairbanks Superior Court
Appointed 1988



Judge Charles Pengilly
Fairbanks Superior Court
Appointed 1997



Judge Dale Curda
Bethel Superior Court
Appointed 1989

THE DISTRICT COURT

The Alaska Constitution provides that the legislature shall establish such lower courts as may be necessary. In 1959, the legislature created a district court for each judicial district and granted to the supreme court the power to increase or decrease the number of district court judges within each judicial district.

DISTRICT COURT JURISDICTION

The district court is a trial court of limited jurisdiction. A district court judge may:

- ▶ hear STATE MISDEMEANORS and violations of CITY AND BOROUGH ORDINANCES
- ▶ issue SUMMONSES, ARREST WARRANTS and SEARCH WARRANTS
- ▶ hear first appearances and PRELIMINARY HEARINGS in felony cases
- ▶ record VITAL STATISTICS (in some areas of the state)
- ▶ hear CIVIL CASES valued up to \$50,000
- ▶ hear SMALL CLAIMS cases (\$7,500 maximum)
- ▶ handle cases involving CHILDREN on an emergency basis
- ▶ hear DOMESTIC VIOLENCE cases

New Appointment: Former Assistant Attorney General Raymond Funk was appointed to the Fairbanks District Court in May 1998 by Governor Tony Knowles.

DISTRICT COURT continued

Magistrates preside over certain district court matters in areas of the state where services of a full-time district court judge are not required. Some magistrates serve more than one court location. Magistrates also serve in metropolitan areas to handle routine matters and to ease the workload of the district court.

A magistrate is not required to be a lawyer. The magistrate is a judicial officer of the district court whose authority is more limited than the authority of a district court judge.

MAGISTRATE JURISDICTION

A magistrate may:

- ▶ hear SMALL CLAIMS cases (\$7,500 maximum)
- ▶ hear FORMAL CIVIL cases (\$7,500 maximum)
- ▶ issue writs of HABEAS CORPUS (challenges to the legality of a person's confinement)
- ▶ solemnize MARRIAGES
- ▶ perform NOTARY PUBLIC duties and record VITAL STATISTICS (in some areas of the state)
- ▶ handle cases involving CHILDREN on an emergency basis hear DOMESTIC VIOLENCE CASES
- ▶ acts a hearing officer to review an ADMINISTRATIVE REVOCATION of a driver's license
- ▶ enter a judgment of conviction if a defendant pleads guilty or no contest to any STATE MISDEMEANOR
- ▶ hold TRIALS and enter judgments in STATE MISDEMEANORS if a defendant agrees in writing to be tried by a magistrate
- ▶ hear trials of MUNICIPAL ORDINANCE violations, STATE TRAFFIC INFRACTIONS and Alaska Statute TITLE 11 violations
- ▶ preside over PRELIMINARY HEARINGS in felony cases
- ▶ issue SEARCH AND ARREST WARRANTS, and SUMMONSES
- ▶ conduct EXTRADITION (fugitive from justice) proceedings

DISTRICT COURT JUDGES

FIRST JUDICIAL DISTRICT



Judge Peter Froehlich
Juneau District Court
Appointed 1989



Judge Patricia Collins
Ketchikan District Court
Appointed 1995

THIRD JUDICIAL DISTRICT



Judge William Fuld
Anchorage District Court
Appointed 1983



Judge Natalie Finn
Anchorage District Court
Appointed 1983



Judge Peter Ashman
Anchorage District Court
Appointed 1987



Judge M. Francis Neville
Homer District Court
Appointed 1990



Judge John Lohff
Anchorage District Court
Appointed 1991



Judge Gregory Motyka
Anchorage District Court
Appointed 1991



Judge Sigurd Murphy
Anchorage District Court
Appointed 1992

DISTRICT COURT JUDGES
continued

THIRD JUDICIAL DISTRICT - continued



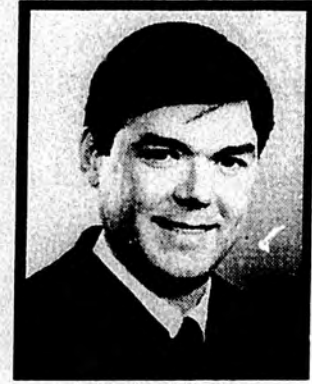
Judge Stephanie Rhoades
Anchorage District Court
Appointed 1992



Judge James Wanamaker
Anchorage District Court
Appointed 1993



Judge Stephanie Joannides
Anchorage District Court
Appointed 1994



Judge Joel H. Bolger
Valdez District Court
Appointed 1997

Not pictured: Palmer District Court Judge Suzanne Lombardi
Appointed 1997

FOURTH JUDICIAL DISTRICT



Judge Jane Kauvar
Fairbanks District Court
Appointed 1981



Judge Mark Wood
Fairbanks District Court
Appointed 1993



Judge Raymond Funk
Fairbanks District Court
Appointed 1998

STATEWIDE COURT ADMINISTRATION

Statewide court administration is the responsibility of the chief justice of the supreme court. By court rule, this responsibility is delegated to the administrative director of the courts subject to general guidelines set forth by the supreme court.

JUDICIAL EDUCATION

Judicial training takes several different forms. There is a statewide judicial conference each year for judges which includes training in specific areas of court procedures or operations. Judges are eligible on a rotating basis for training at the National Judicial College in Reno, Nevada. All magistrates attend at least one magistrate conference during a calendar year. During odd-numbered years, regional magistrate conferences are held for the four judicial districts and the Bethel area magistrates. A statewide magistrate conference is held in Anchorage during even-numbered years. Training judges, deputy training judges and staff of the administrative office regularly visit with magistrates for on-site training. The administrative office prepares written educational materials that are distributed to magistrates.

THE JUDICIAL APPOINTMENT PROCESS

The governor appoints a supreme court justice or a judge of the court of appeals, superior court, or district court from a list of qualified candidates submitted by the Alaska Judicial Council. The governor has 45 days from receipt of the list to make the appointment.

In order to be eligible for appointment to the **supreme court**, a person must be a citizen of the United States and a resident of Alaska for five years prior to appointment. A justice must be licensed to practice law in Alaska at the time of appointment and must have engaged in the active practice of law for eight years.

A **court of appeals judge** must be a citizen of the United States; a resident of Alaska for five years immediately preceding appointment; have been engaged for not less than eight years immediately preceding appointment in the active practice of law; and at the time of appointment be licensed to practice law in Alaska.

The qualifications of a judge of the **superior court** are the same as for a supreme court justice, except only five years of active practice are necessary.

A **district court judge** must be 21 years of age; a citizen of the United States; a resident of the state for at least five years; and (1) be licensed to practice law in Alaska and have engaged in active practice of law for not less than three years immediately preceding appointment, or (2) have served for at least seven years as a magistrate in the state and have graduated from an accredited law school.

Magistrates are not appointed by the governor nor are their qualifications reviewed by the Alaska Judicial Council. Their appointments are made for an indefinite period by the presiding judge of the judicial district in which they will serve. Each magistrate serves at the pleasure of the presiding judge. A magistrate does not have to be a lawyer. A magistrate must be 21 years of age, a United States citizen, and a citizen of Alaska for six months prior to appointment.

JUDICIAL RETENTION ELECTIONS

Each supreme court justice and each court of appeals judge is subject to approval or rejection by a majority of voters statewide on a nonpartisan ballot at the first general election held more than three years after appointment. Thereafter, each justice must participate in a retention election every ten years; each court of appeals judge must participate every eight years.

Each superior court judge is subject to approval or rejection by the voters in the judge's judicial district at the first general election held more than three years after appointment. Thereafter, the judge is subject to approval or rejection every sixth year. Each district court judge must also run in a retention election in his or her district at the first general election held more than two years after appointment, and then every fourth year thereafter. State laws that require judges to participate in retention elections do not apply to magistrates.

In November 1998, the following judges and justices participated in retention elections:

SUPREME COURT

Justice Robert L. Eastaugh

SUPERIOR COURT

Second District

Judge Michael I. Jeffery

Third District

Judge Beverly W. Cutler

Judge John Reese

Fourth District

Judge Niesje J. Steinkruger

DISTRICT COURT

First District

Judge Patricia Collins

Judge Peter Froehlich

Third District

Judge John R. Lohff

Judge Gregory Motyka

Third District - continued

Judge Sigurd E. Murphy

Judge M. Francis Neville

Judge Stephanie Rhoades

Fourth District

Judge Jane F. Kauvar

All of these members of the judiciary were retained by the voters.

THE COMMISSION ON JUDICIAL CONDUCT

The Commission on Judicial Conduct is a constitutionally created state agency separate from the court system. The commission consists of nine members: three state court judges or justices, three lawyers with at least ten years legal practice in Alaska, and three persons who are not lawyers or judges. The chief function of the commission is to investigate complaints of ethical misconduct against state judges and justices. The commission has the power to recommend that the supreme court sanction a justice or judge. Possible sanction recommendations include suspension, removal, retirement from office, or public or private censure. Since 1990, all formal hearings before the Commission on Judicial Conduct are public. In October 1997, the commission held the first public hearing under the 1990 statute.

In calendar year 1997, the commission received forty-nine complaints and processed a total of forty-three complaints. One formal complaint was filed by the commission against a judge during the year. At the end of 1997, the commission had nineteen pending complaints and one pending recommendation for discipline before the Alaska Supreme Court. The commission privately sanctioned one judge.

For more information regarding the Commission on Judicial Conduct, call (907) 272-1033 or toll-free 800-478-1033.

THE ALASKA JUDICIAL COUNCIL

The Alaska Judicial Council is an independent judicial branch agency created by the Alaska Constitution. It has three constitutional and statutory functions. First, the council solicits, screens and nominates applicants for gubernatorial appointments to vacant judgeships, the Alaska Public Defender and administrative tax law judges. Second, it evaluates judges standing for retention and publicizes information on judges and its retention recommendations. Third, the council conducts research to improve what the constitution refers to as "the administration of justice."

The judicial council is comprised of the chief justice, who serves as chairperson and ex officio member; three attorney members appointed by the Board of Governors of the Alaska Bar Association and three non-attorney members appointed by the governor and subject to confirmation by a majority of the members of the state legislature in joint session. Council members serve six-year terms.

The Alaska Judicial Council, which must report to the Alaska State Legislature and the Alaska Supreme Court at least once every two years, is assisted by an executive director and support staff.

For more information on the Alaska Judicial Council, call (907) 279-2526 or visit the Council's Internet site at www.ajc.state.ak.us.

BUDGET AND FISCAL AFFAIRS

The Alaska Legislature annually appropriates from the state's general fund all monies for the operation of the Alaska Court System. A statewide budget for all trial courts, the appellate courts and court administration is

prepared centrally by the administrative office.

The budget process for the court system begins with the submission of budget requests by the trial and appellate courts to the administrative director. The requests are reviewed with each judicial district's area court administrator and the clerk of the appellate courts. Then, these requests are modified to conform to the overall court budget plan. The court's budget request is reviewed and approved by the supreme court. Following legislative review and appropriation, funds are then allocated to the judicial districts, the appellate courts and the administrative office.

Since fiscal year 1988, the court experienced an average annual growth rate of approximately 2.2%. The court's FY 98 operating budget increased approximately 1.1% from the FY 97 level, which is partly attributable to a cost-of-living pay adjustment. The court system's budget represents approximately 1.3% of the State's operating budget.

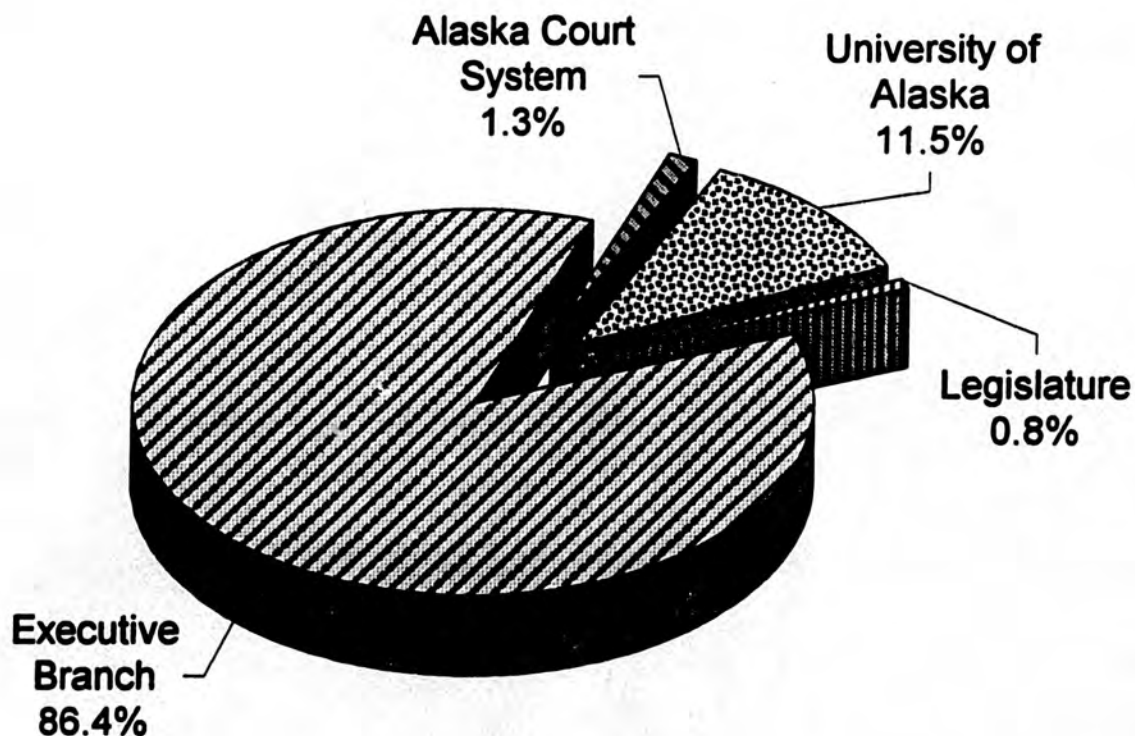
The actual expenditures incurred by the court system during fiscal year 1998 were \$48,653,000. These expenditures were incurred as follows: Appellate Courts, \$4,002,600; Trial Courts, \$38,438,700; and Administration \$6,211,700.

Personnel costs of \$37,767,700, represent approximately 78% of the total operating budget. Expenses for rent, maintenance, utilities, janitorial services and insurance on court facilities in fifty-nine locations across the state amounted to \$3,980,800. Jury fees totaled \$1,097,800. Due to the distances between courts, approximately \$1,055,000 was spent for travel including judicial, administrative, conference and juror transportation and living expenses. Other operating expenses of the court, including commodities, phones, postage, equipment rental, leasehold improvements and new equipment make up approximately \$4,751,700 of the annual expenditures.

Revenues generated by the courts are deposited in the state general fund, except those originating from municipal ordinance violations, which are disbursed to the respective municipalities. During fiscal year 1998, the court system collected \$5,859,600 in revenues. Revenues from fines and for-

feitures totaled \$3,649,100. Civil case filing fees (\$100 superior court, \$60 district court, \$25 small claims) totaled \$1,538,400. Clerical fees (notary, transcript, copies) and other miscellaneous receipts amounted to \$291,700. Cost recoveries totaled \$20,300 and interest on investments totaled \$360,100.

State of Alaska Fiscal Year 1998 Percentage of Operating Budget



Total State Operating Budget = \$3,837.6 million

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**Year
in
Review**



YEAR IN REVIEW

FIRST JUDICIAL DISTRICT



Kristen Carlisle
Area Court Administrator
First Judicial District

The first judicial district encompasses all of southeast Alaska and includes 13 courts located between Craig and Yakutat. The five combined trial court locations are Ketchikan, Juneau, Sitka, Wrangell and Petersburg. District courts are located in Angoon, Craig, Haines, Hoonah, Kake, Pelican, Skagway and Yakutat. Magistrates act as the judicial officers in these locations.

Personnel

The first judicial district experienced personnel turnover in a number of key positions within FY98, including the Rural Court Training Assistant, the first district custody investigator, the Juneau Clerk of Court and the magistrates in Skagway, Haines and Wrangell. Orientation and training in court procedures and policies continue and have been a major focus of personnel activity this year.

Court Programs

The fourth "Meet Your Judges" public forum was held in Petersburg in April 1998 with record participation from local citizens. Previous programs have been held in Juneau and Ketchikan.

Education and Training

Monthly scheduled workshops are held in the communities of Juneau, Ketchikan and Sitka for parties with children who are going through divorce or dissolution. The workshops are taught by the first district custody investigator and are designed to help parents focus on helping their children through the divorce process. When there are enough interested persons, special workshops are scheduled in the other southeast communities. All parents with children view a one hour video focusing on the best interests of the children during divorce.

Ketchikan was the location for a pilot program entitled "Counter Intelligence" in 1998. Twenty front counter clerks from all over the judicial district who routinely are the first to meet and serve court system customers gathered for two days to improve customer service skills and discuss improvements. This program will be offered in other judicial districts within the next year.

Facilities

Extensive remodeling of the courtrooms in Ketchikan was completed in 1998 to provide adequate work space for the clerk and security improvements for the judges. Temporary court facilities in Skagway were obtained to provide space during the remodeling of the Skagway City Hall which is over 100 years old. When completed, the Skagway court will have facilities for trials.

SECOND JUDICIAL DISTRICT



Tom Mize
Area Court Administrator
Second Judicial District

The second judicial district begins along the northwest coast of Alaska in the Norton Sound area south of Nome and extends north above the Arctic Circle and eastward across the entire width of the State of Alaska to the Canadian border. The three most populated communi-

ties in the district are Nome, Kotzebue, and Barrow.

Courts in the Community

Continued growth in case filings have stimulated cooperative efforts to help handle the additional workload. The Barrow court has partnered with the District Attorney, Public Defender, Probation, and other community agencies to hold weekly calendar meetings to identify and resolve probable calendar conflicts before they appear. The same court has monthly meetings with a variety of justice system agencies so that communication lines among all participants can remain open. The Nome court has adopted a policy of setting aside time when all court personnel (including judicial officers) stuff mailing envelopes to help offset additional requirements for distribution of copies of criminal judgments. In Kotzebue, the court has moved the start time for jury trials to later in the day to accommodate community needs, which has resulted in more jurors reporting for service.

The Kotzebue court has partnered with the Alaska Bar Association to provide community members with the opportunity to attend Continuing Legal Education video replays at no cost. Partnering also allowed the courts to

create an informative public education program that would normally be unavailable in such a remote community. This year's programs included such topics as "Politics, Public Policy and the Law," "Sexual Harassment," "Native Law," "Child Sexual Abuse," "Child Support," and "Domestic Partners."

The courts in Nome and Kotzebue continue to work with their communities on implementation of a youth court. All courts in the district are actively keeping their communities informed of court business by innovative approaches such as sentencing convicted residents in their home village rather than at a hub location. Sentencing is often conducted at the local school, commonly the community's largest building, with students, village elders, and members of the public in attendance. Afterwards the judge is available for discussions on the judicial process.

The November 1997 election returned Barrow to a "damp" status from its previous "dry" status, therefore allowing the importation of alcohol. Criminal case filings have now doubled, with no new positions added to the clerk's office. Despite the intense workload, Judge Jeffery, Magistrate Hegyi, and Clerk of Court Peggy Barnebey have maintained an active involvement in the Barrow community. All three recently worked with consulting attorneys to actively support a mock trial for two fifth grade classes. The students acted as prosecuting and defense attorneys, jurors, witnesses, and the in-court clerk, and two student judges were present on the bench with Judge Jeffery. For the students, the mock trial (headlined Justice for 'Bubba') was a serious event. The students became so involved in the process that jury deliberations had to continue at the elementary school after the trial's allotted time was over at the courthouse. Students returned the next morning to hear the jury announce a verdict of guilty. Afterwards, many of the students expressed their appreciation and their interest in justice system careers.

Personnel

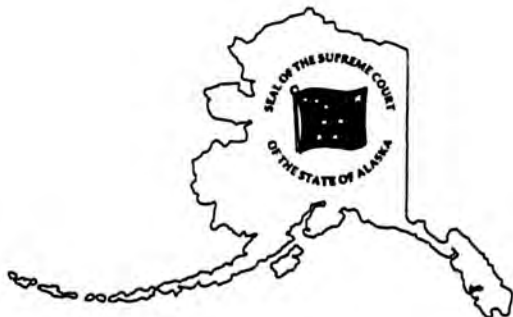
Nome Superior Court Judge Esch, Magistrate Clark, and Magistrate Gater were appointed training judges for the second judicial district. Heidi Erickson was appointed as Magistrate in Unalakleet replacing Middy Johnson who resigned to become the community's Chief of Police.

Facilities

Modifications to comply with the Americans with Disabilities Act have been completed in the Kotzebue Courthouse. Lumber has been purchased for the Ambler magistrate post for the construction of shelving.

Education and Training

Clerks of Court attended Phase I of the new core curriculum for supervisors held in Fairbanks. Phase II is scheduled for early FY99. Deputy Clerks of Court attended a seminar for new supervisors held in Anchorage. This year began our first year working to develop a mentoring program by deploying experienced clerks with particular job skills to assist other clerks within the district. The purpose of this program is to share knowledge among the clerks and to develop a chain of communication for increasing performance and education.



THIRD JUDICIAL DISTRICT

The third judicial district holds court in fifteen locations across a geographical area stretching from Glennallen to Unalaska. The district, which handles 60% of the state court filings, includes single magistrate sites in small rural communities as well as Anchorage, Alaska's largest city.



Wendy Lyford
Area Court Administrator
Third Judicial District

The third district's judicial staff consists of 16 superior court judges, 10 district court judges and 9 magistrates. In FY98, the district lost the services of two long time magistrates when Mary Hawkins of Unalaska and William Garrison of Naknek retired. Tim Jannott joined the court system in September 1998 as the Unalaska magistrate.

In FY98, the third district began planning for a major addition to the Palmer courthouse, one of the district's busiest and fastest growing courts. Renovations also continued in the Boney Memorial Courthouse in Anchorage, home to the Alaska Supreme Court, Court of Appeals, state law library and several trial court operations. The work is primarily focused on addressing long term maintenance needs and code violations. The renovation project will also improve significantly the areas of the courthouse serving domestic violence customers. The renovation, to be completed in the fall of 1998, will create special areas to provide more privacy for families and children, as well as space for consultation between victims and advocates. The renovated space will offer a safer and more comfortable environment for those accessing the court for domestic violence orders, which are available 24-hours a day.

FOURTH JUDICIAL DISTRICT



Ronald J. Woods
Area Court Administrator
Fourth Judicial District

The fourth judicial district extends from the Canadian border on the east of the state to the Bering Sea on the west. The vast size of the district makes it the largest state trial court judicial district in the United States.

Six superior court judges, three district judges, twelve magistrates, and two standing masters sit in the district. There are fourteen court sites and a total of eighty-nine administrative/judicial support positions. Six law clerk positions serve the superior courts: five are based in Fairbanks and one in Bethel.

Personnel

Judge Charles E. Pengilly was appointed to the superior court bench after having served for seven years as a Fairbanks district court judge. The appointment of Judge Raymond M. Funk filled the district court vacancy created by Judge Pengilly's elevation to the superior court.

Chief Justice Matthews presided over a retirement ceremony held in Bethel for Emmonak Magistrate Dorothy Kameroff in June 1998. Magistrate Kameroff served the community of Emmonak for twenty-seven years. Chief Justice Matthews presented to Magistrate Kameroff a plaque signed by all the Alaska Supreme Court justices in recognition of her many years of outstanding service. In another ceremony the same day, Chief Justice Matthews presided over the installation of Magistrate Ron Self, who was appointed to fill the Emmonak position.

Magistrates Margaret Murphy and Joseph Miller were appointed to fill vacancies in Aniak and Tok respectively. In June 1998 the legislature appropriated funding for a standing master in Fairbanks to support the increasing children's caseload demands.

ADMINISTRATION

HUMAN RESOURCES

The Human Resources Department is located in Anchorage and serves employees and members of the public throughout Alaska. Human Resources has system-wide responsibility for recruitment, classification, compensation, labor and employee relations, training and development, personnel record maintenance, and benefits coordination.

Recruitment for the court system is centralized in Human Resources. This function includes recruiting applicants and screening applications. The court system recruits throughout the State of Alaska for each job opening. Human Resources distributes recruitment bulletins to a list of organizations with a focus on attracting female and minority applicants for positions with the court system.

Human Resources also assists members of the public with recruitment questions.

Human Resources maintains a position classification system for analyzing and evaluating court system positions for placement within the classification structure.

The first collective bargaining agreement between the court system and the International Brotherhood of Electrical Workers (IBEW) union took effect July 1, 1996, and expires June 30, 1999. The IBEW represents approximately 290 court system employees. Human Resources administers this contract. Human Resources also assists supervisors and employees in conflict resolution, employee relations, and other issues of personnel management.

Human Resources administers the program for the training and development of non-judicial employees. This includes employee development and supervisory training.

6/30/98

Classified and Non-Classified Judicial Employees

Salary Range(s)	Caucasian		Alaska Native		African-American/Black		American Indian/ Native American*		Hispanic*		Asian/Pacific Islander		Other Minorities		Total			
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Vacant	Total
Range 6-8	2	25	0	6	2	1	0	0	0	0	0	1	2	0	6	33	7	46
Range 10	12	104	0	18	4	5	0	0	2	0	0	5	3	5	21	137	18	176
Range 12	4	104	0	14	0	4	0	0	0	1	0	4	0	6	4	133	8	145
Range 13-14	0	34	0	5	0	2	0	0	0	0	0	0	1	2	1	43	3	47
Range 15-20	11	27	0	1	1	1	0	0	0	0	0	0	0	0	12	29	7	48
Range 21+	15	19	0	0	0	0	0	0	0	0	0	0	1	1	16	20	2	38
Total Employees	44	313	0	44	7	13	0	0	2	1	0	10	7	14	60	395	45	500
Percentage	8.8	62.6	0.0	8.8	1.4	2.6	0.0	0.0	0.4	0.2	0.0	2.0	1.4	2.8	12.0	79.0	9.0	100.0

Judicial Officers and Law Clerks

Classification	Caucasian		Alaska Native		African-American/Black		American Indian/ Native American*		Hispanic*		Asian/Pacific Islander		Other Minorities		Total			
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Vacant	Total
Appellate Court Justice/Judge	7	1	0	0	0	0	0	0	0	0	0	0	0	0	7	1	0	8
Superior Court Judge	23	5	0	0	1	0	0	0	0	0	1	0	2	0	27	5	0	32
District Court Judge	11	6	0	0	0	0	0	0	0	0	0	0	0	0	11	6	0	17
Magistrates	14	13	3	3	0	0	0	0	0	0	0	0	0	0	17	16	25	58
Law Clerks	22	25	0	0	0	0	0	0	1	0	1	1	0	0	24	26	3	53
Total Employees	77	50	3	3	1	0	0	0	1	0	2	1	2	0	86	54	28	168
Percentage	45.8	29.7	1.8	1.8	0.6	0.0	0.0	0.0	0.6	0.0	1.2	0.6	1.2	0.0	51.2	32.1	16.7	100.0

The total number of positions reported above is greater than the number of budgeted positions due to allocating certain full-time positions into multiple part-time positions.

*New categories established 1/1/98

ADMINISTRATION

continued

SYNOPSIS OF LEGISLATIVE ACTION

During the 1998 legislative session, the legislature passed SB 195 (Chapter 20 SLA 1998), which deals with so-called "common law liens." These liens (although never part of the common law and not really liens at all) are documents recorded like legitimate liens but without meeting the corresponding legal requirements. Rather than security for a debt, these documents are recorded in retaliation for action taken by public officials (typically judges, clerks, prosecutors, lawmakers, law enforcement officers, and others). In Alaska, common law liens have been recorded against the property of the members of the Anchorage Municipal Assembly (in retaliation for a zoning enforcement action) and several other local and state officials. Several court employees have been threatened with having liens recorded against their property. These liens are generally for hundreds of thousands or even millions of dollars. Although legally ineffective, common law liens can cloud the title to property and make selling or borrowing against that property expensive and time consuming.

Senate Bill 195, introduced by request of the supreme court, makes it a crime for a person to record a common law lien and clearly establishes that such liens are invalid. The bill also provides for expedited procedures to have a notice of invalidity placed in the property record if such a lien is recorded.

Several bills dealing with children and family issues passed the legislature this year. Of particular importance to the court system was HB 375 (Chapter 99 SLA 1998), which is a major revision of the state's child protection laws. This bill increases the ability of the Division of Family and Youth Services (DFYS) to intervene on behalf of at-risk children and shortens many of the time lines that must be

met by the department as well as the court. It also makes significant changes to the laws, procedures and time lines governing termination proceedings. The Department of Law and DFYS, in conjunction with the court, are providing judicial training on the many aspects of the new law that will affect how the court handles child protection cases.

In addition to HB 375, the legislature approved additional funding to allow the state to pursue more aggressively reports of harm against children. The funds will be used to staff several new positions in both DFYS and the Department of Law. The court system also received some funding to handle the corresponding increase in child protection and termination proceedings.

HB 335 (Chapter 133 SLA 1998) replaces the Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act. HB 344 (Chapter 132 SLA 1998) makes several changes to the laws governing child support enforcement. House Bill 344 includes a provision (with a delayed effective date) that prohibits a court from granting a noncustodial parent an unconditional right to claim a child as a dependant under federal tax laws. The court may grant a conditional right contingent upon the noncustodial parent not being in arrears in his or her child support payments. HB 199 (Chapter 42 SLA 1998) allows married persons the option of entering into an agreement to have some or all of their marital assets treated as community property and defines the legal status of such property.

In the criminal law context, the legislature passed HB 16 (Chapter 107 SLA 1998). This bill, in addition to making several changes related to juvenile delinquency procedures and records, provides that some juveniles charged with certain felony offenses will receive both a juvenile disposition and an adult sentence ("dual sentencing"). The adult sentence, which must include some jail time, is triggered if the juvenile does not abide by the terms of his or her juvenile disposition.

HB 245 (Chapter 86 SLA 1998) increases the penalties for certain crimes involving domestic violence. The new law also creates the crime of "unlawful contact in the first degree" for a person who, having been ordered not to contact a victim or witness, does so either directly or indirectly. The law creates the crime of "unlawful contact in the second degree" for a person who, having been arrested for a crime under AS 11.41 or a crime involving domestic violence, contacts or attempts to contact the victim prior to the person's initial appearance or dismissal of the charge. HB 252 (Chapter 106 SLA 1998) makes several changes to the sex offender registration laws (including making the crime of failure to register in the first degree a class C felony) and makes the crime of child kidnapping subject to the registration requirements. Another bill, SB 323 (Chapter 81 SLA 1998) also expands the scope of the sex offender registration requirements by including certain indecent exposure convictions.

LAW LIBRARY

The court system maintains law libraries at 17 court locations for the use of the judiciary, attorneys and the general public. The Anchorage Law Library is the administrative headquarters of the library system and is the primary legal research library in the state.

Professional librarians in Anchorage provide statewide reference assistance, interlibrary loans, and document retrieval services. They are also responsible for collection development statewide, supervision of branch libraries, and systems administration for all computerized library operations.

The Anchorage Law Library maintains a comprehensive collection of state and federal statutory, administrative and case law; Alaska and federal legislative history materials; American law reviews; legal encyclopedias; looseleaf services; treatises and other secondary source material. The library also houses a collection of 18th and 19th century

American case reports. The library is a depository for federal documents and for publications produced through the State Justice Institute grant program. Library resources are available in a variety of formats including print, microform, video, CD-ROM, and computer disk.

Library staff members manage the Alaska Court System Home Page. Electronic distribution of court information allows attorneys and the general public to access appellate court slip opinions within hours of their release. Alaska Court System resources are continually being added to the home page. In addition to slip opinions, users can access Supreme Court Orders, Court of Appeals MOJs, Alaska Rules of Court, appellate court argument calendars, Anchorage and Fairbanks district and superior court calendars, court system forms and pamphlets, court system recruitment bulletins, Alaska Bar Association Ethics Opinions, and the Directory of Mediators.

The home page provides links to federal legal resources and to other Alaska legal resources including the Alaska Judicial Council, the Alaska Commission on Judicial Conduct, the Alaska Bar Association, the Alaska Statutes, administrative code, administrative journal, constitution, executive orders, and Alaska legislative information.

FACILITIES

The Alaska Court System maintains court facilities in fifty-nine locations throughout the state. These facilities range from large multi-courtroom facilities to one room magistrate offices—from the 353,000 square feet of the Anchorage trial and appellate court facilities to the 117 square feet area that houses a rural magistrate in Skagway. Fourteen of the court locations are housed in buildings owned by the state. The remaining locations are housed in space leased from the private sector or municipalities. The court system occupies approximately 790,000 square feet of space statewide. Approximately 50

percent of the statewide court system space is located in Anchorage, Juneau and Fairbanks.

Deferred maintenance needs at many court facilities are continuing concerns. Although a few projects have been completed over the last four fiscal years, the state-owned buildings housing court operations have significant renewal and replacement maintenance requirements that have not been adequately addressed. Many court facilities, such as the Juneau, Kotzebue, Ft. Yukon, Kodiak, Ketchikan, Valdez and Sitka courts, still need replacement roofs. It is well documented that buildings that do not receive adequate routine and preventive maintenance will deteriorate at an accelerated rate, reducing their useful lives. The nine-story Juneau court and office building continues to leak water at an ever increasing rate as patch and repair efforts fail to provide a waterproof exterior system. The court system, in conjunction with the northern region of DOT/PF, has managed to fund completion of bid documents for a replacement roof at Kotzebue, but both agencies have been unsuccessful in the quest for construction funds. The building has serious leaking problems in the 4 to 6 months when temperatures are above 28 degrees.

While energy upgrades have been accomplished in the Anchorage and Fairbanks courthouses, several of the larger state-owned court buildings need improvements to make them more energy efficient and to reduce operating costs. These simple but effective improvements include the installation of motion and light level sensors as well as low watt, long-life fixtures designed to save electricity consumption. The result has been a significant decrease in consumption. Energy evaluations need to be completed at each major facility and appropriate installation of devices and fixtures should take place. In these types of projects, costs of installation are usually recouped during the first year of operation.

During FY98 the court system continued its efforts to comply with the American with Disabilities Act of 1990. With money appropriated by the legislature in FY 96, the Department of Transportation and Public Facilities (DOT/PF) and the court participated in projects to complete improvements in Fairbanks, Kodiak, and Kotzebue to bring these buildings into compliance. With the exception of Kotzebue, work at these sites has been completed. Utilizing FY98 funds, preparation of bid documents is underway for the Ketchikan and the Boney Court Building in Anchorage

Anchorage: The new trial court building located on block 29 was occupied in May 1996. Work consisting of the demolition of the original district court building and construction of parking and plaza areas was completed in October 1997.

The older Boney building was remodeled, including the addition of a fire safety (sprinkler and alarm) system. Other projects have included a new proximity card key security system as well as a communications wiring upgrade. Remodeling will continue through FY99.

Code problems were identified and resolved for the building at 444 H. Street.

Fairbanks: The project to construct a 100,000-sq. ft. courthouse to replace the current facility is well underway. Site acquisition, environmental assessment and schematic design phases have all been completed. The site work and construction phases are scheduled for FY99. The projected occupancy date is February 2001.

Ketchikan Remodel: Remodel of the in-court clerk stations and witness stands in three courtrooms was completed in mid-January 1997. This remodel work brought the facility into compliance with ADA standards and provided accommodation for computer and recording equipment creating more functional courtrooms.

Kotzebue Roof: DOT/PF completed design of a new roof to replace the badly failing one on the Kotzebue courthouse. The project is awaiting construction funding.

Bethel: The court received funds in FY98 to expand court space in the Bethel court facility (leased from the City of Bethel) because of increased caseloads. Design work is currently progressing.

Fiber Optic Connection: A fiber optic and copper connection was established in FY98 between the Anchorage administrative and trial court buildings. This connection will allow for networking of phone systems and computer operations, providing increased efficiency and improved staff communication.

Year 2000: With the millennium on the immediate horizon, the embedded chip problem poses a potential to disrupt vital facilities services. Agencies that manage many of the court system buildings have assessed equipment and are now contacting the appropriate manufacturers in an effort to resolve any date change problems. Other states have developed Y2000 facility resource departments and published valuable recommendations for assistance with the Y2000 transition.

INFORMATION SYSTEMS SUPPORT

During FY98 the Information Systems Support department ("ISS") worked aggressively to plan and accomplish technology upgrades in several areas. The most significant of these is the effort to make the court's existing case management system Year 2000 compliant. This requires changes to the software and replacement of all the Unix servers and communication equipment. Other technology upgrade projects to modernize audio recording and electronic equipment were started and will continue into FY99. These include the replacement of all the hearing assistance equipment, replacement of cassette tape

equipment (duplicators, reformatters and some recorders), replacement of old PCs and the acquisition of digital recording equipment for courtrooms. The equipment to be replaced is antiquated and failing, and in some cases replacement parts are no longer available.

The CIPS-2000 project, to develop a more comprehensive and useful court information system, was started during FY98. Plans were integrated with audio recording and electronic equipment projects to determine shared requirements and project tasks in order to avoid duplication of work. This integration also combines work tasks, reducing the impact of improvement work at each court location and reducing the travel costs by minimizing trips. The CIPS-2000 computers can support either a modern version of Unix or NT. They replace old 486 PCs running multiple versions of Unix and thus provide a longer equipment life cycle. The 36 existing Unix systems are configured several ways, using a variety of non-standard components. These systems will be replaced by 32 servers using open system standard components and a single version of Unix. Three new systems are being tested by ISS. Deployment of the new systems is scheduled from September 98 through March of 99.

During this period the Administrative Offices installed a Local Area Network (LAN), and MS-NT system in the Snowden building. This LAN will be expanded to include 3rd District staff in the Nesbett and Boney buildings, tying the Anchorage "campus" of three buildings together. The court took advantage of city construction on H Street to install conduits between the Snowden and Nesbett buildings. Installation of phone and fiber cables is scheduled for August 98. As part of the audio recording and electronic equipment infrastructure requirements, a modern network of cables, switches and hubs were installed in all three Anchorage buildings, and the Juneau, Palmer and Bethel courthouses. This rewiring of courthouses is scheduled to continue through FY99. For the large

buildings fiber optic cables are used vertically to provide high bandwidth capabilities.

As part of the audio recording and electronic equipment improvements, the PCs and terminals in judicial offices are being replaced with modern PCs. These systems will eventually be connected to the digital recording system networks in each courthouse.

During the coming year ISS will:

- ✓ Complete the CIPS-2000 projects by installing new servers and revised software in all the automated courts.
- ✓ Upgrade the communication infrastructure in all courthouses. This includes installing Cat 5 wire and (depending upon the size of the court) installation of switches, hubs and multi-port devices. In Anchorage, Fairbanks and Juneau fiber optic cables will be installed.
- ✓ Replace reformatters and duplicators; replace portable recorders.
- ✓ Install two-channel hearing assistive systems in all appellate, superior and district courtrooms. These systems can also be used for language translation.
- ✓ Acquire a contract for the installation of digital recording systems. Install the first systems in Anchorage, Juneau and Fairbanks.
- ✓ Provide all superior and district court judges with PCs in their chambers and for their staff.

ISS will also establish a knowledge based Help Desk and digital documentation for on-line support of installed systems.

FISCAL OPERATIONS

Fiscal Operations is responsible for the financial affairs of the court system and some other centralized services. It includes general accounting, purchasing, finance, statistical information, jury management, micrographics, central court supply, mailroom and the print shop.

General accounting pays all court bills, collects and accounts for revenues, prepares payroll, processes travel claims and maintains court trust fund records. The purchasing division procures supplies, equipment and contractual services, and maintains supply and property inventories. The finance division prepares and administers the operating and capital budgets, prepares legislative fiscal analyses, conducts internal audits, maintains court salary schedules, manages grant finances, establishes and monitors banking contracts, and develops and administers fiscal policies for the trial and appellate courts. The jury management/statistical section maintains the master list of jurors and coordinates the preparation and distribution of juror qualification questionnaires. Additionally, staff assists the courts in selecting jury panels, analyzing juror usage and paying jurors. This section also prepares quarterly and yearly statistical reports and enters traffic dispositions.

Micrographics is the central collection point for all case files requiring conversion to microfilm and for the long-term storage of audio tapes of court proceedings. Annually, micrographics converts over 3 million documents from paper form to microfilm and adds over 26,000 audio tapes to storage. The supply division receives, stores and issues supplies and forms for courts statewide. Mail services for the administrative office are handled by the mailroom. The print shop provides centralized offset printing and duplication services for the court system and other state and federal agencies. Each year

the print shop produces over 10 million documents.

During the year, Fiscal Operations participated in the following projects and activities:

Annual Report Statistical Information: Fiscal Operations assumed responsibility for preparing the statistical section of the court system's annual report. Previously, the statistical section was prepared manually. Fiscal Operations staff entered case filings and dispositions into an electronic spreadsheet and created formula-based, interrelated tables and graphs. Automation of the process will provide more accurate information and easier updating in future years.

Purchasing Catalog: After several years of preparation and review, the court system's supply catalog was completely revised. The new purchasing catalog is designed to guide court staff through the process with detailed instructions for preparing requisitions for supplies, equipment, and printed materials. The catalog contains listings of all on-hand supply items and detailed descriptions of commonly ordered equipment. Other sections contain guidelines for managing court property, transferring or surplusizing excess property and minimizing inventories.

Retirement Incentive Program: Fiscal Operations staff updated the court system's retirement incentive plan for the second offering of early retirement benefits. Employees who met service and age requirements were eligible to retire if a cost saving would result from their retirement. Since inception, 30 employees have retired under the program.

Budget Process Improvements: This year, the trial courts were given the option of preparing their annual operating budget requests electronically. Using a specially designed spreadsheet from Fiscal Operations, budget managers could prepare and automatically summarize their judicial district's financial

needs. Information from approved requests was easily transferred into the combined court system budget request.

Jury Questionnaire: Fiscal Operations staff redesigned the qualification questionnaire that is sent to prospective jurors statewide. The method of processing, printing and distributing the form was completely revised to provide more efficient handling and to comply with new postal regulations. The court system issues over 50,000 questionnaires annually.

Timesheet Revisions: Payroll staff and Human Resources staff revised existing timesheets and created new timesheets to accommodate all classifications of employees. This included creating simplified procedures for timekeeping and reporting. These revisions have reduced the amount of effort needed to process the semi-monthly payroll for the over 700 court employees.

Criminal Rule 8: Fiscal staff played an instrumental part in the implementation of a revision to District Court Criminal Rule 8. The revision allows the court to enter a judgment of conviction when a person fails to respond to a citation issued in a traffic or minor offense case. The person is required to pay court and collection costs in addition to fines/penalties. Staff assisted in the modification of bookkeeping computer programs and the development of procedures and instructions.

For the second consecutive year, a Fiscal Operations staff member was recognized as the "Employee of the Quarter" for outstanding service to the courts.

MAGISTRATE SERVICES

Several regional magistrate conferences were held during the fall of 1997. The magistrates from the Second Judicial District met in Kotzebue on October 2-3, where they addressed topics including new legislation, search warrants, and domestic violence

issues. Third Judicial District magistrates met in Anchorage at the Snowden Training Center on October 13-16. Topics for the Anchorage conference included new legislation and rules, child support enforcement, and domestic violence. Fairbanks and Interior magistrates (Fourth Judicial District) met in Fairbanks on October 27-31 to discuss search warrants, fish & game issues, new rules and legislation, evidence, and domestic violence. Bethel area magistrates discussed new legislation, supervision, customer service, interpreters in the courts, and domestic violence on November 3-7 in Bethel. Conferences in which domestic violence issues were addressed were funded in part with federal Violence Against Women Act grants.

Other magistrate-related projects which were begun in FY98 included a new arraignment benchbook, the development of a computer database for small magistrate courts, updates for the magistrate correspondence course, and a review of the magistrate performance evaluation system.

JUDICIAL EDUCATION

Annual Judicial Conference. The 1998 Alaska Judicial Conference was held in Girdwood on May 6, 7 and 8. Conference topics included:

- Ethics: New Code of Judicial Conduct
- Alaska Appellate Decisions Update
- U.S. Supreme Court Decisions Update
- Advanced Legal Writing
- Opinion Writing for Judges
- A Global Perspective on the Law
- Current Native Law Issues

Special Conference on Alternative Dispute Resolution. On October 22-23, 1998, a judges' conference on alternative dispute resolution was held in Girdwood, Alaska. This conference was supported by a grant from the State Justice Institute, and was conducted in cooperation with the federal court.

Trial Court Performance Standards. On October 20-21, 1998 forty judges and court employees met in Girdwood to study the National Trial Court Performance Standards. The conference was supported by a grant from the State Justice Institute.

CLERKS CONFERENCE

The 1998 Statewide Deputy Magistrate/Clerks Conference was held in Anchorage the week of December 7, 1998. Approximately thirty-five deputy magistrates, clerks of court, rural court training assistants, and area court administrators participated in this year's conference. Three days were set aside for deputy magistrate training and two days for clerk of court training.

The deputy magistrates received training in five key areas: domestic violence, Child In Need of Aid (CINA) and Delinquency cases, the Code of Judicial Conduct, search warrants, and arraignments in criminal cases. The training was conducted by four training judges and by Judge David Mannheimer of the Court of Appeals, who chaired the committee which revised the Code of Judicial Conduct.

Clerks of court received training on the court's sexual harassment policy, the Americans with Disabilities Act and issues relating to the court's customers who have hearing disabilities, technological developments in the court, rule changes, and new legislation. Clerks also gathered in groups and discussed goals for improving customer service in their districts.

SPECIAL TASK FORCES & COMMITTEES

Fairness and Access Implementation Committee.

The Fairness and Access Implementation Committee is continuing the work of the court's original Fairness and Access Committee, which issued its final report in October 1997. The original eight member committee, with the assistance of an extensive network of subcommittees, spent 20 months examining racial and ethnic bias issues. The committee's report made 21 recommendations.

The implementation committee, chaired by Justice Bob Eastaugh and Superior Court Judge Meg Greene, is working to implement many of the original committee's recommendations. Subcommittees are working on projects in five areas: rural services, public education, local dispute resolution, language and interpreters, and juries.

Projects completed or underway include a cultural navigator/court facilitator pilot project; diversity training for all court staff and a two-day conference/retreat for judges and court staff linking the findings of the original committee's report with the national Trial Court Performance Standards.

Projects planned for the immediate future include development of a new Affirmative Action Plan and an "On-Line Encyclopedia of Resources for Criminal and Family Courts." In 1999 federal OJJD funds will be used to add additional judicial and staff resources for the Yukon-Kuskokwim Delta, as recommended by the original committee. The Human Resources Department is continuing work on a variety of efforts to encourage members of minority groups to apply for jobs with the court system, increase minority hires and support minority in-house promotions. An interpreter advisory committee is being formed to advise the court system about the adoption of an interpreter code of ethics and an orientation class for interpreters.

Statewide Task Force on Access to Civil Justice.

This task force, chaired by Justice Dana Fabe, is investigating, planning and recommending methods to improve the delivery of civil legal assistance and to increase access to justice for the citizens of Alaska.

Six subcommittees have forwarded reports and recommendations to the steering committee. Recommendations focus on improving assistance to pro se litigants, encouraging lawyers to provide pro bono assistance, developing community legal support and education, and supporting the efforts of Alaska Legal Services. The task force at large will meet in February 1999 to consider the subcommittee recommendations.

Alaska State-Federal Courts Gender Equality Task Force.

This task force was originally formed in October 1993 as an arm of the Joint State-Federal Judicial Council. The task force is currently chaired by U.S. District Court Judge James Singleton and Justice Dana Fabe.

The final report of the original task force was issued in 1996. The task force then moved into implementation work. Recent projects have included an updating and republishing of an Alaska Women's Rights Handbook, the development and display of a "Women in Alaska Law" historical archive, and training programs.

Child Support Guidelines Review Committee.

Federal law requires the states to review their child support guidelines every four years. The Child Support Guidelines Committee was appointed by Chief Justice Matthews in October 1997 to review Civil Rule 90.3, the Alaska Court System's child support guidelines.

The committee is chaired by Bill Cotton, Director of the Alaska Judicial Council. The committee's work and recommendations will be considered by the supreme court in 1999.

Indigency Guidelines Committee.

This committee was appointed in April 1996. The committee was charged to develop standards or guidelines for judges to use in determining a person's eligibility for appointment of counsel at public expense.

The committee's final report was sent to the supreme court in November 1998. The supreme court has adopted new rules based upon the committee's recommendations, which will be effective in May 1999.

The committee was chaired by District Court Judge Peter Ashman.

Interagency Child Support Committee.

This interagency effort was initiated in January 1997. Representatives from the Alaska Court System, the Child Support Enforcement Division and the Department of Law are working to improve the efficiency of the systems for modifying and enforcing child support orders.

The committee meets almost monthly. The committee is chaired by Special Projects Manager Susan Miller.

The committee is working on several projects, including: revision of the child support standard orders due to a change in CSED policy, a review of the necessity of court ordered child support in children's cases, a reference guide for judges containing a variety of information about the child support process and CSED, a parent's guide about children in the court system; training and assistance for court employees (and eventually the public) in calculation of child support, and pro se forms and instructions for modification of child support, modification of custody, and modification of enforcement of visitation.

Access and Visitation Committee.

This committee, chaired by Special Projects Manager Susan Miller, is administering federal funds and designing programs to support and facilitate non-custodial parents' access to and visitation of their children. Underway is a new program in the Anchorage court to provide mediation services for custody and visitation disputes.

Court Improvement Project Committee.

This committee is chaired by Justice Alex Bryner and Superior Court Judge Niesje Steinkruger. The committee is pursuing a variety of projects to streamline the child in need of aid procedures, especially with regard to timely process of termination cases. Current projects include judicial and staff training, pilot mediation projects, preparation of a judicial bench book, analysis of case processing times for certain cases, revision of case management software to better track CINA cases, and joint sponsorship of multi-disciplinary Indian Child Welfare Act training for the south central region.

Statistical Summaries



SUPREME COURT ACTIVITY

Filings: During FY 98, 541 cases were filed in the supreme court, an 11% increase from the 486 filings in FY 97. Filings decreased by 45% in original applications. There was an increase of 13% in civil appeals, an increase of 21% in criminal petitions and an increase of 14% in civil petitions. For details about filings in various categories of cases from FY 91 through FY 98, see Table III.

Dispositions: The supreme court disposed of 521 cases in FY 98, a 6% decrease from 556 dispositions in FY 97. The court issued 192 published opinions and 31 MO&J's. The remaining 298 dispositions were not on the merits. For details about the dispositions by type and caseload composition in FY 98, see Table II. For comparisons of dispositions by type and caseload composition from FY 91 through FY 98, see Table III.

Pending Caseload: On June 30, 1998, 524 cases were pending, a 4% increase from the 504 cases pending at the end of FY 97. (The FY 97 figure is corrected due to an error which was discovered during the preparation of this report.) Most of these pending cases (60.7%) were at a pre-submission to the court stage (awaiting record, awaiting briefs or awaiting hearing), 1.7% were stayed or remanded, and the remaining 37.6% were under advisement (submitted to the court but awaiting circulation of a draft opinion, filing of an opinion, or a decision on a petition). For a comparison of cases pending at year's end according to case composition from FY 91 through FY 98, see Table III. For a breakdown of reasons for cases pending at the end of FY 98 according to case composition, see Table V.

Time Required for Disposition of Cases: As shown on Table VI, the average time from submission of the last brief to oral argument or conference on the briefs is 3.8 months. The average time from argument or submission until a decision is issued is 9.2 months.

**Supreme Court
Summary of Filings
FY 95 — FY 98**

Type of Case	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Civil Appeals	536	310	264	297	-45%	13%
Petitions for Hearing	100	81	85	103	3%	21%
Petitions for Review	100	104	115	129	29%	12%
Original Applications	17	23	22	12	-29%	-45%
Total	753	518	486	541	-28%	11%

Fiscal Year July 1 — June 30

**Supreme Court
Summary of Dispositions
FY 95 — FY 98**

Type of Case	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Civil Appeals	258	606	329	299	16%	-9%
Petitions for Hearing	98	81	92	91	-7%	-1%
Petitions for Review	101	95	114	117	16%	3%
Original Applications	16	21	21	14	-13%	-33%
Total	473	803	556	521	10%	-6%

Fiscal Year July 1 — June 30

**Supreme Court
Dispositions by Type of Disposition
FY 98**

Type of Case	Disposition by		Total
	Merits	Not on Merits	
Civil Appeals	210	89	299
Petitions for Hearing	9	82	91
Petitions for Review	14	103	117
Original Applications	10	4	14
Total	243	278	521
% of Total	47%	53%	100%

Fiscal Year July 1 — June 30

**Supreme Court
Cases Pending**

Type of Case	FY 95	FY 96	FY 97 ^a	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Civil Appeals	827	533	432	430	-48%	0%
Petitions for Hearing	20	21	32	44	120%	38%
Petitions for Review	25	34	34	46	84%	35%
Original Applications	7	9	6	4	-43%	-33%
Total	879	597	504	524	-40%	4%

Fiscal Year July 1 — June 30

^aThis column corrects errors which were discovered in FY 97 figures while this report was being prepared.

**Supreme Court
Reasons for Cases Pending
June 30, 1998**

Type of Case	Case Awaiting								Total
	Records	Briefs	Argument	Draft Opinion	Draft Opinion Circulating	Petition Decision	Rehearing/Record Return	Stayed	
Civil Appeals	69	134	53	92	63	2	9	8	430
Petitions for Hearing	1	23	0	2	3	14	1	0	44
Petitions for Review	5	27	3	1	1	9	0	0	46
Original Applications	0	3	0	0	0	0	0	1	4
Total	75	187	56	95	67	25	10	9	524
% of Total	14.3	35.7	10.7	18.1	12.8	4.8	1.9	1.7	100.0

COURT OF APPEALS ACTIVITY

Filing: During FY 98, 379 cases were filed in the court of appeals, a 2% decrease from the 386 filings in FY 97. The 279 merit appeals filed in FY 98 were an 11% increase from the 252 merit appeals filed in FY 97. The 57 sentence appeals filed in FY 98 were a 24% decrease from the 75 sentence appeals filed in FY 97, and the number of original applications filed increased from 1 in FY 97 to 4 in FY 98. The 39 petitions for review filed in FY 98 were a 33% decrease from the 58 petitions for review filed in FY 97. For a comparison of filings in various categories of cases from FY 91 through FY 98, see Table X.

Dispositions: The court of appeals disposed of 406 cases in FY 98, a 3% decrease from the 419 dispositions in FY 97. The court issued 73 published opinions, 235 MO&J's, and 84 dispositions were not on the merits. Fourteen petitions were granted without issuance of an opinion or MO&J. For details about the types and caseload composition of dispositions in FY 98, see Table IX. For comparisons of dispositions by type and caseload composition from FY 91 through FY 98, see Table X.

Pending Caseload: On June 30, 1998, 447 cases were pending, a 12% decrease from the 509 cases pending at the end of FY 97. (The FY 97 number was restated due to an error which was discovered while this report was being prepared.) Most of these pending cases (61.8%) were at a pre-submission to the court stage (awaiting record, awaiting briefs or awaiting hearing), 2.2% were stayed or remanded, and the remaining 36% were under advisement (submitted to the court but awaiting circulation of a draft opinion, filing of an opinion or a decision on a petition). For a comparison of cases pending at year's end according to case composition from FY 91 through FY 98, see Table X. For a breakdown of reasons for cases pending at the end of FY 98 according to case composition, see Table XII.

**Court of Appeals
Summary of Filings
FY 95 — FY 98**

Type of Case	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Merit Appeals	239	282	252	279	17%	11%
Sentence Appeals	151	102	75	57	-62%	-24%
Petitions for Review	44	46	58	39	-11%	-33%
Original Applications	2	2	1	4	100%	300%
Total	436	432	386	379	-13%	-2%

Fiscal Year July 1 — June 30

**Court of Appeals
Summary of Dispositions
FY 95 — FY 98**

Type of Case	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Merit Appeals	239	220	241	276	15%	15%
Sentence Appeals	137	145	112	82	-40%	-27%
Petitions for Review	43	50	64	44	2%	31%
Original Applications	3	1	2	4	33%	100%
Total	422	416	419	406	-4%	-3%

Fiscal Year July 1 — June 30

**Court of Appeals
Dispositions by Type of Disposition
FY 98**

Type of Case	Disposition by		Total
	Merits	Not on Merits	
Merit Appeals	232	44	276
Sentence Appeals	69	13	82
Petitions for Review	21	25	46
Original Applications	0	2	2
Total	322	84	406
% of Total	79%	21%	100%

Fiscal Year July 1 — June 30

**Court of Appeals
Cases Pending**

Type of Case	FY 95	FY 96	FY 97 ^a	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Merit Appeals	318	380	396	375	18%	-5%
Sentence Appeals	138	95	92	60	-57%	-35%
Petitions for Review	10	6	22	12	20%	-45%
Original Applications	0	1	0	0	0%	0%
Total	466	482	510	447	-4%	-12%

Fiscal Year July 1 — June 30

^aThis column corrects errors which were discovered in FY 97 figures while this report was being prepared.

**Court of Appeals
Reasons for Cases Pending
June 30, 1998**

Type of Case	Case Awaiting								Total
	Records	Briefs	Argument or Sub- mission	Draft Dispo- sition	Draft Disposition Circulating	Petition Decision	Rehearing/ Record Return	Stayed and/or Remand	
Merit Appeals	90	131	21	73	36	0	16	8	375
Sentence Appeals	8	12	7	11	17	0	4	1	60
Petitions for Review	1	2	4	0	1	0	3	1	12
Original Applications	0	0	0	0	0	0	0	0	0
Total	99	145	32	84	54	0	23	10	447
% of Total	22.1	32.5	7.2	18.8	12.1	0	5.1	2.2	100.0

TRIAL COURT ACTIVITY

Filings: During FY 98, 148,226 cases were filed in the trial courts, a 12% increase from the 132,194 filings in FY 97.

Dispositions: The trial courts disposed of 144,668 cases in FY 98, a 14% increase from 126,895 dispositions in FY 97.

The following tables summarize the FY 98 trial court statistics. Comprehensive statistical tables describing the superior and district court caseloads are located in the statistical section at the back of this report.

**Table I
Trial Courts Caseload Summary
FY 98**

Court	Superior Court		District Court				Total	
	Filings	% of S. C. Total	Non-Traffic Filings	Traffic Filings *	Total Filings	% of D. C. Total	Filings	% of Statewide
Anchorage	11,328	53.4%	18,784	34,885	53,669	42.3%	64,997	43.9%
Barrow	302	1.4%	716	206	922	0.7%	1,224	0.8%
Bethel	765	3.6%	1,555	409	1,964	1.6%	2,729	1.8%
Cordova			202	294	496	0.4%	496	0.3%
Craig			796	264	1,060	0.8%	1,060	0.7%
Delta Junction			180	309	489	0.4%	489	0.3%
Dillingham	151	0.7%	727	138	865	0.7%	1,016	0.7%
Fairbanks	2,833	13.4%	6,515	8,567	15,082	11.9%	17,915	12.1%
Glennallen			261	867	1,128	0.9%	1,128	0.8%
Haines			198	234	432	0.3%	432	0.3%
Healy			50	384	434	0.3%	434	0.3%
Homer			970	1,805	2,775	2.2%	2,775	1.9%
Juneau	960	4.5%	6,056	2,493	8,549	6.7%	9,509	6.4%
Kenai	998	4.7%	3,112	6,125	9,237	7.3%	10,235	6.9%
Ketchikan	708	3.3%	1,954	1,033	2,987	2.4%	3,695	2.5%
Kodiak	422	2.0%	1,259	1,618	2,877	2.3%	3,299	2.2%
Kotzebue	282	1.3%	580	285	865	0.7%	1,147	0.8%
Naknek			280	94	374	0.3%	374	0.3%
Nenana			74	205	279	0.2%	279	0.2%
Nome	378	1.8%	963	175	1,138	0.9%	1,516	1.0%
Palmer	1,630	7.7%	3,396	9,126	12,522	9.9%	14,152	9.6%
Petersburg	87	0.4%	329	204	533	0.4%	620	0.4%
Seward			524	874	1,398	1.1%	1,398	0.9%
Sitka	208	1.0%	658	333	991	0.8%	1,199	0.8%
Tok			180	259	439	0.4%	439	0.3%
Unalaska			400	389	789	0.6%	789	0.5%
Valdez	103	0.5%	397	506	903	0.7%	1,006	0.7%
Wrangell	57	0.3%	268	225	493	0.4%	550	0.4%
Subtotal	21,212	100.0%	51,384	72,306	123,690	97.4%	144,902	97.8%
Lower Vol. Cts.			2,394	930	3,324	2.6%	3,324	2.2%
Statewide Total	21,212	100.0%	53,778	73,236	127,014	100.0%	148,226	100.0%
1st District	2,020	9.5%	10,905	5,119	16,024	12.6%	18,044	12.2%
2nd District	962	4.5%	2,494	666	3,160	2.5%	4,122	2.8%
3rd District	14,632	69.0%	30,563	56,745	87,308	68.7%	101,940	68.8%
4th District	3,598	17.0%	9,816	10,706	20,522	16.2%	24,120	16.3%

Fiscal Year July 1 - June 30

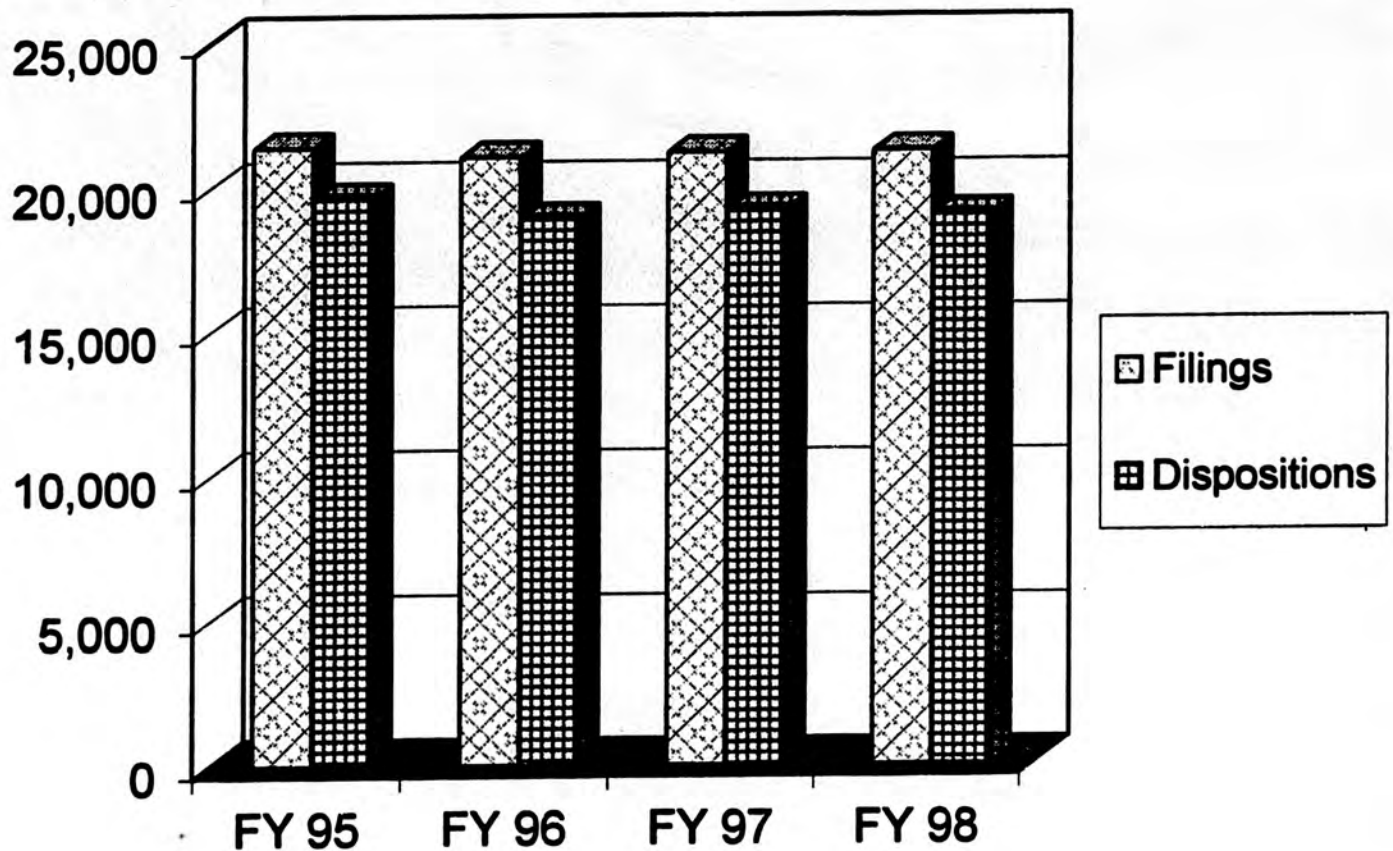
* Traffic / Minor Offense dispositions used as filings.

Table II
Superior Court Caseload Summary
FY 98

Court	Filings	Change from FY 97 Filings	Dispositions	Change from FY 97 Dispositions	Ratio of Dispositions to Filings	
					FY 97	FY 98
Anchorage	11,328	4%	9,643	-2%	90%	85%
Barrow	302	-26%	235	-36%	90%	78%
Bethel	765	2%	520	-26%	93%	68%
Dillingham	151	27%	106	108%	43%	70%
Fairbanks	2,833	3%	2,881	22%	86%	102%
Juneau	960	-23%	880	-16%	84%	92%
Kenai	998	-3%	808	-14%	91%	81%
Ketchikan	708	-13%	673	-20%	104%	95%
Kodiak	422	-12%	458	-5%	101%	109%
Kotzebue	282	11%	264	-2%	106%	94%
Nome	378	10%	387	13%	99%	102%
Palmer	1,630	4%	1,644	14%	92%	101%
Petersburg	87	13%	109	47%	96%	125%
Sitka	208	-18%	232	-8%	100%	112%
Valdez	103	16%	106	-8%	129%	103%
Wrangell	57	-27%	53	-26%	92%	93%
Total	21,212		18,999	-1%	91%	90%
1st District	2,020	-18%	1,947	-15%	93%	96%
2nd District	962	-5%	886	-10%	97%	92%
3rd District	14,632	3%	12,765		90%	87%
4th District	3,598	3%	3,401	11%	88%	95%

Fiscal Year July 1 - June 30
Dillingham Superior Court established 7/1/98

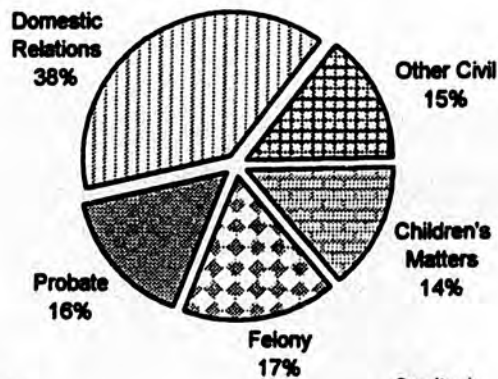
Table III
Superior Courts
Summary of Filings and Dispositions
FY 95 - FY 98



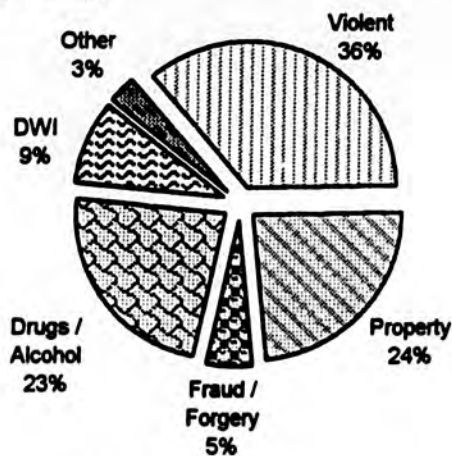
<u>Category</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>
Filings	21,378	21,040	21,173	21,212
Dispositions	19,619	18,899	19,155	18,999

Table IV
Superior Courts
Composition of Filings
FY 98

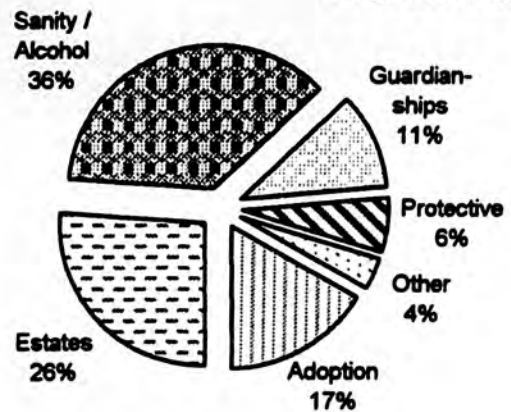
All Filings



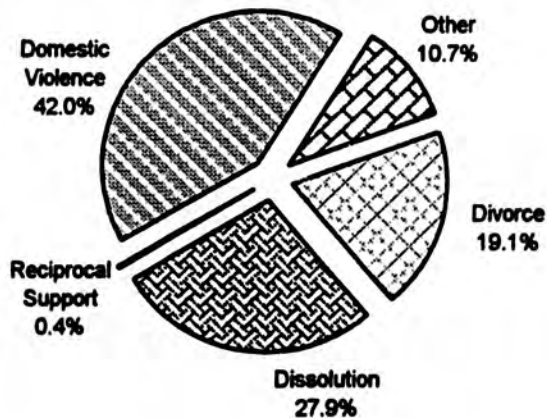
Felony Filings



Probate Filings



Domestic Relations Filings



Other Civil Filings

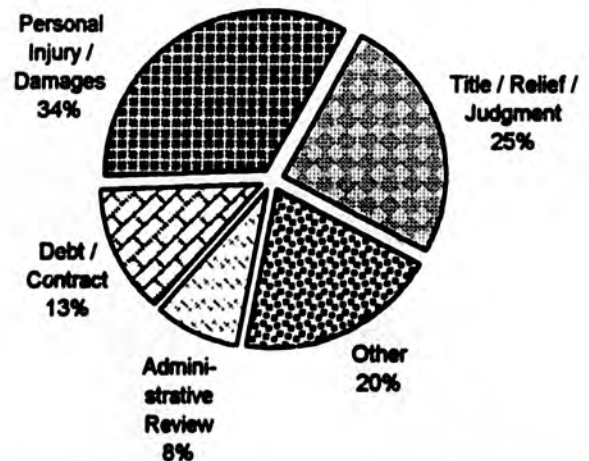
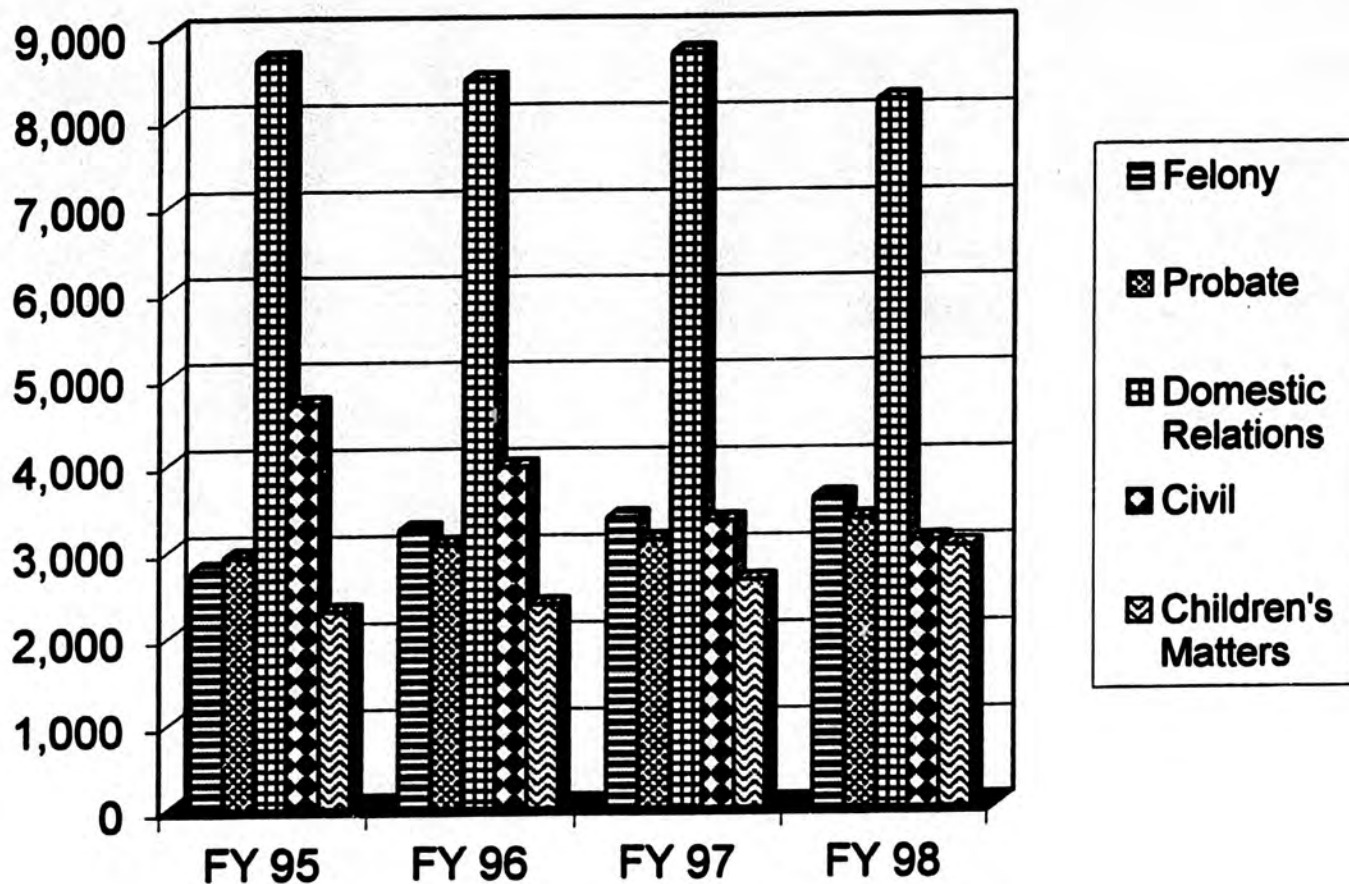


Table IV analyzes the types of cases filed in superior court during FY 98. The largest category of superior court cases continues to be domestic relations, with over 38% of total case filings. Within the general category of domestic relations, domestic violence cases make up over 42% of the domestic relations workload and approximately 16% of the overall superior court workload. Divorce and dissolution cases comprise over 18% of superior court caseload..

Table V
Superior Courts
Summary of Caseload
FY 95 - FY 98



<u>Filing Type</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 95 to FY 98 Change</u>
Felony	2,778	3,228	3,362	3,588	29%
Probate	2,929	3,056	3,103	3,335	14%
Domestic Relations	8,692	8,443	8,753	8,190	-6%
Civil	4,685	3,950	3,317	3,083	-34%
Children's Matters	2,294	2,363	2,638	3,016	31%
Total	21,378	21,040	21,173	21,212	-1%

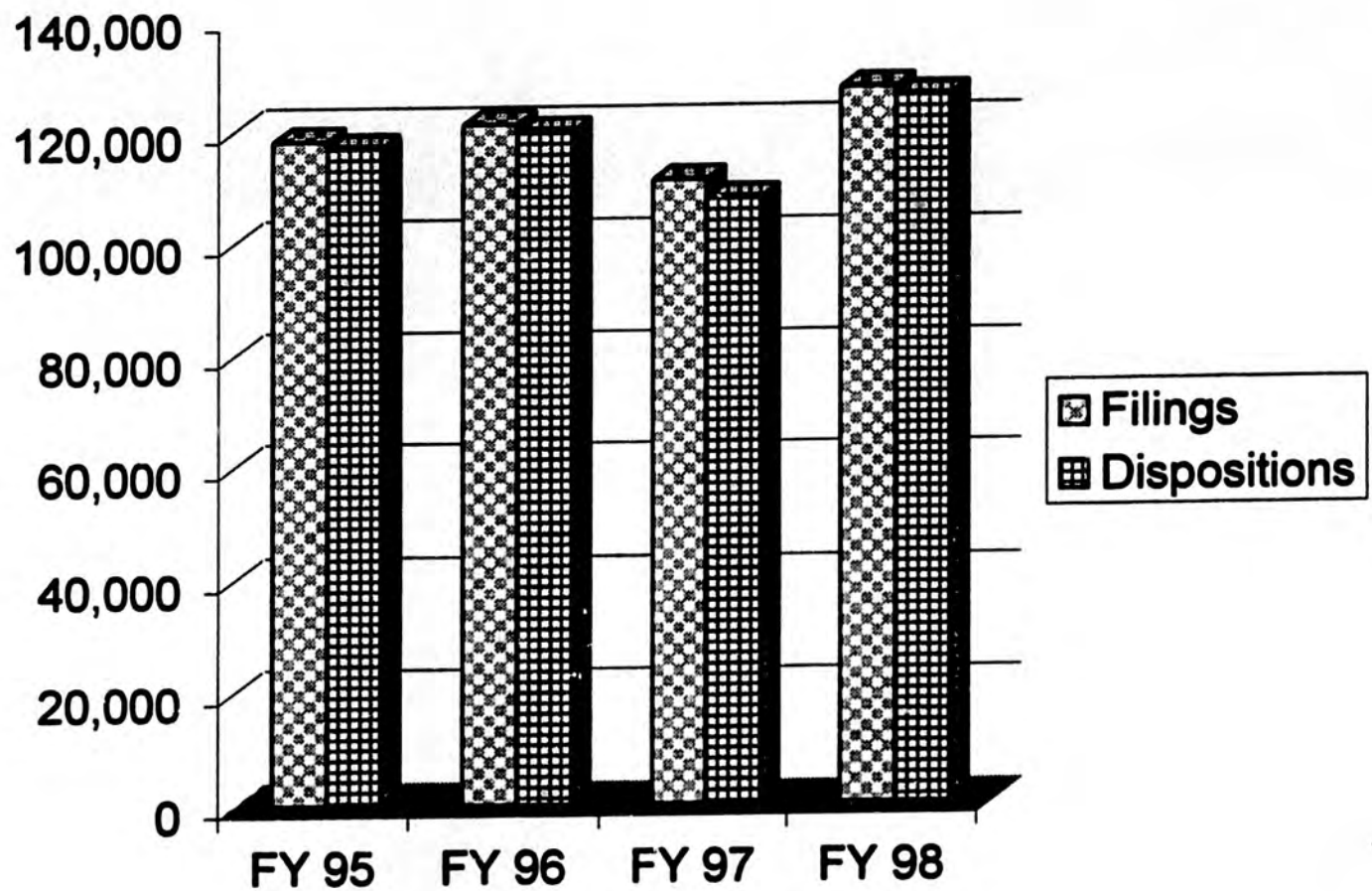
Table VI
District Court Caseload Summary
FY 98

Court	Non-Traffic Filings	Change from FY 97	Traffic Filings *	Change from FY 97	Total Filings	Change from FY 97	Ratio of Dispositions to Filings	
							FY 97	FY 98
Anchorage	18,784	9%	34,885	57%	53,669	37%	96%	97%
Barrow	716	37%	206	-17%	922	20%	96%	90%
Bethel	1,555	10%	409	-37%	1,964	-5%	100%	90%
Cordova	202	-6%	294	4%	496	-1%	99%	100%
Craig	796	12%	264	22%	1,060	14%	94%	100%
Delta Junction	180	-5%	309	-13%	489	-10%	101%	98%
Dillingham	727		138	-8%	865	-1%	92%	91%
Fairbanks	6,515	6%	8,567	9%	15,082	7%	100%	107%
Glennallen	261	4%	867	29%	1,128	22%	99%	100%
Haines	198	34%	234	18%	432	25%	104%	95%
Healy	50	-19%	384	-45%	434	-43%	100%	102%
Homer	970	-8%	1,805	-17%	2,775	-14%	98%	101%
Juneau	6,056	-1%	2,493	-21%	8,549	-8%	94%	101%
Kenai	3,112	14%	6,125	3%	9,237	6%	98%	96%
Ketchikan	1,954	-8%	1,033	-15%	2,987	-11%	102%	105%
Kodiak	1,259	5%	1,618	16%	2,877	11%	96%	103%
Kotzebue	580	27%	285	3%	865	18%	101%	97%
Naknek	280	-33%	94	81%	374	-21%	105%	96%
Nenana	74	6%	205	-53%	279	-45%	99%	86%
Nome	963	24%	175	82%	1,138	31%	96%	97%
Palmer	3,396	8%	9,126	18%	12,522	15%	101%	100%
Petersburg	329	-11%	204	-2%	533	-8%	100%	106%
Seward	524	9%	874	-28%	1,398	-18%	99%	98%
Sitka	658		333	-1%	991		92%	100%
Tok	180	-13%	259	-18%	439	-16%	97%	101%
Unalaska	400	1%	389	5%	789	3%	103%	98%
Valdez	397	34%	506	37%	903	36%	109%	95%
Wrangell	268	-4%	225	-5%	493	-4%	102%	100%
Subtotal	51,384	6%	72,306	22%	123,690	15%	98%	99%
Lower Vol. Cts.	2,394	-4%	930	-18%	3,324	-8%	82%	87%
Statewide Total	53,778	6%	73,236	22%	127,014	14.0%	97%	99%
1st District	10,905	-1%	5,119	-16%	16,024	-6%	96%	101%
2nd District	2,494	25%	666	2%	3,160	21%	99%	98%
3rd District	30,563	8%	56,745	33%	87,308	23%	97%	98%
4th District	9,816	4%	10,706	-2%	20,522	1%	97%	102%

Fiscal Year July 1 - June 30

* Traffic / Minor Offense dispositions used as filings.

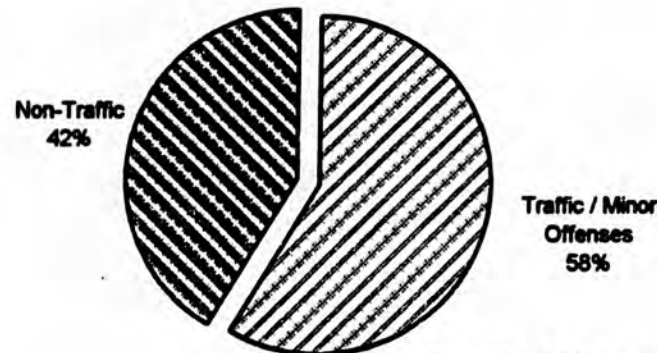
Table VII
District Courts (Higher & Lower Volume)
Summary of Filings and Dispositions
FY 95 - FY 98



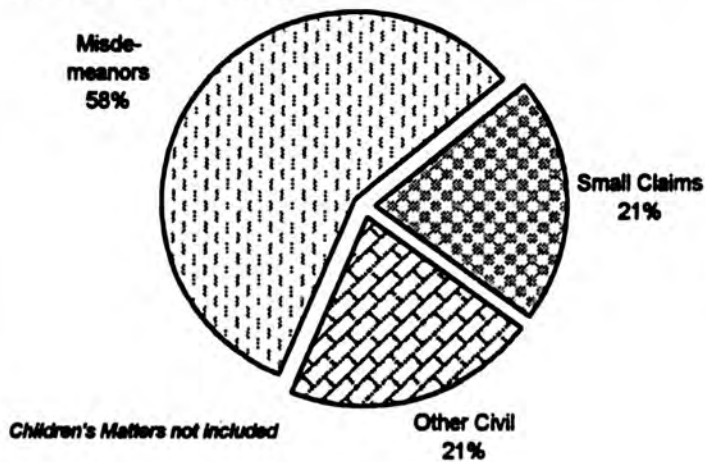
<u>Category</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>
Filings	118,213	121,080	111,021	127,014
Dispositions	117,117	119,696	107,740	125,669

Table VIII
District Courts (Higher Volume Courts)
Composition of Filings
FY 98

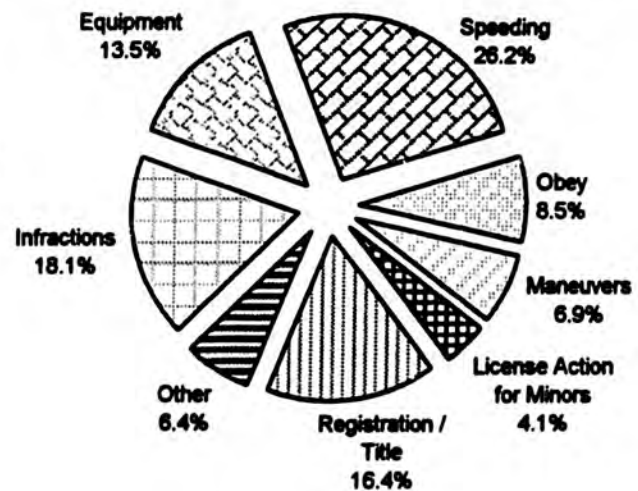
All Filings



Non-Traffic Filings



Traffic / Minor Offense Dispositions

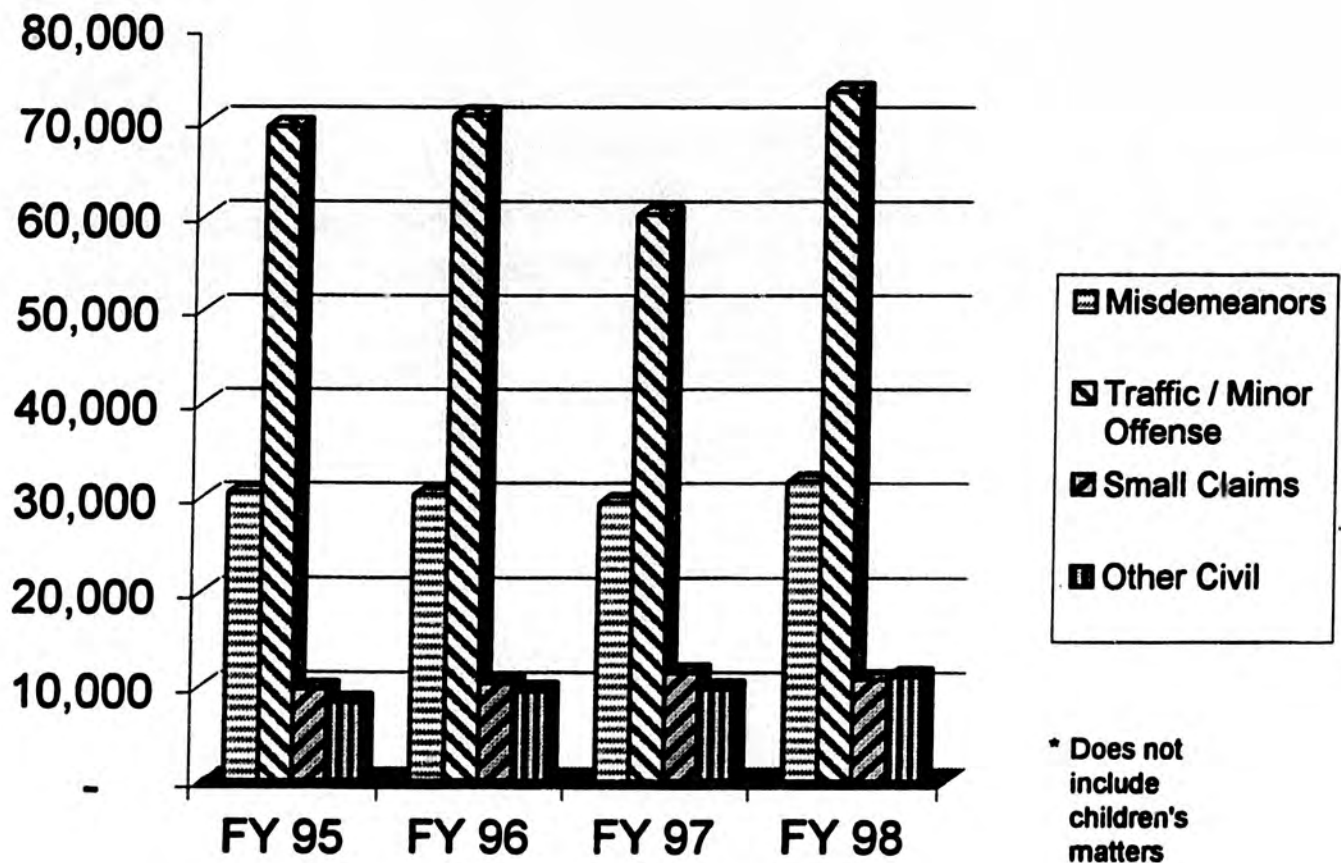


Misdemeanor Filings



Table VIII analyzes the composition of cases filed in higher volume district courts during FY 98. Misdemeanor cases represent approximately 24% of the total district court caseload. Approximately 36% of all misdemeanor cases involve driving while intoxicated and other criminal traffic violations (for example, driving with suspended license). In traffic cases, 4.1% were license actions for minors consuming alcohol even though they were not driving at the time. The over 18% of traffic caseload for Minor Offenses / Infractions are for lesser than criminal offenses not committed by minors.

Table IX
District Courts (Higher & Lower Volume)
Summary of Caseload
FY 95 - FY 98



<u>Filing Type</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 95 to FY 98 Change</u>
Misdemeanors	30,508	30,312	29,463	31,727	4%
Traffic / Minor Offense	69,502	70,678	60,173	73,236	5%
Small Claims	9,717	10,367	11,469	10,757	11%
Other Civil	8,369	9,586	9,818	11,173	34%
Children's Matters	117	137	98	121	3%
Total	118,213	121,080	111,021	127,014	7%

Statistics



FOREWORD

This statistical supplement is designed primarily for research applications. It is comprised of six sections dealing with appellate and trial court statistics. Appellate court statistics are subdivided into sections on the supreme court and court of appeals. Trial court statistics are comprised of sections on superior courts, high volume district courts and lower volume district courts.

Any reader with questions, comments or suggestions about this statistical supplement is invited to contact:

Fiscal Operations
Office of the Administrative Director
820 West Fourth Avenue
Anchorage, Alaska 99501

(907) 264-8269

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Supreme Court



ALASKA SUPREME COURT
TABLE I
Recapitulation - Fiscal Year 1998

	Civil Appeals	Petitions for Hearing	Petitions for Review	Original Applications	Total
Beginning ^a	432	32	34	6	504
Transferred to Court of Appeals					
Transferred from Court of Appeals					
Filed	297	103	129	12	541
Reinstated					
Converted ^b (net)					
Corrected (net)					
Closed	299	91	117	14	521
Ending	430	44	46	4	524

^aAn error was discovered in the computer program which was used to generate these numbers in last year's report. The numbers have been restated after extensive evaluation of the method by which the numbers are generated. In last year's report, the numbers of cases pending at the end of FY 97 were stated as follows: Civil Appeals, 468; Petitions for Hearing, 14; Petitions for Review, 35; Original Applications, 10; and Total, 527.

^bBy action of the court or the parties, cases are occasionally converted from one type to another. These figures represent the end of all such changes during 1998.

ALASKA SUPREME COURT

TABLE II

Dispositions - Fiscal Year 1998

	Civil Appeals	Petitions for Hearing	Petitions for Review	Original applications	Total All Cases
DISPOSITIONS PUBLISHED OPINION					
Affirmed	76	2	0	0	78
Reversed or vacated	62	6	2	1	71
Affirmed in part/Reversed in part	38	0	0	0	38
Other (remanded, dismissed, etc.)	4	0	0	1	5
Total	180	8	2	2	192
SUMMARY AND DISPOSITIONS ON MERITS					
Affirmed	24	0	0	0	24
Reversed or vacated	4	0	0	1	5
Affirmed in part/Reversed in part	1	0	0	0	1
Other (remanded, dismissed, etc.)	1	0	0	0	1
Total	30	0	0	1	31
PETITIONS GRANTED	0	1	12	7	20
TOTAL DISPOSITIONS ON MERIT	210	9	14	10	243
PETITIONS DENIALS	0	77	85	1	163
DISMISSALS					
Stipulated to or by Appellant	68	0	10	1	79
On Motion of Appellee	6	0	0	0	6
<u>Sua sponte</u>	15	5	8	2	30
TOTAL DISPOSITIONS NOT ON MERITS	89	82	103	4	278
TOTAL DISPOSITIONS	299	91	117	14	521

ALASKA SUPREME COURT

TABLE III - Historical^a

	1990-91	1991-92	1992-93	1993-94	1994-95	1995-1996	1996-1997	1997-1998
A. FILINGS^b								
Civil Appeals	339	299	358	451	536	310	264	297
Criminal Petitions	106	125	93	82	100	81	85	103
Petitions for Review	150	128	133	117	100	104	115	129
Original applications	<u>17</u>	<u>16</u>	<u>7</u>	<u>18</u>	<u>17</u>	<u>23</u>	<u>22</u>	<u>12</u>
TOTAL	612	568	591	668	753	518	486	541
B. DISPOSITIONS								
Civil Appeals	288	387	296	300	258	606 ^c	329	299
Criminal Petitions	104	132	102	85	98	81	92	91
Petitions for Review	137	139	139	127	101	95	114	117
Original Application	<u>18</u>	<u>18</u>	<u>7</u>	<u>16</u>	<u>5</u>	<u>21</u>	<u>21</u>	<u>14</u>
TOTAL	547	676	544	528	473	803	556	521
C. DISPOSITIONS								
On Merits	179	286	201	197	173	511	240	223
Petitions & Original Applications Denied	180	195	181	161	154	137	154	163
Granted and Closed				17	15	22	30	20
Dismissals	<u>188</u>	<u>195</u>	<u>162</u>	<u>153</u>	<u>131</u>	<u>133</u>	<u>132</u>	<u>115</u>
TOTAL	547	676	544	528	473	803	556	521
D. OPINIONS PUBLISHED	103	190	132	145	117	478	200	192
MEMORANDUM								
OPINION	49	72	51	52	56	33	40	31
AND JUDGMENTS								
E. PENDING END-OF-YEAR								
Civil Appeals	439	346	405	549	827	533	468	430
Criminal Petitions	37	27	21	18	20	21	14	44
Petitions for Review	49	37	33	26	25	34	35	46
Original Application	<u>8</u>	<u>2</u>	<u>4</u>	<u>6</u>	<u>7</u>	<u>9</u>	<u>10</u>	<u>4</u>
TOTAL	533	412	463	599	879	597	527	524

^aThe figures for cases pending at the end of the year plus the next year's filings minus dispositions do not always equal cases pending at the end of the following year due to reclassification and corrections. See footnote "b" to Table I.

^bIncludes reinstatements and cases transferred from the court of appeals to the supreme court.

^cThe 606 dispositions include 351 appeals that were resolved by this court's decision in *State v. Albert*, 899 P.2d 103 (Alaska 1995), upholding the constitutionality of charging fees under Criminal Rule 39(c) for court-appointed counsel.

ALASKA SUPREME COURT

TABLE IV - Historical

Motions and Petitions for Rehearing

	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
A. FILINGS					
Petitions for Rehearing	43	42	35	36	47
Full Court Motions	110	92	67	60	43
Individual Justice Motions	1,157	1,121	1,088	1,130	1,258
routine (Clerk) Motions	<u>1,024</u>	<u>903</u>	<u>875</u>	<u>844</u>	<u>770</u>
TOTAL	2,334	2,158	2,065	2,070	2,118
B. DISPOSITIONS					
Petitions for Rehearing	46	42	35	37	42
Full Court Motions	111	88	66	62	36
Individual Justice Motions	1,161	1,132	1,059	1,097	1,209
Routine (clerk) Motions	<u>1,011</u>	<u>910</u>	<u>871</u>	<u>835</u>	<u>754</u>
TOTAL	2,329	2,172	2,031	2,028	2,041
C. PENDING END-OF-YEAR					
Petitions for Rehearing	3	3	3	2	7
Full Court Motions	2	6	7	5	12
Individual Justice Motions	28	17	46	82	131
Routine (Clerk) Motions	<u>22</u>	<u>15</u>	<u>19</u>	<u>28</u>	<u>44</u>
TOTAL	55	41	75	117	194

ALASKA SUPREME COURT

TABLE V

Reasons for Cases Pending June 30, 1998

	Civil Appeals	Criminal Petitions for Hearing	Civil Petitions for Review	Original Applications	Total All Cases
Awaiting records	69	1	5	0	75
Awaiting briefs	134	23	27	3	187
Awaiting hearing/submission	53	0	3	0	56
Awaiting draft opinion	92	2	1	0	95
Draft opinion circulating (awaiting votes, separate opinions)	63	3	1	0	67
Awaiting decision on granting petition	2	14	9	0	25
Awaiting decision on rehearing/record return	9	1	0	0	10
Stayed or remanded	8	0	0	1	9
TOTAL CASES PENDING JUNE 30, 1998	430	44	46	4	524

ALASKA SUPREME COURT
TABLE VI - Length of Time to Disposition
(Average Number of Days)
Cases Decided by Opinion or MO&J

	Fiscal Year 1998 Civil Appeals		Fiscal Year 1997 Civil Appeals		Fiscal Year 1996 Civil Appeals		Fiscal Year 1995 Civil Appeals	
	Days	Months	Days	Months	Days	Months	Days	Months
Pre-Submission to Court								
Notice of Appeal to Record Certification	93	3.1	86	2.8	84	2.7	122	4.0
Record Certification to Last Brief	175	5.8	176	5.8	173	5.7	168	5.5
Last Brief to Argument or Submission	113	3.8	92	3.0	77	2.5	70	2.3
Subtotal: Average Days/Months Before Submission to the Court	381	12.7	354	11.6	334	10.9	360	11.8
Submission to Decision								
Argument or Submission to Circulation of Draft Opinion or Recommendation	150	5.0	197	6.5	162	5.3	161	5.3
Circulation of Draft Opinion or Recommendation to Publication	127	4.2	127	4.2	153	5.0	122	4.0
Subtotal: Average Days/Months From Submission to Publication	321	10.7	352	11.6	349	11.4	304	10.0
Post-Publication Motions*								
Publication to Closing	44	1.5	28	.9	34	1.1	21	.7
AVERAGE NUMBER OF DAYS/MONTHS	702	23.4	706	23.4	683	22.3	664	21.8

*Post-publication motions primarily consist of petitions for rehearing and cost bills.

Court of Appeals



ALASKA COURT OF APPEALS
TABLE VII
Recapitulation - Fiscal Year 1998

	MERIT APPEALS		SENTENCE APPEALS		PETITIONS			ORIGINAL APPLICA-TION	TOTAL
	Direct from Superior	Direct from District	Direct from Superior	Direct from District	Direct from Superior	Direct from District	From District via Superior		
Beginning ^a	269	103	71	14	13	4	0	1	474
Transferred from Supreme Court									
Transferred to Supreme Court									
Filed	214	65	49	8	27	8	4	4	379
Reinstated									
Converted (net) ^b									
Correct (net) ^c									
Closed	194	82	69	13	30	11	3	4	406
Ending	289	86	51	9	10	1	1	0	447

^a An error was discovered in the computer program which was used to generate these numbers in last year's report. The numbers have been restated after extensive evaluation of the method by which the numbers are generated. In last year's report, the numbers of cases pending at the end of FY 97 were stated as follows: Merit Appeals, 294 Superior and 97 District; Sentence Appeals, 46 Superior and 12 District; Petitions 2 from Superior, 0 from District, and 0 from District via Superior; Original Applications, 0; and Total, 451.

^bBy action of the court or the parties, cases are occasionally converted from one type to another. These figures represent the net of all such changes during 1998.

^cThis category includes cases erroneously misclassified at the time they were filed. These figures represent the net of all such corrections during 1998.

ALASKA COURT OF APPEALS
TABLE VIII - Dispositions - Fiscal Year 1998

	MERIT APPEALS		SENTENCE APPEALS		PETITIONS			ORIGINAL APPLICATION	TOTAL
	Direct from Superior	Direct from District	Direct from Superior	Direct from District	Direct from Superior	Direct from District	From District via Superior		
DISPOSITIONS PUBLISHED OPINION									
Affirmed	28	14	3	2	1	0	0	0	48
Reversed or vacated	14	1	1	0	2	0	1	0	19
Affirmed in part/ Reversed in part	1	1	0	0	0	1	0	0	3
Other (remanded/dismissed)	2	0	0	0	1	0	0	0	3
Total	45	16	4	2	4	1	1	0	73
SUMMARILY ON MERITS									
Affirmed	99	47	47	10	0	0	0	0	203
Reversed or vacated	13	6	2	0	1	0	0	0	22
Affirmed in part/ Reversed in part	3	0	0	0	0	0	0	0	3
Other (remanded/dismissed)	3	0	4	0	0	0	0	0	7
Total	118	53	53	10	1	0	0	0	235
PETITIONS GRANTED	.	.	.	.	8	6	0	0	14
TOTAL ON MERITS	163	69	57	12	13	7	1	0	322
PETITION DENIALS	.	.	.	.	13	2	1	4	20
DISMISSALS									
Stipulated or by Appellant	20	8	11	1	2	1	0	0	43
Motion of Appellee	2	0	0	0	1	1	0	0	4
<u>Sua sponte</u>	9	5	1	0	1	0	1	0	17
TOTAL NOT ON MERIT	31	13	12	1	17	4	2	4	84
TOTAL DISPOSITIONS	194	82	69	13	30	11	3	4	406

ALASKA COURT OF APPEALS
TABLE IX - Historical^a

	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-1997	1997-1998
A. FILINGS^b								
Merit Appeals	328	247	245	228	239	282	252	279
Sentencing Appeals	126	136	166	143	151	102	75	57
Petitions	58	59	46	48	44	46	58	39
Original applications	<u>2</u>	<u>4</u>	<u>4</u>	<u>3</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>4</u>
TOTAL	<u>514</u>	<u>446</u>	<u>461</u>	<u>422</u>	<u>436</u>	<u>432</u>	<u>386</u>	<u>379</u>
B. DISPOSITIONS								
Merit Appeals	255	309	274	213	239	220	241	279
Sentence Appeals	134	148	166	142	137	145	112	82
Petitions	65	56	47	53	43	50	64	44
Original Application	<u>1</u>	<u>4</u>	<u>5</u>	<u>3</u>	<u>3</u>	<u>1</u>	<u>2</u>	<u>4</u>
TOTAL	<u>455</u>	<u>517</u>	<u>492</u>	<u>411</u>	<u>422</u>	<u>416</u>	<u>419</u>	<u>406</u>
C. DISPOSITIONS								
On Merits	301	361	362	292	313	317	325	322
Petitions & Original Applications Denied	40	39	33	38	41	33	53	20
Dismissals	<u>114</u>	<u>117</u>	<u>97</u>	<u>81</u>	<u>68</u>	<u>66</u>	<u>41</u>	<u>64</u>
TOTAL	<u>455</u>	<u>517</u>	<u>492</u>	<u>411</u>	<u>422</u>	<u>416</u>	<u>419</u>	<u>406</u>
D. OPINIONS PUBLISHED	95	110	70	77	61	70	76	73
MEMORANDUM OPINION AND JUDGMENTS	194	248	286	212	248	245	243	235
E. PENDING END-OF-YEAR								
Merit Appeals	406	335	303	318	318	380	396	375
Sentence Appeals	115	115	123	124	138	95	92	60
Petitions	15	16	15	10	10	6	22	12
Original Application	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>
TOTAL	<u>537</u>	<u>467</u>	<u>441</u>	<u>453</u>	<u>467</u>	<u>482</u>	<u>509</u>	<u>447</u>

^aThe figures for cases pending at the end of one year plus the next year's filings minus dispositions do not always equal cases pending at the end of the following year due to reclassification and corrections. See footnote "b" to Table I.

^bIncludes reinstatements and transfers from the supreme court.

ALASKA COURT OF APPEALS

TABLE X - Historical

Motions and Petitions for Rehearing

	1994	1995	1996	1997	1998
A. FILINGS					
Petitions for Rehearing	15	16	16	17	24
Full Court Motions	95	89	79	65	90
Individual Judge Motions	1066	1028	1073	992	991
routine (Clerk) Motions	<u>556</u>	<u>420</u>	<u>377</u>	<u>372</u>	<u>509</u>
TOTAL	<u>1732</u>	<u>1553</u>	<u>1545</u>	<u>1446</u>	<u>1614</u>
B. DISPOSITIONS					
Petitions for Rehearing	15	14	18	16	24
Full Court Motions	94	92	75	68	86
Individual Judge Motions	1056	1019	1070	995	973
Routine (clerk) Motions	<u>599</u>	<u>421</u>	<u>373</u>	<u>367</u>	<u>492</u>
TOTAL	<u>1724</u>	<u>1546</u>	<u>1536</u>	<u>1456</u>	<u>1575</u>
C. PENDING END-OF-YEAR					
Petitions for Rehearing	0	2	0	1	1
Full Court Motions	5	2	6	3	7
Individual Judge Motions	24	33	36	33	51
Routine (Clerk) Motions	<u>3</u>	<u>2</u>	<u>6</u>	<u>11</u>	<u>28</u>
TOTAL	<u>32</u>	<u>39</u>	<u>48</u>	<u>48</u>	<u>87</u>

ALASKA COURT OF APPEALS
TABLE XI
Reasons for Cases Pending - June 30, 1998

	MERIT APPEALS		SENTENCE APPEALS		PETITIONS			ORIGINAL APPLICA-TION	TOTAL
	Direct from Superior	Direct from District	Direct from Superior	Direct from District	Direct from Superior	Direct from District	From District via Superior		
Awaiting record	79	11	6	2	1	0	0	0	99
Awaiting briefs	93	38	12	1	1	1	0	0	145
Awaiting hearing/submission	15	6	5	2	4	0	0	0	32
Awaiting draft disposition	53	20	8	3	0	0	0	0	84
Draft disposition circulating	29	7	15	2	1	0	0	0	54
Awaiting decision on granting petition	0	0	0	0	0	0	0	0	0
Awaiting decision on rehearing/ record return	12	4	4	0	2	0	1	0	23
Stayed or remanded	8	0	1	0	1	0	0	0	10
TOTAL CASES PENDING	289	86	51	9	10	1	1	0	447

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Statewide Trial Courts



**Alaska Courts
Summary of Population
As of July 1, 1997**

Court	Population			Change 4/1/90 to 7/1/97	% of Statewide Total
	Census 1990	Estimated* 7/1/97	Change		
Anchorage	226,338	254,849	28,511	12.6%	41.7%
Barrow	5,979	7,263	1,284	21.5%	1.2%
Bethel	12,127	13,982	1,855	15.3%	2.3%
Cordova	2,579	2,496	(83)	-3.2%	0.4%
Craig	4,652	5,099	447	9.6%	0.8%
Delta Junction	3,844	4,130	286	7.4%	0.7%
Dillingham	4,012	4,521	509	12.7%	0.7%
Fairbanks	77,720	82,278	4,558	5.9%	13.5%
Glennallen	2,763	3,182	419	15.2%	0.5%
Haines	2,117	2,421	304	14.4%	0.4%
Healy	1,171	1,334	163	13.9%	0.2%
Homer	6,810	8,351	1,541	22.6%	1.4%
Juneau	26,751	29,813	3,062	11.4%	4.9%
Kenai	29,570	34,879	5,309	18.0%	5.7%
Ketchikan	15,454	16,376	922	6.0%	2.7%
Kodiak	13,309	13,547	238	1.8%	2.2%
Kotzebue	6,113	6,701	588	9.6%	1.1%
Naknek	1,410	1,270	(140)	-9.9%	0.2%
Nenana	1,399	1,290	(109)	-7.8%	0.2%
Nome	8,288	9,178	890	10.7%	1.5%
Palmer	41,351	54,228	12,877	31.1%	8.9%
Petersburg	3,707	3,791	84	2.3%	0.6%
Seward	4,422	4,868	446	10.1%	0.8%
Sitka	8,588	8,733	145	1.7%	1.4%
Tok	2,069	2,224	155	7.5%	0.4%
Unalaska	10,153	5,885	(4,268)	-42.0%	1.0%
Valdez	4,367	4,464	97	2.2%	0.7%
Wrangell	2,635	2,631	(4)	-0.2%	0.4%
Lower Vol. Cts.	20,345	21,516	1,171	5.8%	3.5%
Total	550,043	611,300	61,257	11.1%	100.0%
1st District	68,989	74,217	5,228	7.6%	12.1%
2nd District	20,380	23,142	2,762	13.6%	3.8%
3rd District	349,116	394,548	45,432	13.0%	64.5%
4th District	111,558	119,393	7,835	7.0%	19.5%

Fiscal Year July 1 - June 30

* Department of Labor estimates

Alaska Courts
Distribution of Population, Police and Lawyers
As of July 1, 1997

Location	Population as of 7/1/97	Total Number Police*	Police per Thousand Population	Total Number of Lawyers	Lawyers per Thousand Population
Anchorage	254,849	392	1.5	1,503	5.9
Barrow	7,263	46	6.3	8	1.1
Bethel	13,982	28	2.0	15	1.1
Cordova	2,496	5	2.0		
Craig	5,099	9	1.8		
Delta Junction	4,130	3	0.7	1	0.2
Dillingham	4,521	10	2.2	4	0.9
Fairbanks	82,278	85	1.0	184	2.2
Glennallen	3,182	4	1.3		
Haines	2,421	6	2.5	1	0.4
Healy	1,334	2	1.5		
Homer	8,351	14	1.7	15	1.8
Juneau	29,813	54	1.8	228	7.6
Kenai	34,879	47	1.3	49	1.4
Ketchikan	16,376	31	1.9	40	2.4
Kodiak	13,547	25	1.8	21	1.6
Kotzebue	6,701	15	2.2		
Naknek	1,270	2	1.6	1	0.8
Nenana	1,290	2	1.6		
Nome	9,178	14	1.5	8	0.9
Palmer	54,228	70	1.3	58	1.1
Petersburg	3,791	9	2.4	4	1.1
Seward	4,868	13	2.7	5	1.0
Sitka	8,733	23	2.6	15	1.7
Tok	2,224	5	2.2		
Unalaska	5,885	15	2.5		
Valdez	4,464	11	2.5	4	0.9
Wrangell	2,631	7	2.7	2	0.8
Lower Vol. Cts.	21,516	Unknown	Unknown	Unknown	Unknown
Total	611,300	947	1.5	2,166	3.5
1st District	74,217	139	1.9	290	3.9
2nd District	23,142	75	3.2	16	0.7
3rd District	394,548	608	1.5	1,660	4.2
4th District	119,393	125	1.0	200	1.7

Fiscal Year July 1 - June 30

* Authorized Positions

**Alaska Courts
Authorized Judicial Positions
FY 98**

Court	Superior Court	District Court	Magis- trates	Masters	Total *	% of Statewide Total
Anchorage	12	9	5	6	32	25.8%
Barrow	1		1		2	1.6%
Bethel	1		1		2	1.6%
Cordova			1		1	0.8%
Craig			1		1	0.8%
Delta Junction			1		1	0.8%
Dillingham	1		1		2	1.6%
Fairbanks	5	3	2	2	12	9.7%
Glennallen			1		1	0.8%
Haines			1		1	0.8%
Healy			1		1	0.8%
Homer		1			1	0.8%
Juneau	2	1	1		4	3.2%
Kenai	2		1		3	2.4%
Ketchikan	2	1	1		4	3.2%
Kodiak	1		1		2	1.6%
Kotzebue	1		1		2	1.6%
Naknek			1		1	0.8%
Nenana						
Nome	1		1		2	1.6%
Palmer	2	1	1		4	3.2%
Petersburg			1		1	0.8%
Seward			1		1	0.8%
Sitka	1		1		2	1.6%
Tok			1		1	0.8%
Unalaska			1		1	0.8%
Valdez		1			1	0.8%
Wrangell			1		1	0.8%
Lower Vol. Cts.			37		37	29.8%
Total	32	17	67	8	124	100.0%
1st District	5	2	13		20	16.1%
2nd District	3		12		15	12.1%
3rd District	18	12	21	6	57	46.0%
4th District	6	3	21	2	32	25.8%

Fiscal Year July 1 - June 30

* Does not include 15 pro tempore judicial positions.

**Alaska Courts
Authorized Positions
FY 98**

Court	Positions by Range					% of Statewide Total
	Below 10	10 Through 12	13 Through 16	Over 16	Total	
Anchorage	16	135	32	8	191	44.5%
Barrow *	1	2	3	1	7	1.6%
Bethel	1	7	2		10	2.3%
Cordova		1			1	0.2%
Craig	1	2			3	0.7%
Delta Junction		1			1	0.2%
Dillingham		3			3	0.7%
Fairbanks	6	51	15	5	77	17.9%
Glennallen	1	1			2	0.5%
Haines	1				1	0.2%
Healy		1			1	0.2%
Homer		2	1		3	0.7%
Juneau	4	15	5	1	25	5.8%
Kenai	2	13	3	1	19	4.4%
Ketchikan	2	10	4	2	18	4.2%
Kodiak	1	5	2		8	1.9%
Kotzebue	1	4	1		6	1.4%
Naknek		1			1	0.2%
Nenana		1			1	0.2%
Nome	1	4	1		6	1.4%
Palmer	4	14	4	1	23	5.4%
Petersburg		1			1	0.2%
Seward		3			3	0.7%
Sitka	1	4	2		7	1.6%
Tok		1			1	0.2%
Unalaska		2			2	0.5%
Valdez		3			3	0.7%
Wrangell		2			2	0.5%
Lower Vol. Cts.	3				3	0.7%
Total	46	289	75	19	429	100.0%
1st District	10	34	11	3	58	13.5%
2nd District	3	10	5	1	19	4.4%
3rd District	24	183	42	10	259	60.4%
4th District	9	62	17	5	93	21.7%

Fiscal Year July 1 - June 30

Alaska Courts
Operating Costs (Thousands of Dollars)
FY 98

Court	Personnel	Other	Total	% of Statewide Total	Dollar Cost Per Case Filed	
					All Filings	Non Traffic Filings
Anchorage	\$11,430.8	\$2,807.3	\$14,238.1	37.0%	\$219	\$473
Barrow	604.3	880.8	1,485.1	3.9%	1,213	1,459
Bethel	836.0	420.2	1,256.2	3.3%	460	541
Cordova	125.4	134.3	259.7	0.7%	524	1,286
Craig	184.4	122.9	307.3	0.8%	290	386
Delta Junction	132.7	19.6	152.3	0.4%	311	846
Dillingham	405.7	173.2	578.9	1.5%	570	659
Fairbanks	5,196.9	1,025.7	6,222.6	16.2%	347	666
Glennallen	157.8	103.6	261.4	0.7%	232	1,002
Haines	64.3	43.4	107.7	0.3%	249	544
Healy	149.0	26.6	175.6	0.5%	405	3,512
Homer	267.0	114.4	381.4	1.0%	137	393
Juneau	1,579.6	289.0	1,868.6	4.9%	197	266
Kenai	1,308.3	308.3	1,616.6	4.2%	158	393
Ketchikan	1,287.3	172.0	1,459.3	3.8%	395	548
Kodiak	663.6	109.1	772.7	2.0%	234	460
Kotzebue	562.7	72.0	634.7	1.7%	553	736
Naknek	158.3	39.4	197.7	0.5%	529	706
Nenana	18.9	20.7	39.6	0.1%	142	535
Nome	796.6	327.7	1,124.3	2.9%	742	838
Palmer	1,545.3	325.1	1,870.4	4.9%	132	372
Petersburg	142.9	161.1	304.0	0.8%	490	731
Seward	245.9	16.0	261.9	0.7%	187	500
Sitka	535.6	77.3	612.9	1.6%	511	708
Tok	111.4	93.2	204.6	0.5%	466	1,137
Unalaska	190.9	96.7	287.6	0.7%	365	719
Valdez	279.3	50.1	329.4	0.9%	327	659
Wrangell	139.2	122.4	261.6	0.7%	476	805
Lower Vol. Cts.	830.8	337.4	1,168.2	3.0%	351	488
Total	29,950.9	8,489.5	38,440.4	100.0%	259	513
1st District	4,167.1	1,093.8	5,260.9	13.7%	292	407
2nd District	2,048.7	1,336.4	3,385.1	8.8%	821	979
3rd District	16,778.3	4,298.3	21,076.6	54.8%	207	466
4th District	6,956.8	1,761.5	8,718.3	22.7%	361	650

Fiscal Year July 1 - June 30

Alaska Courts
Distribution of Population, Costs and Judicial Positions
FY 98

Location	Percentage of Statewide Statistics				
	Population	Operating Costs	Judicial Positions	Case Filings	Case Dispositions
Anchorage	41.7%	37.0%	25.8%	43.3%	42.8%
Barrow	1.2%	3.9%	1.6%	0.8%	0.7%
Bethel	2.3%	3.3%	1.6%	1.8%	1.6%
Cordova	0.4%	0.7%	0.8%	0.3%	0.3%
Craig	0.8%	0.8%	0.8%	0.7%	0.7%
Delta Junction	0.7%	0.4%	0.8%	0.3%	0.3%
Dillingham	0.7%	1.5%	1.6%	0.7%	0.6%
Fairbanks	13.5%	16.2%	9.7%	12.1%	13.1%
Glennallen	0.5%	0.7%	0.8%	0.8%	0.8%
Haines	0.4%	0.3%	0.8%	0.3%	0.3%
Healy	0.2%	0.5%	0.8%	0.3%	0.3%
Homer	1.4%	1.0%	0.8%	1.9%	1.9%
Juneau	4.9%	4.9%	3.2%	6.4%	6.6%
Kenai	5.7%	4.2%	2.4%	6.9%	6.7%
Ketchikan	2.7%	3.8%	3.2%	2.5%	2.6%
Kodiak	2.2%	2.0%	1.6%	2.2%	2.4%
Kotzebue	1.1%	1.7%	1.6%	0.8%	0.8%
Naknek	0.2%	0.5%	0.8%	0.3%	0.2%
Nenana	0.2%	0.1%		0.2%	0.2%
Nome	1.5%	2.9%	1.6%	1.0%	1.0%
Palmer	8.9%	4.9%	3.2%	9.5%	9.8%
Petersburg	0.6%	0.8%	0.8%	0.4%	0.5%
Seward	0.8%	0.7%	0.8%	0.9%	0.9%
Sitka	1.4%	1.6%	1.6%	0.8%	0.8%
Tok	0.4%	0.5%	0.8%	0.3%	0.3%
Unalaska	1.0%	0.7%	0.8%	0.5%	0.5%
Valdez	0.7%	0.9%	0.8%	0.7%	0.7%
Wrangell	0.4%	0.7%	0.8%	0.4%	0.4%
Lower Vol. Cts.	3.5%	3.0%	29.8%	2.2%	2.0%
Total	100.0%	100.0%	100.0%	100.0%	100.0%
1st District	12.1%	13.7%	16.1%	12.2%	12.5%
2nd District	3.8%	8.8%	12.1%	2.8%	2.8%
3rd District	64.5%	54.8%	46.0%	68.8%	67.9%
4th District	19.5%	22.7%	25.8%	16.3%	16.8%

Fiscal Year July 1 - June 30

**Alaska Courts
Statewide Filings
FY 98**

Location	Superior Court	District Court	Total	% of Statewide Total	Filings per Judge
Anchorage	11,328	53,669	64,997	43.8%	2,031.2
Barrow	302	922	1,224	0.8%	612.0
Bethel	765	1,964	2,729	1.8%	1,364.5
Cordova		496	496	0.3%	496.0
Craig		1,060	1,060	0.7%	1,060.0
Delta Junction		489	489	0.3%	489.0
Dillingham	151	865	1,016	0.7%	508.0
Fairbanks	2,833	15,082	17,915	12.1%	1,492.9
Glennallen		1,128	1,128	0.8%	1,128.0
Haines		432	432	0.3%	432.0
Healy		434	434	0.3%	434.0
Homer		2,775	2,775	1.9%	2,775.0
Juneau	960	8,549	9,509	6.4%	2,377.3
Kenai	998	9,237	10,235	6.9%	3,411.7
Ketchikan	708	2,987	3,695	2.5%	923.8
Kodiak	422	2,877	3,299	2.2%	1,649.5
Kotzebue	282	865	1,147	0.8%	573.5
Nal. nek		374	374	0.3%	374.0
Nenana		279	279	0.2%	
Nome	378	1,138	1,516	1.0%	758.0
Palmer	1,630	12,522	14,152	9.5%	3,538.0
Petersburg	87	533	620	0.4%	620.0
Seward		1,398	1,398	0.9%	1,398.0
Sitka	208	991	1,199	0.8%	599.5
Tok		439	439	0.3%	439.0
Unalaska		789	789	0.5%	789.0
Valdez	103	903	1,006	0.7%	1,006.0
Wrangell	57	493	550	0.4%	550.0
Lower Vol. Cts.		3,324	3,324	2.2%	89.8
Total	21,212	127,014	148,226	100.0%	1,195.4
1st District	2,020	16,024	18,044	12.2%	902.2
2nd District	962	3,160	4,122	2.8%	274.8
3rd District	14,632	87,308	101,940	68.8%	1,788.4
4th District	3,598	20,522	24,120	16.3%	753.8

Fiscal Year July 1 - June 30

**Alaska Courts
Statewide Dispositions
FY 98**

Location	Superior Court	District Court	Total	% of State-wide Total	Dispositions per Judge
Anchorage	9,643	52,267	61,910	42.8%	1,934.7
Barrow	235	832	1,067	0.7%	533.5
Bethel	520	1,765	2,285	1.6%	1,142.5
Cordova		496	496	0.3%	496.0
Craig		1,063	1,063	0.7%	1,063.0
Delta Junction		478	478	0.3%	478.0
Dillingham	106	791	897	0.6%	448.5
Fairbanks	2,881	16,089	18,970	13.1%	1,580.8
Glennallen		1,127	1,127	0.8%	1,127.0
Haines		411	411	0.3%	411.0
Healy		441	441	0.3%	441.0
Homer		2,812	2,812	1.9%	2,812.0
Juneau	880	8,645	9,525	6.6%	2,381.3
Kenai	808	8,873	9,681	6.7%	3,227.0
Ketchikan	673	3,128	3,801	2.6%	950.3
Kodiak	458	2,962	3,420	2.4%	1,710.0
Kotzebue	264	836	1,100	0.8%	550.0
Naknek		360	360	0.2%	360.0
Nenana		240	240	0.2%	
Nome	387	1,107	1,494	1.0%	747.0
Palmer	1,644	12,556	14,200	9.8%	3,550.0
Petersburg	109	566	675	0.5%	675.0
Seward		1,373	1,373	0.9%	1,373.0
Sitka	232	988	1,220	0.8%	610.0
Tok		443	443	0.3%	443.0
Unalaska		773	773	0.5%	773.0
Valdez	106	856	962	0.7%	962.0
Wrangell	53	493	546	0.4%	546.0
Lower Vol. Cts.		2,898	2,898	2.0%	78.3
Total	18,999	125,669	144,668	100.0%	1,166.7
1st District	1,947	16,189	18,136	12.5%	906.8
2nd District	886	3,093	3,979	2.8%	265.3
3rd District	12,765	85,479	98,244	67.9%	1,723.6
4th District	3,401	20,908	24,309	16.8%	759.7

Fiscal Year July 1 - June 30

Superior. Court



**Superior Courts
Summary of Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	11,599	11,575	10,916	11,328	-2%	4%
Barrow	168	231	410	302	80%	-26%
Bethel	681	723	752	765	12%	2%
Dillingham			119	151		27%
Fairbanks	2,687	2,520	2,740	2,833	5%	3%
Juneau	1,237	1,156	1,242	960	-22%	-23%
Kenai	1,169	1,127	1,034	998	-15%	-3%
Ketchikan	881	798	813	708	-20%	-13%
Kodiak	452	447	477	422	-7%	-12%
Kotzebue	279	298	255	282	1%	11%
Nome	296	324	345	378	28%	10%
Palmer	1,333	1,328	1,573	1,630	22%	4%
Petersburg	104	113	77	87	-16%	13%
Sitka	304	260	253	208	-32%	-18%
Valdez	132	84	89	103	-22%	16%
Wrangell	56	56	78	57	2%	-27%
Total	21,378	21,040	21,173	21,212	-1%	
1st District	2,582	2,383	2,463	2,020	-22%	-18%
2nd District	743	853	1,010	962	29%	-5%
3rd District	14,685	14,561	14,208	14,632		3%
4th District	3,368	3,243	3,492	3,598	7%	3%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Composition of Filings
FY 98**

Court	Felony	Civil				Total
		Probate	Domestic Relations	Other	Children's Matters	
Anchorage	1,342	1,469	5,413	1,686	1,418	11,328
Barrow	93	64	23	41	81	302
Bethel	269	117	47	93	239	765
Dillingham	55	30	28	16	22	151
Fairbanks	464	756	881	362	370	2,833
Juneau	199	217	250	184	110	960
Kenai	229	166	277	169	157	998
Ketchikan	160	165	181	86	116	708
Kodiak	89	51	102	146	34	422
Kotzebue	121	19	25	28	89	282
Nome	113	51	50	41	123	378
Palmer	348	119	774	167	222	1,630
Petersburg	25	18	31	8	5	87
Sitka	35	71	58	27	17	208
Valdez	31	9	32	21	10	103
Wrangell	15	13	18	8	3	57
Total	3,588	3,335	8,190	3,083	3,016	21,212
% of Total	16.9	15.7	38.6	14.5	14.2	100.0
1st District	434	484	538	313	251	2,020
2nd District	327	134	98	110	293	962
3rd District	2,094	1,844	6,626	2,205	1,863	14,632
4th District	733	873	928	455	609	3,598

Fiscal Year July 1 - June 30

**Superior Courts
Summary of Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	10,153	10,042	9,791	9,643	-5%	-2%
Barrow	163	175	370	235	44%	-36%
Bethel	847	887	698	520	-39%	-26%
Dillingham			51	106		108%
Fairbanks	2,465	2,193	2,364	2,881	17%	22%
Juneau	1,245	1,061	1,047	880	-29%	-16%
Kenai	1,086	1,087	938	808	-26%	-14%
Ketchikan	873	728	842	673	-23%	-20%
Kodiak	438	416	480	458	5%	-5%
Kotzebue	319	255	269	264	-17%	-2%
Nome	292	302	343	387	33%	13%
Palmer	1,187	1,215	1,448	1,644	39%	14%
Petersburg	93	98	74	109	17%	47%
Sitka	280	283	253	232	-17%	-8%
Valdez	116	96	115	106	-9%	-8%
Wrangell	62	61	72	53	-15%	-26%
Total	19,619	18,899	19,155	18,999	-3%	-1%
1st District	2,553	2,231	2,288	1,947	-24%	-15%
2nd District	774	732	982	886	14%	-10%
3rd District	12,980	12,856	12,823	12,765	-2%	
4th District	3,312	3,080	3,062	3,401	3%	11%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Composition of Dispositions
FY 98**

Court	Felony	Civil			Children's Matters	Total
		Probate	Domestic Relations	Other		
Anchorage	1,139	1,013	5,151	1,495	845	9,643
Barrow	76	28	33	54	44	235
Bethel	257	56	23	42	142	520
Dillingham	47	19	16	14	10	106
Fairbanks	506	888	896	358	233	2,881
Juneau	197	167	270	197	49	880
Kenai	184	111	235	127	151	808
Ketchikan	162	137	179	86	109	673
Kodiak	96	55	110	154	43	458
Kotzebue	113	24	21	25	81	264
Nome	131	38	36	43	139	387
Palmer	395	77	787	150	235	1,644
Petersburg	31	17	32	20	9	109
Sitka	49	57	55	25	46	232
Valdez	31	10	35	17	13	106
Wrangell	16	12	16	6	3	53
Total	3,430	2,709	7,895	2,813	2,152	18,999
% of Total	18.1	14.3	41.6	14.8	11.3	100.0
1st District	455	390	552	334	216	1,947
2nd District	320	90	90	122	264	886
3rd District	1,892	1,285	6,334	1,957	1,297	12,765
4th District	763	944	919	400	375	3,401

Fiscal Year July 1 - June 30

**Superior Courts
Felony Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	1,040	1,223	1,183	1,342	29%	13%
Barrow	38	87	76	93	145%	22%
Bethel	217	263	237	269	24%	14%
Dillingham			53	55		4%
Fairbanks	386	348	482	464	20%	-4%
Juneau	146	174	213	199	36%	-7%
Kenai	167	202	144	229	37%	59%
Ketchikan	146	146	192	160	10%	-17%
Kodiak	83	94	94	89	7%	-5%
Kotzebue	110	163	111	121	10%	9%
Nome	87	120	117	113	30%	-3%
Palmer	231	281	328	348	51%	6%
Petersburg	40	42	26	25	-37%	-4%
Sitka	32	51	50	35	9%	-30%
Valdez	50	25	35	31	-38%	-11%
Wrangell	5	9	21	15		-29%
Total	2,778	3,228	3,362	3,588	29%	7%
1st District	369	422	502	434	18%	-14%
2nd District	235	370	304	327	39%	8%
3rd District	1,571	1,825	1,837	2,094	33%	14%
4th District	603	611	719	733	22%	2%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Felony Case Composition of Filings
FY 98**

Court	Case Type						Total
	Violent	Property	Fraud / Forgery	Drugs / Alcohol	DWI	Other	
Anchorage	415	308	69	406	119	25	1,342
Barrow	46	17		13	17		93
Bethel	148	58	6	31	24	2	269
Dillingham	25	16	1	4	6	3	55
Fairbanks	144	129	20	90	41	40	464
Juneau	72	48	8	54	13	4	199
Kenai	66	64	17	42	27	13	229
Ketchikan	65	42	21	14	6	12	160
Kodiak	32	31	3	20	3		89
Kotzebue	56	23	6	20	15	1	121
Nome	71	14	4	12	5	7	113
Palmer	105	79	21	104	36	3	348
Petersburg	10	9	1	2	2	1	25
Sitka	13	6	1	8	6	1	35
Valdez	11	2	1	11	6		31
Wrangell	5	5		5			15
Total	1,284	851	179	836	326	112	3,588
% of Total	35.8	23.7	5.0	23.3	9.1	3.1	100.0
1st District	165	110	31	83	27	18	434
2nd District	173	54	10	45	37	8	327
3rd District	654	500	112	587	197	44	2,094
4th District	292	187	26	121	65	42	733

Fiscal Year July 1 - June 30

**Superior Courts
Felony Case Descriptions
FY 98**

Violent

Assault
Child Abuse
Criminal Mischief
Disorderly Conduct
Felon in Possession
Kidnapping
Manslaughter
Murder / Homicide
Rape
Reckless Endangerment
Robbery
Sexual Abuse
Stalking
Terroristic Threats
Violate DV Order
Weapon Misconduct

Drugs / Alcohol

Contraband
Controlled Substance
Drugs
Importation of Alcohol

Other

Attempted Crime
Escape
Fail to Appear
Fugitive
Interfere with Custody
Official Proceedings
Promote Prostitution
Violate Parole

DWI

Traffic

Property

Arson
Auto Theft
Burglary
Criminal Trespass
Destruction of Property
Larceny
Theft

Fraud / Forgery

Embezzlement
Extortion
False Statement / Report
Forgery
Fraud Check
License Required
Perjury
Tampering with Evidence
Tampering with Witness
Theft of Service

**Superior Courts
Felony Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	921	1,095	1,221	1,139	24%	-7%
Barrow	52	56	73	76	46%	4%
Bethel	187	292	246	257	37%	4%
Dillingham			32	47		47%
Fairbanks	392	335	407	506	29%	24%
Juneau	155	145	160	197	27%	23%
Kenai	165	181	174	184	12%	6%
Ketchikan	142	140	175	162	14%	-7%
Kodiak	56	86	97	96	71%	-1%
Kotzebue	116	130	142	113	-3%	-20%
Nome	92	94	121	131	42%	8%
Palmer	210	199	314	395	88%	26%
Petersburg	29	49	24	31	7%	29%
Sitka	22	41	51	49	123%	-4%
Valdez	46	31	30	31	-33%	3%
Wrangell	8	4	18	16		-11%
Total	2,593	2,878	3,285	3,430	32%	4%
1st District	356	379	428	455	28%	6%
2nd District	260	280	336	320	23%	-5%
3rd District	1,398	1,592	1,868	1,892	35%	1%
4th District	579	627	653	763	32%	17%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Felony Case Disposition Stage
FY 98**

Court	Stage of Disposition									Total
	At / Before Arraignment		Between Arraignment and Trial			Court Trial		Jury Trial		
	DS / DP *	PG *	DS / DP *	PG *	Other	Guilty	Not Guilty	Guilty	Not Guilty	
Anchorage	14	4	294	754	3	4		59	7	1,139
Barrow			43	29				3	1	76
Bethel	1		76	169	1			7	3	257
Dillingham		1	5	38	2			1		47
Fairbanks	16	8	49	383	1	2		39	8	506
Juneau	1	2	39	143				8	4	197
Kenai	10	7	28	137				1	1	184
Ketchikan	5	2	50	98				6	1	162
Kodiak	5	2	12	75		1		1		96
Kotzebue	1	2	15	92				2	1	113
Nome		2	26	102				1		131
Palmer	7	4	45	328	1	1		8	1	395
Petersburg		2	6	22				1		31
Sitka	1	2	7	37				1	1	49
Valdez	2	1	2	25	1					31
Wrangell			6	8				1	1	16
Total	63	39	703	2,440	9	8		139	29	3,430
% of Total	1.8	1.1	20.5	71.1	0.3	0.2	-	4.1	0.8	100.0
1st District	7	8	108	308				17	7	455
2nd District	1	4	84	223				6	2	320
3rd District	38	19	386	1,357	7	6		70	9	1,892
4th District	17	8	125	552	2	2		46	11	763

Fiscal Year July 1 - June 30

* DS - dismissed DP - deferred prosecution PG - pled guilty

**Superior Courts
Probate Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	1,312	1,504	1,407	1,469	12%	4%
Barrow	22	40	56	64	191%	14%
Bethel	93	105	99	117	26%	18%
Dillingham			17	30		76%
Fairbanks	680	614	716	756	11%	6%
Juneau	212	205	218	217	2%	
Kenai	136	149	140	166	22%	19%
Ketchikan	159	144	141	165	4%	17%
Kodiak	43	47	51	51	19%	
Kotzebue	21	14	17	19	-10%	12%
Nome	38	44	32	51	34%	59%
Palmer	115	103	107	119	3%	11%
Petersburg	10	16	12	18		50%
Sitka	78	54	62	71	-9%	15%
Valdez	4	8	5	9		
Wrangell	6	9	23	13		-43%
Total	2,929	3,056	3,103	3,335	14%	7%
1st District	465	428	456	484	4%	6%
2nd District	81	98	105	134	65%	28%
3rd District	1,610	1,811	1,727	1,844	15%	7%
4th District	773	719	815	873	13%	7%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/98

**Superior Courts
Probate Case Composition of Filings
FY 98**

Court	Case Type						Total
	Adoption	Estates	Sanity / Alcohol	Guardian-ships	Protective	Other	
Anchorage	253	416	484	142	114	60	1,469
Barrow	46	7	9	2			64
Bethel	16	13	60	5	19	4	117
Dillingham	2	3	11	5	9		30
Fairbanks	102	173	348	89	23	21	756
Juneau	26	72	87	13	7	12	217
Kenai	21	45	63	29	4	4	166
Ketchikan	24	36	79	15	4	7	165
Kodiak	12	17	17	2	1	2	51
Kotzebue	4	3	3	4	2	3	19
Nome	2	11	18	11	7	2	51
Palmer	28	49	16	21	4	1	119
Petersburg	1	9	2	6			18
Sitka	10	13	28	9	7	4	71
Valdez			4	1	4		9
Wrangell	4	4	3	2			13
Total	551	871	1,232	356	205	120	3,335
% of Total	16.5	26.1	36.9	10.7	6.1	3.6	100.0
1st District	65	134	199	45	18	23	484
2nd District	52	21	30	17	9	5	134
3rd District	316	530	595	200	136	67	1,844
4th District	118	186	408	94	42	25	873

Fiscal Year July 1 - June 30

**Superior Courts
Probate Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	1,172	1,242	1,215	1,013	-14%	-17%
Barrow	24	13	66	28	17%	-58%
Bethel	231	187	122	56	-76%	-54%
Dillingham			8	19		
Fairbanks	568	510	624	888	56%	42%
Juneau	209	189	191	167	-20%	-13%
Kenai	116	109	94	111	-4%	18%
Ketchikan	145	124	154	137	-6%	-11%
Kodiak	43	39	47	55	28%	17%
Kotzebue	24	12	9	24		
Nome	20	29	36	38	90%	6%
Palmer	96	90	79	77	-20%	-3%
Petersburg	13	6	9	17	31%	
Sitka	80	67	57	57	-29%	
Valdez	1	2	5	10		
Wrangell	7	11	20	12		-40%
Total	2,749	2,630	2,736	2,709	-1%	-1%
1st District	454	397	431	390	-14%	-10%
2nd District	68	54	111	90	32%	-19%
3rd District	1,428	1,482	1,448	1,285	-10%	-11%
4th District	799	697	746	944	18%	27%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Domestic Relations Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	5,524	5,427	5,443	5,413	-2%	-1%
Barrow	18	26	45	23	28%	-49%
Bethel	72	62	87	47	-35%	-46%
Dillingham			7	28		
Fairbanks	772	851	864	881	14%	2%
Juneau	487	439	485	250	-49%	-48%
Kenai	492	422	411	277	-44%	-33%
Ketchikan	323	303	305	181	-44%	-41%
Kodiak	102	103	122	102		-16%
Kotzebue	25	20	28	25		-11%
Nome	52	40	38	50	-4%	32%
Palmer	625	598	788	774	24%	-2%
Petersburg	33	23	23	31	-6%	35%
Sitka	111	81	69	58	-48%	-16%
Valdez	30	25	20	32	7%	60%
Wrangell	26	23	18	18	-31%	
Total	8,692	8,443	8,753	8,190	-6%	-6%
1st District	980	869	900	538	-45%	-40%
2nd District	95	86	111	98	3%	-12%
3rd District	6,773	6,575	6,791	6,626	-2%	-2%
4th District	844	913	951	928	10%	-2%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

Superior Courts
Domestic Relations Case Composition of Filings
FY 98

Court	Case Type					Total
	Divorce	Dissolution of Marriage	Reciprocal Support	Domestic Violence	Other *	
Anchorage	882	1,058	8	2,936	529	5,413
Barrow	7	9		3	4	23
Bethel	12	17	1	4	13	47
Dillingham	8	11	2	3	4	28
Fairbanks	266	506	6	12	91	881
Juneau	72	117		26	35	250
Kenai	79	146		4	48	277
Ketchikan	71	63		5	42	181
Kodiak	33	57			12	102
Kotzebue	1	7		6	11	25
Nome	12	5	11	7	15	50
Palmer	94	192		433	55	774
Petersburg	2	28			1	31
Sitka	15	37		1	5	58
Valdez	5	24			3	32
Wrangell	6	6	1		5	18
Total	1,565	2,283	29	3,440	873	8,190
% of Total	19.1	27.9	0.4	42.0	10.7	100.0
1st District	166	251	1	32	88	538
2nd District	20	21	11	16	30	98
3rd District	1,101	1,488	10	3,376	651	6,626
4th District	278	523	7	16	104	928

Fiscal Year July 1 - June 30

* Paternity, License Action, etc.

**Superior Courts
Domestic Relations Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	5,282	5,255	5,079	5,151	-2%	1%
Barrow	9	24	31	33		6%
Bethel	88	66	102	23	-74%	-77%
Dillingham			2	16		
Fairbanks	831	670	786	896	8%	14%
Juneau	490	420	464	270	-45%	-42%
Kenai	461	432	358	235	-49%	-34%
Ketchikan	337	273	348	179	-47%	-49%
Kodiak	95	99	128	110	16%	-14%
Kotzebue	29	22	40	21	-28%	-47%
Nome	53	43	44	36	-32%	-18%
Palmer	622	628	748	787	27%	5%
Petersburg	32	20	27	32		19%
Sitka	99	101	89	55	-44%	-38%
Valdez	26	29	39	35	35%	-10%
Wrangell	24	26	20	16	-33%	-20%
Total	8,478	8,108	8,305	7,895	-7%	-5%
1st District	982	840	948	552	-44%	-42%
2nd District	91	89	115	90	-1%	-22%
3rd District	6,486	6,443	6,354	6,334	-2%	
4th District	919	736	888	919		3%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Domestic Relations Case Disposition Stage
FY 98**

Court	Stage of Disposition					Total
	Dismissed	Divorce Hearing	Trial	Domestic Violence	Other	
Anchorage	397	1,622	28	2,800	304	5,151
Barrow	9	12	2	5	5	33
Bethel	9	8		3	3	23
Dillingham		10		1	5	16
Fairbanks	204	599	18	12	63	896
Juneau	33	168	11	23	35	270
Kenai	29	159	10	4	33	235
Ketchikan	36	102	8	5	28	179
Kodiak	17	75	4	1	13	110
Kotzebue	5	5		4	7	21
Nome	4	11		8	13	36
Palmer	56	246	22	424	39	787
Petersburg	3	26			3	32
Sitka	6	40	1	1	7	55
Valdez	6	26		1	2	35
Wrangell	1	10		1	4	16
Total	815	3,119	104	3,293	564	7,895
% of Total	10.3	39.5	1.3	41.7	7.1	100.0
1st District	79	346	20	30	77	552
2nd District	18	28	2	17	25	90
3rd District	505	2,138	64	3,231	396	6,334
4th District	213	607	18	15	66	919

**Superior Courts
Other Civil Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	2,608	2,159	1,691	1,686	-35%	
Barrow	68	35	181	41	-40%	-77%
Bethel	185	220	168	93	-50%	-45%
Dillingham			16	16		
Fairbanks	562	495	386	362	-36%	-6%
Juneau	293	236	225	184	-37%	-18%
Kenai	215	155	145	169	-21%	17%
Ketchikan	174	146	97	86	-51%	-11%
Kodiak	168	157	159	146	-13%	-8%
Kotzebue	58	45	24	28	-52%	17%
Nome	68	48	30	41	-40%	37%
Palmer	186	172	144	167	-10%	16%
Petersburg	11	19	8	8		
Sitka	46	36	27	27	-41%	
Valdez	30	18	9	21	-30%	
Wrangell	13	9	7	8		
Total	4,685	3,950	3,317	3,083	-34%	-7%
1st District	537	446	364	313	-42%	-14%
2nd District	194	128	235	110	-43%	-53%
3rd District	3,207	2,661	2,164	2,205	-31%	2%
4th District	747	715	554	455	-39%	-18%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Other Civil Case Composition of Filings
FY 98**

Court	Case Type					Total
	Admin. Review	Debt/ Contract	Pers. Injury / Damages	Title / Relief / Judgment	Other	
Anchorage	189	246	630	345	276	1,686
Barrow	1	4	6	14	16	41
Bethel		6	34	31	22	93
Dillingham		1	7	4	4	16
Fairbanks	37	51	99	109	66	362
Juneau	14	24	48	70	28	184
Kenai	4	18	69	62	16	169
Ketchikan	7	18	16	29	16	86
Kodiak	2	2	18	11	113	146
Kotzebue	1	1	8	4	14	28
Nome		3	14	12	12	41
Palmer	6	24	54	63	20	167
Petersburg		2	1	3	2	8
Sitka		4	12	11		27
Valdez		1	6	8	6	21
Wrangell		1	4	2	1	8
Total	261	406	1,026	778	612	3,083
% of Total	8.5	13.2	33.3	25.2	19.9	100.0
1st District	21	49	81	115	47	313
2nd District	2	8	28	30	42	110
3rd District	201	292	784	493	435	2,205
4th District	37	57	133	140	88	455

Fiscal Year July 1 - June 30

**Superior Courts
Other Civil Case Descriptions
FY 98**

Administrative Review

Administrative Appeal

Debt / Contract

Debt - General

Real Estate Matter

Other Contract

Personal Injury / Damage

Personal Injury - Auto

Personal Injury - Other

Wrongful Death

Property Damage - Auto

Property Damage - Other

Medical Malpractice

Legal Malpractice

Other Malpractice

Title / Relief / Judgment

Foreclosure

Injunctive Relief

Quiet Title

Application for Post-Conviction Relief

Condemnation

Forcible Entry and Detainer

Registration of Foreign Judgment

Habeas Corpus

Other

Change of Name

Minor Settlement

Election Contest or Recant Appeal

Other

**Superior Courts
Other Civil Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	2,400	1,898	1,275	1,495	-38%	17%
Barrow	54	48	146	54		-63%
Bethel	231	249	147	42	-82%	-71%
Dillingham			2	14		
Fairbanks	513	502	346	358	-30%	3%
Juneau	321	247	195	197	-39%	1%
Kenai	169	203	121	127	-25%	5%
Ketchikan	167	140	100	86	-49%	-14%
Kodiak	194	137	167	154	-21%	-8%
Kotzebue	78	41	20	25	-68%	25%
Nome	71	51	19	43	-39%	126%
Palmer	134	160	132	150	12%	14%
Petersburg	9	10	8	20		
Sitka	52	40	21	25	-52%	19%
Valdez	26	22	20	17	-35%	-15%
Wrangell	12	15	6	6		
Total	4,431	3,763	2,725	2,813	-37%	3%
1st District	561	452	330	334	-40%	1%
2nd District	203	140	185	122	-40%	-34%
3rd District	2,923	2,420	1,717	1,957	-33%	14%
4th District	744	751	493	400	-46%	-19%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Other Civil Case Disposition Stage
FY 98**

Court	Stage of Disposition						Total
	Dismiss / Settle	Default Judgment	Summary Judgment	Court Trial	Jury Trial	Other	
Anchorage	925	40	43	12	15	460	1,495
Barrow	39	8	1	1		5	54
Bethel	35	1			2	4	42
Dillingham	6	6				2	14
Fairbanks	203	19	16	3	2	115	358
Juneau	97	7	1	5	3	84	197
Kenai	71	10	2	3	4	37	127
Ketchikan	48	5	7	2	2	22	86
Kodiak	42	3		1	2	106	154
Kotzebue	7	6	1			11	25
Nome	19	4	1		2	17	43
Palmer	90	4	5	4	2	45	150
Petersburg	10		3			7	20
Sitka	14	1	1		1	8	25
Valdez	10	1				6	17
Wrangell	4			1		1	6
Total	1,620	115	81	32	35	930	2,813
% of Total	57.6	4.1	2.9	1.1	1.2	33.1	100.0
1st District	173	13	12	8	6	122	334
2nd District	65	18	3	1	2	33	122
3rd District	1,144	64	50	20	23	656	1,957
4th District	238	20	16	3	4	119	400

Fiscal Year July 1 - June 30

**Superior Courts
Children's Matters Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	1,115	1,262	1,192	1,418	27%	19%
Barrow	22	43	52	81	268%	56%
Bethel	114	73	161	239	110%	48%
Dillingham			26	22		-15%
Fairbanks	287	212	292	370	29%	27%
Juneau	99	102	101	110	11%	9%
Kenai	159	199	194	157	-1%	-19%
Ketchikan	79	59	78	116	47%	49%
Kodiak	56	46	51	34	-39%	-33%
Kotzebue	65	56	75	89	37%	19%
Nome	51	72	128	123	141%	-4%
Palmer	176	174	206	222	26%	8%
Petersburg	10	13	8	5		
Sitka	37	38	45	17	-54%	-62%
Valdez	18	8	20	10		
Wrangell	6	6	9	3		
Total	2,294	2,363	2,638	3,016	31%	14%
1st District	231	218	241	251	9%	4%
2nd District	138	171	255	293	112%	15%
3rd District	1,524	1,689	1,689	1,863	22%	10%
4th District	401	285	453	609	52%	34%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

**Superior Courts
Children's Matters Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	378	552	1,001	845	124%	-16%
Barrow	24	34	54	44	83%	-19%
Bethel	110	93	81	142	29%	75%
Dillingham			7	10		
Fairbanks	161	176	201	233	45%	16%
Juneau	70	60	37	49	-30%	32%
Kenai	175	162	191	151	-14%	-21%
Ketchikan	82	51	65	109	33%	68%
Kodiak	50	55	41	43	-14%	5%
Kotzebue	72	50	58	81	13%	40%
Nome	56	85	123	139	148%	13%
Palmer	125	138	175	235	88%	34%
Petersburg	10	13	6	9		
Sitka	27	34	35	46	70%	31%
Valdez	17	12	21	13	-24%	-38%
Wrangell	11	5	8	3		
Total	1,368	1,520	2,104	2,152	57%	2%
1st District	200	163	151	216	8%	43%
2nd District	152	169	235	264	74%	12%
3rd District	745	919	1,436	1,297	74%	-10%
4th District	271	269	282	375	38%	33%

Fiscal Year July 1 - June 30

Dillingham Superior Court established 7/1/96

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**District
Court
(higher
volume)**



**District Courts - Higher Volume
Summary of Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	41,382	41,213	39,317	53,669	30%	37%
Barrow	859	830	770	922	7%	20%
Bethel	2,014	2,079	2,059	1,964	-2%	-5%
Cordova	433	515	500	496	15%	-1%
Craig	939	839	930	1,060	13%	14%
Delta Junction	593	526	546	489	-18%	-10%
Dillingham	824	902	875	865	5%	-1%
Fairbanks	17,062	18,060	14,031	15,082	-12%	7%
Glennallen	1,400	1,007	922	1,128	-19%	22%
Haines	277	433	346	432	56%	25%
Healy	446	860	762	434	-3%	-43%
Homer	2,445	3,093	3,226	2,775	13%	-14%
Juneau	8,192	9,512	9,295	8,549	4%	-8%
Kenai	8,969	9,793	8,690	9,237	3%	6%
Ketchikan	3,556	3,616	3,340	2,987	-16%	-11%
Kodiak	2,563	2,591	2,584	2,877	12%	11%
Kotzebue	565	909	735	865	53%	18%
Naknek	332	477	471	374	13%	-21%
Nenana	330	694	505	279	-15%	-45%
Nome	862	700	870	1,138	32%	31%
Palmer	14,665	12,838	10,884	12,522	-15%	15%
Petersburg	549	519	580	533	-3%	-8%
Seward	2,100	1,945	1,698	1,398	-33%	-18%
Sitka	885	930	990	991	12%	
Tok	812	538	520	439	-46%	-16%
Unalaska	733	836	769	789	8%	3%
Valdez	754	749	665	903	20%	36%
Wrangell	472	430	516	493	4%	-4%
Total	115,013	117,434	107,396	123,690	8%	15%
1st District	14,870	16,279	15,997	15,045	1%	-6%
2nd District	2,286	2,439	2,375	2,925	28%	23%
3rd District	76,600	75,959	70,601	87,033	14%	23%
4th District	21,257	22,757	18,423	18,687	-12%	1%

Fiscal Year July 1 - June 30

Traffic / Minor Offense dispositions used as filings

**District Courts - Higher Volume
Composition of Case Filings
FY 98**

Court	Misde- meanor	Other		Civil		Total
		Traffic / Minor Offense @	Children's Matters	Small Claims	Other Civil	
Anchorage	9,798	34,885	*	4,638	4,348	53,669
Barrow	585	206	*	48	83	922
Bethel	1,229	409	*	168	158	1,964
Cordova	126	294	6	14	56	496
Craig	583	264	30	60	123	1,060
Delta Junction	126	309	3	21	30	489
Dillingham	540	138	*	109	78	865
Fairbanks	3,565	8,567	*	1,332	1,618	15,082
Glennallen	167	867	15	39	40	1,128
Haines	127	234	2	31	38	432
Healy	32	384		15	3	434
Homer	577	1,805	14	105	274	2,775
Juneau	2,357	2,493	*	1,354	2,345	8,549
Kenai	2,117	6,125	*	480	515	9,237
Ketchikan	1,310	1,033	*	391	253	2,987
Kodiak	748	1,618	*	298	213	2,877
Kotzebue	490	285	*	44	46	865
Naknek	235	94	5	27	13	374
Nenana	30	205		39	5	279
Nome	744	175	*	146	73	1,138
Palmer	2,384	9,126	*	810	202	12,522
Petersburg	231	204	*	84	14	533
Seward	353	874		80	91	1,398
Sitka	312	333	*	232	114	991
Tok	116	259		34	30	439
Unalaska	311	389	13	18	58	789
Valdez	279	506	*	66	52	903
Wrangell	170	225	*	74	24	493
Total	29,642	72,306	88	10,757	10,897	123,690
% of Total	24.0	58.5	0.1	8.7	8.8	100.0
1st District	5,090	4,786	32	2,226	2,911	15,045
2nd District	1,819	666		238	202	2,925
3rd District	17,635	56,721	53	6,684	5,940	87,033
4th District	5,098	10,133	3	1,609	1,844	18,687

Fiscal Year July 1 - June 30

@ Traffic / Minor Offense dispositions used as filings.

*Children's matters reported in Superior Court.

**District Courts - Higher Volume
Summary of Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	41,973	40,742	37,685	52,267	25%	39%
Barrow	880	844	742	832	-5%	12%
Bethel	2,116	2,028	2,051	1,765	-17%	-14%
Cordova	436	523	493	496	14%	1%
Craig	939	891	872	1,063	13%	22%
Delta Junction	574	536	552	478	-17%	-13%
Dillingham	722	830	804	791	10%	-2%
Fairbanks	16,669	17,653	14,035	16,089	-3%	15%
Glennallen	1,394	1,014	910	1,127	-19%	24%
Haines	267	434	358	411	54%	15%
Healy	442	839	765	441		-42%
Homer	2,443	3,158	3,175	2,812	15%	-11%
Juneau	7,957	9,407	8,707	8,645	9%	-1%
Kenai	8,692	10,048	8,472	8,873	2%	5%
Ketchikan	3,518	3,465	3,396	3,128	-11%	-8%
Kodiak	2,517	2,677	2,489	2,962	18%	19%
Kotzebue	565	863	745	836	48%	12%
Naknek	304	410	494	360	18%	-27%
Nenana	321	692	501	240	-25%	-52%
Nome	817	693	831	1,107	35%	33%
Palmer	14,214	12,598	10,988	12,556	-12%	14%
Petersburg	525	490	579	566	8%	-2%
Seward	2,084	1,971	1,681	1,373	-34%	-18%
Sitka	867	978	913	988	14%	8%
Tok	807	550	502	443	-45%	-12%
Unalaska	790	830	794	773	-2%	-3%
Valdez	770	786	722	856	11%	19%
Wrangell	513	427	528	493	-4%	-7%
Total	114,116	116,377	104,784	122,771	8%	17%
1st District	14,586	16,092	15,353	15,294	5%	
2nd District	2,262	2,400	2,318	2,775	23%	20%
3rd District	76,339	75,587	68,707	85,246	12%	24%
4th District	20,929	22,298	18,406	19,456	-7%	6%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Composition of Case Dispositions
FY 98**

Court	Misde- meanor	Other		Civil		Total
		Traffic / Mi- nor Offense	Children's Matters	Small Claims	Other	
Anchorage	9,052	34,885	*	5,607	2,723	52,267
Barrow	488	206	*	58	80	832
Bethel	1,152	409	*	92	112	1,765
Cordova	131	294	7	15	49	496
Craig	575	264	38	61	125	1,063
Delta Junction	124	309	3	15	27	478
Dillingham	530	138	*	56	67	791
Fairbanks	3,558	8,567	*	1,704	2,260	16,089
Glennallen	173	867	4	36	47	1,127
Haines	115	234	1	28	33	411
Healy	35	384		19	3	441
Homer	571	1,805	64	77	295	2,812
Juneau	2,124	2,493	*	1,494	2,534	8,645
Kenai	2,024	6,125	*	338	386	8,873
Ketchikan	1,394	1,033	*	470	231	3,128
Kodiak	853	1,618	*	261	230	2,962
Kotzebue	458	285	*	53	40	836
Naknek	233	94	2	17	14	360
Nenana	28	205		1	6	240
Nome	706	175	*	164	62	1,107
Palmer	2,399	9,126	*	844	187	12,556
Petersburg	247	204	*	94	21	566
Seward	333	874		89	77	1,373
Sitka	309	333	*	234	112	988
Tok	118	259		26	40	443
Unalaska	287	389	12	21	64	773
Valdez	271	506	*	30	49	856
Wrangell	181	225	*	65	22	493
Total	28,469	72,306	131	11,969	9,896	122,771
% of Total	23.2	58.9	0.1	9.7	8.1	100.0
1st District	4,945	4,786	39	2,446	3,078	15,294
2nd District	1,652	666		275	182	2,775
3rd District	16,857	56,721	89	7,391	4,188	85,246
4th District	5,015	10,133	3	1,857	2,448	19,456

Fiscal Year July 1 - June 30

* Children's Matters reported in Superior Court.

**District Courts - Higher Volume
Non-Traffic Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	15,899	16,902	17,158	18,784	18%	9%
Barrow	537	490	523	716	33%	37%
Bethel	1,590	1,404	1,413	1,555	-2%	10%
Cordova	211	213	216	202	-4%	-6%
Craig	718	639	713	796	11%	12%
Delta Junction	201	197	189	180	-10%	-5%
Dillingham	752	783	725	727	-3%	
Fairbanks	6,928	6,727	6,168	6,515	-6%	6%
Glennallen	286	267	252	261	-9%	4%
Haines	163	161	148	198	21%	34%
Healy	54	97	62	50	-7%	-19%
Homer	992	869	1,054	970	-2%	-8%
Juneau	4,347	5,737	6,144	6,056	39%	-1%
Kenai	2,593	2,693	2,724	3,112	20%	14%
Ketchikan	2,246	2,153	2,125	1,954	-13%	-8%
Kodiak	909	982	1,195	1,259	39%	5%
Kotzebue	398	513	458	580	46%	27%
Naknek	293	419	419	280	-4%	-33%
Nenana	92	84	70	74	-20%	6%
Nome	803	655	774	963	20%	24%
Palmer	3,295	3,277	3,147	3,396	3%	8%
Petersburg	380	369	371	329	-13%	-11%
Seward	555	503	482	524	-6%	9%
Sitka	663	626	655	658	-1%	
Tok	185	159	206	180	-3%	-13%
Unalaska	444	405	397	400	-10%	1%
Valdez	320	270	296	397	24%	34%
Wrangell	398	323	278	268	-33%	-4%
Total	46,252	47,917	48,362	51,384	11%	6%
1st District	8,915	10,008	10,434	10,259	15%	-2%
2nd District	1,738	1,658	1,755	2,259	30%	29%
3rd District	26,549	27,583	28,065	30,312	14%	8%
4th District	9,050	8,668	8,108	8,554	-5%	6%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Non-Traffic Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	16,490	16,431	15,526	17,382	5%	12%
Barrow	558	504	495	626	12%	26%
Bethel	1,692	1,353	1,405	1,356	-20%	-3%
Cordova	214	221	209	202	-6%	-3%
Craig	718	691	655	799	11%	22%
Delta Junction	182	207	195	169	-7%	-13%
Dillingham	650	711	654	653		
Fairbanks	6,535	6,320	6,172	7,522	15%	22%
Glennallen	280	274	240	260	-7%	8%
Haines	153	162	160	177	16%	11%
Healy	50	76	65	57	14%	-12%
Homer	990	934	1,003	1,007	2%	
Juneau	4,112	5,632	5,556	6,152	50%	11%
Kenai	2,316	2,948	2,506	2,748	19%	10%
Ketchikan	2,208	2,002	2,181	2,095	-5%	-4%
Kodiak	863	1,068	1,100	1,344	56%	22%
Kotzebue	398	467	468	551	38%	18%
Naknek	265	352	442	266		-40%
Nenana	83	82	66	35	-58%	-47%
Nome	758	648	735	932	23%	27%
Palmer	2,844	3,037	3,251	3,430	21%	6%
Petersburg	356	340	370	362	2%	-2%
Seward	539	529	465	499	-7%	7%
Sitka	645	674	578	655	2%	13%
Tok	180	171	188	184	2%	-2%
Unalaska	501	399	422	384	-23%	-9%
Valdez	336	307	353	350	4%	-1%
Wrangell	439	320	290	268	-39%	-8%
Total	45,355	46,860	45,750	50,465	11%	10%
1st District	8,631	9,821	9,790	10,508	22%	7%
2nd District	1,714	1,619	1,698	2,109	23%	24%
3rd District	26,288	27,211	26,171	28,525	9%	9%
4th District	8,722	8,209	8,091	9,323	7%	15%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Misdemeanor Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	8,401	9,194	8,923	9,798	17%	10%
Barrow	453	388	373	585	29%	57%
Bethel	1,389	1,147	1,149	1,229	-12%	7%
Cordova	146	148	140	126	-14%	-10%
Craig	600	510	505	583	-3%	15%
Delta Junction	166	145	139	126	-24%	-9%
Dillingham	531	536	506	540	2%	7%
Fairbanks	3,920	3,711	3,235	3,565	-9%	10%
Glennallen	211	200	159	167	-21%	5%
Haines	93	123	74	127	37%	72%
Healy	38	73	39	32	-16%	-18%
Homer	539	505	647	577	7%	-11%
Juneau	2,079	1,878	2,077	2,357	13%	13%
Kenai	1,873	1,944	1,856	2,117	13%	14%
Ketchikan	1,570	1,508	1,433	1,310	-17%	-9%
Kodiak	549	664	775	748	36%	-3%
Kotzebue	338	420	357	490	45%	37%
Naknek	263	330	379	235	-11%	-38%
Nenana	35	51	44	30	-14%	-32%
Nome	546	495	556	744	36%	34%
Palmer	2,576	2,537	2,240	2,384	-7%	6%
Petersburg	282	277	269	231	-18%	-14%
Seward	403	350	315	353	-12%	12%
Sitka	426	360	371	312	-27%	-16%
Tok	152	89	141	116	-24%	-18%
Unalaska	346	313	287	311	-10%	8%
Valdez	228	175	205	279	22%	36%
Wrangell	217	183	165	170	-22%	3%
Total	28,370	28,254	27,359	29,642	4%	8%
1st District	5,267	4,839	4,894	5,090	-3%	4%
2nd District	1,337	1,303	1,286	1,819	36%	41%
3rd District	16,066	16,896	16,432	17,635	10%	7%
4th District	5,700	5,216	4,747	5,098	-11%	7%

**District Courts - Higher Volume
Misdemeanor Case Composition of Filings
FY 98**

Court	Violence	Theft / Fraud	Environ- mental	Nui- sance	Alcohol / Drugs	Resisting / Evading	Vice	Traffic	Other	Total
Anchorage	2,332	1,751	63	706	331	309	143	3,319	844	9,798
Barrow	191	23	7	86	70	9		198	1	585
Bethel	388	46	23	305	178	9		204	76	1,229
Cordova	20	4	33	22	14			32	1	126
Craig	113	19	62	65	97	57		167	3	583
Delta Junction	27	3	15	5	9	1		61	5	126
Dillingham	117	14	136	126	24	5		89	29	540
Fairbanks	825	221	79	295	452	135	4	1,345	209	3,565
Glennallen	19	4	56	17	7	1		62	1	167
Haines	24	1	6	10	33	4		45	4	127
Healy	1	2		2	1			25	1	32
Homer	82	31	27	50	92	10		283	2	577
Juneau	585	86	63	242	329	176	4	783	89	2,357
Kenai	276	113	203	99	250	28		1,135	13	2,117
Ketchikan	291	91	55	172	281	10	1	390	19	1,310
Kodiak	150	14	16	65	136	6		353	8	748
Kotzebue	164	20	3	65	97	5	1	131	4	490
Naknek	40	5	93	11	49	3		30	4	235
Nenana	8	3			7			12		30
Nome	272	24	8	138	140	5	2	95	60	744
Palmer	362	144	135	86	232	20		1,337	68	2,384
Petersburg	40	7	21	40	47	4		62	10	231
Seward	70	17	5	47	35	4		170	5	353
Sitka	58	12	55	36	15	3		120	13	312
Tok	20	2	25	21	15	3		29	1	116
Unalaska	70	20	40	46	24	7	1	99	4	311
Valdez	42	28	5	21	51	1		121	10	279
Wrangell	27	2	13	26	51	4		47		170
Total	6,614	2,707	1,247	2,804	3,067	819	156	10,744	1,484	29,642
% of Total	22.3	9.1	4.2	9.5	10.3	2.8	0.5	36.2	5.0	100.0
1st District	1,138	218	275	591	853	258	5	1,614	138	5,090
2nd District	627	67	18	289	307	19	3	424	65	1,819
3rd District	3,580	2,145	812	1,296	1,245	394	144	7,030	989	17,635
4th District	1,269	277	142	628	662	148	4	1,676	292	5,098

Fiscal Year July 1 - June 30

District Courts Misdemeanor Case Descriptions FY 98

Violence

Assault
Child Abuse
Concealed Weapon
DV Violation
Firearms
Malicious Destruction
Reckless Endangerment
Stalking
Terroristic Threats
Violate Protective Order
Weapon Misuse

Theft / Fraud

Auto Theft
Concealing Merchandise
Defraud
False Report
Fraudulent Use of Credit Card
Illegal Purchase
Impersonate Officer
Larceny
Official Misconduct
Pawnshop
Shoplift
Tax Violation
Telephones
Theft
Theft of Service
Vehicle Tampering
Worthless Check

Environmental

Animal Offenses
Archeological Offenses
Commercial Fishing
Fire Offenses
Fish and Game Offenses
Illegal Storage
Junk
Littering
Polluting
Public Excrement
Safety Requirements

Nuisance

Criminal Mischief
Disorderly Conduct
Disrupt Meetings
Disturbing the Peace
Harassment
Indecent Exposure
Trespass
Unauthorized Entry

Alcohol / Drugs

Alcohol After Hours
Contraband
Contributing to the
Delinquency of a Minor
Controlled Substance
Drunk in Public
Furnishing Alcohol
Importation / Selling
Minor Consuming
Minor on Premises
Open Container
Sell to Drunk

Resist / Evade Prosecution or Arrest

Arrest Prior Requi
Destroy Evidence
Escape
Evasion
Fail to Appear
Fugitive
Hinder Prosecution
Interfere with Official Proceedings
Resist Arrest
Tampering with Evidence

Vice

Assignment
Enticement
Gambling
Possess Child Pornography
Prostitution / Soliciting

Traffic

Accident Violation
Driving While Intoxicated
Leaving the Scene
License Violation
Notice of Accident
Reckless Driving

Other

Attempted Crime
Business License
Compulsory Attendance
Contempt of Court
Failure to Register as
a Sex Offender
Insurance
Interfere with Custody
Nonsupport
Official Proceedings
Tobacco
Truancy
Violation of Release

**District Courts - Higher Volume
Misdemeanor Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	9,170	8,853	8,783	9,052	-1%	3%
Barrow	491	404	340	488	-1%	44%
Bethel	1,381	1,130	1,169	1,152	-17%	-1%
Cordova	158	159	124	131	-17%	6%
Craig	615	550	481	575	-7%	20%
Delta Junction	149	155	143	124	-17%	-13%
Dillingham	468	534	487	530	13%	9%
Fairbanks	3,856	3,601	3,436	3,558	-8%	4%
Glennallen	204	201	165	173	-15%	5%
Haines	88	114	83	115	31%	39%
Healy	38	51	57	35	-8%	-39%
Homer	518	517	626	571	10%	-9%
Juneau	2,156	1,887	1,995	2,124	-1%	6%
Kenai	1,723	2,129	1,774	2,024	17%	14%
Ketchikan	1,590	1,495	1,476	1,394	-12%	-6%
Kodiak	495	688	762	853	72%	12%
Kotzebue	332	396	369	458	38%	24%
Naknek	242	299	414	233	-4%	-44%
Nenana	34	48	43	28	-18%	-35%
Nome	523	492	528	706	35%	34%
Palmer	2,260	2,334	2,442	2,399	6%	-2%
Petersburg	261	276	270	247	-5%	-9%
Seward	365	387	330	333	-9%	1%
Sitka	417	412	336	309	-26%	-8%
Tok	160	105	136	118	-26%	-13%
Unalaska	391	314	304	287	-27%	-6%
Valdez	194	183	251	271	40%	8%
Wrangell	248	181	171	181	-27%	6%
Total	28,527	27,895	27,495	28,469		4%
1st District	5,375	4,915	4,812	4,945	-8%	3%
2nd District	1,346	1,292	1,237	1,652	23%	34%
3rd District	16,188	16,598	16,462	16,857	4%	2%
4th District	5,618	5,090	4,984	5,015	-11%	1%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Misdemeanor Case Disposition Stage
FY 98**

Court	Stage of Disposition									Total
	At / Before Arraignment		Between Arraignment and Trial			Court Trials		Jury Trials		
	DS / DP *	PG *	DS / DP *	PG *	Other	Guilty	Not Guilty	Guilty	Not Guilty	
Anchorage	1,037	1,824	1,312	4,721	37	9	2	84	26	9,052
Barrow	4	15	189	277	1			1	1	488
Bethel	15	127	288	706	1	1	5	5	4	1,152
Cordova	2	34	37	48	2	3		4	1	131
Craig	20	239	139	167	7		1	2		575
Delta Junction	2	51	18	42	2	1		4	4	124
Dillingham	2	32	81	402	1	8		3	1	530
Fairbanks	135	1,306	543	1,483	8	17	5	28	33	3,558
Glennallen	17	53	21	79	1			2		173
Haines	4	52	22	35	1			1		115
Healy	3	11	7	13	1					35
Homer	5	58	161	328	16			1	2	571
Juneau	48	263	779	1,010	3	3		8	10	2,124
Kenai	348	559	383	711	4	8	2	4	5	2,024
Ketchikan	30	382	280	689	2	2		9		1,394
Kodiak	44	255	216	332	4			1	1	853
Kotzebue	36	79	107	233	1				2	458
Naknek	9	88	36	88		6	4	1	1	233
Nenana		3	6	16	3					28
Nome	25	214	88	370		3	1	3	2	706
Palmer	191	414	712	1,053	3	3		17	6	2,399
Petersburg	10	101	48	80	1	3	1	2	1	247
Seward	18	90	87	134	2	1		1		333
Sitka	6	126	43	129	1		2	1	1	309
Tok	7	26	23	57	2			2	1	118
Unalaska	1	68	50	161	5			1	1	287
Valdez	10	108	47	100	1	3		1	1	271
Wrangell			43	134	1	2	1			181
Total	2,029	6,578	5,766	13,598	111	73	24	186	104	28,469
% of Total	7.1	23.1	20.3	47.8	0.4	0.3	0.1	0.7	0.4	100.0
1st District	118	1,163	1,354	2,244	16	10	5	23	12	4,945
2nd District	65	308	384	880	2	3	1	4	5	1,652
3rd District	1,684	3,583	3,143	8,157	76	41	8	120	45	16,857
4th District	162	1,524	885	2,317	17	19	10	39	42	5,015

Fiscal Year July 1 - June 30

* DS - dismissed. DP - deferred prosecution. PG - pled guilty.

**District Courts - Higher Volume
Small Claims Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	4,429	4,598	5,019	4,638	5%	-8%
Barrow	64	51	77	48	-25%	-38%
Bethel	85	137	157	168	98%	7%
Cordova	23	16	24	14	-39%	-42%
Craig	29	40	87	60	107%	-31%
Delta Junction	23	28	14	21	-9%	50%
Dillingham	117	103	156	109	-7%	-30%
Fairbanks	1,126	1,241	1,334	1,332	18%	
Glennallen	33	34	34	39	18%	15%
Haines	36	16	33	31	-14%	-6%
Healy	16	20	21	15	-6%	-29%
Homer	147	120	127	105	-29%	-17%
Juneau	920	1,473	1,654	1,354	47%	-18%
Kenai	422	419	456	480	14%	5%
Ketchikan	559	551	566	391	-30%	-31%
Kodiak	199	130	212	298	50%	41%
Kotzebue	32	44	35	44	38%	26%
Naknek	16	52	18	27	69%	50%
Nenana	53	25	17	39	-26%	129%
Nome	226	114	155	146	-35%	-6%
Palmer	593	599	701	810	37%	16%
Petersburg	80	63	85	84	5%	-1%
Seward	89	71	83	80	-10%	-4%
Sitka	154	190	200	232	51%	16%
Tok	12	17	14	34	183%	143%
Unalaska	35	36	50	18	-49%	-64%
Valdez	50	67	50	66	32%	32%
Wrangell	149	112	90	74	-50%	-18%
Total	9,717	10,367	11,469	10,757	11%	-6%
1st District	1,927	2,445	2,715	2,226	16%	-18%
2nd District	322	209	267	238	-26%	-11%
3rd District	6,153	6,245	6,930	6,684	9%	-4%
4th District	1,315	1,468	1,557	1,609	22%	3%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Small Claims Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	3,570	5,766	5,032	5,607	57%	11%
Barrow	49	55	82	58	18%	-29%
Bethel	127	118	127	92	-28%	-28%
Cordova	18	23	19	15	-17%	-21%
Craig	22	38	70	61	177%	-13%
Delta Junction	25	26	19	15	-40%	-21%
Dillingham	84	86	108	56	-33%	-48%
Fairbanks	1,176	889	1,072	1,704	45%	59%
Glennallen	42	33	32	36	-14%	13%
Haines	29	26	35	28	-3%	-20%
Healy	12	21	7	19	58%	
Homer	176	160	160	77	-56%	-52%
Juneau	923	1,314	1,464	1,494	62%	2%
Kenai	317	445	358	338	7%	-6%
Ketchikan	530	426	564	470	-11%	-17%
Kodiak	221	180	162	261	18%	61%
Kotzebue	39	27	42	53	36%	26%
Naknek	17	32	11	17		55%
Nenana	45	25	17	1		
Nome	203	114	141	164	-19%	16%
Palmer	451	563	646	844	87%	31%
Petersburg	81	41	83	94	16%	13%
Seward	109	84	57	89	-18%	56%
Sitka	147	189	158	234	59%	48%
Tok	11	10	16	26	136%	63%
Unalaska	23	36	54	21	-9%	-61%
Valdez	88	94	59	30	-66%	-49%
Wrangell	163	110	92	65	-60%	-29%
Total	8,698	10,931	10,687	11,969	38%	12%
1st District	1,895	2,144	2,466	2,446	29%	-1%
2nd District	291	196	265	275	-5%	4%
3rd District	5,116	7,502	6,698	7,391	44%	10%
4th District	1,396	1,089	1,258	1,857	33%	48%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Small Claims Case Disposition Stage
FY 98**

Court	Stage of Disposition					Total
	Dis.miss	Default Judgment	Judgment on the Pleadings	Trial	Other	
Anchorage	2,368	1,972	284	649	334	5,607
Barrow	27	21	3	4	3	58
Bethel	71	14	4		3	92
Cordova	5	5	2	3		15
Craig	31	15	4	7	4	61
Delta Junction	6	5	2	2		15
Dillingham	14	34	2		6	56
Fairbanks	835	547	127	142	53	1,704
Glennallen	14	8	1	12	1	36
Haines	2	12	1	6	7	28
Healy	11	5	2	1		19
Homer	17	25	15	11	9	77
Juneau	536	817	56	53	32	1,494
Kenai	47	157	48	71	15	338
Ketchikan	184	220	30	24	12	470
Kodiak	73	122	40	22	4	261
Kotzebue	6	16	15	4	12	53
Naknek	6	5	3	3		17
Nenana	1					1
Nome	56	70	24	9	5	164
Palmer	230	349	57	131	77	844
Petersburg	35	44	6	5	4	94
Seward	47	29	1	1	11	89
Sitka	76	123	13	16	6	234
Tok	7	9	3	5	2	26
Unalaska	10	6		4	1	21
Valdez	9	12	3	4	2	30
Wrangell	28	30	4	2	1	65
Total	4,752	4,672	750	1,191	604	11,969
% of Total	39.7	39.0	6.3	10.0	5.0	100.0
1st District	892	1,261	114	113	66	2,446
2nd District	89	107	42	17	20	275
3rd District	2,840	2,724	456	911	460	7,391
4th District	931	580	138	150	58	1,857

**District Courts - Higher Volume
Other Civil Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	3,069	3,110	3,216	4,348	42%	35%
Barrow	20	51	73	83	315%	14%
Bethel	116	120	107	158	36%	48%
Cordova	41	39	46	56	37%	22%
Craig	53	65	85	123	132%	45%
Delta Junction	12	24	36	30	150%	-17%
Dillingham	80	106	63	78	-2%	24%
Fairbanks	1,882	1,775	1,599	1,618	-14%	1%
Glennallen	40	31	44	40		-9%
Haines	29	20	35	38	31%	9%
Healy		4	2	3		
Homer	286	230	266	274	-4%	3%
Juneau	1,348	2,386	2,413	2,345	74%	-3%
Kenai	298	330	412	515	73%	25%
Ketchikan	117	94	126	253	116%	101%
Kodiak	161	188	208	213	32%	2%
Kotzebue	28	49	66	46	64%	-30%
Naknek	7	22	18	13		-28%
Nenana	3	8	9	5		
Nome	31	46	63	73	135%	16%
Palmer	126	141	206	202	60%	-2%
Petersburg	18	29	17	14	-22%	-18%
Seward	53	80	84	91	72%	8%
Sitka	83	76	84	114	37%	36%
Tok	21	53	51	30	43%	-41%
Unalaska	59	46	51	58	-2%	14%
Valdez	42	28	41	52	24%	27%
Wrangell	32	28	23	24	-25%	4%
Total	8,055	9,179	9,444	10,897	35%	15%
1st District	1,680	2,698	2,783	2,911	73%	5%
2nd District	79	146	202	202	156%	
3rd District	4,262	4,351	4,655	5,940	39%	28%
4th District	2,034	1,984	1,804	1,844	-9%	2%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Other Civil Case Composition of Filings
FY 98**

Court	Title / Relief / Pers. Injury / Damage	Debt / Contract	Other	Domestic Violence	Dom. Rel. / Probate Etc. *	Total
Anchorage	1,935	1,120	1,293			4,348
Barrow	2	5		76		83
Bethel	2	8	56	92		158
Cordova	5	2	1	24	24	56
Craig	3	5	63	52		123
Delta Junction				30		30
Dillingham		3	4	3	68	78
Fairbanks	327	425	69	797		1,618
Glennallen	1	3		24	12	40
Haines	5	2	4	26	1	38
Healy				3		3
Homer	36	23	12	90	113	274
Juneau	62	2,018	48	217		2,345
Kenai	49	64	109	293		515
Ketchikan	37	32	20	164		253
Kodiak	13	22	98	80		213
Kotzebue	2	1	6	37		46
Naknek	1	1		10	1	13
Nenana				3	2	5
Nome	7	10	1	55		73
Palmer	107	71	24			202
Petersburg		4	1	9		14
Seward	15	3	4	37	32	91
Sitka	15	12	2	85		114
Tok	1	7		22		30
Unalaska	6	3	1	22	26	58
Valdez	5	6		38	3	52
Wrangell	1	2		21		24
Total	2,637	3,852	1,816	2,310	282	10,897
% of Total	24.2	35.3	16.7	21.2	2.6	100.0
1st District	123	2,075	138	574	1	2,911
2nd District	11	16	7	168		202
3rd District	2,173	1,321	1,546	621	279	5,940
4th District	330	440	125	947	2	1,844

Fiscal Year July 1 - June 30

* Case filings not reported in Superior Court.

**District Courts - Higher Volume
Other Civil Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	3,750	1,812	1,711	2,723	-27%	59%
Barrow	18	45	73	80	344%	10%
Bethel	184	105	109	112	-39%	3%
Cordova	33	30	54	49	48%	-9%
Craig	52	67	79	125	140%	58%
Delta Junction	8	26	33	27		-18%
Dillingham	75	67	59	67	-11%	14%
Fairbanks	1,503	1,830	1,664	2,260	50%	36%
Glennallen	31	31	36	47	52%	31%
Haines	30	21	35	33	10%	-6%
Healy		4	1	3		
Homer	296	251	214	295		38%
Juneau	1,033	2,431	2,097	2,534	145%	21%
Kenai	276	374	374	386	40%	3%
Ketchikan	88	81	141	231	163%	64%
Kodiak	147	200	176	230	56%	31%
Kotzebue	27	44	57	40	48%	-30%
Naknek	6	15	14	14		
Nenana	3	9	6	6		
Nome	32	42	66	62	94%	-6%
Palmer	133	140	163	187	41%	15%
Petersburg	14	23	17	21	50%	24%
Seward	55	56	78	77	40%	-1%
Sitka	81	73	84	112	38%	33%
Tok	9	56	36	40		11%
Unalaska	79	46	52	64	-19%	23%
Valdez	54	30	43	49	-9%	14%
Wrangell	28	29	27	22	-21%	-19%
Total	8,045	7,938	7,499	9,896	23%	32%
1st District	1,326	2,725	2,480	3,078	132%	24%
2nd District	77	131	196	182	136%	-7%
3rd District	4,935	3,052	2,974	4,188	-15%	41%
4th District	1,707	2,030	1,849	2,448	43%	32%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Other Civil Case Disposition Stage
FY 98**

Court	Stage of Disposition							Total
	Dismiss / Settle	Default Judgment	Summary Judgment	Court Trial	Jury Trial	Domestic Violence	Other	
Anchorage	1,532	749	33	9	3		397	2,723
Barrow	1	5				72	2	80
Bethel	51	1				57	3	112
Cordova	2					23	24	49
Craig	9	2		3	1	57	53	125
Delta Junction		2				25		27
Dillingham	8	2			1	55	1	67
Fairbanks	493	809	35	4	1	807	111	2,260
Glennallen	3		1	2		25	16	47
Haines	2	1		2	1	24	3	33
Healy						3		3
Homer	41	6		2		73	173	295
Juneau	150	2,017	93	2		207	65	2,534
Kenai	35	80	6	3		200	62	386
Ketchikan	22	18	5	2	1	158	25	231
Kodiak	27	8	2		4	84	105	230
Kotzebue	2	3	3	1		29	2	40
Naknek		1				9	4	14
Nenana	2	1				2	1	6
Nome	2	6	1			53		62
Palmer	85	66	10	7			19	187
Petersburg	7	1	1			11	1	21
Seward	7	1	2	1		38	28	77
Sitka	14	12	1	1	2	78	4	112
Tok	2	14				21	3	40
Unalaska	7	2	2	1	1	22	29	34
Valdez	5	2				39	3	49
Wrangell	1					21		22
Total	2,510	3,809	195	40	15	2,193	1,134	9,896
% of Total	25.4	38.5	2.0	0.4	0.2	22.2	11.5	100.0
1st District	205	2,051	100	10	5	556	151	3,078
2nd District	5	14	4	1		154	4	182
3rd District	1,752	917	56	25	9	568	861	4,188
4th District	548	827	35	4	1	915	118	2,448

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Traffic / Minor Offense Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage	25,483	24,311	22,159	34,885	37%	57%
Barrow	322	340	247	206	-36%	-17%
Bethel	424	675	646	409	-4%	-37%
Cordova	222	302	284	294	32%	4%
Craig	221	200	217	264	19%	22%
Delta Junction	392	329	357	309	-21%	-13%
Dillingham	72	119	150	138	92%	-8%
Fairbanks	10,134	11,333	7,863	8,567	-15%	9%
Glennallen	1,114	740	670	867	-22%	29%
Haines	114	272	198	234	105%	18%
Healy	392	763	700	384	-2%	-45%
Homer	1,453	2,224	2,172	1,805	24%	-17%
Juneau	3,845	3,775	3,151	2,493	-35%	-21%
Kenai	6,376	7,100	5,966	6,125	-4%	3%
Ketchikan	1,310	1,463	1,215	1,033	-21%	-15%
Kodiak	1,654	1,609	1,389	1,618	-2%	16%
Kotzebue	167	396	277	285	71%	3%
Naknek	39	58	52	94	141%	81%
Nenana	238	610	435	205	-14%	-53%
Nome	59	45	96	175	197%	82%
Palmer	11,370	9,561	7,737	9,126	-20%	18%
Petersburg	169	150	209	204	21%	-2%
Seward	1,545	1,442	1,216	874	-43%	-28%
Sitka	222	304	335	333	50%	-1%
Tok	627	379	314	259	-59%	-18%
Unalaska	289	431	372	389	35%	5%
Valdez	434	479	369	506	17%	37%
Wrangell	74	107	238	225	204%	-5%
Total	68,761	69,517	59,034	72,306	5%	22%
1st District	5,955	6,271	5,563	4,786	-20%	-14%
2nd District	548	781	620	666	22%	7%
3rd District	50,051	48,376	42,536	56,721	13%	33%
4th District	12,207	14,089	10,315	10,133	-17%	-2%

Fiscal Year July 1 - June 30

**District Courts - Higher Volume
Traffic / Minor Offense Case Composition of Dispositions
FY 98**

Court	Equip- ment	Speeding	Obey Signs / Control Devices	Maneu- vers	License Actions for Minor Consuming	Regis- tration / Title	Other	Minor Offense / Infraction	Total
Anchorage	3,044	7,781	4,149	2,842	385	7,041	4,337	5,306	34,885
Barrow		4	10	10	32			150	206
Bethel	15	39	24	17	250	13	5	46	409
Cordova	20	1	8	12	17	83	1	152	294
Craig	24	93	14	13	77	40	1	2	264
Delta Junction	19	143	5	6	6	23	7	100	309
Dillingham	7	20	3	11	23	16	2	56	138
Fairbanks	1,472	2,844	1,080	700	537	1,801	34	99	8,567
Glennallen	18	606	3	14	6	32	4	184	867
Haines	15	40	3	5	35	12	2	122	234
Healy	18	218	2	13		15	2	116	384
Homer	488	603	17	53	86	197	5	356	1,805
Juneau	158	614	153	150	335	380	2	701	2,493
Kenai	1,354	1,477	141	284	206	609	46	2,008	6,125
Ketchikan	105	135	7	31	239	64	3	449	1,033
Kodiak	77	503	53	161	74	189	9	552	1,618
Kotzebue		11	14	8	69		1	182	285
Naknek					31			63	94
Nenana	11	145	1	7	1	4	3	33	205
Nome	1	21	8	10	64	9		62	175
Palmer	2,618	2,785	411	485	257	1,059	152	1,359	9,126
Petersburg	28	39	6	14	64	21		32	204
Seward	84	243	12	50	36	86	15	348	874
Sitka	39	22	5	11	32	59	2	163	333
Tok	38	91	1	4	14	17	2	92	259
Unalaska	31	86	5	39	12	28		188	389
Valdez	43	284	10	24	32	38		75	506
Wrangell	4	67	2	7	47	31		67	225
Total	9,731	18,915	6,147	4,981	2,967	11,867	4,635	13,063	72,306
% of Total	13.5	26.2	8.5	6.9	4.1	16.4	6.4	18.1	100.0
1st District	373	1,010	190	231	829	607	10	1,536	4,786
2nd District	1	36	32	28	165	9	1	394	666
3rd District	7,784	14,389	4,812	3,975	1,165	9,378	4,571	10,647	56,721
4th District	1,573	3,480	1,113	747	808	1,873	53	486	10,133

Fiscal Year July 1 - June 30

District Courts
Traffic / Minor Offense Case Descriptions
FY 98

Equipment

Equipment / Vehicles - Registrations, Defects and Misuse

Speeding

Obey Signs / Control Devices

Failure to obey stop signs, yield, flashing, etc.

Maneuvers

Following Improperly
Improper Lane or Location
Improper Passing
Failure to Yield
Failure to Signal
Improper Turn
Wrong Way
Miscellaneous Maneuvers

License Actions for Minor Consuming

Revocation of Minor's License -
caught drinking but not driving

Registration / Title

Expired License or Registration
Obstructed Plates
No Safety Inspection

Other

Citations not identified in APSIN
Parking Citations
Littering
Duty Failure

Minor Offense / Infraction

Curfew
Dog Tickets
Fish and Game
Other Local Ordinances
Tobacco

**District Courts - Higher Volume
Children's Matters Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage *						
Barrow *						
Bethel *						
Cordova	1	10	6	6		
Craig	36	24	36	30	-17%	-17%
Delta Junction				3		
Dillingham *	24	38				
Fairbanks *						
Glennallen	2	2	15	15		
Haines	5	2	6	2		
Healy						
Homer	20	14	14	14	-30%	
Juneau *						
Kenai *						
Ketchikan *						
Kodiak *						
Kotzebue *						
Naknek	7	15	4	5		
Nenana	1					
Nome *						
Palmer *						
Petersburg *						
Seward	10	2				
Sitka *						
Tok						
Unalaska	4	10	9	13		
Valdez *						
Wrangell *						
Total	110	117	90	88	-20%	-2%
1st District	41	26	42	32	-22%	-24%
2nd District						
3rd District	68	91	48	53	-22%	10%
4th District	1			3		

Fiscal Year July 1 - June 30

* Children's Matters reported in Superior Court

**District Courts
Traffic / Minor Offense Case Descriptions
FY 98**

Equipment

Equipment / Vehicles - Registrations, Defects and Misuse

Speeding

Obey Signs / Control Devices

Failure to obey stop signs, yield, flashing, etc.

Maneuvers

Following Improperly
Improper Lane or Location
Improper Passing
Failure to Yield
Failure to Signal
Improper Turn
Wrong Way
Miscellaneous Maneuvers

License Actions for Minor Consuming

Revocation of Minor's License -
caught drinking but not driving

Registration / Title

Expired License or Registration
Obstructed Plates
No Safety Inspection

Other

Citations not identified in APSIN
Parking Citations
Littering
Duty Failure

Minor Offense / Infraction

Curfew
Dog Tickets
Fish and Game
Other Local Ordinances
Tobacco

**District Courts - Higher Volume
Children's Matters Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Anchorage *						
Barrow *						
Bethel *						
Cordova	5	9	12	7		
Craig	29	36	25	38	31%	52%
Delta Junction				3		
Dillingham *	23	24				
Fairbanks *						
Glennallen	3	9	7	4		
Haines	6	1	7	1		
Healy						
Homer		6	3	64		
Juneau *						
Kenai *						
Ketchikan *						
Kodiak *						
Kotzebue *						
Naknek		6	3	2		
Nenana	1					
Nome *						
Palmer *						
Petersburg *						
Seward	10	2				
Sitka *						
Tok						
Unalaska	8	3	12	12		
Valdez *						
Wrangell *						
Total	85	96	69	131	54%	90%
1st District	35	37	32	39	11%	22%
2nd District						
3rd District	49	59	37	89	82%	141%
4th District	1			3		

Fiscal Year July 1 - June 30

* Children's Matters reported in Superior Court

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The ABCs of ADR: A Dispute Resolution Glossary

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Some ADR procedures, such as binding arbitration and private judging, are similar to expedited litigation in that they involve a third-party decision-maker with authority to impose a resolution if the parties so desire. Other procedures, such as mediation and the minitrial, are collaborative: a neutral third party helps a group of individuals or entities with divergent views to reach a goal or complete a task to their mutual satisfaction.

Arbitration and mediation tend to be the mechanisms most often used and, for many people, are synonymous with the term, "ADR." But to respond to specific needs, parties often craft hybrid procedures that combine elements of one or more dispute resolution methods.

The following glossary is designed to help parties communicate about this rapidly changing field. Definitions are not standardized, but flexible and creative like ADR itself. And with all aspects of ADR, it is most important not that the parties use exactly the same terms, but that they understand each other.

We have divided the glossary into private and court-related ADR processes. Most of these working definitions are derived from prior publications of the CPR Institute for Dispute Resolution, a number of which address particular ADR processes in depth. Click here for a complete list of [CPR Publications](#) and ADR practice tools.

-
- [Private ADR Processes](#)
 - [Court-Related ADR Processes](#)

Private ADR Processes

[Arbitration](#)
[Binding Arbitration](#)
[Non-Binding Arbitration](#)
["Baseball" or "Final Offer"](#)
[Arbitration](#)
["Bounded" or "High-Low"](#)
[Arbitration](#)
[Incentive Arbitration](#)
[Confidential Listener](#)

[Co-Med-Arb](#)
[Minitrial](#)
[Multi-Party Coordinated Defense](#)
[Multi-Step ADR](#)
[Negotiated Rule-Making](#)
[Ombudsperson](#)
[Partnering](#)
[Predispute ADR Contract Clause](#)
[Two-Track Approach](#)

conduct the settlement negotiations or ADR procedure. The negotiation or ADR efforts may proceed concurrently with litigation or during an agreed-upon cessation of litigation. This approach is particularly useful in cases when: it may not be feasible to abandon litigation while the parties explore settlement possibilities; or as a practical matter, the specter of litigation must be present in order for the opposing party to consider or agree to an alternative mechanism. It also is useful when the litigation has become acrimonious or when a suggestion of settlement would be construed as a sign of weakness.

CPR Publications

Court-Related ADR Processes

Court-Annexed Mediation
Mediation
Early Neutral Evaluation
Court-Annexed Arbitration
Summary Jury Trial
Appellate ADR
Judge-Hosted Settlement
Conferences

Court Minitrial
Case Valuation
Multidoor Courthouse or Multi-
Option ADR
Settlement Week
Private Judging

Court-Annexed Mediation. In mediation, a neutral third party the mediator facilitates negotiations among the parties to help them settle. The mediation session is confidential and informal. Disputants clarify their understanding of underlying interests and concerns, probe the strengths and weaknesses of legal positions, explore the consequences of not settling, and generate settlement options. The mediator, who may meet jointly or separately with the parties, serves solely as a facilitator and does not issue a decision or make findings of fact. A hallmark of mediation is its capacity to help parties expand traditional settlement discussions and broaden resolution options, often by going beyond the legal issues in controversy.

Mediation works much the same in courts and in private settings, with a few important differences. A court mediation program may be based in the court, or may involve referral by the court to outside ADR programs run by bar associations, nonprofit groups, other local courts, or private ADR providers. Some courts require litigants to use mediation in what are known as mandatory mediation programs. The purpose of the mediation session is unchanged whether litigants enter the program voluntarily or by court mandate. The court mediator may be a lawyer trained in mediation and compensated by the parties, or serve as a volunteer. Judges, magistrate judges, or court ADR professionals also serve as mediators in some court programs.

Mediation is the primary ADR process in federal, state and local courts, second only to the traditional judicial settlement conference. Mediation has proved useful in so many kinds of disputes that some experts favor its use in all civil cases, to improve case management and settlement.

In the federal system, more than 40 of the 94 district courts and almost all the circuit courts have mediation programs using judges or lawyers as mediators. Mediation programs are also underway in more than one-third

of the state courts and in many bankruptcy courts.

Early Neutral Evaluation. Like mediation, ENE is applicable to many types of civil cases, including complex disputes. In ENE, a neutral evaluator a private attorney expert in the substance of the dispute holds a several-hour confidential session with parties and counsel early in the litigation to hear both sides of the case. Afterwards, the evaluator identifies strengths and weaknesses of the parties' positions, flags areas of agreement and disputes, and issues a non-binding assessment of the merits of the case.

Developed during the mid-1980's in the San Francisco federal court, ENE is now used in 18 federal district courts and several state courts. Usually, attorneys trained by the court serve as evaluators; in some courts, including the Southern District of California, magistrate judges conduct ENE sessions.

Originally designed to make both case management and settlement more efficient, ENE has evolved into a pure settlement device in some courts. Used this way, ENE resembles evaluative mediation, in which the mediator uses case evaluation as a settlement tool.

Court-Annexed Arbitration. An adjudicatory dispute-resolution process in which one or more arbitrators issue a non-binding judgment on the merits, after an expedited, adversarial hearing. The arbitrator's decision addresses only the disputed legal issues and applies legal standards. Either party may reject the non-binding ruling and proceed to trial.

Court annexed arbitration is used mainly in small- and moderate-sized tort and contract cases, when litigation costs are often disproportionate to the amounts at stake. Twenty-six federal district courts have established mandatory or voluntary arbitration programs and arbitration is common in many state courts. In some courts, about a third of all civil cases are referred to arbitration. Still, new court-annexed arbitration programs are rare these days. Once the premier court ADR process, it has lost popularity in recent years. Most court ADR development focuses on mediation.

Summary Jury Trial. The summary jury trial is a non-binding ADR process used to promote settlement in trial-ready cases headed for protracted jury trials. Usually a judge or magistrate judge presides over the SJT; occasionally, a neutral attorney conducts the process. Part or all of a complex dispute may be submitted to a summary jury trial. After an abbreviated hearing in which counsel present evidence in summary form, the jury renders an advisory verdict. Non-binding, it becomes the basis for subsequent settlement negotiations. If the parties do not reach a settlement, the case proceeds to trial.

Because they are costly, SJTs are used relatively rarely. Typically, the SJT is reserved for large cases when other settlement efforts have failed and litigants differ significantly about jury outcome.

Appellate ADR. Mediation programs have become increasingly popular among the nation's appeals courts. Each of the 12 federal circuits either has a settlement office or plans to open one shortly. One the state level, at least 50 appeals courts have used mediation at some time, and approximately 25 courts currently have active programs.

Unlike trial-level ADR, which ranges from mandatory arbitration to multidoor courthouses, appellate programs tend to look very similar. In most programs, staff attorneys or outside lawyers conduct mandatory, pre-argument conferences in those cases that seem most likely to settle. Some appellate programs are geared exclusively toward settlement, while other programs also address case management and procedural issues.

Judge-Hosted Settlement Conferences. The most common form of ADR used in federal and state courts is the settlement conference presided over by a judge or magistrate judge. Almost 94 of the federal district courts use judicial settlement conferences routinely, and nearly one-third of the courts assign this role almost exclusively to magistrate judges.

The classic role of the settlement judge is to articulate judgments about the merits of the case and to facilitate the trading of settlement offers. Some settlement judges and magistrate judges also use mediation techniques in the settlement conference to improve communication among the parties, probe barriers to settlement, and assist in formulating resolutions. In some courts, a specific judge or magistrate judge is designated as settlement judge. In others, the assigned judge (or another judicial officer who will not hear the case) hosts settlement conferences at various points during the litigation, often directly before trial.

Court Minitrial. The minitrial is a flexible, non-binding settlement process primarily used out of court. During the past decade, some federal district judges have used their own version of the minitrial. Like the summary jury trial, the court minitrial is a relatively elaborate ADR method generally reserved for large disputes.

In a typical court minitrial, each side presents a shortened form of its best case to settlement-authorized client representatives usually senior executives. The hearing is informal, with no witnesses and a relaxation of the rules of evidence and procedure. A judge, magistrate judge or non-judicial neutral presides over the one- or two-day hearing. Following the hearing, the client representatives meet, with or without the neutral adviser, to negotiate a settlement. At the parties' request, the neutral advisor may assist the settlement discussions by acting as a facilitator or by issuing an advisory opinion. If the talks fail, the parties proceed to trial.

Case Valuation ("Michigan Mediation"). This hybrid ADR process provides litigants in trial-ready cases with a written, non-binding assessment of the case's judgment value, delivered by a panel of three attorneys with subject-matter expertise after a very short hearing. If the panel's valuation is accepted by all parties, the case is settled for that amount. If any party rejects the panel's assessment, the case proceeds to trial.

Used only in the federal and state courts in Michigan, the arbitration-like valuation process is known widely by the misnomer "Michigan Mediation." Established in the Michigan state courts almost 20 years ago, today the process is used mainly for money-only contract, personal injury and civil rights cases.

Multidoor Courthouse or Multi-Option ADR. This term describes courts that offer an array of dispute resolution options or screen cases and then

channel them to particular ADR methods. Some multidoor courthouses refer all cases of certain types to particular ADR programs, while others offer litigants a menu of options in each case. Multidoor courthouses have been established in state courts in New Jersey, Texas, Massachusetts, and the District of Columbia. On the federal level, courts in the Western District of Missouri, the Northern District of California, the District of Rhode Island, and others now have multi-option ADR.

Settlement Week. In a typical settlement week, a court suspends normal trial activity and, aided by bar groups and volunteer lawyers, devotes itself to the mediation of long-pending civil cases. Mediation is the mainstay ADR method in a typical settlement week. Volunteer lawyers conduct mediations in courtrooms, conference rooms and other areas of the courthouse. Sessions may last an hour or two, with additional sessions held as needed. Unresolved cases return to the court's docket.

Settlement weeks are used regularly only in two federal district courts. The process is used more widely in state courts and a few federal courts send cases to settlement weeks sponsored by local state courts.

Private Judging. Private judging is a general term used to describe a private or court-related process in which disputing parties empower a private individual to hear and decide their case. The procedure may be exclusively a matter of contract between the parties or may be undertaken in connection with an authorizing statute. When authorized by statute, the process is sometimes referred to by the colloquial term, "Rent-a-Judge."

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Part 1:

Survey of Programs in Other Jurisdictions

This section of the report first defines each of the three dispute resolution processes specified in the legislation and summarizes research regarding their effectiveness. It then surveys court-connected programs in other state courts and in the federal courts. The report does not include information about the many programs that operate outside of, or independent of, the courts.

I. Definitions & Summary of Research Findings

Alternative Dispute Resolution (ADR) in its most general sense refers to dispute resolution procedures other than adjudication by a court. For purposes of this legislation, the Alaska Legislature limited "alternative dispute resolution" to three processes: arbitration, early neutral evaluation and mediation. These procedures are defined below. (The following definitions come largely from the Center for Public Resource's JUDGE'S DESKBOOK ON COURT ADR (1993). More detailed explanations of the three processes are included in Appendix B.)

A. Arbitration

Arbitration is a mandatory, adjudicative process in which a third party other than a judge or jury reviews facts and hears arguments from both sides and then renders a decision. When courts mandate arbitration, it is non-binding unless the parties themselves agree to be bound. Dissatisfied parties can reject the advisory arbitration award and insist on a trial de novo. Court-annexed arbitration is notable in several ways. First, it is relatively old, the first program having been set up in Philadelphia in 1952. Second, it is common, having spread by the early 1990s to both federal and state courts.

Federal arbitration programs typically include minor civil cases seeking no more than a specified upper dollar limit. Although the trend over time has been to increase the dollar limits, arbitration-eligible cases in the federal courts typically range from

\$75,000 - \$150,000 in damages. In the state courts, arbitration-eligible cases typically have lower ceilings, usually around \$50,000 (although Hawaii's arbitration program has a \$150,000 ceiling). Most arbitration programs focus on routine contract, personal injury and property damage cases.

Court-ordered arbitration, unlike other forms of ADR, has been subjected to systematic empirical study for more than a decade.¹ Researchers first compared arbitrations to trials. They found that arbitration hearings were, on average, shorter than trials, involved less attorney preparation time than trials, cost both courts and private litigants less than trials, and generally required less time in the schedule queue than trials.²

A second generation of research examined arbitration's effects on case processing and settlement behavior. These analyses showed that in most instances, the arbitration process does not divert cases from trial, but rather provides an alternative to a settlement reached without a hearing.³ In other words, arbitration provides an alternative form of adjudication to many cases that would settle without any hearing.⁴

Thus, most court-ordered arbitration programs do not significantly reduce the number or rate of trials.⁵ However, litigants and their attorneys consistently have reported high levels of satisfaction with the arbitration process and its outcome, and this is true whether they won or lost.⁶

¹ *An Alternative View*, *supra* note 36, at 406.

² *Id.* at 406-07.

³ *Id.* at 407. See also MacCoun, *Unintended Consequences of Court Arbitration: A Cautionary Tale from New Jersey*, 14 JUSTICE SYSTEM JOURNAL 229 (1991). MacCoun reported on a study of court-annexed automobile arbitration in New Jersey. He found that after the arbitration program began, there was a significant reduction in the percentage of cases settled without third-party intervention, but no reliable decrease in the trial rate, and a significant increase in filing-to-termination time for auto cases assigned to the program. *Id.* at 229.

⁴ *An Alternative View*, *supra* note 36, at 408.

⁵ *Id.*

⁶ *Id.* at 415.

B. Early Neutral Evaluation

Early Neutral Evaluation ("ENE") began in 1983 with an experiment in the U.S. Northern District of California. The program became permanent in 1988. In early neutral evaluation, a neutral evaluator (usually a private attorney expert in the substance of the dispute) holds a brief, confidential, nonbinding session early in the litigation to hear both sides of the cases. The evaluator identifies the main issues in dispute, explores the possibility of settlement, and assesses the merit of the claims. The evaluator also may discuss and review ways of settling or simplifying the case with the parties, for example, a discovery or motion plan.

Courts experimenting with ENE have used it for a wide array of civil disputes including contract, product liability, labor and employment and personal injury cases. ENE also may be helpful in cases handled by inexperienced or poorly-prepared counsel, cases involving high levels of animosity among parties, complex legal disputes involving multiple issues or cases where the parties differ substantially on legal or factual issues.

The Western District of Missouri's ENE demonstration program recently was evaluated by the Federal Judicial Center.⁷ The program, known as the Early Assessment Program, was established in 1992. Cases were assigned to the program using a true experimental design, which is to say cases were randomly assigned to the program and to the regular litigation track. Data showed that the program led to earlier case resolution and decreased fees for clients in most cases as compared to the cases on the normal litigation track.⁸

⁷ See FEDERAL JUDICIAL CENTER, REPORT TO THE JUDICIAL CONFERENCE COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT ON THE CIVIL JUSTICE REFORM ACT DEMONSTRATION PROGRAMS (1997) [hereinafter "FEDERAL JUDICIAL CENTER REPORT"]. The report evaluated five demonstration programs established under the CJRA; two different state case management programs and three ADR programs.

⁸ Cases required to participate in the program had a median age at termination almost three months shorter than cases not permitted to participate. *Id.* at 215. Also, over two-thirds of attorneys who participated in the program reported that the process did reduce their client's litigation costs. *Id.* at 216.

C. Mediation

In mediation, a neutral, third party helps the parties reach their own voluntary settlement of some or all of the issues in the case. Mediators facilitate settlement by promoting communication among parties, exploring bases for agreement and the consequences of not settling, developing a cooperative, problem-solving approach, identifying the parties' underlying interests and identifying options beyond the parties' perceptions. Mediation styles vary along a continuum from facilitative to evaluative, depending on the mediator and the parties' needs. Facilitative mediators concentrate on enhancing parties' communication and creating an atmosphere conducive to conciliation but do not attempt to evaluate the case. Evaluative mediators, on the other hand, may offer opinions about case value, liability and legal issues.⁹

Mediation is considered one of the most versatile ADR processes. It can be helpful in a wide variety of cases and circumstances. Most often cited are cases in which the parties have a continuing relationship (for example, divorces with children, landlord-tenant, business disputes, employment); however, mediation also has been effective in cases not involving a continuing relationship (for example, personal injury cases).

As mediation has become more popular, researchers have tried to quantify the effects that mediation has on case processing and case outcomes. Most of the research has involved family mediation, although some studies address non-family civil mediation. Research about family mediation suggests that mediation can be an effective and efficient service that can be more helpful than litigation to divorcing couples in conflict.¹⁰ Research shows that the majority of clients entering family mediation across a variety of settings reach agreement (either in whole or in part), report satisfaction with the experience and consider it fair and responsive to their

⁹ Mediation should not be confused with judge-hosted settlement conferences. Judge-hosted settlement conferences typically are limited to discussions of the strengths and weaknesses of the case, case value, the legal arguments and the likely outcome at trial. The judge's status as a judicial officer invests the process with weight and commands the parties' respect. Traditionally, the judge's settlement role was mainly to referee a "horse trade," although that may be changing as judges are learning more techniques for facilitating settlement.

¹⁰ Benjamin and Irving, *Research in Family Mediation: Review and Implications*, 13 *MEDIATION QUARTERLY* 53, 53 (1995). The article reviewed fifty-one mediation studies and summarized their findings on process, outcomes and predictors of mediated agreements. *Id.*

needs.¹¹ Also, relitigation rates among mediation couples have been found to be consistently low, and lower than those found among their litigation counterparts.¹² Not surprisingly, the studies further suggest that the most effective use of mediation involves matching clients amenable to it with the specific service model best suited to their needs, as opposed to blanket referrals to mediation.¹³

A limited amount of research has addressed non-family civil mediation's effects on pace, litigation costs, court workload, trial rates, settlement rates and participant satisfaction.¹⁴ Studies on litigation pace are mixed but suggest that many mediation programs cause cases to be resolved faster than traditional adjudication. For example, two studies of state court programs showed that mediation cases were resolved more quickly than adjudicated cases, while another state court study found that cases referred to mediation had longer disposition times than cases that were adjudicated.¹⁵ The recent RAND study of four federal court mediation programs¹⁶ found significantly

¹¹ *Id.* at 68. These judgments are characteristic of both men and women, but especially of women. *Id.*

¹² *Id.* at 64.

¹³ *Id.* at 71.

¹⁴ KEILITZ, ed., NATIONAL SYMPOSIUM ON COURT-CONNECTED DISPUTE RESOLUTION RESEARCH: A REPORT ON CURRENT RESEARCH FINDINGS — IMPLICATIONS FOR COURTS AND FUTURE RESEARCH NEEDS 6 (National Center for State Courts 1994) [hereinafter "NATIONAL ADR RESEARCH SYMPOSIUM"]. The report summarized the findings of four studies of non-family mediation programs in Minnesota, Maine, Florida and the District of Columbia. *Id.*

¹⁵ *Id.* at 7-8.

¹⁶ KAKALIK, DUNWORTH, HILL, MCCAFFREY, OSHIRO, PACE & VALANA, AN EVALUATION OF MEDIATION AND EARLY NEUTRAL EVALUATION UNDER THE CIVIL JUSTICE REFORM ACT (RAND 1996) [hereinafter "RAND"]. While the RAND report is one of the most empirically rigorous evaluations of ADR, a number of commentators have concerns about applying the findings to other programs. See CPR Judicial Project Advisory Council of the CPR Institute for Dispute Resolution, *Statement of Concerns Regarding the RAND ADR Study* (1997). The RAND report evaluated several programs that were new and examined them early, or as program refinements were under way. In several of the courts studied, substantial revisions to the ADR programs were made after the RAND data were collected. In addition, several of the programs had significant design flaws that were in the process of being corrected at the time they were being studied. In fact, none of the six programs evaluated were model programs; they apparently were selected because they were pilot programs with sufficiently large case loads to allow analysis. *Id.* Indeed, the RAND authors themselves cautioned restraint in drawing any general conclusions about the effects of ADR on cost and delay, adding that the findings did not support any "definitive policy recommendations." *Id.* at 4. The authors did suggest the possibility that the programs studied "may have had smaller effects that could not be identified as statistically significant in the

shorter disposition times in one of the programs and disposition times that approached but did not reach statistical significance in two others.¹⁷ In three of the four programs a majority of lawyers reported that mediation was helpful in reducing the time needed to resolve the case.¹⁸

Studies of court workloads showed that mediation cases required fewer court hearings and motions compared to control group cases.¹⁹ With regard to settlement rates, one of the studies found that 20% of the control group cases were resolved through trial or judicial finding, compared to 13% of the assigned ADR cases and 8% of the voluntary ADR cases.²⁰ The RAND study found the likelihood that a case settled just before or as a result of the mediation session ranged from 31-72%.²¹

The research on litigant costs is limited; however, in several studies (including the RAND study) attorneys reported that they thought mediation was less costly than typical case processing.²² On the other hand, the RAND study's empirical analysis of

sample of cases studied." *Id.* at xxxiv.

¹⁷ *Id.* at 34-35.

¹⁸ *Id.* at 47, Table 4.21.

¹⁹ NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 8.

²⁰ *Id.* at 8.

²¹ RAND, *supra* note 21, at 41. The program with the lowest settlement rate suffered from mandatory sessions that occurred very early in the process and were hosted by lawyers who were not required to be trained mediators. *Id.* at 92-93. Over half of the responding lawyers and mediators in that program said settlement was difficult because more discovery was needed. *Id.* at 46. For all the programs, impediments to settlement did not appear related to difficulty in the underlying subject matter such as factual or legal complexity. Nor did parties' or lawyers' reluctance to participate in mediation appear to bar success. Rather, the problem most often cited by lawyers and ADR providers was that the parties were not "ready" to settle. The second most often cited difficulty was that more discovery was needed. *Id.* at 45-46.

²² NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 9; *see also* RAND, *supra* note 21, at 37-38 and Table 4.10 (reporting that half or more of the lawyers surveyed in two of the four mediation programs thought that mediation had decreased total case costs). The RAND report noted that the lawyers' subjective opinions on costs were not always in agreement with the objective data. *Id.* at 35.

attorney work hours found "no strong statistical evidence that lawyer work hours are significantly affected by ADR, either up or down...."²³

Studies of participant satisfaction suggest that both litigants and attorneys find mediation to be fair and satisfactory, although the data comparing satisfaction in mediation to satisfaction in litigation are mixed. Ninety percent of lawyers and a slightly smaller percentage of litigants surveyed in the RAND study felt that the ADR process was fair.²⁴ In one mediation study from Minnesota, litigants in mediation rated it more favorably than did litigants in the judicial process, while attorneys rated the judicial process more highly.²⁵ In another study, parties rated mediation more highly than parties rated unassisted negotiations.²⁶

Participants in ADR programs generally are supportive of them. In the RAND study, most of the lawyers felt that the programs were worthwhile in general and beneficial for their individual cases.²⁷ Only a small percentage in any district felt that the program should be dropped. Litigants felt the same, although they were a little less positive than the lawyers.²⁸

II. ADR in State Courts

A number of authors have published comprehensive surveys of court-connected ADR programs in other jurisdictions. The two upon which this report relies most heavily are: ELIZABETH PLAPINGER & MARGARET SHAW, *COURT ADR: ELEMENTS OF PROGRAM DESIGN* (Center for Public Resources, 1992) and ELIZABETH PLAPINGER &

²³ RAND, *supra* note 21, at 37. The RAND researchers found that lawyer work hours per litigant were actually significantly higher for cases in one program. In this program, judges encouraged the tougher cases to volunteer for mediation. The RAND researchers concluded that the non-mediation cases in this program probably were not truly comparable to the mediation cases. *Id.*

²⁴ *Id.* at 49.

²⁵ NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 8. About 75% of both groups viewed mediation as fair. *Id.*

²⁶ *Id.* The parties in mediation also had a greater perception that the outcome was fair and that the full story was told. *Id.*

²⁷ RAND, *supra* note 21, at 51.

²⁸ *Id.*

MEDIATION TASK FORCE REPORT

I. WHAT IS MEDIATION?

Mediation is a form of dispute resolution characterized by the active role the parties take in determining a solution to their conflicts. Acting as a neutral third party, a mediator guides the parties to a mutual resolution of the dispute. Mediators clarify and isolate the central issues in a dispute, identify choices, and may document the final agreement. Mediation encourages parties to actively formulate their own solution to a dispute and gives them a vested interest in the agreement and its continuing enforcement.¹

Mediation has proven successful in the following areas:

1. Divorce/dissolution and child custody matters,
2. neighbor to neighbor disputes (including landlord/tenant disputes),
3. local disputes between interest groups,
4. employer/employee differences,
5. small claims matters,

¹Mediation is one of several forms of alternative dispute resolution ("ADR"). Mediation should not be confused with arbitration, a process in which a neutral third party renders a decision resolving a dispute. ADR originally meant alternatives to the judicial decision-making process. More recently, however, several ADR methods have been institutionalized as a part of court systems. Both federal and state court-annexed arbitration and mediation services exist across the country. The term "alternative dispute resolution" now refers to alternatives to traditional dispute resolution.

6. environmental issues,
7. complex civil litigation,
8. commercial disputes, and
9. labor disputes.

Mediation can be a viable alternative when:

1. there is an ongoing relationship between the parties,
2. court processes are lengthy and costly,
3. a judgment may be difficult to enforce,
4. the desired result is not within a court's power to grant, or
5. the parties do not trust the decision-maker (e.g., the system, or the judge).

II. ADVANTAGES AND DISADVANTAGES OF MEDIATION

A wealth of written material has been generated in recent years about mediation. (A bibliography of source materials is included at the end of this report.) This report will not attempt to provide a comprehensive review of the materials available. Rather, this section outlines generally what are perceived to be the advantages and disadvantages of mediation, although there is not universal agreement about some of these assessments.

Advantages to Mediation

A. User satisfaction

Some studies have found that the parties to mediated resolutions are more likely to feel satisfied with both the process and the resolution. Parties often feel that they have been afforded more of an opportunity to air their grievances and to retain the ability to make their own decisions in a mediation context than in a judicial context. In cases in which a long-term relationship between the parties must continue (such as in the case of a divorce when the parties have minor children or in a partnership dissolution when income from partnership assets will be distributed over a long period of time), the parties may be more able to maintain the relationship without new or recurring disputes after a mediated settlement.

B. Time to resolution

Because court calendars are often seriously back-

logged² (and even with calendars which are considered current a case can wait many months for a trial date), a mediated resolution can occur much more quickly than a judicial resolution. The parties may prevent escalation and expansion of their conflicts, particularly in emotional cases.

C. Reduction of court cases

Courts may be able to reduce the number of cases thereby conserving scarce judicial resources for those matters that will only be resolved in the adversarial process. Also, at least one study has found that mediated divorces were much less likely than judicially-determined divorces to return to court with post-judgment problems and disputes.

D. Compliance

Some studies have found that the rates of compliance with the terms of final settlements resulting from mediated resolutions are higher than the rates of compliance with judicially-imposed judgments. In other words, parties who participate in the resolution of their problem are more likely to carry out the terms of that resolution.

E. Cost

One of the advantages most often mentioned is reduced costs. Savings to the parties may be realized in the reduction or elimination of attorneys' fees. Although the parties usually bear the cost of compensating the mediator, the total cost may be less than the cost to

²The task force did not make any determination as to whether court calendars in Alaska are backlogged.

the parties of compensating their attorneys through the course of a lengthy court proceeding.

F. Addressing underlying conflicts/achieving superior resolutions

Traditional litigation addresses only the effects of disputes, not their causes. Mediation can address all levels of a dispute, including matters which may not be actionable in a court proceeding.

Disadvantages to Mediation

A. Inappropriate types of disputes

Mediation may be inappropriate if one of the parties has an overwhelming edge in the balance of power between the parties--for example, in a divorce involving a powerful, forceful spouse and an unassertive, unsophisticated spouse. In such a circumstance, it has been argued that the unassertive spouse needs the assistance of an advocate (i.e., an attorney) to protect the spouse's legal rights. The weaker spouse may not be able to assert his or her own rights in mediation (although recent projects have successfully utilized mediation in settling cases involving family violence).

Some types of disputes may be inappropriate, or less appropriate, for mediated resolutions. For example, where one of the parties to a dispute is suffering from a considerable mental or emotional disturbance, mediation may be impractical. It has also been suggested that mediation is inappropriate in cases involving severe child abuse.

Mediation may be more appropriate where the parties are genuinely interested in settlement. If one or both of the parties are interested only in full vindication of their positions, or if the overwhelming motivation of the parties is revenge, attempts at mediation may be doomed to fail.

B. Relinquishment of Legal Rights

The goal of mediation is settlement, not assertion of principles. Therefore, in some cases a party to a mediated settlement may have forfeited substantive legal rights of which the party may be unaware. Similarly, a party may lose some due process protections guaranteed within the judicial process. For example, facts may be considered which would have been excluded in a judicial proceeding.

C. Public Access

Disputes heard in the courtroom are public, except in very limited confidential proceedings. Mediation proceedings are not public and may take dispute resolution behind closed doors.

D. Enforcement

If a party to a mediated agreement does not abide by its terms, it may be difficult to mandate compliance unless the agreement has been adopted in some way by a court.

E. Public Policy Disputes

Disputes which have ramifications beyond the interests of the parties (e.g., environmental law violations) may

be better handled in an open forum which allows for a broader legal impact.

F. Second Class Justice

On the one hand it has been argued that "lesser" forums, such as mediation, which provide service primarily to the poor, may provide only second class justice by denying the poor access to the courts.

Others, however, contend that since many systems require the parties to a dispute to pay for the services of the mediator, alternatives are available only to those who can pay. Thus, it has been argued that the courts will deteriorate as the disputes of the wealthy are transferred to private forums.

was planned and managed with great care. A program lacking this kind of planning and management might not work as well. Second, this program was limited to uncomplicated suits for damages not exceeding \$15,000, most of which were based on a contract theory. The program might not work as well if applied to actions involving more money or to different types of claims such as torts, domestic matters, or real property. And finally, aside from the fact that the program substantially curtailed out-of-court settlement, we cannot say from our study whether it affected the dollar amounts of settlements in cases assigned to the program. This issue, indeed, the whole area of settlement, is fertile ground for future research.

Mandatory Arbitration in Colorado: An Initial Look at a Privatized ADR Program*

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In May 1987, the Colorado legislature passed SB22, The Colorado Mandatory Arbitration Act, authorizing nonbinding arbitration of selected civil disputes. Shortly thereafter, the governor signed the bill into law as Colorado Revised Statutes, sec. 13-22-401. This public law provided a structure for the promulgation of detailed rules by the Colorado Supreme Court. Preliminary rules were announced in November 1987 and, after public hearing, were finalized December 17, 1987. These rules (Colorado Rules of Civil Procedure, Rule 109.1) implementing the statute became effective January 1, 1988.

The Colorado mandatory arbitration program is experimental in two senses. First, it operates in a subset of jurisdictions within the state for a specific time period.¹ Second, it differs in several important ways from existing mandatory arbitration programs in other states.

In this preliminary report, we describe the enactment of this reform, outline the structure of the Colorado mandatory arbitration program, highlight some of the differences between this program and those existing elsewhere throughout the country and briefly report on the operation of the program to date. We conclude with several observations on the future of mandatory arbitration in Colorado.

* We would like to thank Wendy Green and Deidre Grano for their efforts in helping to collect the data presented in this report. This work has been supported by the State Justice Institute in the form of grant SJ1-88-03C-D-002. Additional support has been provided to the authors by the Conflict Resolution Consortium and by the Council on Research and Creative Work of the University of Colorado. Completion of this project would not have been possible without the assistance of the State Court Administrator James Thomas, his Director of Planning and Research Daniel Hall and his staff, especially James Jezek. None of the above organizations or individuals is responsible for the analysis and interpretations presented here.

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¹ Originally this program was authorized to run for two and one-half years, from January 1988 until July 1, 1990. During its spring 1990 session, the state legislature decided to continue the pilot project for additional year prior to deciding whether to authorize, expand or terminate the program.

Prelude to Mandatory Arbitration: A History of Civil Litigation in Colorado

Whether or not courts generally suffer from "hyperlexis" or a litigation explosion (Manning, 1977; Lieberman, 1981; Galanter, 1988), civil filings in Colorado's courts of general jurisdiction have grown rapidly during the last two decades. Between 1975 (the last major shift in the jurisdiction of these courts) and 1988 civil filings doubled. Modest increases during this period in the number of state judges, from 94 to 110, could not control the growth of judges' caseloads and the concomitant backlog of pending cases at the end of each year.

Much of this increase in litigation in recent years can be attributed to at least three factors. The rapid expansion of Colorado's population base during the 1970s and early 1980s brought greater numbers of cases before the courts. Secondly, although the principal trial courts purchased some breathing space by raising the dollar minimums in 1975 from \$500 to \$1000, they were again submerged when inflation during the 1970s pushed smaller cases into the domain of the state's trial courts of general jurisdiction ("district courts"). Finally, the economic downturn in the mid-1980s has fueled significant increases in the number of bankruptcy filings crowding court dockets.

By 1986, it was clear that something needed to be done about the growing delays within the civil justice system. Mandatory arbitration was enacted as an experimental program in eight of the state's 22 judicial districts. Four of these districts lie along the major front range urban corridor in Colorado: First District (Jefferson and Gilpin Counties), Eighth District (Larimer and Jackson Counties), Eighteenth District (Arapahoe, Douglas, Elbert and Lincoln Counties), and the Twentieth District (Boulder County). The remaining four districts are rural, located in the southern and western mountainous regions of the state: Third District, Sixth District, Seventh District, and Fourteenth District.²

Each of the large urban and suburban districts as well as the combined rural districts has experienced significant increases in its civil filings as well as in the average annual caseloads of individual judges. Litigants have felt the consequences of these increased demands for access to the civil justice system. The adjudication of even minor disputes may take two to three years.

² Activity levels in these four districts are considerably lower than in the four districts located in the urban corridor along the eastern slope of the Rocky Mountains. For comparative purposes, data from the four rural districts are combined in the tables that follow.

Prior to the start of the mandatory arbitration program, approximately 30 percent of all civil filings and terminations occurred in these eight districts. These experimental districts conducted a greater number of trials per termination and per judge in 1987 than districts not participating in the arbitration experiment, but the differences are not substantial. The percentage of cases filed that go to trial is approximately three percent statewide. Three of the urban experimental districts exceed this average while the Twentieth District and the four rural districts conduct fewer trials than the state mean.

Mandatory Arbitration Colorado-Style

Successful experimentation with court-annexed arbitration elsewhere stimulated discussion, design and enactment of such a program in Colorado. Though modeled on other mandatory arbitration programs, the Colorado program incorporates a number of novel components. Colorado's court-annexed arbitration system may well represent the most highly privatized program now in existence.

Compulsory civil arbitration in Colorado is designed to proceed in the absence of direct court supervision. In this sense, it is a mandatory arbitration program that is not "court-annexed". The Colorado State Supreme Court has established general program rules in accordance with the guidelines established by the legislative statute. The district clerks handle the initial filing of complaints and answers. During this time period, the court will rule on any initial motions, e.g., change of venue, default judgment. The district court's role once the case is *at issue*³ is limited. Its principal function after both sides have certified the case to be subject to the arbitration program is to receive the arbitration award and process settlements or judgments resulting from the arbitration decision. All other actions are in the jurisdiction of the arbitrator.

Thus once the case is *at issue*, the first task of the litigants and their attorneys is to hire one or more arbitrators. Two principal choices are available. The parties may jointly stipulate to a single arbitrator, or each party may choose its own arbitrator and the two arbitrators will choose an independent third member of the panel. Thus hearings may be conducted by one arbitrator or a three member panel. These alternatives were designed to limit court involvement in the process. In many instances, however, the court has not been able to escape responsibility for appointing arbitrator(s). Parties may stipulate to a hearing by

³ Cases are *at issue* ten days after completion of the initial pleadings.

a single arbitrator but be unable to choose one. In this situation, the court has often been asked to choose a neutral third party. In those cases in which the parties fail to stipulate to a single arbitrator, the court has been asked to appoint an arbitrator for one of the parties (usually the defendant). In a few cases decided by a panel of arbitrators, the court has been asked to appoint both an arbitrator for the parties and the third arbitrator.

The only qualification for being an arbitrator in the Colorado program is that one be a registered voter in the state.⁴ While attorneys and judges may serve as arbitrators, CRCP 109.1 explicitly states that legal training is not required. In this regard, the Colorado pilot program may be unique.⁵

Once a civil complaint has been filed and answered, and the arbitrator(s) empaneled, all pre-hearing motions are directed to the arbitrator(s) instead of the court. The arbitrator has responsibility for keeping the case on schedule and ensuring that discovery is completed and the hearing held within the statutorily imposed 90-day deadline from the time the complaint is answered.

Arbitrator fees are established by the Colorado Supreme Court. Arbitrators receive \$150 for all pre-hearing administration of the case and \$150 for the first

⁴ Rule 109.1(d4) specifies arbitrator qualifications:

A competent arbitrator is a person who meets the requirements of Section 13-71-109, C.R.S., to serve as a juror, except that the person need not reside in the judicial district where the case is pending. A qualified arbitrator is a person who meets the competency requirements of this rule and has filed a consent to serve as an arbitrator in the judicial district where the case is pending. The court shall use its discretion in its appointment of an arbitrator and may take into account consideration of the nature of the case and any special knowledge, skill, training or experience which may be helpful in determining the particular controversy. To be an arbitrator a person must be willing to sign an oath or affirmation under penalty of perjury that he or she meets the requirements of Section 13-71-109, C.R.S., will be completely impartial and will fairly and justly determine the issues in the case. An arbitrator need not be an attorney.

⁵ With joint stipulation of all litigants, lay arbitrators are permitted in several other state court-annexed arbitration programs, including those in Arizona, California and Washington (see McIver and Keilitz, this issue.) It appears, however, that only attorneys serve in this capacity on any regular basis. In contrast, a list of available "state-certified" arbitrators is circulated by the Colorado State Court Administrator's Office. This list contains the names of several hundred available lay arbitrators. Available evidence suggests that this list combined with the American Arbitration Association and other organizations pushing lay arbitration have stimulated the selection of lay arbitrators on a regular basis. In approximately 15-20% of all arbitration hearings, a lay arbitrator has been the sole decision maker or one of a panel of three arbitrators.

two days of a hearing.⁶ If hearings extend beyond two days, arbitrators may receive an additional \$200.⁷ Arbitrators are directed to assign costs to whichever parties they see fit and in whatever proportions they deem fair, although the standard expectation is that each party will pay half of the arbitrator's fees and costs. CRCP 109.1 directs arbitrators to bill the parties directly for their services at the time the award is rendered, and to apply to the court for a judgment against the parties billed if fees have not been received within 60 days of the award.

To facilitate completion of discovery within the established time limits, the discovery process is both restricted and liberalized. Each side is permitted only two depositions and only ten interrogatories. To ease the burden of these limitations, each side is required to disclose all relevant information. Within 20 days of the case being at issue, each side must submit a disclosure statement identifying all claims, probable witnesses (including experts), and documents to be presented at the hearing, and provide any stipulations. This expedited procedure effectively requires that attorneys be prepared at the point the suit is filed.

Hearings take place outside the supervision or even knowledge of the district courts. Hearing procedures are up to the discretion of the individual arbitrators. Rules of evidence are relaxed. After the hearing, arbitrators must notify all parties of their decision within ten days. Each decision is filed with the court and becomes the court's judgment after 30 days if not appealed.

Either party to the dispute may seek a trial de novo, unless that party has failed to prosecute or defend the case at arbitration and a default judgment has been rendered.⁸ However, if the party requesting a trial is unable to better its position by more than ten percent over the amount of the arbitration award, that party is compelled to pay up to \$1,000 of the costs of the earlier arbitration proceeding.

⁶ Parties may stipulate to pay arbitrators more than the fee structure set by the court. In most instances, these arrangements amount to an agreement to pay attorneys or other professionals at their traditional hourly rates. Several of these agreements have resulted in hearing bills running several thousands of dollars. Critics have suggested such arrangements are not within the intent of the mandatory arbitration program.

⁷ Fewer than one percent of the hearings held during the first two years of the program extended beyond two days.

⁸ Payment of arbitrator fees is also required as a precondition to trial de novo.

Just as the courts play no direct role in the administration of cases subject to arbitration, so too no public facilities are made available for the conduct of hearings. At a non-mandatory training for arbitrators practicing under CRCP 109.1, the participants were advised to hold hearings in conference rooms at their place of employment. If such facilities were not available, it was suggested that arbitrators rent a hotel room for the hearing and then add reimbursement for the room rent to the costs assigned in the award.⁹

Relative to similar programs in other states, judicial oversight is minimal, as the Colorado Legislature evidently intended. When the legislature enacted the arbitration statute, no funds were appropriated for either its implementation or the evaluation of its impact on the administration of civil justice. Thus, the courts were neither funded nor directed to play an active role in program administration.

In contrast, most aspects of the arbitration process are theoretically within the control of the litigants. They may choose when and where the hearing takes place—within limitations placed upon them by their attorneys. They may also choose both the number of independent arbitrators who hear their case as well as the identity of these arbitrators.

Implementing Mandatory Arbitration in Colorado

The program got off to a rocky start. The late announcement of the rules governing the mandatory arbitration program precluded *The Colorado Lawyer*, the state bar association journal, from publishing Rule 109.1 until its February 1988 issue (which arrived about the tenth of February). As a consequence, some attorneys did not discover the mandatory arbitration requirement until they filed their first case subject to the rule in January or February 1988. Copies of Rule 109.1 were available in each district court clerk's office. Attorneys who did not acknowledge the applicability of the mandatory arbitration program in the first paragraph of their complaint (as required by Rule 109.1) were subsequently

⁹ At least one enterprising group attempted to facilitate the organization of arbitration hearings by offering a package of services to litigants and their attorneys. Arbitration-Mediation Associates (AMA) provided a "stable" of trained arbitrators, designed schedules after contacting all parties, and offered a specially designed hearing room containing a triangular hearing table. To minimize collection problems, fees for these services as well as those of the arbitrator were collected in advance to minimize problems. AMA has not found this a profitable venture, however, and has ceased to offer these services.

notified by the district court clerks that failure to certify a case for arbitration would subject it to dismissal.

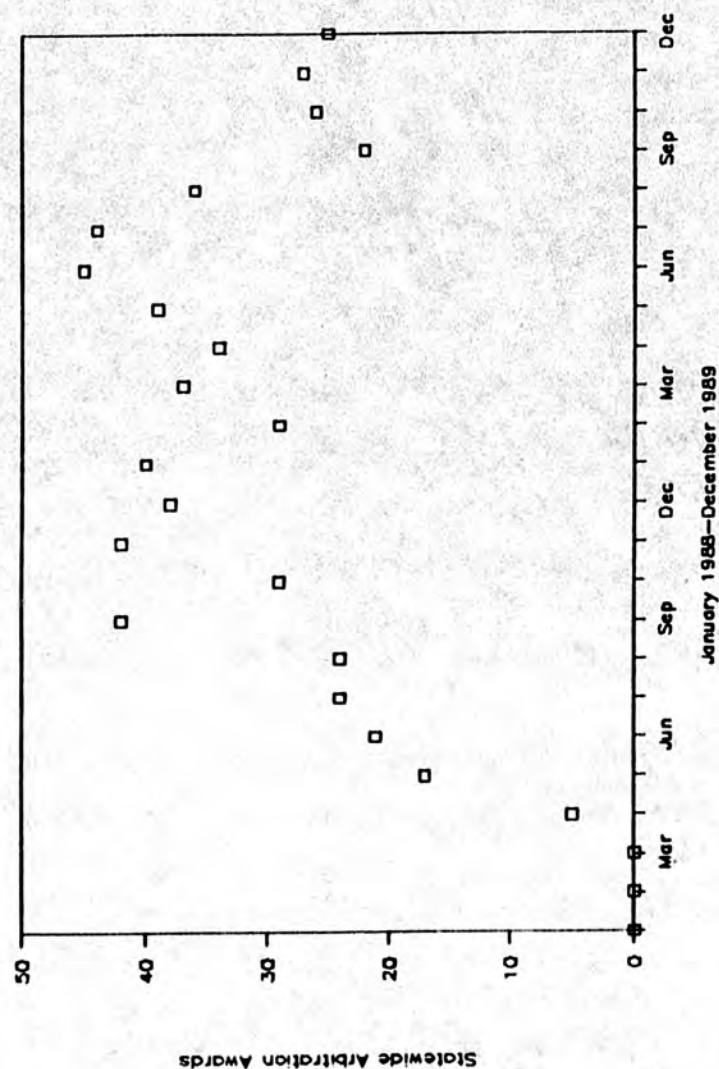
Despite the eventual publication of the rule and extensive public debate, arbitration has proceeded more slowly than expected given rule requirements that hearings be conducted within 90 days of cases at issue. Figure 1 shows the monthly growth in the number of arbitration hearings conducted statewide.¹⁰ Few hearings were held during the first half of 1988 as all participants waited to see how the process would work. In June, arbitration awards were filed for 23 hearings. By September, the number of hearings doubled to 42. Yet September 1988 has turned out to be the high point of activity in the arbitration experiment. In only two other months during the last two years have hearings been conducted more often. It appears that the program has stabilized at a monthly rate of 35-40 hearings within the eight judicial districts.

The number of hearings held in each judicial district from the start of the program through September 1989 is reported in Table 1. Basic information on the participants at the hearing, the winners and losers and the fees charged, has been derived from the awards filed with the court clerks. The awards identified cases that have gone to hearing and enabled us to locate arbitration participants. A significant portion of our evaluation focuses on the reactions of litigants, attorneys, and arbitrators to their experiences in these hearings.

Arbitration Decisions ("The Award")

Each arbitration hearing produces a decision on the claims and counterclaims of the litigants. At the end of 30 days, if the award of the arbitrator is not appealed, it is entered as the judgment of the district court. Table 2 shows the success rates for plaintiffs in arbitration hearings. Plaintiffs typically win a majority of cases in traditional court settings and the arbitration hearing is no exception to the rule. Statewide, plaintiffs win more than three-fourths of their claims with little variation across districts.

¹⁰ We derive our count of the number of hearings held from the filing of awards with the district clerk. The award is the only information the court system receives from the arbitrator to indicate that a scheduled hearing has taken place.

Figure 1.
Arbitration AwardsTable 1.
Mandatory Arbitration Hearings, January 1988 - December 1989

District	Awards	Percent of Total Awards
1st	149	23%
8th	103	16%
18th	280	44%
20th	62	10%
Rural Districts	48	8%
All Districts	642	100%

Table 2.
Arbitration Outcomes

District	Percent for Plaintiff on Claim
1st	79%
8th	75%
18th	80%
20th	74%
Rural Districts	79%
All District Courts	78%

Note: The percentage of decisions for the plaintiff reported here is a conservative estimate of the success rate of plaintiffs in arbitration hearings. Comparative negligence cases that attribute some blame to plaintiffs and other cases in which plaintiffs are awarded significantly less than their prayer demand are coded as split decisions.

Awards to victorious plaintiffs range from \$200 to \$66,000.¹¹ Most awards, however, fall in a much narrower range. Half of all arbitration decisions provide the plaintiff relief in amounts between \$6,500 and \$19,000.

Few counterclaims are filed in these arbitration cases. Of the sixty filed during the first 700 cases decided, the defendant won 37 percent. Most awards to defendants range from \$500 to \$4000.

One Arbitrator or Three?

Because the fees paid to arbitrators are fixed by state statute, identifying the arbitrator(s) is a costless decision.¹² However, the choice of whether to have one's problems considered by one or three neutral third parties is clearly not an insignificant decision. A one day hearing will either cost the parties \$300 or \$900 for their arbitrators (over and above the amount each will owe his or her attorney). Depending on how this decision makers' fee is split—it may be equally divided among the parties or assigned disproportionately to the winner or loser—the choice of the number of arbitrators can be quite costly.

In Table 3 we report the choices of litigants for either one or three arbitrators in each of the experimental districts. There are minor variations in the percentage of disputes heard by one arbitrator versus three. Clearly the least costly option is approved most often: statewide 70 percent of all hearings are heard by a single arbitrator. When panels do meet to hear cases, it appears that a "norm" of unanimity may exist in some areas but not others; few dissents are expressed in the urban and suburban districts but nearly one-third of the rural panel hearings result in a dissent by one of the three arbitrators.

Since the object of most legal battles is to win, both litigants and attorneys have speculated on the value of their choices regarding the number of arbitrators governing the hearing. Does it matter whether one arbitrator or three arbitrators decides the case? For example, is a three arbitrator panel more likely to favor the

¹¹ Arbitration awards are not confined to an upper limit of \$50,000. Filings certify that the amount in dispute is \$50,000 or less. In some personal injury suits, complaints do not identify a specific dollar loss but "pray" the court examine the evidence and decide on the plaintiff's damages. In addition, the rule does not prohibit cases larger than \$50,000 from proceeding voluntarily under the pilot program guidelines.

¹² As we noted previously, in a few instances, parties have voluntarily stipulated to fees other than those established by court rules. In these cases, the choice of an arbitrator is not costless.

plaintiff than a single arbitrator or is the defendant more likely to find a sympathetic ear if three arbitrators preside? Is the increase in the expense of a three-member panel worth the cost? Will the expected benefits outweigh the (expected) costs?¹³

Table 3.
Number of Arbitrators

District	Percent 3-Arbitrator Panels	Panel Dissent Rate
1st	27%	12%
8th	22%	3%
18th	30%	6%
20th	36%	13%
Rural Districts	25%	17%
All Districts	28%	8%

In Table 4 we attempt to shed some light on this question but, not surprisingly, raise more questions than we answer. The number of arbitrators has little impact on the success rates of plaintiffs in certain jurisdictions and a great impact in others. Furthermore, when the number of arbitrators does appear to make a difference, its impact does not uniformly benefit one party or the other. In the first and eighth districts, success rates are unrelated to the number of arbitrators. In the 18th and 20th districts, plaintiffs are slightly more successful when their case is heard before three arbitrators. In the 18th and 20th districts, plaintiffs are slightly less successful when their case is heard before three arbitrators. The greatest difference between decision making by single arbitrators and panels occurs in the rural districts: plaintiffs prevail 30 percent more often in arbitration

¹³ We talk about expected rather than actual cost because the assignment of fees is not predetermined. Assessment of probable fees can be guessed by examining the past behavior of arbitrators.

hearings when their case is heard by a single arbitrator than when a panel is chosen to arbitrate the dispute.

Table 4.
The Impact of Geography and Panel Size on Arbitrator Decisions

District	Number of Arbitrators	
	One	Three
1st	80%	78%
8th	74%	78%
18th	84%	69%
20th	78%	68%
Rural Districts	86%	58%
All Districts	81%	72%

Note: Cell entries identify the percentage of arbitration decisions for the plaintiff

Judge, Attorney or Lay Arbitrator?

Several factors play a role in the choice of arbitrators, including past experience, attorney recommendations, arbitrator subject matter expertise, trust in the legal system, and reaction to suggestions made by the opposition. The basic decision for many participants comes down to two questions: Do I have any faith in the choice of the opposition? Do I have enough faith in the legal profession to want a lawyer to decide this case, or do I want a neutral arbitrator without legal training?

Both attorneys and lay arbitrators are available in sufficient numbers in every judicial district in the state to handle the current demand for arbitrators. Over 1000 persons have filed consent forms signifying their willingness to serve as arbitrators.

Relatively few lay arbitrators (about 17 percent) have been chosen to decide civil disputes. The small number is surprising in light of: attorney dissatisfaction with the arbitration fee structure; extensive training programs run by the American Arbitration Association, the Better Business Bureau and other groups involved in

arbitration prior to the start of the mandatory arbitration program; explicit advertising of lay arbitrator availability; the large number of lay persons on the state consent list; and attorney responses to a state survey in spring of 1988 indicating a general willingness to use lay arbitrators. However, attorneys practicing under the rule have expressed a degree of uncertainty in working with the new arbitration system. As a consequence, they are more comfortable with other attorneys as arbitrators than with lay arbitrators who may not have a thorough understanding of trial court procedure.

In the first 700 arbitration hearings held, 800 different individuals have served as arbitrators. Almost three quarters of arbitrators have heard but a single case. Several individuals, however, seem to dominate the arbitration program. These individuals are senior judges. The three most experienced arbitrators (two senior judges and one former administrative judge) together have presided over almost 20 percent of all arbitration hearings conducted during the program's first two years. The other arbitrators who have participated in the greatest number of hearings are colleagues and contacts of these most active arbitrators who have served with them on multi-arbitrator panels.

Arbitration Expenses: Arbitrator Salaries

Arbitrator salaries have been the subject of considerable debate within Colorado. Initial objections to the fee structure were that these salaries were insufficient to compensate practicing attorneys for their time. Attorneys often consider their service as arbitrators to be *pro bono* despite the fact that Colorado arbitrators are paid as much or more than individuals serving in the same capacity in most other state systems. Colorado arbitrators clearly do not serve *pro bono* in the traditional sense that Hawaiian attorneys do. Despite initial objections, however, the vast majority of those who volunteered to be listed as certified arbitrators are practicing attorneys.

In comparison to the national standard, Colorado arbitrators clearly are not underpaid on a per case basis. However, if compensation is calculated on an hourly basis, there may be some justification for concern over the fee structure. Elsewhere arbitration proceedings are often held as extended small claims hearings with each side provided a limited opportunity to present his or her side of the dispute. In Colorado, however, hearings have tended to last considerably longer;

the hearings we have observed have typically lasted four to six hours.¹⁴ Combined with the tasks of processing pre-hearing motions, governing discovery, and establishing meeting times and locations, Colorado arbitrators may devote many days toward a case that will produce less return than a good morning's billable hours.

Most arbitrators divide the costs of arbitration equally between plaintiff and defendant but retain flexibility to assign costs as they see fit. Thirteen percent of plaintiffs have been assigned less than 50 percent of the arbitration costs while seven percent of plaintiffs have been assigned more than 50 percent of the costs.¹⁵

The Reactions of Arbitration Participants

Following the conclusion of the arbitration hearing, we attempted to contact all participants—attorneys, arbitrators and litigants—to obtain their evaluations of the program. Approximately 200 attorneys, 200 arbitrators and 200 litigants responded to mail questionnaires. Within the confines of a six page survey instrument, three basic evaluations are recorded. Participants were asked:

- (a) if they were satisfied with the outcome of the hearing (attorneys and litigants) or the system (arbitrators),
- (b) if they perceived the arbitration process to be a fair one, and
- (c) whether they would support the program, insist on changes, or prefer to eliminate arbitration as an alternative to traditional civil procedure.

Their responses to these three questions are summarized in Table 5. Almost 70 percent of the attorneys and a majority of the litigants were satisfied with the result of the arbitration hearing. Over four-fifths of the arbitrators expressed satisfaction with the arbitration system in place. The fairness of the hearing process received even higher satisfaction ratings. Almost 95 percent of the

¹⁴ Arbitration litigants estimate that their hearings last 5.1 hours while arbitrators place the average length of the hearing at 6.0 hours.

¹⁵ Conversations with arbitrators who have experienced difficulties in collecting their fees suggest new billing strategies are evolving: the victor is assessed the full cost of arbitration and is then awarded the loser's share of the arbitration bill to collect with the rest of the award. The problem with this method of fee collection is that it eliminates the loser's payment of arbitration fees prior to their trial de novo request. This situation effectively penalizes the winner of the hearing who must pay the bill. 1990 legislative revisions to the program described later in this paper have attempted to address the fee collection problem.

Colorado attorneys who had participated in at least one hearing judged it to be a fair one. Three-fourths of the litigants thought the process fair even though a sizable portion of these respondents had lost their case and were less satisfied with the outcome.

Table 5.
Reactions of Arbitration: An Overview

	Attorneys	Arbitrators	Litigants
	(w/outcome)	(w/system)	(w/outcome)
Satisfaction Levels			
Very Satisfied	49%	30%	39%
Somewhat Satisfied	19%	51%	17%
Somewhat Dissatisfied	20%	15%	11%
Very Dissatisfied	12%	5%	33%
Hearing Fairness			
Very Fair	59%	--	54%
Somewhat Fair	35%	--	21%
Somewhat Unfair	5%	--	13%
Very Unfair	2%	--	12%
Program Support			
No Changes	11%	15%	36%
Make Changes	61%	79%	37%
Eliminate Program	28%	6%	27%
	(N = 213)	(N = 198)	(N = 201)

Respondents showed an overall satisfaction with the program. In no group of respondents did more than 30 percent wish to cancel the program. Yet changes in the pilot program clearly are sought by all groups. Sixty percent of the attorneys, 80 percent of the arbitrators and almost 40 percent of the litigants offered suggestions to improve the program. Specific changes proposed by the respondents are listed in decreasing order of frequency in Table 6. In each case, these suggestions might be classified as self-interested. Attorneys tended to propose rules changes that would make the arbitration process more binding while

permitting attorneys greater flexibility in litigating their dispute. Arbitrators advocated closing the loopholes regarding their reimbursement. The desire for increased flexibility was counterbalanced by recognition that the program was designed to ensure speedy civil justice and not simply to provide an alternative to the traditional dispute resolution process. Litigants tended to demand greater certainty both of the process and of their rights within the system.

Table 6.
Proposed changes to the Mandatory Arbitration Pilot Program

Attorneys	
	Increase trial de novo penalties
	Extend deadlines/Permit continuances
	Permit additional discovery
	Eliminate the trial de novo option
	Tighten rules and procedures
	Enforce strict rules of evidence
	Make arbitration optional
	Clarify arbitrator powers
Arbitrators	
	Require payment of fees prior to the hearing
	Increase fees
	Extend deadlines/Permit continuances
	Eliminate the trial de novo option
	Increase trial de novo penalties
	Speed up process/Disallow continuances
	Permit additional discovery
Litigants	
	Eliminate the trial de novo option
	Better qualified/trained arbitrators
	Clarify the powers of the arbitrator
	Notify litigants of their rights
	Increase trial de novo penalties
	Make arbitration optional

The Future of Mandatory Arbitration in Colorado

During its 1990 session, the Colorado state legislature was to decide whether to extend the existing mandatory arbitration program throughout the state, to alter its structure based on what the court system has learned during this two year experiment, or to consign it to oblivion as a program inappropriate for Colorado. In anticipation of this upcoming decision, both advocates and critics have come forward to express their opinions.

Opposition to Rule 109.1

Rule 109.1 appears to have generated more opposition among the members of the Colorado bar than have court-annexed arbitration programs in other states. This opposition is evidenced in articles and editorials in the state bar journal, *The Colorado Lawyer*, in preliminary surveys of local bar associations, and in court challenges to the act.

Some opponents, unwilling to await the 1990 legislative evaluation of the pilot program, forced judicial consideration of the merits of the mandatory arbitration. In November 1988, the Colorado Supreme Court received the case of *Firelock, Incorporated v. The District Court, 20th Judicial District, Honorable Richard C. McClean and McGhee Communications, Incorporated* (88 SA 262). *Firelock* petitioned the Supreme Court to prevent the district court from referring *McGhee Communications Inc. v. Firelock Inc.* (88 CV 788) to arbitration pursuant to the Colorado Mandatory Arbitration Act. This case challenges the constitutionality of the act on five grounds:

- (1) Mandatory arbitration violates the separation of judicial and legislative powers.
- (2) Mandatory arbitration is an unconstitutional infringement of the right of access to the courts.
- (3) Mandatory arbitration eliminates the right to trial by jury.
- (4) Mandatory arbitration is prohibited by the Colorado Constitution. According to prior Colorado Supreme Court rulings, only consensual arbitration is permitted.
- (5) Mandatory arbitration violates the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution.

The Colorado Supreme Court was not responsive to these arguments. The court ruled the system acceptable under each of the claims made by *Firelock*.

Similar critiques of the mandatory arbitration program have been voiced in the state bar journal. Renner (1989) has recently insisted that mandatory alternative dispute resolution programs suffer fundamental weaknesses:

- (1) The doctrine of *stare decisis* is undermined by the lack of written opinions to justify decisions.
- (2) Settlement, the focus of alternative dispute resolution, is analogous to plea bargaining, hardly a goal worth pursuing.
- (3) Mandatory alternative dispute resolution creates ethical problems for attorneys by promoting nonconfrontation and compromise.
- (4) Mandatory alternative dispute resolution does not dispense better judgement than ordinary litigation and erodes the enforcement of norms.

Renner's arguments reflect the mood of the opposition to this experimental program. More widespread, perhaps, is the feeling that the implementation of the program is not well conceived. As our survey results indicate, Colorado attorneys have questioned specific aspects of the program rather than the program itself.

Proponents

Despite this vocal opposition, many members of the bar association are supportive of this experiment. The Colorado Bar Association entered *Firelock v. District Court* as amicus curiae on behalf of the respondent. Its brief argued that the act does not violate the Colorado Constitution but actually assists the courts in exercising its judicial authority. The Colorado Bar Association asked that the pilot program be permitted to continue through July 1990 in order to permit assessment of its ability to reduce litigation expense and minimize litigation delays while increasing the public's satisfaction with the judicial system's ability to resolve disputes.

The support of the Colorado Bar Association is qualified, however. Perceptions of membership dissatisfaction with the Mandatory Arbitration program led its Board of Governors to withhold approval of the re-enactment and expansion of the Mandatory Arbitration program in its November 1989 business meeting. This vote was reversed in January after the bar association reconsidered the programmatic changes added to the reenactment legislation.

The Future

Given a state legislature dominated by fiscal conservatives and economic conditions that limit the ability of state government to improve the fiscal status of the court system, especially in light of competing demands for education, highways, and prisons (among other items), the future for mandatory arbitration looks promising. This is not because the existing program does not have its faults, but rather because the state legislature has few alternatives. The Colorado civil justice system is overwhelmed—at least in the urban and suburban jurisdictions. Alternative dispute resolution may not be a long-term solution to the size of the civil docket, but no other partial solutions even loom on the horizon. Absent alternatives, mandatory arbitration may survive. Changes in the program are inevitable, however. Mandatory arbitration in Colorado may need to find a form closer to the court-annexed arbitration programs developed in other states.

During the fall of 1989 new legislation designed to restructure the Colorado mandatory arbitration system was proposed. House Bill 1067, considered by the legislature during its spring 1990 session, incorporates a number of modifications that specifically address current problems: the time limits for holding the arbitration hearing are expanded from 90 to 120 days; procedures for dismissal of disputes that fail to meet program deadlines are included; arbitrator fees are to be paid in advance to minimize post-hearing difficulties; attorney fees are now included in the liability of the party losing in arbitration; and penalties for unsuccessful appeals are increased to \$1,500.

Two proposed changes to the program prove problematic. First, the Judicial Department's request for additional clerk positions to help administer the program was met with much skepticism. Given that much of the original support for the program came from legislators who saw an advantage in moving costs to litigants, the expense of these clerk positions threatened to kill the program. Second, many legislators felt that statewide implementation of the program was unwarranted, at least until the 1990 revisions to the program could be tested. As a consequence, the new legislation provides for neither funding for clerks nor expansion of the program.

With the changes proposed in HB 1067, the pilot program was extended for one year. On May 14, 1990, Governor Romer signed HB 1067 into law. In 1991, the state legislature will decide whether or not to continue the mandatory arbitration program.

Just prior to the start of the Colorado mandatory arbitration experiment Littlefield noted:

The pilot program...may be handicapped from the start since the plan does not provide for as much court involvement in the selection of cases and reimbursement of arbitrators as plans in most other states. The Colorado experiment, therefore, is bold in assuming that mandatory arbitration can be as self-executing as the act and rule contemplate (Littlefield, 1987:1946).

Littlefield's choice of the phrase "self-executing" may be unfortunate. Implementation problems have led opponents to level complaints against the system. Advocates of mandatory arbitration hope the initial problems have been resolved with the 1990 program changes. If the arbitration program can operate independently of the judicial system as intended and prove the alternative and speedy system of dispute resolution it was originally designed to be, then its future is bright. If not, mandatory arbitration in Colorado may self-destruct and Littlefield's assessment may unintentionally prove accurate.

Arbitration and Case Processing Time: Lessons From Fulton County*

Roger A. Hanson**
Susan Keilitz***

This paper presents information on the relationship between court-annexed arbitration and case processing time. Are arbitration cases resolved more expeditiously than court cases? Is arbitration expeditious for some cases and not others? Does the outcome of the arbitration hearing affect the appeal rate? These and related questions are addressed through an examination of the Georgia Fulton County Superior Court Arbitration Program, which was introduced in the spring of 1986. A review of court and arbitration cases indicates that arbitration improves case processing time for the cases referred to it without increasing the processing time for the rest of the court's caseload. While all basic types of civil cases are handled more expeditiously under arbitration, contract and collection cases undergo the greatest reduction in case processing time. Finally, both the size of the arbitration award and its relation to the amount claimed affect the rate at which parties appeal the arbitration award.

Introduction

Trial courts have introduced case management, applied new technologies and designed simplified procedures in order to achieve greater productivity and efficiency. In addition to innovating their internal operations, courts have looked to outside sources for better methods of handling cases. For civil litigation, a leading method of dispute resolution outside the courtroom is arbitration. Arbitration shifts the locus of third party review from judges to arbitrators, who conduct hearings in which the opposing sides present arguments, submit exhibits,

* The authors wish to acknowledge the cooperation, advice, and support of many individuals. Special thanks are extended to Sanford Jones, Fulton County Superior Court Administrator, and Whitfield Smith, DeKalb County Clerk of Court, for their time and effort in assisting us in our examination of case files. Constructive criticisms on prior drafts of this paper were provided by Craig Boersema, Joy Chappier, Brian Ostrom, and David Rottman. Craig Boersema also assisted in the data analysis and Deborah Gause helped prepare the paper. The research is supported by a grant from the State Justice Institute to the National Center for State Courts. Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

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MEMORANDUM

TO: CINA Mediation Subcommittee Members
FROM: Susanne DiPietro JDD
DATE: May 2, 1999
RE: Draft Strategic Plan

I took the liberty of drafting a rough strategic plan as requested by NJS in her April 19 letter. The plan is based on the budget we submitted at the last CINA Committee meeting. Both of those documents are attached.

Please review the plan for discussion at our next meeting: *Monday, May 10 from 9 a.m. to 10:15 a.m. at the Judicial Council.* I'll see you then.

RECEIVED

MAY 7 1999

MAGISTRATE
SERVICES

CINA Mediation Subcommittee

DRAFT Strategic Plan: August 1, 1999- February 2003

Over the next three years, the Mediation Subcommittee will work with the Alaska Court System's Mediation Coordinator to design, implement, monitor and evaluate CINA mediation projects in at least five separate court locations. By February of 2003, the mediation coordinator will identify, with the help of the Mediation Subcommittee, which programs were successful and should be continued, and identify resources available to continue the successful programs.

I. Goals for August, 1999-February 2000

The Alaska Court System will hire a part-time Mediation Coordinator in the spring of 1999. The Mediation Coordinator (MC) will implement the Anchorage mediation program (the program already has been designed by the Mediation Subcommittee). Anchorage is the largest court location in the state, accounting for almost half of all CINA filings. For the Anchorage program, the MC will recruit mediators, arrange for mediator training, oversee the mediator training, finalize policies, procedures and forms, and meet with judges and stakeholders (social workers, parents' attorneys, guardians ad litem, court-appointed special advocates, tribal representatives and assistant attorneys general) to explain the program and how to use it.

Also during this time period, the MC will work with the Mediation Subcommittee to design and implement mediation programs at three other superior court locations (possibly Kotzebue, Kenai and Fairbanks). Mediation in other locations should begin in late 1999 or early 2000.

The Alaska Court System also will hire a part-time Court Scheduler for the Anchorage program. The CS, who probably will be an existing court employee, will devote approximately 7 ½ hours/week to scheduling CINA mediations in Anchorage.

II. February 2000-February 2001

The MC will continue to oversee and develop the mediation programs in Anchorage and the three other locations, including recruiting mediators, arranging for mediator training, stakeholder outreach, outreach to judges and trouble-shooting. In addition, the MC will work with the Mediation

Subcommittee to design a program in another court location (possible Bethel).

III. February 2001-February 2002

The MC will continue to oversee and develop mediation services in Anchorage and the three other locations, including stakeholder outreach, outreach to judges, trouble-shooting and ongoing training for mediators. In addition, the MC will implement the fifth program (probably Bethel). The MC also will begin evaluating the new and ongoing programs. The MC may work with the Alaska Judicial Council to design and implement the evaluation (the Alaska Judicial Council performed the original court assessment).

IV. February 2002-February 2003

The MC will continue to oversee delivery of mediation services at all locations. In addition, the MC will evaluate all programs. Finally, by the end of the grant period, the Mediation Coordinator will find funding to continue mediation programs (if evaluations are positive).

CINA Mediation Subcommittee

Proposed Budget: February 1998- February 2003

March 4, 1999

I. Goals and Budget for February 1999-February 2000

Goals:

1. *Hire Part-Time Mediation Coordinator:*
Get the Anchorage program running,
Design and implement the Kotzebue program.
Oversee the Anchorage and Kotzebue programs.
Design the Fairbanks and Kenai programs;
Implement Fairbanks and Kenai programs (by Sept-Oct. 1999);
2. *Hire Part-Time Court Scheduler for Anchorage.* The CS, who probably will be an existing court employee, will devote approximately 7 ½ hours/week to scheduling CINA mediations;
3. *Train Anchorage and Kotzebue mediators;*
4. *Begin Mediations in Anchorage and Kotzebue;*
5. *Begin Mediations in Fairbanks and Kenai (by Oct-Nov. 1999);*
6. *Train Judges & Mediation Consumers.* The Mediation Coordinator will educate judges, public defenders, assistant attorneys general, social workers and GALs about how to use the program.
7. *Evaluation setup.*

Mediation Budget for 1999-2000

Mediation services in Anchorage	\$21,600/yr (6 hrs/case @ \$60/hr x 5 cases/mo.)	
Mediation Coordinator Salary	\$29,000/yr (25 hrs/wk)	
Court Scheduler Salary	\$5,000 (7.5 hrs/wk)	
Evaluate Anchorage project	No charge	
Mediation services in Kotzebue	\$3,000	
Mediation services in Fairbanks and Kenai	\$9,000 (6 hrs/case @ \$60/hr x 5 cases/mo for 5 months)	
Mediation training	\$7,000	
Total cost		\$74,600
Travel	\$500 \$00	

II. Goals and Budget for February 2000-February 2001

Goals:

1. Continue Mediation in Anchorage, Kotzebue, Fairbanks & Kenai;
2. Support new and ongoing programs;
3. Train mediators;
4. Design program for Bethel.
5. *Resource development - funds for future mediation (when grant funds are exhausted)*

Mediation Budget for 2000-2001

Mediation services in Anchorage	\$18,000/yr (5 hrs/case @ \$60/hr x 5 cases/month)	
Mediation services in Kotzebue	\$3,000	
Mediation services in Fairbanks, Kenai	\$21,600/yr (6 hrs/case @ \$60/hr x 5 cases/month)	
Court Schedulers (all locations)	\$8,000	
Mediation Coordinator Salary	\$29,000/yr (25 hrs/wk)	
Evaluation	No charge	
Mediation training	\$7,000	
Total cost		\$86,600
<i>Travel</i>	<i>2,000</i>	

III. Goals and Budget for February 2001-February 2002

Goals:

1. Continue mediation services in Anchorage, Kotzebue, Fairbanks, Kenai;
2. Train mediators;
3. Implement program at Bethel;
4. Support new and ongoing programs;
5. Evaluate new and ongoing programs.

Mediation Budget for 2001-2002

Mediation services in Anchorage	\$18,000/yr. (5 hrs/case @ \$60/hr x 5 cases/month)	
Mediation services in Kotzebue	\$3,000	
Mediation services in Kenai & Fairbanks	\$18,000/yr. (5 hrs/case @ \$60/hr x 5 cases/month)	
Mediation training	\$7,000	
Mediation services in Bethel	\$8,640/yr. (6 hrs/case @ \$60/hr x 2 cases/month)	
Mediation Coordinator	\$23,192/yr (20 hrs/wk)	
Court Schedulers (all locations)	\$10,000	
Evaluate all programs	No charge	
Total cost		\$87,832
<i>Travel</i>	<i>2,000</i>	

IV. Goals and Budget for February 2002-February 2003

Goals:

1. Continue mediation services;
2. Evaluate all programs;
3. Mediation Coordinator will find funding to continue mediation programs (if evaluations are positive).

Mediation Budget for 2002-2003

Mediation services:

Anchorage	\$18,000/yr. (60 cases)
Kotzebue	\$3,000/yr. (10 cases)
Kenai	\$7,200/yr. (24 cases)
Fairbanks	\$10,800/yr. (36 cases)
Bethel	\$7,200/yr. (24 cases)

Subtotal: \$46,200

Mediation Coordinator	\$11,596
Court Schedulers (all locations)	\$10,000
Evaluate programs	No charge

Total cost

\$67,796

Travel

2,000

7.04.220

Note 2

appeal. *Tacoma R. & Motor Co. v. Cummings* (1892) 5 Wash. 206, 31 P. 747, 33 P. 507.

3. Scope of review

Court of Appeals would decline to address issue whether absorption of new energy audit positions into bargaining unit would violate public policy by imposing unionization without election where record did not reveal how energy audit positions would be affected by arbitrator's decision favorable to union, whether union election is always necessary if worker is summarily brought into union, or whether court should refuse to enforce arbitration before arbitrator has had opportunity to decide question. *Local Union No. 77, Intern. Broth. of Elec. Workers v. Public Utility Dist. No. 1, Grays Harbor County* (1985) 40 Wash. App. 61, 696 P.2d 1264.

Court will not review arbitration award unless errors of law or fact are apparent on face of award. *Keen v. IFG Leasing Co.* (1980) 28 Wash.App. 167, 622 P.2d 861.

Court of appeals could not properly consider question of whether plaintiff waived his right to enforce arbitration clause by filing federal securities action, since dismissal by summary judgment on basis of collateral estoppel assumed there were no material facts in dispute. *Beagles v. Seattle-First Nat. Bank* (1980) 25 Wash.App. 925, 610 P.2d 962.

Court's review of arbitration proceeding is limited to whether or not statutory grounds, as specified in § 7.04.160, exist to vacate award, regardless of whether or not there were any violations of any American Arbitration Association rules. *St. Paul Ins. Cos. v. Lulis* (1971) 6 Wash. App. 205, 492 P.2d 575.

When arbitrators are acting within authority granted them by agreement of parties and this chapter to become judges of both law and facts, court

SPECIAL PROCEEDINGS

should not modify or vacate moderators' award unless award on its face shows adoption of erroneous rule or mistake in applying law. *Thorgaard Plumbing & Heating Co. v. King County* (1967) 71 Wash.2d 126, 426 P.2d 828.

Error of law or fact which court is empowered to review must be error appearing on face of award. *Puget Sound Bridge & Dredging Co. v. Frye* (1927) 142 Wash. 166, 252 P. 546.

Findings that there was no dispute between parties calling for arbitration, is not sustained by evidence, where there was clear dispute in pleadings, and defendant's officers testified to their faithful performance of contract and its breach by plaintiff, and plaintiff retaliated by attempting to show defendant's nonperformance and its termination by such breach, and upon second cause of action, defendant offered evidence of amount due and its nonpayment, while plaintiff offered evidence of breach and sought to counterclaim for damages. *Herring-Hall-Marvin Safe Co. v. Purcell Safe Co.* (1914) 81 Wash. 592, 142 P. 1153, affirmed on rehearing 86 Wash. 694, 150 P. 1162.

4. Attorney fees

Shareholders and trustees of assets of utility company were not entitled to attorney fees on appeal, based on sale and arbitration agreement, where agreement spoke of action to specifically compel commissioners to increase water rates to cover payments to shareholders and trustees, while instant action was originally to show cause why district should not be required to pay shareholders and trustees the initial \$30,000 down payment, not to compel commissioners to make possible payments to shareholders and trustees. *Liberty Lake Sewer Dist. No. 1 v. Liberty Lake Utilities Co., Inc.* (1984) 37 Wash.App. 809, 683 P.2d 1117.

CHAPTER 7.06

MANDATORY ARBITRATION OF CIVIL ACTIONS

Section

- 7.06.010. Authorization.
- 7.06.020. Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support.
- 7.06.030. Implementation by supreme court rules.
- 7.06.040. Qualifications, appointment and compensation of arbitrators.
- 7.06.050. Decision and award—Appeals—Trial—Judgment.
- 7.06.060. Costs and attorney's fees.
- 7.06.070. Right to trial by jury.
- 7.06.900. Severability—1979 c 103.
- 7.06.910. Effective date—1979 c 103.

Library References

Court rules, mandatory arbitration, see Wash.Prac. vol. 4A, Orland and Tegland, MAR 1.1 et seq.
Evidence rules, applicability in mandatory arbitration hearings, see Wash.Prac. vol. 5B, Tegland, § 515.

Judges, prohibition on testimony, applicability to arbitrators, see Wash. Prac. vol. 5A, Tegland, § 222.
Prior statements, admissibility at trial, see Wash.Prac. vol. 5B, Tegland, § 341.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

7.06.010. Authorization

In counties with a population of seventy thousand or more, the superior court of the county, by majority vote of the judges thereof, or the county legislative authority may authorize mandatory arbitration of civil actions under this chapter. In all other counties, the superior court of the county, by a majority vote of the judges thereof, may authorize mandatory arbitration of civil actions under this chapter.

Enacted by Laws 1979, ch. 103, § 1, eff. July 1, 1980. Amended by Laws 1984, ch. 258, § 511, eff. July 1, 1984; Laws 1991, ch. 363, § 7.

Historical and Statutory Notes

Laws 1984, ch. 258, § 511, rewrote the section, which previously read:

"The superior court of a county by majority vote of the judges thereof may authorize mandatory arbitration of civil actions under this chapter."

Laws 1991, ch. 363, § 7, in the first sentence, substituted "with a population of seventy thousand or more" for "of the second class and larger".

Purpose—Captions not law—Laws 1991, ch. 363: See Historical and Statutory Notes following § 2.32.180.

Court Improvement Act of 1984—Effective dates—Severability—Short title—Laws 1984, ch. 258: See Historical and Statutory Notes following § 3.30.010.

7.06.010

SPECIAL PROCEEDINGS

Library References

Arbitration ⇐1.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 2, 3.

Notes of Decisions

Purpose 1

1. Purpose

Purpose of this section authorizing mandatory arbitration in certain civil

cases is primarily to alleviate court congestion and reduce delay in hearing civil cases. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

7.06.020. Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support

(1) All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to thirty-five thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration.

(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved.

Enacted by Laws 1979, ch. 103, § 2, eff. July 1, 1980. Amended by Laws 1982, ch. 188, § 1; Laws 1985, ch. 265, § 3; Laws 1987, ch. 202, § 127; Laws 1987, ch. 212, § 101, eff. July 1, 1988.

Historical and Statutory Notes

Laws 1982, ch. 188, § 1, in language now contained in subsec. (1), inserted "or if approved by the superior court of a county by majority vote of the judges thereof, fifteen thousand dollars".

Laws 1985, ch. 265, § 3, designated subsec. (1); then, in subsec. (1), substituted "by two-thirds or greater vote of the judges thereof, up to twenty-five thousand dollars" for "by majority vote of the judges thereof, fifteen thousand dollars"; and added subsec. (2).

Laws 1987, ch. 202, § 127, in subsec. (1), substituted "district" for "justice" courts.

Laws 1987, ch. 212, § 101, in subsec. (1), following "where no party asserts a claim in excess of" substituted "fifteen" for "ten" thousand dollars; and following "vote of the judges thereof, up to" substituted "thirty-five" for "twenty-five" thousand dollars.

Reviser's Note: This section was amended by 1987 c 202 § 127 and by

MANDATORY ARBITRATION

7.06.040

1987 c 212 § 101, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Laws 1987, ch. 212, §§ 101, 102: "Sections 101 and 102 of this act shall take effect July 1, 1988." [Laws 1987, ch. 212, § 1902.]

Intent—Laws 1987, ch. 202: See Historical and Statutory Notes following § 2.04.190.

Library References

Arbitration ⇐3.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 11.
Matters subject to arbitration, see Wash.Prac. vol. 4A, Orland and Tegland, MAR 1.2.

Superior courts, see Wash.Prac. vol. 1, Barker and Scharf, § 1.2.

Notes of Decisions

Consumer protection 1

1. Consumer protection

Claims under the Consumer Protection Act, § 19.86.010 et seq., are not referable to arbitration under broad arbitration

clause contained in written agreement for sale of candy dispensing machines and therefore were not subject to the stay provisions of the Arbitration Act (9 U.S.C.A. § 3). *Wineland v. Marketex Intern., Inc.* (1981) 28 Wash.App. 830, 627 P.2d 967.

7.06.030. Implementation by supreme court rules

The supreme court shall by rule adopt procedures to implement mandatory arbitration of civil actions under this chapter.

Enacted by Laws 1979, ch. 103, § 3, eff. July 1, 1980.

Library References

Courts ⇐80(1).
WESTLAW Topic No. 106.
C.J.S. Courts §§ 7, 128.

7.06.040. Qualifications, appointment and compensation of arbitrators

The appointment of arbitrators shall be prescribed by rules adopted by the supreme court. An arbitrator must be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator. The supreme court may prescribe by rule additional qualifications of arbitrators.

Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court.

Enacted by Laws 1979, ch. 103, § 4, eff. July 1, 1980. Amended by Laws 1987, ch. 212, § 102, eff. July 1, 1988.

Historical and Statutory Notes

Laws 1987, ch. 212, § 102, in the first paragraph, in the first sentence, substituted "The appointment of" for "The qualifications and appointment of"; and added the second, third, and fourth sentences.

Effective date—Laws 1987, ch. 212: See Historical and Statutory Notes following § 7.06.020.

Library References

Arbitration ¶26, 27.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 60 to 66.

7.06.050. Decision and award—Appeals—Trial—Judgment

Following a hearing as prescribed by court rule, the arbitrator shall file his decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions.

Enacted by Laws 1979, ch. 103, § 5, eff. July 1, 1980. Amended by Laws 1982, ch. 188, § 2.

Historical and Statutory Notes

Laws 1982, ch. 188, § 2, rewrote the second paragraph, which previously read:

"If no appeal has been filed at the expiration of twenty days following fil-

ing of the arbitrator's decision and award, the clerk shall enter the arbitrator's decision and award as a final judgment in the cause, which shall have the same force and effect as judgments in civil actions."

Library References

Arbitration ¶55, 73.1, 73.7(4), 84.
WESTLAW Topic No. 33.
C.J.S. Arbitration §§ 76, 103, 145 to 148, 161, 163.

Trial de novo, see Wash.Prac. vol. 4A, Orland and Tegland, MAR 7.1 et seq.

Notes of Decisions

Collateral estoppel 2
Res judicata and collateral estoppel 2
Review 3

Waiver 1

1. Waiver
Defendants in products liability action did not waive their right to trial de novo

by failing to personally attend arbitration hearing, where they were represented by their attorney at hearing, and attorney presented argument, cross-examined plaintiffs and plaintiffs' witness, presented memorandum, and put into evidence original contract and warranty documents. *Trowbridge v. Walsh* (1988) 51 Wash.App. 727, 755 P.2d 182.

2. Res judicata and collateral estoppel

Where cause of action of employee of subcontractor against general contractor for injuries sustained at construction site was involved in arbitration between general contractor and subcontractor and presumably resolved in arbitration award, award was bar to any claim by general contractor against subcontractor for payment under contract indemnification clause of judgment injured employee might secure against general contractor. *Tri-M Erectors, Inc. v. Donald M. Drake Co.* (1980) 27 Wash.App. 529, 618 P.2d 1341.

Arbitration award between general contractor and subcontractor involving many items in subcontract for construction of stadium was not bar to suit by general contractor against subcontractor under indemnification clause of construction contract for general contractor's attorney's fees incurred in defending against claim brought by subcontractor.

7.06.060. Costs and attorney's fees

The supreme court may be rule provide for costs and reasonable attorney's fees that may be assessed against a party appealing from the award who fails to improve his position on the trial de novo. Enacted by Laws 1979, ch. 103, § 6, eff. July 1, 1980.

Library References

Arbitration ¶73.8.
WESTLAW Topic No. 33.
C.J.S. Arbitration § 161.

Notes of Decisions

In general 2
Consolidated and multiparty cases 5
Insurance 6
Multiparty cases 5
New issues 4
Purpose 3

Validity 1

1. Validity

Assessment of attorney fees against appellant who did not improve his position in trial de novo following an arbit-

ration employee for injuries sustained during process of moving any wires holding rebar towers in place where issue of expenses incurred in defending lawsuits arising from activities of subcontractor under subcontract was not included in arbitration award. *Tri-M Erectors, Inc. v. Donald M. Drake Co.* (1980) 27 Wash.App. 529, 618 P.2d 1341.

Since it could not be determined that issue of proper method of accounting, although determined in prior federal securities action, was an essential, ultimate fact in securities fraud action as opposed to merely collateral or evidentiary fact, trial court improperly entered judgment for defendant on basis of collateral estoppel in shareholder's action to enforce reorganization agreement's arbitration clause to settle dispute on method of accounting. *Beagles v. Seattle-First Nat. Bank* (1980) 25 Wash.App. 925, 610 P.2d 962.

3. Review

Court of appeals could not properly consider question of whether plaintiff waived his right to enforce arbitration clause by filing federal securities action, since dismissal by summary judgment on basis of collateral estoppel assumed there were no material facts in dispute. *Beagles v. Seattle-First Nat. Bank* (1980) 25 Wash.App. 925, 610 P.2d 962.

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Note 1

tration award does not unconstitutional-ly restrict his jury trial right. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

2. In general

Attorney's fees were properly awarded to corporation which administered homeowners' warranty claims in homeowner's action against it and its sister corporation, an insurer that paid in event claims were justified, where homeowner requested trial de novo after mandatory arbitration on homeowner's warranty claim, first corporation was non-sulted on first day of trial, and action continued against insurer on different issues than were decided at arbitration. *Nguyen v. Glendale Const. Co., Inc.* (1989) 56 Wash.App. 196, 782 P.2d 1110, reconsideration denied, review denied 114 Wash.2d 1021, 792 P.2d 533.

In action brought by storage company against customer and her attorney seeking recovery for packing, moving, and storage services it performed upon the unauthorized, though good faith assurances of attorney that these services were to be performed, storage company should have been awarded reasonable attorney fees and costs in view of the fact that the difference between storage company's arbitration award and trial de novo judgment against customer's attorney was de minimis, and attorney did not improve his position on appeal in the trial de novo as to storage company's arbitrated claim. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

3. Purpose

Purpose of MAR 7.3, assessing costs and attorney fees upon withdrawal of a trial de novo request, is to deter such requests made solely to delay enforcement of an arbitration award. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

Restriction of an award of attorney fees only to a successful appellee, not a successful appellant under provision of this section governing assessment of such fees against a party appealing from a mandatory arbitration award who fails to improve his position on trial de novo, reflects a policy decision favoring arbi-

SPECIAL PROCEEDINGS

tration in certain cases in order for mandatory arbitration effectively to relieve court congestion. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

4. New issues

It is inherently unfair to deny an attorney fee award to a party that has borne the cost of mandatory arbitration and a trial de novo without a change in results where the denial is based upon the appellant's improving his overall position in the trial de novo solely because of the new claim brought for the first time on appeal. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

Shareholders and trustees of assets of utility company were not entitled to attorney fees on appeal, based on sale and arbitration agreement, where agreement spoke of action to specifically compel commissioners to increase water rates to cover payments to shareholders and trustees, while instant action was originally to show cause why district should not be required to pay shareholders and trustees the initial \$30,000 down payment, not to compel commissioners to make possible payments to shareholders and trustees. *Liberty Lake Sewer Dist. No. 1 v. Liberty Lake Utilities Co., Inc.* (1984) 37 Wash.App. 809, 683 P.2d 1117.

5. Consolidated and multiparty cases

Attorney fees and costs in multiparty cases as well as in certain consolidated cases are awarded to different parties on the basis of the separate judgments obtained, not the overall trial result. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

6. Insurance

A personal injury protection endorsement which stated that insurance company would not be responsible for attorney's fees on any sums which it was able to recover through intercompany arbitration, involved no deception and, furthermore, arbitration agreement and rules of arbitration neither conflicted with nor modified insurance policy and, thus, endorsement to policy did not violate the Washington Consumer Protection Act, § 19.86.010 et seq. *Richter,*

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Wimberley & Ericson, P.S. v. Honore (1980) 29 Wash.App. 507, 628 P.2d 1311.

7.06.070. Right to trial by jury

No provision of this chapter may be construed to abridge the right to trial by jury.

Enacted by Laws 1979, ch. 103, § 7, eff. July 1, 1980.

Library References

Jury ⇐31(8).
WESTLAW Topic No. 230.
C.J.S. Juris § 118.

Notes of Decisions

Validity of related laws 1

1. Validity of related laws

Assessment of attorney fees against an appellant who did not improve his position in trial de novo following an arbitration award does not unconstitutionally restrict his jury trial right. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

Costs or fees imposed upon an appellant from a mandatory arbitration award as a precondition to obtaining a jury trial must not be so large in proportion to the amount in controversy as to constitute an unconstitutional restriction upon the right to a jury trial; this is so regardless of whether the fees that must be paid are recoverable by a successful appellant. *Christie-Lambert Van & Storage Co., Inc. v. McLeod* (1984) 39 Wash.App. 298, 693 P.2d 161.

7.06.900. Severability—1979 c 103

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Enacted by Laws 1979, ch. 103, § 9, eff. July 1, 1980.

Library References

Statutes ⇐64(2).
WESTLAW Topic No. 361.
C.J.S. Statutes § 96 et seq.

7.06.910. Effective date—1979 c 103

This act shall take effect July 1, 1980.

Enacted by Laws 1979, ch. 103, § 10, eff. July 1, 1980.

MEMORANDUM

ALASKA COURT SYSTEM

Telephone: (907) 264-8265

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TO: Alaska Court System Subcommittee Members
Commission on Privatization and Delivery of Government Services

FROM: Doug Wooliver
Administrative Attorney

DATE: August 25, 1999

RE: Alternative Dispute Resolution in the Alaska Court System

In December of 1997, the Alaska Judicial Council (the Council) submitted its Report to the Alaska Legislature: Alternative Dispute Resolution in the Alaska Court System. (Appendix A). That report contains a summary of ADR in state and federal courts around the country, a summary of ADR in the Alaska Court System, and a series of proposals designed to encourage and increase the use of ADR. The following proposals were recommended jointly by the Council and the court system and were adopted by the supreme court. They were developed in consultation with many public and private organizations and individuals.

Broaden Civil Rule 100

Civil Rule 100 governs court ordered mediation. In response to the Council's report the supreme court amended the CR 100 to include information about early neutral evaluation, arbitration, and settlement conferences. (Appendix B).

Amend Civil Rule 26

Civil Rule 26 governs the discovery process in civil litigation. In response to the Council's report the supreme court amended CR 26 to require parties and their attorneys to meet as soon as practical to discuss settlement and the use of ADR. Additionally, the discovery plan required by the rule must include a plan for the use of ADR or an explanation of why ADR is inappropriate. (Appendix C).

Amend Civil Rule 16

Civil Rule 16 governs pretrial conferences, scheduling, and case management. In response to the Council's report the supreme court amended CR 16 to include a discussion of ADR as one of the objectives of a pretrial conference. A pretrial conference is a conference between the judge and attorneys that, in addition to facilitating settlement, is intended to more efficiently manage the case. (Appendix D).

Amend Rules of Professional Conduct to Require Attorneys to Discuss ADR with Clients

The supreme court recently amended Rule 2.1 of the Alaska Rules for Professional Conduct to state that attorneys should discuss ADR with their clients. (Appendix E).

Educate Judges about ADR

The focus of last year's fall judicial conference was court connected ADR. Although the legislature declined to provide the funding as recommended in the Council's report, the court system was able to pay for the conference with the aid of a federal grant. Experts presented a two-day course on the various ADR alternatives and the procedural aspects and policy issue associated with them. (See Appendix F for a copy of the conference agenda).

Educate Attorneys about ADR

The state bar association has an ADR section that, in cooperation with the court system, regularly puts on ADR continuing education classes.

Educate the Public

The court system has a handout on mediation that is both included in our marriage dissolution packets and available separately. (Appendix G). Additionally, the Council developed (with federal grant funds) a Consumer's Guide to Selecting a Mediator that the court system helps publish and otherwise make available. (Appendix H).

Additionally, The court system's homepage includes a directory of mediators with the mediators listed by their areas of expertise. Included with the directory is the Council's consumer guide.

Probate Mediation Project

In response to the report, the supreme court adopted Probate Rule 4.5, which sets out the procedures for ADR in probate cases. (Appendix I).

Early Neutral Evaluation Project

The legislature declined to provide the funding for this project.

Legislature to Appoint Task Force to Recommend Minimum Qualifications for Neutrals.

Although the legislature declined to act on this recommendation, the Alaska Dispute Settlement Association is developing a draft of minimum qualifications.

In addition to adopting the recommendations made in the Council's report, the court system has several other ADR projects underway.

Settlement Conferences

Although not always considered ADR, settlement conferences are basically facilitated settlements. They are an attempt at settlement that is facilitated by a judge. These are very common (with many judges devoting most of their afternoons to settlement conferences) and very effective.

Access and Visitation Mediation Pilot Project

This pilot program (funded by a federal grant) operates in Anchorage and Fairbanks and will soon be on the Kenai Peninsula and in Southeast Alaska. It provides mediators to indigent persons wishing to mediate child custody or visitation disputes. Referrals come from attorneys, judges, and court custody investigators.

Child in Need of Aid Mediation Pilot Project

The court system is currently in the process of finding qualified persons to provide CINA mediation training. The training will be provided to qualifying private mediators who will contract with the court to provide the mediation. Again, federal grant money supports the project; paying for both the training and the mediation.

Appellate Case Settlement Program

The supreme court is in the process of developing this program. The Appellate Rules Committee has developed a proposal that the court is tentatively scheduled to consider this September.

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Citation/Title

RCP Rule 100, RULE 100. MEDIATION AND OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION

Rules of Civil Procedure, Rule 100

**WEST'S ALASKA COURT RULES
RULES OF CIVIL PROCEDURE
PART XIII. GENERAL PROVISIONS**

Current with amendments received through 7-1-98.

RULE 100. MEDIATION AND OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION

(a) Application. At any time after a complaint is filed, a party may file a motion with the court requesting mediation for the purpose of achieving a mutually agreeable settlement. The motion must address how the mediation should be conducted as specified in paragraph (b), including the names of any acceptable mediators. If domestic violence has occurred between the parties and mediation is requested in a matter covered by AS 25, mediation may only be ordered when permitted under AS 25.20.080, AS 25.24.060, or 25.24.140. In matters not covered by AS 25, the court may order mediation in response to such a motion, or on its own motion, whenever it determines that mediation may result in an equitable settlement. In making this determination, the court shall consider whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim. Mediation may not be ordered between the parties to, or in, a case filed under AS 18.66.100-18.66.180.

(b) Order. A order of mediation must state:

(1) the name of the mediator, or how the mediator will be decided upon;

(2) any changes in the procedures specified in paragraphs (d) and (e), or any additional procedures;

(3) that the costs of mediation are to be borne equally by the parties unless the court apportions the costs differently between the parties; and

(4) a date by which the initial mediation conference must commence.

(c) Challenge of Mediator. Each party has the right once to challenge peremptorily any mediator appointed by the court if the "Notice of Challenge of Mediator" is timely filed pursuant to Civil Rule 42(c).

***294** (d) Mediation Briefs. Any party may provide a confidential brief to the mediator explaining its view of the dispute. If a party elects to provide a brief, the brief may not exceed five pages in length and must be provided to the mediator not less than three days prior to the mediation. A party's mediation brief may not be disclosed to anyone without the party's consent and is not admissible in evidence.

(e) Conferences. Mediation will be conducted in informal conferences at a location agreed to by the parties or, if they do not agree, at a location designated by the mediator. All parties shall attend the initial conference at which the mediator shall first meet with all parties. Thereafter the mediator may meet with the parties separately. Counsel for a party may attend all conferences attended by that party.

(f) Termination. After the initial joint conference and the first round of separate conferences if separate conferences are required by the mediator, a party may withdraw from mediation, or the mediator may terminate the process if the mediator

RCP Rule 100, RULE 100. MEDIATION AND OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION

determines that mediation efforts are likely to be unsuccessful. Upon withdrawal by a party or termination by the mediator, the mediator shall notify the court that mediation efforts have been terminated.

(g) Confidentiality. Mediation proceedings shall be held in private and are confidential. The mediator shall not testify as to any aspect of the mediation proceedings. Evidence of conduct or statements made in the course of court-ordered mediation is inadmissible to the same extent that conduct and statements are inadmissible under Alaska Rule of Evidence 408. This rule does not relieve any person of a duty imposed by statute.

(h) Dismissal. If the mediation is successful, the party requesting mediation shall prepare a stipulation for dismissal which dismisses all or such portions of the action as have been concluded by mediation as agreed upon at the mediation.

(i) Other Forms of Alternative Dispute Resolution.

(1) Early Neutral Evaluation. Parties or the court may use the procedure set out in this rule to refer a case to early neutral evaluation instead of mediation. All provisions of this rule apply to a case in which early neutral evaluation has been ordered under paragraph (a).

(2) Arbitration. Parties may stipulate to arbitration without further order of the court.

*295 (3) Settlement Conference. At any time after a complaint is filed, a party may file a motion with the court requesting a settlement conference with a judge for the purpose of achieving a mutually agreeable settlement. The court may order a settlement conference in response to such a motion or on its own motion.

[Adopted effective July 15, 1993; amended effective July 15, 1993; July 1, 1996, by Laws 1996, c. 64, § 69; July 15, 1997; July 15, 1998.]

Note to SCO 1269

Civil Rule 100(a) was amended by § 69 ch. 64 SLA 1996.

Citation/Title

RCP Rule 26, RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

Rules of Civil Procedure, Rule 26

**WEST'S ALASKA COURT RULES
RULES OF CIVIL PROCEDURE
PART V. DEPOSITIONS AND DISCOVERY**

Current with amendments received through 7-1-98.

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

(a) Required Disclosures; Methods to Discover Additional Matter. Disclosure under subparagraphs (a)(1), (2), and (3) of this rule is required in all civil actions, except those categories of cases exempted from the requirement of scheduling conferences and scheduling orders under Civil Rule 16(g), adoption proceedings, and prisoner litigation against the state under AS 09.19.

(1) Initial Disclosures. Except to the extent otherwise directed by order or rule, a party shall, without awaiting a discovery request, provide to other parties:

(A) the factual basis of each of its claims or defenses;

(B) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information and whether the attorney-client privilege applies;

(C) the name and, if known, the address and telephone number of each individual who has made a written or recorded statement and, unless the statement is privileged or otherwise protected from disclosure, either a copy of the statement or the name and, if known, the address and telephone number of the custodian;

(D) subject to the provisions of Civil Rule 26(b)(3), a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are relevant to disputed facts alleged with particularity in the pleadings;

(E) subject to the provisions of Civil Rule 26(b)(3), all photographs, diagrams, and videotapes of persons, objects, scenes and occurrences that are relevant to disputed facts alleged with particularity in the pleadings;

(F) each insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and

***63** (G) all categories of damages claimed by the disclosing party, and a computation of each category of special damages, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such claims are based, including materials bearing on the nature and extent of injuries suffered.

Unless otherwise directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under paragraph (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

RCP Rule 26, RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by subparagraph (a)(1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Evidence Rules 702, 703, or 705.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. The parties shall supplement these disclosures when required under subparagraph (e)(1).

(D) No more than three independent expert witness may testify for each side as to the same issue in any given case. For purposes of this rule, an independent expert is an expert from whom a report is required under section (a)(2)(B). The court, upon the showing of good cause, may increase or decrease the number of independent experts to be called.

***64 (3) Pretrial Disclosures.** In addition to the disclosures required in the preceding paragraphs, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

These disclosures shall be made at the times and in the sequence directed by the court. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) Form of Disclosures. Unless otherwise directed by the court, all disclosures under subparagraphs (a)(1) and (2) shall be made in writing, signed, and served in accordance with Rule 5.

(5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

RCP Rule 26, RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

(b) **Discovery Scope and Limits.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) **In General.** Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

***65 (2) Limitations.** The court may alter the limits in these rules on the number of depositions and interrogatories, the length of depositions under Rule 30, and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under paragraph (c).

(3) **Trial Preparation: Materials.** Subject to the provisions of subparagraph (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subparagraph (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

***66 (4) Trial Preparation: Experts.**

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under section (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

RCP Rule 26, RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subparagraph; and (ii) with respect to discovery obtained under section (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the judicial district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition, after being sealed, be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

*67 If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery.

(1) Timing of Discovery--Non-Exempted Actions. In an action in which disclosure is required under Rule 26(a), a party may serve up to ten of the thirty interrogatories allowed under Rule 33(a) at the times allowed by section (d)(2)(C) of this rule. Otherwise, except by order of the court or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by paragraph (f).

(2) Timing of Discovery--Exempted Actions. In actions exempted from disclosure under Rule 26(a), discovery may take place as follows:

(A) For depositions upon oral examination under Civil Rule 30, a defendant may take depositions at any time after commencement of the action. The plaintiff must obtain leave of court if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service by publication if authorized, except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) the plaintiff seeks to take the deposition under Civil Rule 30(a)(2)(C).

(B) For depositions upon written questions under Civil Rule 31, a party may serve questions at any time after commencement of the action.

RCP Rule 26, RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

(C) For interrogatories, requests for production, and requests for admission under Civil Rules 33, 34, and 36, discovery requests may be served upon the plaintiff at any time after the commencement of the action, and upon any other party with or after service of the summons and complaint upon that party.

(3) Sequence of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

***68 (e) Supplementation of Disclosures and Responses.** A party who has made a disclosure under paragraph (a) or Civil Rule 26.1(b) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under paragraph (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Meeting of Parties; Planning for Discovery and Alternative Dispute Resolution. Except when otherwise ordered and except in actions exempted from disclosure under Rule 26(a), the parties shall, as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, including whether an alternative dispute resolution procedure is appropriate, to make or arrange for the disclosures required by subparagraph (a)(1), and to develop a proposed discovery plan and a proposed alternative dispute resolution plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing or form of disclosures under paragraph (a), including a statement as to when the disclosures under subparagraph (a)(1) were made or will be made and what are appropriate intervals for supplementation of disclosure under Rule 26(e)(1);

***69 (2)** the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(4) the plan for alternative dispute resolution, including its timing, the method of selecting a mediator, early neutral evaluator, or arbitrator, or an explanation of why alternative dispute resolution is inappropriate;

(5) whether a scheduling conference is unnecessary; and

(6) any other orders that should be entered by the court under paragraph (c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and

RCP Rule 26, RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the plan.

(g) [Applicable to cases filed on or after August 7, 1997.] Limited Discovery; Expedited Calendaring. In a civil action for personal injury or property damage involving less than \$100,000 in claims, the parties shall limit discovery to that allowed under District Court Civil Rule 1(a)(1) and shall avail themselves of the expedited calendaring procedures allowed under District Court Civil Rule 4.

[Amended effective July 15, 1990; July 15, 1994; July 15, 1995; July 15, 1997; August 7, 1997, by Laws 1997, c. 26, § 40; amended to apply to cases filed on or after August 7, 1997; July 15, 1998.]

Note

Note to SCO 1281: Paragraph (g) of this rule was added by ch. 26, § 40, SLA 1997. According to § 55 of the Act, the amendment to Civil Rule 26 applies "to all causes of action accruing on or after the effective date of this Act." The amendment to Rule 26 adopted by paragraph 1 of this order applies to all cases filed on or after August 7, 1997. See paragraph 17 of this order. The change is adopted for the sole reason that the legislature has mandated the amendment.

Ch. 26, § 10, SLA 1997 repeals and reenacts AS 09.17.020 concerning punitive damages. New AS 09.17.020(e) prohibits parties from conducting discovery relevant to the amount of punitive damages until after the fact finder has determined that an award of punitive damages is allowed. This provision applies to causes of action accruing on or after August 7, 1997. See ch. 26, § 55, SLA 1997. According to § 48 of the Act, new AS 09.17.020(e) has the effect of amending Civil Rule 26 by limiting discovery in certain actions.

*70 Publisher's Note

Laws 1998, c. 95, § 2, which amended AS 09.19.050, had the effect of amending Rule 26 "by providing that the automatic disclosure provisions of the rule do not apply to litigation against the state brought by prisoners." Laws 1998, c. 95, § 13.

Citation/Title

RCP Rule 16, RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

Rules of Civil Procedure, Rule 16

**WEST'S ALASKA COURT RULES
RULES OF CIVIL PROCEDURE
PART III. PLEADINGS AND MOTIONS**

Current with amendments received through 7-1-98.

RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating the settlement of the case, including use of alternative dispute resolution procedures such as mediation, early neutral evaluation, arbitration, and settlement conferences.

(b) Scheduling Order; Mandatory Scheduling Conference.

(1) Except in categories of actions exempted under Rule 16(g), the judge shall, after receiving the report from the parties under Rule 26(f), enter a scheduling order that limits or establishes the time:

- (A) to join other parties and to amend the pleadings;
- (B) to file motions;
- (C) to disclose expert witnesses and reports required under Rule 26(a)(2);
- (D) to supplement disclosures required under Rule 26(a);
- (E) to identify witnesses and exhibits;
- (F) to complete discovery; and
- (G) for trial or the trial setting conference.

The scheduling order may also address:

- (H) modification of the discovery limitations contained in these rules, including the length of depositions in light of the

RCP Rule 16, RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

factors listed in Rule 30(d)(2), and the extent of discovery to be permitted;

- (I) the date or dates for conferences before trial;
- (J) the use and timing of an alternative dispute resolution procedure; and
- (K) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of the defendants. A schedule shall not be modified except upon a showing of good cause and by leave of court.

***35 (2)** The judge shall meet with the attorneys for the parties and any unrepresented parties prior to entering the scheduling order unless the parties have waived this conference in their report and the judge determines that a conference is unnecessary. The court shall distribute notice of the conference date as soon as practicable after the appearance of the defendants. The conference may be held on or off the record.

(c) **Subjects for Consideration at Pretrial Conferences.** At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

- (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
- (4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Evidence Rule 702;
- (5) the appropriateness and timing of summary adjudication under Rule 56;
- (6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;
- (7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
- (8) the advisability of referring matters to a master;
- (9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;
- (10) the form and substance of the pretrial order;
- (11) the disposition of pending motions;
- (12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

RCP Rule 16, RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim or with respect to any particular issue in the case;

(14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a);

*36 (15) an order establishing a reasonable limit on the time allowed for presenting evidence; and

(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) Final Pretrial Conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(g) Actions Exempted From Rule 16(b). The following categories of cases are exempted from the requirement of scheduling conferences and scheduling orders under Rule 16(b):

*37 (1) special proceedings listed in Part XII of these rules, including habeas corpus petitions and dissolution of marriage and divorce actions;

(2) paternity cases;

(3) small claims cases;

(4) actions to enforce out-of-state judgments;

(5) eminent domain cases;

(6) proceedings for post-conviction relief under Criminal Rule 35.1; and

RCP Rule 16, RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(7) proceedings to obtain a domestic violence protective order under AS 18.66.100 and AS 18.66.110.

[Amended effective July 15, 1988; July 15, 1994; July 15, 1995; July 15, 1997; July 15, 1998.]

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1354

Amending Alaska Rule of
Professional Conduct 2.1
concerning attorneys as
advisors.

IT IS ORDERED:

Alaska Rule of Professional Conduct 2.1 is amended to read:

Rule 2.1. Advisor.

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, and the availability of alternative forms of dispute resolution, that may be relevant to the client's situation.

ALASKA COMMENT

In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

COMMENT
Scope of Advice

* * * *

Supreme Court Order No. 1354
Effective Date: October 15, 1999
Page 2

DATED: February 18, 1999

EFFECTIVE DATE: October 15, 1999

/s/
Chief Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner

/s/
Justice Carpeneti

JOINT STATE/FEDERAL JUDICIAL CONFERENCE
Dispute Resolution Training for Judges
Thursday, October 22, 1998

- | | |
|-------------------------|---|
| 8:00 a.m. - 9:00 a.m. | Continental Breakfast (outside Columbia Ballrooms A,B&C) |
| 9:00 a.m. - 9:15 a.m. | Welcome and Introductions
Columbia Ballrooms A,B&C |
| 9:15 a.m. - 10:45 a.m. | Introduction to ADR and Demonstration of the Mediation Process

Michael Keating, Moderator, Little Bowman & Reardon

Charles Wiggins, Mediator
Judge Wayne Brazil, Attorney
Stephanie Smith, Client
Jack Esher, Attorney
Sam Imperati, Client |
| 10:45 a.m. - 11:00 a.m. | BREAK |
| 11:00 a.m. - 12:15 p.m. | Continue morning program |
| 12:15 p.m. - 1:30 p.m. | LUNCH
Prince Court |
| 1:30 p.m. - 3:00 p.m. | Getting to the Underlying Interests in the Dispute

Introduction: Michael Keating

Role Play

Participants, in groups of five, will take on the roles of mediators, attorneys, and clients. An important objective will be to identify the underlying interests at stake in the dispute. Coaches will provide feedback.

Coaches: Judge Wayne Brazil, Jack Esher, Sam Imperati, Michael Keating, Bob Niemic, Stephanie Smith, Donna Stienstra, Charles Wiggins |

JOINT STATE/FEDERAL JUDICIAL CONFERENCE

Dispute Resolution Training for Judges

Thursday, October 22, 1998 - continued

3:00 p.m. - 3:15 p.m. BREAK

3:15 p.m. - 5:00 p.m. *Caucusing*

Introduction: Michael Keating

Role Play

Participants will continue the role play, this time in groups of two. The emphasis in this session is on practicing the skills used in holding private caucuses with each side. Coaches will provide feedback.

Coaches: Judge Wayne Brazil, Jack Esher, Sam Imperati, Michael Keating, Bob Niemic, Stephanie Smith, Donna Stienstra, Charles Wiggins

5:00 p.m. Adjournment

**6:30 p.m. - 9:00 p.m. Reception
Prince Court**

JOINT STATE/FEDERAL JUDICIAL CONFERENCE
Dispute Resolution Training for Judges
Friday, October 23, 1998

7:30 a.m. - 8:15 a.m. Continental Breakfast (outside Columbia Ballrooms A,B&C)

8:15 a.m. - 9:15 a.m. Generating Options and Breaking Impasse
Columbia Ballrooms A,B&C

Michael Keating

Discussion of techniques mediators and settlement judges can use to help parties break impasse. Role plays will supplement lecture.

9:15 a.m. - 10:15 a.m. Mediating Emotionally Charged Cases

Michael Keating

Discussion of techniques mediators and settlement judges can use to help parties in emotionally charged cases. Role plays will supplement lecture.

10:15 a.m. - 10:30 a.m. BREAK

10:30 a.m. - 12:30 p.m. Managing Cases in ADR

Honorable Wayne D. Brazil, Northern District of California
Stephanie E. Smith, Stanford University Law School

Lecture and discussion about management of cases in ADR, including the following:

Case selection: How to identify cases appropriate for ADR, how to raise the issue with attorneys and parties, whether to compel party attendance, what to put in the referral order.

JOINT STATE/FEDERAL JUDICIAL CONFERENCE
Dispute Resolution Training for Judges
Friday, October 23, 1998

Continued...

Case management: Should other case activities continue during the ADR process; what materials, if any, should the parties submit to the ADR neutral; should persons who are not parties to the case be permitted to attend the ADR session; and what level of participation should be required?

12:30 p.m. - 1:00 p.m.

LUNCH (outside Columbia Ballrooms A,B&C)

Participants will pick up lunch and bring it back to the meeting room.

1:00 p.m. - 3:45 p.m.

Ethical Issues in ADR

Judge Wayne Brazil, Stephanie Smith

Lecture and discussion (with breaks as appropriate) about such issues as confidentiality within and outside the ADR sessions, the proper relationship between the ADR neutral and the judge assigned to the case, how to handle revelations of illegality or danger, what to do when there is a pro se party and whether to take any action when counsel is ineffective.

3:45 p.m.

Adjournment

Citation/Title

PROB Rule 4.5, RULE 4.5. MEDIATION AND OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION

Probate Rules, Rule 4.5

**WEST'S ALASKA COURT RULES
PROBATE RULES
GENERAL PROVISIONS**

Current with amendments received through 7-1-98.

RULE 4.5. MEDIATION AND OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION

(a) Application. This rule applies to all actions filed under Title 13. At any time after an action under Title 13 is filed, an interested person as defined in AS 13.06.050(24) may file a motion with the court requesting mediation for the purpose of providing an alternative to litigation. The motion must address how the mediation should be conducted as specified in paragraph (b), including the names of any acceptable mediators. In matters not covered by AS 25, the court may order mediation in response to such a motion, or on its own motion, whenever it determines that mediation may result in an equitable settlement. In making this determination, the court shall consider whether there is a history of domestic violence between the interested persons which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim. Mediation may not be ordered between the parties to, or in, a case filed under AS 18.66.100--18.66.180.

(b) Order. An order of mediation must state:

(1) the name of the mediator or how the mediator will be decided upon;

(2) any changes in the procedures specified in paragraphs (d) and (e), or any additional procedures;

(3) that the costs of mediation are to be borne equally by the interested persons unless the court apportions the costs differently; estate funds may be used to pay the costs of mediation only upon order of the court or agreement of all persons whose interests would be affected by payment from the estate; and

(4) a date by which the initial mediation conference must commence.

(c) Challenge of Mediator. Each interested person has the right once to challenge peremptorily any mediator appointed by the court if the "Notice of Challenge of Mediator" is timely filed pursuant to Civil Rule 42(c).

(d) Mediation Briefs. Any interested person may provide a confidential brief to the mediator explaining its view of the dispute. If an interested person elects to provide a brief, the brief may not exceed five pages in length and must be provided to the mediator not less than three days prior to the mediation. An interested person's mediation brief may not be disclosed to anyone without the person's consent and is not admissible in evidence.

*868 (e) Conferences. Mediation will be conducted in informal conferences at a location agreed to by the interested persons or, if they do not agree, at a location designated by the mediator. All interested persons shall attend the initial conference at which the mediator shall first meet with all participants. Thereafter the mediator may meet with the participants separately. Counsel for an interested person may attend all conferences attended by that person. If the mediator believes the presence of third parties is critical to the resolution of a case, the mediator may request them to attend the mediation.

(f) Authority of Mediators. Mediators shall work with the interested persons to facilitate agreements on substantive and

PROB Rule 4.5, RULE 4.5. MEDIATION AND OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION

procedural matters and attempt to aid in the voluntary resolution of cases. Mediators shall not issue decisions or make procedural or substantive recommendations to the court.

(g) Termination. After the initial joint conference and the first round of separate conferences if separate conferences are required by the mediator, an interested person may withdraw from mediation, or the mediator may terminate the process if the mediator determines that mediation efforts likely to be unsuccessful. Upon withdrawal by an interested person or termination by the mediator, the mediator shall notify the court that mediation efforts have been terminated.

(h) Confidentiality. Mediation proceedings shall be held in private and are confidential. Unless otherwise ordered, the mediator shall not testify as to any aspect of the mediation proceedings. Evidence of conduct or statements made in the course of court-ordered mediation shall be inadmissible to the same extent that conduct or statements are inadmissible under Alaska Rule of Evidence 408. This rule does not relieve any person of a duty imposed by statute.

(i) Stipulation. If the mediation is successful, the interested persons shall prepare and file with the court a stipulation setting forth their agreement.

(j) Other Forms of Alternative Dispute Resolution.

(1) Early Neutral Evaluation. Parties or the court may use the procedure set out in this rule to refer a case to early neutral evaluation instead of mediation. All provisions of this rule apply to a case in which early neutral evaluation has been ordered under paragraph (a).

(2) Settlement Conference. At any time after a complaint is filed, a party may file a motion with the court requesting a settlement conference with a judge for the purpose of achieving a mutually agreeable settlement. The court may order a settlement conference in response to such a motion or on its own motion.

*869 [Adopted effective July 15, 1998.]

A Consumer Guide to Selecting a Mediator

July 1995

This guide was developed under a grant (#SJI-94-03E-H-284) from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute. The Judicial Council would like to express its appreciation to the many people who contributed to this project. Thanks to all who gave so freely of their expertise and time, and exhibited such support and enthusiasm for the project. You also may wish to refer to a Directory of Mediators in Alaska published by the Alaska Court System.

To make an informed choice of a mediator; the consumer must have information and the ability to evaluate that information. This guide begins the educational process by presenting a framework for understanding mediator competence. The information is based on research presented at the 1993 National Symposium on Court-Connected Dispute Resolution Research sponsored by the State Justice Institute and the National Center for State Courts, the ongoing work of the Test Design Project, the work of alternate dispute resolution policy makers, and the experience of mediators and mediation program directors nationwide. We anticipate that the guide will need to be updated as our knowledge grows.

Please send us an e-mail message with comments, suggestions or requests for written copies of this guide.

Purpose of This Brochure

This guide is for anyone looking for a mediator. It will be especially useful to lawyers or other professionals advising their clients, court systems and mediation programs that provide information to consumers, judges who refer litigants to mediation, and people who have been referred by the court to mediation and who must choose their own mediator.

This guide does not explain mediation or alternative dispute resolution (ADR) in detail, although a consumer needs at least a basic understanding of mediation to profit fully from this guide. To learn about mediation, consult books, articles and pamphlets at your local library, community mediation center, courthouse, bookstore, mediator's office, or mediation association.

Mediation is a conflict resolution process in which one or more impartial persons intervene in a conflict with the disputants' consent and help them negotiate a mutually acceptable agreement. The mediator does not take sides or decide how the dispute should be resolved.

What Qualifications Does a Mediator Need?

Qualifications refer to the amount and type of training, education and experience possessed by a mediator. In some states, courts or legislatures impose training or experience standards on mediators who practice in state- or court-funded mediation programs. In most states, including Alaska, a person can offer private mediation services without taking a class, passing a test or having a special license or certification. In reality, however, many private mediators, and most of those who work for or are associated with mediation organizations and programs, have some training or experience.

Most independent mediation programs impose their own training or experience standards on mediators. For example, community mediation centers often require their volunteers to complete a certain amount of mediation training before handling cases.

Some national and local mediation membership organizations set training and experience requirements and ethical standards for their practicing members (refer to the resources section at the end of this brochure for more information). One national non-profit mediator organization, the Academy of Family Mediators, is working to develop a voluntary performance-based certification program.

Many mediation-referral services impose training, experience or other requirements on mediators who wish to be included on their rosters. For example, the American Arbitration Association requires mediators listed on its mediation panel to complete an AAA training course, receive recommendations from the trainers, and successfully complete an apprenticeship. In Anchorage, the Alaska Dispute Settlement Association (ADSA) requires all mediators listed on their referral line to provide certain information to ADSA and the potential client, including an explanation of the standards of professional practice or ethical conduct that the mediator uses.

Certification explicitly recognizes that a person has completed a specific level of education or training. In some cases, it recognizes that a person has achieved a particular level of skill in performing certain functions. Public, private, professional or educational bodies can certify. If a public body has certified a professional's abilities, the person may then be permitted to practice a profession or use a title.

What Makes a Competent Mediator?

There is no universal answer to this question. No particular type or amount of education or job experience has been shown to predict success as a mediator. Successful mediators come from many different backgrounds.

Competence depends partly on the context of the dispute and the parties' expectations. It also depends on whether the mediator has the right mix of acquired skills, training, education, experience and natural abilities to help resolve the specific dispute. Important skills and abilities include neutrality, ability to communicate, ability to listen and understand, and ability to define and clarify issues.

Five Steps to Choosing a Qualified Mediator

Because no easy formula can predict mediator competence, the consumer must do some groundwork

before selecting a mediator. First, you must understand the mediation process. After you understand the basics, you can use the following process to choose a mediator:

Five Steps to Choosing a Mediator
1. Decide what you want from mediation
2. Get a list of mediators
3. Look over mediator's written qualifications
4. Interview mediators
5. Evaluate information and make decision

These steps are described on the next pages. Remember during your search that a mediator should remain neutral and treat both parties with equal fairness and respect.

1. Decide What You Want from Mediation

Think about your goals for the session. Do you want a mediator who suggests options in order to help move the parties towards agreement? Or, do you want a mediator who resists offering opinions so the parties feel responsible for their agreement? Think about past attempts at negotiation and problems with those attempts. What are your choices if mediation does not work?

Think about your abilities. What are your strengths and weaknesses as a negotiator? What are the other party's strengths and weaknesses? What are your emotional limitations? Do you expect the mediator to help you stand your ground if the other person negotiates better than you or has more "power?" Thinking about these issues is especially important if there is a power imbalance between you and the other party. If there has been abuse and or violence between you and the other party, please read the Domestic Abuse section.

Think about the dispute and the context in which you must resolve it. What is the time frame? Is this a commercial dispute between experienced insurance company representatives, or is it a divorce involving an emotional child custody decision? The approach or model that commercial disputants might prefer may differ greatly from the one preferred by a mother and father.

Consider your budget. How much you can spend might limit your choice of mediator or mediation program.

Many mediators and dispute resolution firms or services can help you understand what services would be best for your dispute. Some will contact the other party to the dispute to introduce the concept of mediation.

2. Compile a List of Names.

You can get a list of mediators from several sources.

Word of Mouth. Ask a friend, your attorney, your therapist, or another professional. Describe your case to a mediator and ask, "Other than yourself, who are the most skilled mediators in this kind of case?" Talk to people who have been in a mediation with the mediator (you can ask the mediator for names of clients). What was their case about and what were their impressions of the mediator?

Written Lists. Check local listings in the Yellow Pages. The Alaska Court System publishes a Directory of Mediators in Alaska. The Alaska state law library has copies of both. Martindale-Hubbell, available in the law library, publishes a national Dispute Resolution Directory containing the names of some 60,000 service providers. Rural consumers can consult the Alaska Judicial Council's directory of organizations that resolve disputes in rural areas (many of these are tribal courts or councils). Many local mediation organizations maintain directories of member-mediators.

Referral Services. The Alaska Dispute Settlement Association maintains a statewide referral service (Anchorage number) and a written directory of members. Many national mediator membership organizations and trade organizations keep lists of practitioner members and offer referral services (some of these organizations are listed at the end of this pamphlet). Some may charge for the referral services.

3. Evaluate Written Materials.

Call or write several mediators on your list and ask them to send you their promotional materials, resume, references and a sample of their written work. These materials should cover most of the following topics.

Mediation Training. How was the mediator trained? Some mediators receive formal classroom-style training. Some participate in apprenticeships or in mentoring programs. While training alone does not guarantee a competent mediator, most professional mediators have had some type of formal training. How many hours of training has this mediator had? How recent was the training?

Experience. Evaluate the mediator's type and amount of experience (number of years of mediation, number of mediations conducted, types of mediations conducted). How many cases similar to yours has the mediator handled? A mediator's experience is particularly important if he or she has limited formal training.

Written Work. Some mediators will write up notes about agreements or even draft agreements for the parties. Other mediators do not prepare written agreements or contracts. If your mediator will prepare written work, you may want to review a sample. Samples could include letters, articles or promotional materials. Any sample of the mediator's written work should be clear, well organized, and use neutral language. Agreements or contracts should have detailed information about all items upon which the parties have agreed.

Orientation Session. Some mediators offer an introductory or orientation session after which the parties decide whether they wish to continue. Is it offered at no cost, reduced cost, or otherwise?

Cost. Understand the provider's fee structure. Does the mediator charge by the hour or the day? How much per hour/day?]

Other Considerations. Find out whether the mediator carries professional liability insurance which specifically covers mediation. Is the mediator certified, and if so by whom? While certification usually shows the mediator has completed a specific amount of training or education, training and education do not guarantee competence.

Does the mediator belong to a national or local mediation organization, and is the mediator a practicing or general member? Cost may prevent some competent mediators from joining organizations, becoming certified, or carrying liability insurance.

4. Interview the Mediators.

Talk to the mediators in person or by phone. During the interview, observe the mediator's interpersonal and professional skills. Qualities often found in effective mediators include neutrality, emotional stability and maturity, integrity, and sensitivity. Look also for good interviewing skills, verbal and nonverbal communication, ability to listen, ability to define and clarify issues, problem-solving ability, and organization.

During the conversation, you also may want to ask questions about matters covered in the written materials and other topics. Some topics to discuss in the interview include:

Training, Knowledge and Experience

Ask the mediator, "How has your education and experience prepared you to help us work out this specific dispute?" If the mediator had formal training, did it include role play and observations of skilled mediators? While training and education do not guarantee competence, training is most effective when it includes practice-oriented segments such as role play and observation.

Ask "Do you participate in continuing education, on-going supervision, or consultation?" Many professional mediation organizations encourage or require their members to participate in ongoing education or other professional development.

People often ask whether a mediator should be an expert in the subject of the dispute. For example, should the mediator in a commercial mediation be an expert on industry standards and practices? The answer depends on the type of dispute, the mediation program (for example, court-referred or administrative agency), and the parties' expectations and needs. Ask the mediator if he or she thinks subject-matter expertise is necessary for this dispute, and why or why not.

In some cases, the parties may prefer a mediator with no special knowledge of the subject. Benefits of this approach include avoiding a mediator's preconceived notions of what a settlement should look like and letting the parties come up with unique or creative alternatives.

In other cases, for example where the subject of the dispute is highly technical or complex, a mediator who comes to the table with some substantive knowledge could help the parties focus on the key issues in the dispute. Or, parties may want someone who understands a cultural issue or other context of the dispute.

Style.

Ask "What values and goals do you emphasize in your practice?" For example, does the mediator encourage the parties to communicate directly with each other, or does he or she control the interchanges? The mediator should be able to describe his or her style of mediation and his or her role in the mediation process. Remember that different mediators may practice their craft in different ways, although some mediators can change their style to suit the parties' specific needs.

Another stylistic difference is the use of caucus. A caucus is a meeting between one of the parties and the mediator without the other party present. Some mediators caucus frequently during the mediation, while others seldom or never use this procedure. Ask the mediator whether he or she uses caucuses, and if so, when.

If the mediator works for or is associated with a mediation program or organization, ask what values and goals the program emphasizes. For example, the style or requirements of a mediator who practices in a court program designed to reduce court caseloads may differ from the style of someone whose practice does not involve the same time pressure.

Ethics.

Ask "Which ethical standards will you follow?" (You may ask for a copy of the standards). All mediators should be able to show or explain their ethical standards (sometimes called a code of conduct) to you. If the mediator is a lawyer or other professional, ask what parts of the professional code of ethics will apply to the mediator's services. Ask the mediator, "Do you have a prior relationship with any of the parties or their attorneys?" The mediator should reveal any prior relationship or personal bias which would affect his or her performance, and any financial interest that may affect the case.

Standards of conduct (Ethics). Standards of conduct do not regulate who may practice, but rather create a general framework for the practice of mediation. National mediator organizations have adopted voluntary standards of conduct. The resources section at the end of this brochure lists some of the national organizations that have adopted or are considering adopting standards of conduct for their practitioner members.

Confidentiality.

The mediator should explain the degree of confidentiality of the process. The mediator may have a written confidentiality agreement for you and the other party to read and sign. If the mediation has been ordered by the court, ask the mediator whether he or she will report back to the court at the conclusion of the mediation. How much will the mediator say about what happened during mediation? How much of what you say will the mediator report to the other disputants? Does the confidentiality agreement affect what the disputants can reveal about what was said? If the parties' attorneys are not present during the mediation, will the mediator report back to them, and if so, what will the mediator say? The mediator should be able to explain these things to you.

Logistics.

Who will arrange meeting times and locations, prepare agendas, etc.? Will the mediator prepare a written agreement or memorandum if the parties reach a resolution? What role do the parties' lawyers or therapists play in the mediation? Does the mediator work in teams or alone?

Cost.

Ask "How would you estimate costs for this case?; How can we keep costs down?" Are there any other charges associated with the mediation? Does the mediator perform any pro bono (free) services or work on a sliding fee scale? If more than one mediator attends the session, must the parties pay for both? Does the mediator charge separately for mediation preparation time and the actual mediation?

Special Considerations if There has Been Domestic Abuse Between You and the Other Party.

If there has been domestic abuse or violence between you and the other party, you should understand how it can affect the safety and fairness of the mediation process. Talk to your lawyer, a domestic violence counselor, women's advocate, or other professional who works with victims of domestic

abuse before making the decision to mediate.

All family mediators should be knowledgeable and skilled in the screening and referral of cases involving abusive relationships. They should be able to explain the potential risks and benefits of mediation when control, abuse, and violence issues exist. Any mediator who handles such cases should have special training in domestic violence issues and should offer special techniques and procedures to minimize risk and maximize safety of all participants.

If you decide to try mediation, it is important to let the mediator know about the abuse or violence. Some ways you can tell the mediator include asking your lawyer to tell the mediator, or telling the mediator yourself. You can tell the mediator yourself in the initial telephone call, or when filling out any written questionnaires. If there is an active restraining order, make sure the mediator knows about it before the first session.

Ask what domestic violence training the mediator has had and if the mediator has worked with similar cases. Ask whether or not the mediator believes your case is suitable for mediation and why. Ask how the mediation process can be modified to make it safer and more fair. Can the mediation be done by telephone or in separate sessions ("shuttle mediation")? Can a support person (domestic violence advocate or your attorney) be present during the mediation? If your case is not suitable for mediation, what are your alternatives? Ask for referrals to other resources, such as a local domestic violence counselor.

5. Evaluate Information and Make Decision.

During the interviews, you probably observed the mediators' skills and abilities at several important tasks. These tasks, which mediators perform in almost all mediations, include:

- gathering background information,
- communicating with the parties and helping the parties communicate,
- referring the parties to other people or programs where appropriate,
- analyzing information,
- helping the parties agree,
- managing cases, and
- documenting information.

Ask yourself which of the mediators best demonstrated these skills. Did the mediator understand your problem? Understand your questions and answer them clearly? If the other party was present, did the mediator constructively manage any expressions of anger or tension? Did the mediator convey respect and neutrality? Did you trust the mediator? Did the mediator refer you to other helpful sources of information? Understand what was important to you? Pick up on an aspect of the conflict that you were not completely aware of yourself? Did the mediator ask questions to find out whether mediation is preferable or appropriate? Understand the scope and intensity of the case? Of course, not every orientation interview permits the mediator to demonstrate all these skills, and every mediator has relative strengths and weaknesses. But you should be satisfied that the mediator can perform these tasks for you before beginning.

Review the other questions on this checklist. Make sure that the mediator's cost and availability coincide with your resources and timeframe. The other parties to the mediation must agree to work with this person, too. You may want to suggest two or three acceptable mediators so that all parties can agree on at least one.

Finally, consider evaluations of others who have used this mediator or your own previous experience with this mediator. If applicable, consider the goals and procedures of any organization with which the mediator is associated.

Conclusion

The increasing use of mediation has outpaced knowledge about how to measure mediator competence. You can choose a qualified mediator by thinking about what you expect, gathering information about mediators, and evaluating that information using the information in this guide.

More Information/Resources

Many mediation organizations exist. This is not a definitive list, but merely a sample of some that offer consumer services.

LOCAL ORGANIZATIONS:

Alaska Dispute Settlement Association (ADSA): A non-profit professional association of Alaskans working for resolution of conflict in non-judicial settings by providing mediation, arbitration and facilitation services. Membership costs \$25 per year and is open to everyone with an interest in alternative dispute resolution. Offers a telephone referral service: (907) 258-0624.

Alaska Bar Association Alternative Dispute Resolution Section: Membership in this section of the Alaska Bar Association is open to lawyers and non-lawyers with an interest in alternative dispute resolution. Among its many activities, the section presents continuing education programs on dispute resolution topics. Call (907) 272-7469 for more information.

NATIONAL ORGANIZATIONS:

American Arbitration Association (AAA): Maintains panels of trained mediators with wide range of subject matter expertise and supplies complete administrative services. Can arrange for any other form of alternative dispute resolution, should mediation fail or not be preferred. A not-for-profit organization in operation since 1926, AAA has a network of 34 regional offices throughout the United States. Cases processed in Alaska are administered from the AAA office in Seattle. Call 1-800-559-3222 or Email aaaaxnwx@reach.com for complete information and assistance.

American Bar Association Section on Alternative Dispute Resolution: Sells books, pamphlets and videos about alternative dispute resolution and mediation; publishes quarterly magazine, and offers general information. Call (202) 331-2258 or write to: 1800 M St., N.W.; 2nd Floor, South Lobby; Washington, D.C. 20036.

Academy of Family Mediators: A mediator membership organization. Practitioner membership entitles the mediator to listing in the Academy's National Referral Roster. To qualify for practitioner member status, the applicant must (1) complete 60 hours of mediation training as described below, (2) have at least 100 hours of face-to-face mediation experience in at least 10 mediation cases; and (3) submit six sample memoranda, case reports or other documentation from the required ten mediation cases, and maintain 20 hours of continuing education every two years. The sixty hours of training must include no less than 30 hours of an integrated generic family mediation training. This integrated mediation training must include the following core areas and at least six hours of role playing: information gathering skills and knowledge, relationship skills and knowledge, communication skills and knowledge, problem-solving skills and knowledge, ethical decision-making values skills and knowledge, interaction and conflict management skills and knowledge, professional skills and knowledge, an introduction to conflict resolution theory, family systems and development, domestic violence issues and legal context (substantive knowledge base), and at least two hours of training in domestic violence issues. Call (612) 525-8670 or write to: 1500 S. Hwy 100, Suite 355; Golden Valley, MN. 55416-1593.

Association of Family and Conciliation Courts: an interdisciplinary association of judges, lawyers,

mediators and mental health professionals dedicated to the development and improvement of the practices and procedures of court-connected services as a complement to the judicial process. Members must subscribe to the purposes of the Association. Call (608) 251-4001 or write to: 329 W. Wilson St; Madison, WI 53703.

CPR Institute for Dispute Resolution: A membership-based nonprofit corporation with a variety of educational and information functions. Offers neutrals for public policy disputes. Also offers many publications, including a Model Mediation Procedure. Call (212) 949-6490 or write to: 366 Madison, New York, N.Y. 10017.

National Association for Community Mediation: An organization of community mediation programs and volunteer mediators which supports and promotes community-based mediation programs. The NACM will maintain a national directory and database and develop financial resources. Requests for information handled by NIDR staff (see below).

National Institute for Dispute Resolution (NIDR): established in 1983 by five foundations and corporations to encourage the growth and development of dispute resolution, NIDR makes grants devoted solely to conflict resolution and provides a source of innovation, information, and technical assistance for people who seek ways to improve the ways disputes are resolved. In 1992, the National Institute for Dispute Resolution published its Interim Guidelines for Selecting Mediators. The Guidelines, designed to help program administrators evaluate staff mediators and target training needs, was based on work done by the Test Design Project. Call (202) 466-4764 or write to: 1726 M St. N.W., Ste 500; Washington, D.C. 20036-4502.

San Diego Mediation Center: a non-profit, public service organization, which provides mediation and other dispute resolution services and training. It was established in 1982 by the San Diego Law Center, a program of the University of San Diego Law School and the San Diego County Bar Association. The Center, in conjunction with representatives of the ADR community of San Diego, has developed a performance based mediator credentialing program. The instrument used to assess performance is designed as a generic evaluation of specific behaviors, measuring both the ability to facilitate a process, and specific skills and techniques. Call (619) 295-0203 or write to: 2150 W. Washington St. #112; San Diego, CA 92110.

The Society of Professionals in Dispute Resolution (SPIDR): a non-profit organization promoting the use of alternative dispute resolution throughout the United States and other countries. SPIDR has issued two reports on mediator qualifications. Both draw on the observations of practitioners and consumers, the policy and personal goals of the SPIDR membership, and research attempting to quantify the combination of skills, training, education, experience and other attributes in a good mediator. Call (202) 783-7277 or write to: 815 15th St; N.W., Suite 530, Washington, D.C. 20005.

Standards of Practice

LOCAL:

(None adopted in Alaska).

NATIONAL:

American Bar Association (ABA): Standards of Practice for Lawyer Mediators in Family Disputes (adopted 1984).

AAA, ABA & SPIDR: Standards of Practice for Mediators.

SPIDR: Ethical Standards of Professional Responsibility for the Society of Professionals in Dispute

Resolution (adopted June 1986, readopted June 1991).

Academy of Family Mediators: Standards of Practice for Divorce and Family Mediation (also subscribed to by the Association of Family and Conciliation Courts).

MORE INFORMATION:

The Ohio Commission on Dispute Resolution and Conflict Management and the Oregon Dispute Resolution Commission offer consumer's guides to selecting third parties to help resolve public conflicts. For public policy disputes, different considerations in choice of mediator may apply than the very general ones discussed here.

INFORMATION ABOUT NEGOTIATION STRATEGIES:

Many books exist. Try *Getting to Yes* by Roger Fisher and William Ury and *Getting Past No* by William Ury.

RESEARCH AND ACADEMIC WRITING ON MEDIATOR QUALIFICATION AND COMPETENCE:

See the list of references cited in the Test Design Project's most recent paper on performance-based assessment of mediators. The Test Design Project's work is published by NIDR (address above).

Quick Reference: Select a Mediator

Checklist 1: What Do You Want?
1. What are your goals?
2. What mediation approach do you prefer?
3. Assess your abilities: strengths, weaknesses
4. What is your timeframe?
5. What is your budget?
Checklist 2: Get Names
1. Ask people and professionals whom you know
2. Look at directories
3. Call referral services (ask whether they charge to refer you to a mediator)
Checklist 3: Evaluate Written Materials
1. Fees: Hourly? Daily? How much?
2. Education: How much? What? How recent?
3. Experience: What kinds of disputes? How many mediations? Areas of specialization?
4. Written (if available): Understandable? Complete? Concise?

5. Insurance: Yes? What kind?

6. Professional memberships, certifications, adherence to ethical standards?
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Checklist 4: Interview Mediator
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1. What ethical standards apply?

2. Confidentiality?

3. What approach to mediation?

4. More about training and experience?
--

5. Logistics (meetings, written agreements)?
--

6. How much will this cost?

7. Domestic abuse concerns?

Checklist 5: Evaluate

1. Evaluate the mediator's skills and abilities against the tasks listed above.

2. Did the mediator understand you, listen well, act neutral, understand the problem, convey respect, analyze well?

3. Can you afford the services?

4. Can the mediator work with your time frame?
--

5. Will the other parties agree to the mediator?
--

WHAT IS MEDIATION?

ANSWERS TO SOME COMMON QUESTIONS

WHAT IS MEDIATION?

Mediation is a process in which a neutral and independent third person helps parties involved in a conflict to reach a voluntary and mutually acceptable settlement of their differences. In mediation, the parties discuss the disputed issues with the mediator who through active listening techniques attempts to help the parties reconcile their differences and reach an agreement that defines their future actions.

WHAT IS A MEDIATOR?

A mediator is a facilitator who directs the discussion of the issues. The mediator is not a judge and does not decide who is right or wrong. Using communication and listening skills, the mediator guides the parties to an understanding of the issues involved in the dispute and helps them find agreeable solutions to the problem. A mediator does not have to be an individual. A community could organize a mediation board to help resolve conflicts in a neighborhood or village.

WHAT KINDS OF DISPUTES CAN BE MEDIATED?

Any dispute can be mediated if both parties are open to the idea of settling the conflict. Mediation is particularly effective when the parties have a relationship that will continue after the dispute is resolved, for example, family members, landlord/ tenant, employer/ employee, or neighbors.

WHAT ARE THE BENEFITS OF MEDIATION?

- Parties who have voluntarily come to a solution regarding their dispute have a greater sense of control over their situation and a vested interest in seeing the agreement work.
- Because mediation involves a frank discussion of each party's needs and interest, disputants are often able to get past the actual conflict and discover the underlying causes of the dispute.
- Parties who go through the mediation process can learn new approaches to resolve conflicts based on techniques used in mediation: active listening, conflict management, team work and agreement drafting.
- Divorcing parents who mediate successfully tend to have more friendly relationships after the divorce, which can be beneficial to the children and their relationship with both parents.
- Mediation may be less expensive and more rapid than the judicial process.

WHAT IS MEDIATION? - continued

WHAT HAPPENS IN MEDIATION?

A mediator usually begins by describing the mediation process. The mediator then gives each person an opportunity to tell his or her side of the story. The mediator helps determine the issues, suggests a negotiation process and helps the parties look at all possible options for agreement. When a final agreement has been reached, the mediator helps the parties put it in writing. Some mediators require that clients sign an agreement that the mediator will not be called to testify in court and that what occurs in mediation will not be used as evidence in a trial.

WHO PAYS FOR MEDIATION?

The parties are responsible for payment and must agree between themselves how to handle the cost of mediation.

IS IT NECESSARY TO HAVE A LAWYER?

Lawyers do not participate in mediation. The parties determine their own agreement. That agreement may not be what a court would decide. Since it is important for each party to know what his or her legal rights are, each party may want to consult an attorney to discuss the merits of mediation in his or her situation.

WHAT HAPPENS IF MEDIATION DOES NOT WORK?

If mediation is unsuccessful, the parties can still take the matter to court.

HOW DO I LOCATE A MEDIATOR?

In some communities, mediators are listed in the Yellow Pages under the heading "Mediation" or "Mediation Services."

The Better Business Bureau has mediators available to mediate trade disputes between a consumer and a business or between two businesses.

In Anchorage and Fairbanks the Custody Investigator's office keeps a current listing of people available to do mediation in their areas. This information is available to the public upon request.

**District
Court
(lower
volume)**



**District Courts - Lower Volume
Summary of Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak	54	26	26	27	-50%	4%
Angoon	29	85	30	38	31%	27%
Aniak	260	313	227	185	-29%	-19%
Chevak / Hooper Bay	249	153	241	347	39%	44%
Emmonak	596	633	623	533	-11%	-14%
Fort Yukon	143	106	134	129	-10%	-4%
Galena	171	292	141	173	1%	23%
Gambell / Savoonga	19	9	5			
Hoonah	342	361	491	395	15%	-20%
Kake	87	171	247	210	141%	-15%
Kiana / Noorvik / Selawik	127	94	94	135	6%	44%
McGrath	42	29	32	38	-10%	19%
Pelican	19	14	12	7		
Point Hope			31	41		32%
Quinhagak						
Sand Point	225	209	135	132	-41%	-2%
Skagway	182	207	156	97	-47%	-38%
St. Marys	362	517	417	411	14%	-1%
St. Paul Island	111	63	183	117	5%	-36%
Tanana		80	78	19		-76%
Unalakleet			81	32		-60%
Whittier	35	75	40	26	-26%	-35%
Yakutat	147	209	201	232	58%	15%
Total	3,200	3,646	3,625	3,324	4%	-8%
1st District	806	1,047	1,137	979	21%	-14%
2nd District	200	129	237	235	18%	-1%
3rd District	371	347	358	275	-26%	-23%
4th District	1,823	2,123	1,893	1,835	1%	-3%

Fiscal Year July 1 - June 30

Traffic / Minor Offense dispositions used as filings

**District Courts - Lower Volume
Composition of Case Filings
FY 98**

Court	Misde- meanor	Other		Civil		Total
		Traffic / Minor Offense @	Children's Matters *	Small Claims	Other Civil	
Ambler / Kobuk / Shungnak	27					27
Angoon	24				14	38
Aniak	138	18			29	185
Chevak / Hooper Bay	260	64			23	347
Emmonak	267	259			7	533
Fort Yukon	76	28	1		24	129
Galena	130	23	13		7	173
Gambell / Savoonga						
Hoonah	158	195			42	395
Kake	178	21			11	210
Kiana / Noorvik / Selawik	132				3	135
McGrath	29	4			5	38
Pelican	1	5			1	7
Point Hope	39				2	41
Quinhagak						
Sand Point	115		2		15	132
Skagway	42	41			14	97
St. Marys	203	167			41	411
St. Paul Island	74	15	17		11	117
Tanana	7	10			2	19
Unalakleet	32					32
Whittier	16	9			1	26
Yakutat	137	71			24	232
Total	2,085	930	33		276	3,324
% of Total	62.7	28.0	1.0		8.3	100.0
1st District	540	333			106	979
2nd District	230				5	235
3rd District	205	24	19		27	275
4th District	1,110	573	14		138	1,835

Fiscal Year July 1 - June 30

@ Traffic / Minor Offense dispositions used as filings.

* Children's Matters not reported in Superior Court.

**District Courts - Lower Volume
Summary of Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak	17	13	22			
Angoon	24	84	34	25	4%	-26%
Aniak	332	284	162	187	-44%	15%
Chevak / Hooper Bay	135	90	156	220	63%	41%
Emmonak	592	626	605	539	-9%	-11%
Fort Yukon	124	72	90	135	9%	50%
Galena	9	7	3			
Gambell / Savoonga	173	299	77	162	-6%	110%
Hoonah	350	350	486	387	11%	-20%
Kake	83	171	237	151	82%	-36%
Kiana / Noorvik / Seiawik	100		75	125	25%	67%
McGrath	35	31	12	46	31%	283%
Pelican	22	14	10	11	-50%	
Point Hope			23			
Quinhagak						
Sand Point	215	218	139	114	-47%	-18%
Skagway	178	203	143	94	-47%	-34%
St. Marys	377	447	196	315	-16%	61%
St. Paul Island	90	76	148	100	11%	-32%
Tanana		31	46	10		
Unalakleet			64	31		-52%
Whittier	34	76	41	19	-44%	-54%
Yakutat	111	227	187	227	105%	21%
Total	3,001	3,319	2,956	2,898	-3%	-2%
1st District	768	1,049	1,097	895	17%	-18%
2nd District	290	312	261	318	10%	22%
3rd District	339	370	328	233	-31%	-29%
4th District	1,604	1,588	1,270	1,452	-9%	14%

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Composition of Case Dispositions
FY 98**

Court	Misde- meanor	Other		Civil		Total
		Traffic / Mi- nor Offense	Children's Matters *	Small Claims	Other	
Ambler / Kobuk / Shungnak						
Angoon	21			4		25
Aniak	148	18		21		187
Chevak / Hooper Bay	155	64		1		220
Emmonak	262	259		18		539
Fort Yukon	80	28	1	26		135
Galena						
Gambell / Savoonga	115	23	12	12		162
Hoonah	155	195		37		387
Kake	124	21		6		151
Kiana / Noorvik / Selawik	122			3		125
McGrath	29	4		13		46
Pelican	6	5				11
Point Hope						
Quinhagak						
Sand Point	103		4	7		114
Skagway	39	41		14		94
St. Marys	126	167		22		315
St. Paul Island	65	15	10	10		100
Tanana		10				10
Unalakleet	31					31
Whittier	9	9		1		19
Yakutat	132	71		24		227
Total	1,722	930	27	219		2,898
% of Total	59.4	32.1	0.9	7.6	-	100.0
1st District	477	333		85		895
2nd District	268	23	12	15		318
3rd District	177	24	14	18		233
4th District	800	550	1	101		1,452

Fiscal Year July 1 - June 30

* Children's Matters not reported in Superior Court.

**District Courts - Lower Volume
Non-Traffic Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak	54	26	26	27	-50%	4%
Angoon	29	79	28	38	31%	36%
Aniak	246	254	198	167	-32%	-16%
Chevak / Hooper Bay	249	153	241	283	14%	17%
Emmonak	345	267	278	274	-21%	-1%
Fort Yukon	81	69	103	101	25%	-2%
Galena	156	177	110	150	-4%	36%
Gambell / Savoonga	19	9	5			
Hoonah	202	169	209	200	-1%	-4%
Kake	84	148	183	189	125%	3%
Kiana / Noorvik / Selawik	127	94	94	135	6%	44%
McGrath	39	26	30	34	-13%	13%
Pelican	19	14	11	2		
Point Hope			31	41		32%
Quinhagak						
Sand Point	166	195	126	132	-20%	5%
Skagway	55	50	48	56	2%	17%
St. Marys	315	439	309	244	-23%	-21%
St. Paul Island	101	63	165	102	1%	-38%
Tanana		58	32	9		
Unalakleet			81	32		-60%
Whittier	35	60	32	17	-51%	-47%
Yakutat	137	135	146	161	18%	10%
Total	2,459	2,485	2,486	2,394	-3%	-4%
1st District	526	595	625	646	23%	3%
2nd District	200	129	237	235	18%	-1%
3rd District	302	318	323	251	-17%	-22%
4th District	1,431	1,443	1,301	1,262	-12%	-3%

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Non-Traffic Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak	17	13	22			
Angoon	24	78	32	25	4%	-22%
Aniak	318	225	133	169	-47%	27%
Chevak / Hooper Bay	135	90	156	156	16%	
Emmonak	341	260	260	280	-18%	8%
Fort Yukon	62	35	59	107	73%	81%
Galena	9	7	3			
Gambell / Savoonga	158	184	46	139	-12%	202%
Hoonah	210	158	204	192	-9%	-6%
Kake	80	148	173	130	63%	-25%
Kiana / Noorvik / Selawik	100		75	125	25%	67%
McGrath	32	28	10	42	31%	
Pelican	22	14	9	6		
Point Hope			23			
Quinhagak						
Sand Point	156	204	130	114	-27%	-12%
Skagway	51	46	35	53	4%	51%
St. Marys	330	369	88	148	-55%	68%
St. Paul Island	80	76	130	85	6%	-35%
Tanana		9				
Unalakleet			64	31		-52%
Whittier	34	61	33	10		
Yakutat	101	153	132	156	54%	18%
Total	2,260	2,158	1,817	1,968	-13%	8%
1st District	488	597	585	562	15%	-4%
2nd District	275	197	230	295	7%	28%
3rd District	270	341	293	209	-23%	-29%
4th District	1,227	1,023	709	902	-26%	27%

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Misdemeanor Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak	47	23	24	27	-43%	13%
Angoon	23	71	23	24	4%	4%
Aniak	175	169	168	138	-21%	-18%
Chevak / Hooper Bay	243	126	213	260	7%	22%
Emmonak	315	224	247	267	-15%	8%
Fort Yukon	34	45	67	76	124%	13%
Galena	148	144	91	130	-12%	43%
Gambell / Savoonga	19	9	5			
Hoonah	176	151	179	158	-10%	-12%
Kake	76	139	156	178	134%	14%
Kiana / Noorvik / Selawik	114	93	94	132	16%	40%
McGrath	35	23	19	29	-17%	53%
Pelican	8	10	5	1		
Point Hope			31	39		26%
Quinhagak						
Sand Point	154	168	108	115	-25%	6%
Skagway	46	39	41	42	-9%	2%
St. Marys	289	381	217	203	-30%	-6%
St. Paul Island	84	52	148	74	-12%	-50%
Tanana		38	32	7		
Unalakleet			81	32		-60%
Whittier	35	60	32	16	-54%	-50%
Yakutat	117	93	123	137	17%	11%
Total	2,138	2,058	2,104	2,085	-2%	-1%
1st District	446	503	527	540	21%	2%
2nd District	180	125	235	230	28%	-2%
3rd District	273	280	288	205	-25%	-29%
4th District	1,239	1,150	1,054	1,110	-10%	5%

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Misdemeanor Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak	16	12	22			
Angeon	19	66	26	21	11%	-19%
Aniak	174	171	86	148	-15%	72%
Chevak / Hooper Bay	135	72	153	155	15%	1%
Emmonak	303	223	235	262	-14%	11%
Fort Yukon	26	19	37	80	208%	116%
Galena	9	7	3			
Gambell / Savoonga	135	154	36	115	-15%	219%
Hoonah	187	145	178	155	-17%	-13%
Kake	72	139	150	124	72%	-17%
Kiana / Noorvik / Selawik	94		75	122	30%	63%
McGrath	30	24	9	29	-3%	
Pelican	12	10	4	6		
Point Hope			23			
Quinhagak						
Sand Point	140	193	114	103	-31%	-10%
Skagway	46	33	32	39	-15%	22%
St. Marys	266	331	59	126	-53%	114%
St. Paul Island	65	63	116	65		-44%
Tanana		8				
Unalakleet			64	31		-52%
Whittier	33	60	33	9		
Yakutat	88	129	116	132	50%	14%
Total	1,859	1,859	1,571	1,722	-7%	10%
1st District	424	522	506	477	13%	-6%
2nd District	245	166	220	268	9%	22%
3rd District	247	316	263	177	-28%	-33%
4th District	943	855	582	800	-15%	37%

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Civil Case Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak	7	3	2			
Angoon	6	8	5	14		
Aniak	71	85	30	29	-59%	-3%
Chevak / Hooper Bay	6	27	28	23		-18%
Emmonak	30	43	31	7		
Fort Yukon	46	24	33	24	-48%	-27%
Galena	8	33	19	7		
Gambell / Savoonga						
Hoonah	26	18	30	42	62%	40%
Kake	8	9	27	11		-59%
Kiana / Noorvik / Selawik	13	1		3		
McGrath	4	3	11	5		
Pelican	11	4	6	1		
Point Hope				2		
Quinhagak						
Sand Point	11	16	15	15	36%	
Skagway	9	11	6	14		
St. Marys	26	58	92	41	58%	-55%
St. Paul Island	13	7	16	11	-15%	-31%
Tanana		20		2		
Unalakleet						
Whittier				1		
Yakutat	19	37	23	24	26%	4%
Total	314	407	374	276	-12%	-26%
1st District	79	87	97	106	34%	9%
2nd District	20	4	2	5		
3rd District	24	23	31	27	13%	-13%
4th District	191	293	244	138	-28%	-43%

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Civil Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak	1	1				
Angeon	5	12	6	4		
Aniak	144	54	47	21	-85%	-55%
Chevak / Hooper Bay		18	3	1		
Emmonak	38	37	25	18	-53%	-28%
Fort Yukon	36	16	22	26	-28%	18%
Galena						
Gambell / Savoonga	23	30	10	12	-48%	
Hoonah	23	13	26	37	61%	42%
Kake	8	9	23	6		
Kiana / Noorvik / Selawik	6			3		
McGrath	2	4	1	13		
Pelican	10	4	5			
Point Hope						
Quinhagak						
Sand Point	7	9	14	7		
Skagway	5	13	3	14		
St. Marys	64	38	29	22	-66%	-24%
St. Paul Island	8	5	14	10		
Tanana		1				
Unalakleet						
Whittier	1	1		1		
Yakutat	13	21	16	24	85%	50%
Total	394	286	244	219	-44%	-10%
1st District	64	72	79	85	33%	8%
2nd District	30	31	10	15	-50%	
3rd District	16	15	28	18	13%	-36%
4th District	284	168	127	101	-64%	-20%

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Traffic / Minor Offense Case Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak						
Angoon		6	2			
Aniak	14	59	29	18	29%	-38%
Chevak / Hooper Bay				64		
Emmonak	251	366	345	259	3%	-25%
Fort Yukon	62	37	31	28	-55%	-10%
Galena						
Gambell / Savoonga	15	115	31	23	53%	-26%
Hoonah	140	192	282	195	39%	-31%
Kake	3	23	64	21		-67%
Kiana / Noorvik / Selawik						
McGrath	3	3	2	4		
Pelican			1	5		
Point Hope						
Quinhagak						
Sand Point	59	14	9			
Skagway	127	157	108	41	-68%	-62%
St. Marys	47	78	108	167	255%	55%
St. Paul Island	10		18	15		-17%
Tanana		22	46	10		
Unalakleet						
Whittier		15	8	9		
Yakutat	10	74	55	71		29%
Total	741	1,161	1,139	930	26%	-18%
1st District	280	452	512	333	19%	-35%
2nd District	15	115	31	23	53%	-26%
3rd District	69	29	35	24	-65%	-31%
4th District	377	565	561	550	46%	-2%

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Children's Matters Filings
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak						
Angoon						
Aniak						
Chevak / Hooper Bay						
Emmonak						
Fort Yukon	1		3	1		
Galena				13		
Gambell / Savoonga						
Hoonah						
Kake						
Kiana / Noorvik / Selawik						
McGrath						
Pelican						
Point Hope						
Quinhagak						
Sand Point	1	11	3	2		
Skagway			1			
St. Marys						
St. Paul Island	4	4	1	17		
Tanana						
Unalakleet						
Whittier						
Yakutat	1	5				
Total	7	20	8	33		
1st District	1	5	1			
2nd District						
3rd District	5	15	4	19		
4th District	1		3	14		

Fiscal Year July 1 - June 30

**District Courts - Lower Volume
Children's Matters Dispositions
FY 95 - FY 98**

Court	FY 95	FY 96	FY 97	FY 98	Change	
					FY 95 to FY 98	FY 97 to FY 98
Ambler / Kobuk / Shungnak						
Angoon						
Aniak						
Chevak / Hooper Bay						
Emmonak						
Fort Yukon				1		
Galena						
Gambell / Savoonga				12		
Hoonah						
Kake						
Kiana / Noorvik / Selawik						
McGrath						
Pelican						
Point Hope						
Quinhagak						
Sand Point		2	2	4		
Skagway						
St. Marys						
St. Paul Island	7	8		10		
Tanana						
Unalakleet						
Whittier						
Yakutat		3				
Total	7	13	2	27		
1st District		3				
2nd District				12		
3rd District	7	10	2	14		
4th District				1		

Fiscal Year July 1 - June 30

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Alaska Court System
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***Report to the Alaska Legislature:
Alternative Dispute Resolution
in the Alaska Court System***

December 1997

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Alternative Dispute Resolution in the Alaska Court System

Introduction and Structure of Report

In May of 1997, the Alaska Legislature directed the Alaska Judicial Council (AJC) to propose a program for alternative dispute resolution ("ADR") within the Alaska Court System (a copy of the legislation is attached at Appendix A). The legislature directed the AJC to review court-sanctioned alternative dispute resolution programs in other states and in the federal court system, consult with the Alaska Dispute Settlement Association, and confer with and obtain the approval of the Alaska Court System regarding the establishment of the ADR program. This report contains the requested research on court-connected ADR in other jurisdictions and the proposals developed by the Alaska Judicial Council and the Alaska Court System.

Part 1 summarizes programs in other state and federal courts. The section describes generally how other jurisdictions' ADR programs are administered, what types of cases go to ADR, how cases are referred, the qualifications of the neutrals used by the litigants and how programs are funded. Subsection I contains the information about state courts and subsection II contains the information about the federal courts.

Part 2 contains proposals recommended jointly by the Alaska Judicial Council and the Alaska Court System for ADR programs within the Alaska Court System. The proposals were developed in consultation with the Alaska Court System's Deputy Director and Staff Counsel, the Alaska Supreme Court Advisory Committee on Mediation, and the members of the Alaska Dispute Settlement Association ("ADSA"). They are based on the research from other state and federal jurisdictions, a written survey of all active members of the Alaska Bar Association, interviews with judges, meetings with heads of the Alaska Bar Association's substantive law sections, input from a non-custodial parents' group and numerous written and oral comments from members of ADSA and the Bar.

Part 1:

Survey of Programs in Other Jurisdictions

This section of the report first defines each of the three dispute resolution processes specified in the legislation and summarizes research regarding their effectiveness. It then surveys court-connected programs in other state courts and in the federal courts. The report does not include information about the many programs that operate outside of, or independent of, the courts.

I. Definitions & Summary of Research Findings

Alternative Dispute Resolution (ADR) in its most general sense refers to dispute resolution procedures other than adjudication by a court. For purposes of this legislation, the Alaska Legislature limited "alternative dispute resolution" to three processes: arbitration, early neutral evaluation and mediation. These procedures are defined below. (The following definitions come largely from the Center for Public Resource's JUDGE'S DESKBOOK ON COURT ADR (1993). More detailed explanations of the three processes are included in Appendix B.)

A. Arbitration

Arbitration is a mandatory, adjudicative process in which a third party other than a judge or jury reviews facts and hears arguments from both sides and then renders a decision. When courts mandate arbitration, it is non-binding unless the parties themselves agree to be bound. Dissatisfied parties can reject the advisory arbitration award and insist on a trial de novo. Court-annexed arbitration is notable in several ways. First, it is relatively old, the first program having been set up in Philadelphia in 1952. Second, it is common, having spread by the early 1990s to both federal and state courts.

Federal arbitration programs typically include minor civil cases seeking no more than a specified upper dollar limit. Although the trend over time has been to increase the dollar limits, arbitration-eligible cases in the federal courts typically range from

\$75,000 - \$150,000 in damages. In the state courts, arbitration-eligible cases typically have lower ceilings, usually around \$50,000 (although Hawaii's arbitration program has a \$150,000 ceiling). Most arbitration programs focus on routine contract, personal injury and property damage cases.

Court-ordered arbitration, unlike other forms of ADR, has been subjected to systematic empirical study for more than a decade.¹ Researchers first compared arbitrations to trials. They found that arbitration hearings were, on average, shorter than trials, involved less attorney preparation time than trials, cost both courts and private litigants less than trials, and generally required less time in the schedule queue than trials.²

A second generation of research examined arbitration's effects on case processing and settlement behavior. These analyses showed that in most instances, the arbitration process does not divert cases from trial, but rather provides an alternative to a settlement reached without a hearing.³ In other words, arbitration provides an alternative form of adjudication to many cases that would settle without any hearing.⁴

Thus, most court-ordered arbitration programs do not significantly reduce the number or rate of trials.⁵ However, litigants and their attorneys consistently have reported high levels of satisfaction with the arbitration process and its outcome, and this is true whether they won or lost.⁶

¹ *An Alternative View*, *supra* note 36, at 406.

² *Id.* at 406-07.

³ *Id.* at 407. See also MacCoun, *Unintended Consequences of Court Arbitration: A Cautionary Tale from New Jersey*, 14 JUSTICE SYSTEM JOURNAL 229 (1991). MacCoun reported on a study of court-annexed automobile arbitration in New Jersey. He found that after the arbitration program began, there was a significant reduction in the percentage of cases settled without third-party intervention, but no reliable decrease in the trial rate, and a significant increase in filing-to-termination time for auto cases assigned to the program. *Id.* at 229.

⁴ *An Alternative View*, *supra* note 36, at 408.

⁵ *Id.*

⁶ *Id.* at 415.

B. Early Neutral Evaluation

Early Neutral Evaluation ("ENE") began in 1983 with an experiment in the U.S. Northern District of California. The program became permanent in 1988. In early neutral evaluation, a neutral evaluator (usually a private attorney expert in the substance of the dispute) holds a brief, confidential, nonbinding session early in the litigation to hear both sides of the cases. The evaluator identifies the main issues in dispute, explores the possibility of settlement, and assesses the merit of the claims. The evaluator also may discuss and review ways of settling or simplifying the case with the parties, for example, a discovery or motion plan.

Courts experimenting with ENE have used it for a wide array of civil disputes including contract, product liability, labor and employment and personal injury cases. ENE also may be helpful in cases handled by inexperienced or poorly-prepared counsel, cases involving high levels of animosity among parties, complex legal disputes involving multiple issues or cases where the parties differ substantially on legal or factual issues.

The Western District of Missouri's ENE demonstration program recently was evaluated by the Federal Judicial Center.⁷ The program, known as the Early Assessment Program, was established in 1992. Cases were assigned to the program using a true experimental design, which is to say cases were randomly assigned to the program and to the regular litigation track. Data showed that the program led to earlier case resolution and decreased fees for clients in most cases as compared to the cases on the normal litigation track.⁸

⁷ See FEDERAL JUDICIAL CENTER, REPORT TO THE JUDICIAL CONFERENCE COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT ON THE CIVIL JUSTICE REFORM ACT DEMONSTRATION PROGRAMS (1997) [hereinafter "FEDERAL JUDICIAL CENTER REPORT"]. The report evaluated five demonstration programs established under the CJRA; two different state case management programs and three ADR programs.

⁸ Cases required to participate in the program had a median age at termination almost three months shorter than cases not permitted to participate. *Id.* at 215. Also, over two-thirds of attorneys who participated in the program reported that the process did reduce their client's litigation costs. *Id.* at 216.

C. Mediation

In mediation, a neutral, third party helps the parties reach their own voluntary settlement of some or all of the issues in the case. Mediators facilitate settlement by promoting communication among parties, exploring bases for agreement and the consequences of not settling, developing a cooperative, problem-solving approach, identifying the parties' underlying interests and identifying options beyond the parties' perceptions. Mediation styles vary along a continuum from facilitative to evaluative, depending on the mediator and the parties' needs. Facilitative mediators concentrate on enhancing parties' communication and creating an atmosphere conducive to conciliation but do not attempt to evaluate the case. Evaluative mediators, on the other hand, may offer opinions about case value, liability and legal issues.⁹

Mediation is considered one of the most versatile ADR processes. It can be helpful in a wide variety of cases and circumstances. Most often cited are cases in which the parties have a continuing relationship (for example, divorces with children, landlord-tenant, business disputes, employment); however, mediation also has been effective in cases not involving a continuing relationship (for example, personal injury cases).

As mediation has become more popular, researchers have tried to quantify the effects that mediation has on case processing and case outcomes. Most of the research has involved family mediation, although some studies address non-family civil mediation. Research about family mediation suggests that mediation can be an effective and efficient service that can be more helpful than litigation to divorcing couples in conflict.¹⁰ Research shows that the majority of clients entering family mediation across a variety of settings reach agreement (either in whole or in part), report satisfaction with the experience and consider it fair and responsive to their

⁹ Mediation should not be confused with judge-hosted settlement conferences. Judge-hosted settlement conferences typically are limited to discussions of the strengths and weaknesses of the case, case value, the legal arguments and the likely outcome at trial. The judge's status as a judicial officer invests the process with weight and commands the parties' respect. Traditionally, the judge's settlement role was mainly to referee a "horse trade," although that may be changing as judges are learning more techniques for facilitating settlement.

¹⁰ Benjamin and Irving, *Research in Family Mediation: Review and Implications*, 13 *MEDIATION QUARTERLY* 53, 53 (1995). The article reviewed fifty-one mediation studies and summarized their findings on process, outcomes and predictors of mediated agreements. *Id.*

needs.¹¹ Also, relitigation rates among mediation couples have been found to be consistently low, and lower than those found among their litigation counterparts.¹² Not surprisingly, the studies further suggest that the most effective use of mediation involves matching clients amenable to it with the specific service model best suited to their needs, as opposed to blanket referrals to mediation.¹³

A limited amount of research has addressed non-family civil mediation's effects on pace, litigation costs, court workload, trial rates, settlement rates and participant satisfaction.¹⁴ Studies on litigation pace are mixed but suggest that many mediation programs cause cases to be resolved faster than traditional adjudication. For example, two studies of state court programs showed that mediation cases were resolved more quickly than adjudicated cases, while another state court study found that cases referred to mediation had longer disposition times than cases that were adjudicated.¹⁵ The recent RAND study of four federal court mediation programs¹⁶ found significantly

¹¹ *Id.* at 68. These judgments are characteristic of both men and women, but especially of women. *Id.*

¹² *Id.* at 64.

¹³ *Id.* at 71.

¹⁴ KEILITZ, ed., NATIONAL SYMPOSIUM ON COURT-CONNECTED DISPUTE RESOLUTION RESEARCH: A REPORT ON CURRENT RESEARCH FINDINGS—IMPLICATIONS FOR COURTS AND FUTURE RESEARCH NEEDS 6 (National Center for State Courts 1994) [hereinafter "NATIONAL ADR RESEARCH SYMPOSIUM"]. The report summarized the findings of four studies of non-family mediation programs in Minnesota, Maine, Florida and the District of Columbia. *Id.*

¹⁵ *Id.* at 7-8.

¹⁶ KAKALIK, DUNWORTH, HILL, MCCAFFREY, OSHIRO, PACE & VAIANA, AN EVALUATION OF MEDIATION AND EARLY NEUTRAL EVALUATION UNDER THE CIVIL JUSTICE REFORM ACT (RAND 1996) [hereinafter "RAND"]. While the RAND report is one of the most empirically rigorous evaluations of ADR, a number of commentators have concerns about applying the findings to other programs. See CPR Judicial Project Advisory Council of the CPR Institute for Dispute Resolution, *Statement of Concerns Regarding the RAND ADR Study* (1997). The RAND report evaluated several programs that were new and examined them early, or as program refinements were under way. In several of the courts studied, substantial revisions to the ADR programs were made after the RAND data were collected. In addition, several of the programs had significant design flaws that were in the process of being corrected at the time they were being studied. In fact, none of the six programs evaluated were model programs; they apparently were selected because they were pilot programs with sufficiently large case loads to allow analysis. *Id.* Indeed, the RAND authors themselves cautioned restraint in drawing any general conclusions about the effects of ADR on cost and delay, adding that the findings did not support any "definitive policy recommendations." *Id.* at 4. The authors did suggest the possibility that the programs studied "may have had smaller effects that could not be identified as statistically significant in the

shorter disposition times in one of the programs and disposition times that approached but did not reach statistical significance in two others.¹⁷ In three of the four programs a majority of lawyers reported that mediation was helpful in reducing the time needed to resolve the case.¹⁸

Studies of court workloads showed that mediation cases required fewer court hearings and motions compared to control group cases.¹⁹ With regard to settlement rates, one of the studies found that 20% of the control group cases were resolved through trial or judicial finding, compared to 13% of the assigned ADR cases and 8% of the voluntary ADR cases.²⁰ The RAND study found the likelihood that a case settled just before or as a result of the mediation session ranged from 31-72%.²¹

The research on litigant costs is limited; however, in several studies (including the RAND study) attorneys reported that they thought mediation was less costly than typical case processing.²² On the other hand, the RAND study's empirical analysis of

sample of cases studied." *Id.* at xxxiv.

¹⁷ *Id.* at 34-35.

¹⁸ *Id.* at 47, Table 4.21.

¹⁹ NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 8.

²⁰ *Id.* at 8.

²¹ RAND, *supra* note 21, at 41. The program with the lowest settlement rate suffered from mandatory sessions that occurred very early in the process and were hosted by lawyers who were not required to be trained mediators. *Id.* at 92-93. Over half of the responding lawyers and mediators in that program said settlement was difficult because more discovery was needed. *Id.* at 46. For all the programs, impediments to settlement did not appear related to difficulty in the underlying subject matter such as factual or legal complexity. Nor did parties' or lawyers' reluctance to participate in mediation appear to bar success. Rather, the problem most often cited by lawyers and ADR providers was that the parties were not "ready" to settle. The second most often cited difficulty was that more discovery was needed. *Id.* at 45-46.

²² NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 9; see also RAND, *supra* note 21, at 37-38 and Table 4.10 (reporting that half or more of the lawyers surveyed in two of the four mediation programs thought that mediation had decreased total case costs). The RAND report noted that the lawyers' subjective opinions on costs were not always in agreement with the objective data. *Id.* at 35.

attorney work hours found "no strong statistical evidence that lawyer work hours are significantly affected by ADR, either up or down...."²³

Studies of participant satisfaction suggest that both litigants and attorneys find mediation to be fair and satisfactory, although the data comparing satisfaction in mediation to satisfaction in litigation are mixed. Ninety percent of lawyers and a slightly smaller percentage of litigants surveyed in the RAND study felt that the ADR process was fair.²⁴ In one mediation study from Minnesota, litigants in mediation rated it more favorably than did litigants in the judicial process, while attorneys rated the judicial process more highly.²⁵ In another study, parties rated mediation more highly than parties rated unassisted negotiations.²⁶

Participants in ADR programs generally are supportive of them. In the RAND study, most of the lawyers felt that the programs were worthwhile in general and beneficial for their individual cases.²⁷ Only a small percentage in any district felt that the program should be dropped. Litigants felt the same, although they were a little less positive than the lawyers.²⁸

II. ADR in State Courts

A number of authors have published comprehensive surveys of court-connected ADR programs in other jurisdictions. The two upon which this report relies most heavily are: ELIZABETH PLAPINGER & MARGARET SHAW, *COURT ADR: ELEMENTS OF PROGRAM DESIGN* (Center for Public Resources, 1992) and ELIZABETH PLAPINGER &

²³ RAND, *supra* note 21, at 37. The RAND researchers found that lawyer work hours per litigant were actually significantly higher for cases in one program. In this program, judges encouraged the tougher cases to volunteer for mediation. The RAND researchers concluded that the non-mediation cases in this program probably were not truly comparable to the mediation cases. *Id.*

²⁴ *Id.* at 49.

²⁵ NATIONAL ADR RESEARCH SYMPOSIUM, *supra* note 19, at 8. About 75% of both groups viewed mediation as fair. *Id.*

²⁶ *Id.* The parties in mediation also had a greater perception that the outcome was fair and that the full story was told. *Id.*

²⁷ RAND, *supra* note 21, at 51.

²⁸ *Id.*

DONNA STIENSTRA, *ADR AND SETTLEMENT IN THE FEDERAL DISTRICT COURTS: A SOURCEBOOK FOR JUDGES & LAWYERS* (1996). Most of the information contained in this section comes from those sources, supplemented by information from the National Institute for Dispute Resolution, the National Center for State Courts, recent research, and discussions with program administrators in other jurisdictions. Because the number and variety of individual county or local programs throughout the nation is so large, this report will focus for the most part on statewide programs.

A. Program Models in the State Courts

State courts structure and administer their ADR programs in a variety of ways. While features of many programs are similar, they often differ in how they are established, their goals, policies and procedures.²⁹ They also vary in terms of whether case referrals are mandatory or voluntary,³⁰ what kinds of cases are referred to ADR and which types of ADR processes the cases are referred to.

ADR programs are organized with different levels of attachment to the court. In some states, court employees work as neutrals in the courthouse. In others, volunteer neutrals handle cases for the courts as needed. In yet others, the court system contracts with a bar association or nonprofit corporation to handle court-referred disputes. In some jurisdictions, individual neutrals certified by the courts take referrals but have no contractual relationship with the court.³¹

Second, programs vary by their goals. Goals cited by courts in adopting ADR programs have included: reducing judicial workload, speeding case resolution, decreasing the court or the parties' cost to resolve the case, handling cases more effectively, providing litigants with more options, better results or greater satisfaction

²⁹ Press, *Court-Connected ADR: Policies and Issues*, NIDR FORUM 4 (1995) [hereinafter "*Court-Connected ADR*"].

³⁰ The terms "voluntary" and "mandatory" describe how cases enter a court ADR process. "Voluntary" ADR generally refers to use which is consented to by all the parties. "Mandatory" ADR generally refers to ADR usage compelled by the court. Of course, the definitions can become blurred in some programs that have both compulsory and voluntary elements (for example, parties are required to attend an ADR orientation session but need not agree to use the process, or a judge strongly encourages but does not order the parties to use an ADR process). Some programs are "presumptively mandatory," meaning that the court presumes the parties will use an ADR process unless they opt out.

³¹ *Court-Connected ADR*, *supra* note 2, at 5.

with the process, decreasing relitigation, improving the relationship between the disputing parties, or responding to political or legislative directives.³² The most successful ADR programs are adopted in response to a specific need or goal. Carefully designed programs have proven effective at meeting these and other goals; however, poorly designed programs have proven less effective.

Third, programs vary by their implementation authorization. Some programs are established by state statute, while others are established by court rule or even by administrative order. For example, all of the court-connected ADR programs in Florida, currently established by statute and comprehensive court rules, began as experiments.³³ In Texas, comprehensive statutes authorize court-annexed ADR and set out the details of the ADR system. In other states (for example Arizona, Indiana and Minnesota), laws authorize the state supreme court to use its rule-making authority to adopt ADR programs. Benefits to establishing comprehensive, statewide statutes or court rules include program consistency and continuity.³⁴ On the other hand, statewide rules or statutes lack the flexibility to respond to the changing needs of evolving programs.³⁵

Fourth, programs vary by their funding. Dispute resolution advocates believe that public funding for dispute resolution options should be part of the justice system budget in every state. Thus, many court-connected ADR programs are funded by state legislative appropriations or local court budgets. On the other hand, state legislatures often are unwilling to devote scarce public funds to ADR programs, and some court administrators argue that court budgets should be reserved for "core" court functions. Alternatives to state funding include court filing fees, dispute resolution user fees, foundation grants or bar association assistance. Florida charges participating neutrals

³² PLAPINGER & SHAW, COURT ADR: ELEMENTS OF PROGRAM DESIGN 2 (1992).

³³ *Court-Connected ADR*, *supra* note 2, at 6. Florida's mediation program is one of the most comprehensive in the country. Under a 1987 statute, trial judges have the authority to refer any contested civil matter to mediation or arbitration, subject to limited exceptions. The program is operated by the Florida Dispute Resolution Center, a joint program of Florida State University College of Law and the Florida Supreme Court. The center mediates cases through citizen dispute resolution centers, county programs and circuit civil programs. *Id.*

³⁴ For example, programs implemented by an individual judge in the judge's own court often fall into disuse when the judge is transferred or moves to another court.

³⁵ *Court-Connected ADR*, *supra* note 2, at 6.

"certification fees." Some of the most effective programs rely on a combination of funding sources, along with reliance on volunteers.³⁶

B. ADR Programs In Other States

As of 1992, nineteen states had enacted statewide ADR legislation or had established task forces or commissions for statewide court-connected ADR program planning.³⁷ Information compiled by the National Center for State Courts in the early 1990s showed over 1,200 ADR programs throughout the country receiving referrals from state courts. In addition, numerous individual courts or judges have used ADR on a case-by-case-basis. The two most common forms of ADR in other jurisdictions are mediation and arbitration.

1. Mediation

Mediation became more popular in state courts than arbitration in the 1990s.³⁸ As of 1995, 27 states had formally incorporated various ADR methods other than arbitration into their court systems statewide (most of these programs involved mediation).³⁹ The most common type of ADR program offered by courts probably is divorce mediation. Information published in 1993 showed that about 205 of the nation's approximately 2,420 domestic relations courts offered court-based or court-annexed

³⁶ *Id.*

³⁷ The states included: Arizona, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Maine, Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Tennessee, Texas, Virginia and Wisconsin. FLAPINGER & SHAW, *supra* note 5, at x n. A6.

³⁸ California's courts provide an example of the popularity of mediation services. A 1994 survey of 46 of the 58 California state superior courts found that thirty-six courts (78%) provided mediation for matters other than child custody disputes. Thirty-two courts (70%) conducted mediation in guardianship matters; nine courts (20%) provided mediation for certain juvenile dependence cases and in property disputes; eight courts (17%) provided mediation for certain civil disputes; and five courts (11%) provided mediation for child support. Providers of these services were primarily Family Court Services or mediation services staff (54% of courts) or probation officers (20% of courts). Contractors, court volunteers, other courts staff, outside referrals or other providers also provided mediation services. CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS, A SURVEY OF CALIFORNIA FAMILY COURTS: ADR AND AUXILIARY SERVICES 2-3 (1994).

³⁹ Press, *Getting to Excellence in Court System ADR*, NIDR NEWS, No. 2, at 1 (1996).

services for divorce disputes.⁴⁰ In 1993, thirty-eight states and the District of Columbia had instituted programs to mediate custody, visitation, child support and other domestic relations disputes.⁴¹ In recent years, a number of states (among them Arizona, California, Florida, Maine, Oregon, Washington and Wisconsin) have mandated mediation in child custody and visitation disputes. Others (for example, Colorado, Kansas, Kentucky and New Mexico) lack a statewide mediation requirement, but have mandated mediation in child custody and visitation disputes in most or all of their courts.

The usefulness of research on mediation is hampered by the great variability in mediation (and other ADR) programs throughout the federal courts and in the states. Programs differ substantially in program design, mediator training, funding, purpose and quality. This great variability makes it difficult to apply conclusions about one program to another program.⁴² Future research hopefully will start to identify significant variables in program development and implementation that contribute to specific outcomes, such as reduced times to settlement or decreased costs.⁴³

2. Arbitration

During the 1980s, the largest growth in ADR programs was in the creation of court-connected arbitration programs. As of 1990, twenty states (including the District

⁴⁰ PEARSON, A REPORT ON CURRENT RESEARCH FINDINGS FOR THE NATIONAL SYMPOSIUM ON COURT-CONNECTED DISPUTE RESOLUTION RESEARCH 55 (1993). Of these, 75 categorically mandated participation, 75 permitted case-by-case judicial (mandatory) referrals, and the remaining 55 were initiated by one or both of the parties. About half of the programs focused on custody and visitation disputes, while the other half included child support, spousal support and property division issues as well. *Id.*

⁴¹ NATIONAL CENTER FOR STATE COURTS, MULTI-STATE ASSESSMENT OF DIVORCE MEDIATION AND TRADITIONAL COURT PROCESSING 11 (1992) (hereinafter "MULTI-STATE ASSESSMENT"). The Association of Family and Conciliation Courts counted 33 states with mandatory mediation programs in at least one court hearing family issues. *Id.*

⁴² Plapinger and McEwen have said that in one sense, the RAND study might be considered "a snapshot of six imperfect and changing versions of mediation...out of the 51 mediation...programs currently operating the federal district courts" rather than an evaluation of ADR's true potential in the federal courts. McEwen & Plapinger, *RAND Report Points Way to Next Generation of ADR Research*, 3 DISPUTE RESOLUTION MAGAZINE 10 (Summer 1997).

⁴³ *Id.* at 11.

of Columbia) had implemented mandatory, non-binding, court-ordered arbitration programs either statewide or in major metropolitan trial courts.⁴⁴ While a few programs applied to all civil damage suits, most had either an upper dollar limit, a substantive limitation or both.⁴⁵

3. Early Neutral Evaluation

To date, only a few state courts (among them Colorado, Ohio and Hawaii) have developed or have considered developing ENE initiatives. The District of Columbia began an experimental ENE program, but discontinued it because it duplicated its already-established mediation program. ENE has been more popular in federal courts; federal ENE programs are discussed *infra* at Section IIIC(3).

C. Referring Cases to ADR

An important consideration is how to refer cases to the ADR program. Should the court rely entirely on the parties' voluntary decision to use ADR processes or should the court order parties to use ADR?

1. Voluntary Referrals

Relying completely on voluntary referrals is problematic, because purely voluntary programs typically are underused.⁴⁶ Researchers have cited a number of possible reasons for this fact, including the observation that attorneys often are reluctant to request ADR because the opponent may see it as a sign of weakness. Yet ADR research consistently has shown that the vast majority of lawyers and litigants surveyed approved of the court ADR programs that they participated in, found them helpful and wanted them continued.⁴⁷ Because lawyer enthusiasm for the ADR

⁴⁴ Hensler, *Court-Ordered Arbitration: An Alternative View*, U. CHICAGO LEGAL FORUM 399, 404 (1990) [hereinafter "*An Alternative View*"].

⁴⁵ *Id.*; *A Taxonomy of Judicial ADR* in ALTERNATIVES TO THE HIGH COST OF LITIGATION, at 109 (Center for Public Resources 1991).

⁴⁶ Voluntary programs studied in the RAND report had much lower case volumes than mandatory programs. RAND, *supra* note 21, at 52.

⁴⁷ *Id.* at 51.

experience typically does not translate into voluntary use, many courts with ADR programs have developed procedures for actively encouraging parties voluntarily to choose ADR.⁴⁸

One method of encouraging voluntary use is to require the parties or their attorneys to confer with the opposing parties or attorneys to consider the feasibility of ADR options. For example, in Hawaii, the litigants are required to confer about ADR in person within eight months of filing the complaint.⁴⁹ The pretrial statement filed with the court must identify any party who objects to using an ADR process and the reason(s) for the objection.⁵⁰ Minnesota's Supreme Court calls on litigants to discuss case management issues, including selection and timing of an ADR process, within 45 days of filing, and to report their results to the court.

In Colorado, the rules of civil procedure require parties in district court civil cases to submit, within 45 days after the case is at issue, a proposed Case Management Order which includes the parties' "plans for future efforts to settle the case." In 1993, the Colorado Supreme Court adopted a rule of professional conduct exhorting lawyers to advise their litigation clients of alternative forms of dispute resolution.⁵¹

Other states encourage voluntary use by educating the parties about the availability and purposes of ADR services. For example, the metropolitan trial courts in Kansas City, Missouri have required lawyers to provide their clients with an ADR information sheet prepared by the court.

⁴⁸ See McEwen & Plapinger, *supra* note 34, at 11. Future research hopefully will tell us more about how lawyers make decisions about using ADR. *Id.*

⁴⁹ See Hawai'i Rule of the Circuit Courts 12(b)(6).

⁵⁰ See *id.* at 12(b)(7).

⁵¹ "In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought."

2. Mandatory Referrals

Some state court ADR programs are mandatory, meaning that participation is mandated either by category of case or on a case-by-case basis. Statutes or court rules authorizing mandatory referral of cases to ADR typically include procedures for parties to remove the case from ADR.⁵² Generally, parties may file a motion to opt out of the referral, with the granting of the motion left to the judge's discretion. Few statutes or rules provide criteria to guide the judge in deciding the motion other than "for good cause shown."⁵³

While some mandatory ADR programs offer litigants a choice of ADR procedures (the "multi-door" courthouse), in most judges refer individually-selected cases to a specific ADR process. Alaska's Civil Rule 100 falls into the "case-by-case referral" category, although the Alaska Court System has no ADR program to take referrals. In Minnesota, judges supervise conferences with the parties to attempt to find an ADR process that the parties will accept; however, the judge makes the ultimate decision in ordering the parties to a particular non-binding process.

(a) **Mandatory Mediation.** Most court-based mediation programs rely on case-by-case referrals. Criteria for selecting cases for mediation are seldom articulated and often left to the discretion of individual judges or others (e.g., court staff) who screen cases for ADR suitability. In practice, most judges select cases for mediation based on the nature of the parties, the relationship between them, and the number and types of issues involved.

Some mediation programs, like Maine's, use a combination of mandatory and discretionary referrals. In Maine, mediation has been mandatory in domestic relations cases for over a decade; mediation of small claims cases has been mandatory since 1996. Judges may refer other civil cases to mediation at their discretion.

⁵² *Court-Connected ADR*, *supra* note 2, at 37.

⁵³ The Indiana Supreme Court rules are an exception. They list a number of factors for the judge to consider in deciding motions to opt out of mediation, including "the willingness of the parties to mutually resolve their dispute, the ability of the parties to participate in the mediation process, the need for discovery and the extent to which it has been conducted, and any other factors which affect the potential for fair resolution" through mediation. In Alaska, Civil Rule 100 authorizes a judge to consider "whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim."

(b) Mandatory Arbitration. Cases generally are selected for court-connected arbitration based on category of case (usually categorized by subject matter or amount in controversy). Many statutes or court rules limit arbitration programs to smaller money damage suits, personal injury, property damage and contract cases. Deborah Hensler, a well-respected researcher of court ADR with the RAND Corporation's Institute for Civil Justice, has suggested that arbitration, because of its discouragement of formal briefing and motions, "is not designed to deal with complex legal issues, which may arise in small or large money damage suits as well as in other disputes."⁵⁴

One example of a longstanding arbitration program is Washington state's popular court-connected arbitration program. In effect since 1980, the program provides non-binding⁵⁵ arbitration for civil, non-domestic cases valued at \$35,000 or less per claim.

About five months after a case has been filed, the litigants must choose whether they will keep their trial date or go to arbitration instead. The parties may choose their own arbitrator or be assigned one by the program director. The state and the county each pay half of the arbitrators fees and the program administration costs. After arbitration, the disappointed party may ask for a trial de novo; however, a requestor who fails to better his or her outcome at trial becomes liable for the opposing side's trial fees and costs. The program administrator believes the program's strength comes from simple, precise rules; administrative support that permits the rules to be quickly and consistently enforced; a large and experienced pool of arbitrators to draw from; and a disincentive to appeal and training for the arbitrators. However, the program has not formally been evaluated.

(c) Mandatory Early Neutral Evaluation. Criteria for cases selected for ENE programs vary among jurisdictions. A state court ENE program in Denver, Colorado reported targeting cases possessing certain characteristics such as multiple parties, numerous claims for relief, complex legal issues, long trials and continuing discovery disputes. In practice, ADR selections often were made on the basis of the "fat

⁵⁴ Hensler, *Court-Annexed Arbitration*, 23, 43, in CPR Legal Program, *ADR AND THE COURTS: A MANUAL FOR JUDGES AND LAWYERS* (1987).

⁵⁵ In non-binding arbitration, either party may request a trial de novo after the arbitration.

file" theory, in which the fat files among a group of cases filed 90 days earlier ended up fitting the program's selection criteria.

D. Qualifications and Ethics of Neutrals

Once court systems decide to refer cases to an alternative dispute resolution process, they often consider a host of issues related to managing the neutrals and assuring the quality of their performance, including selection, qualifications, funding, training and monitoring.

Many commentators believe that when courts employ mediators or early neutral evaluators or make referrals to private neutrals, some minimum standards are necessary to protect the public. Thus, courts in many other states that operate ADR programs establish and enforce minimum qualifications for neutrals to whom cases are referred.

States' solutions to the question of neutral qualifications vary dramatically. First, neutral qualifications vary depending on the ADR process. Because mediation, arbitration and early neutral evaluation involve different skills, different qualifications often are required for the different processes.

Second, qualifications vary among programs. At one end, the District of Columbia has a comprehensive selection, training and monitoring program. At the other end, some states simply supply the names of neutrals who have put themselves on a list.

Maine's Court Alternative Dispute Resolution Service (CADRES) selects and maintains four distinct rosters of ADR providers corresponding to case type: domestic relations, small claims, land use/environmental and general civil. CADRES established training and experience criteria for each roster.

An issue closely related to minimum qualifications concerns ethical standards of practice. Some states (Hawaii, Georgia and Florida among them) and national dispute resolution organizations (The Academy of Family Mediators, The Society of Professionals in Dispute Resolution, and the American Bar Association) have adopted

independent codes of professional conduct for mediators or for neutrals in general.⁶⁶ In 1995, the American Arbitration Association, SPIDR and the ABA Section on Dispute resolution adopted a joint code of professional conduct. In 1992, the Florida Supreme Court adopted a grievance procedure to accompany its code of conduct.⁶⁷ In 1995, the Center for Public Resources Institute for Dispute Resolution and Georgetown University Law Center established a comprehensive, multi-year project to encourage sound ADR ethics practices and rule-making.⁶⁸

1. Mediator Qualifications

No currently available research conclusively addresses the issue of mediator qualifications. No particular type or amount of education or job experience has been shown to predict success as a mediator. Successful neutrals come from many different backgrounds. Research has shown that the optimal way to qualify mediators is on the basis of performance, knowledge and skills, rather than by degree-based criteria. In other words, a good mediator exhibits certain skills and abilities that can not be predicted by legal training or experience. It follows that successful mediators need not be attorneys. Despite the lack of evidence that legal training predicts skilled mediators, many state courts require civil case mediators to possess law degrees and legal experience.

Some state courts have adopted qualifications based on experience and training. For example, the Ohio Supreme Court requires qualifications for mediators employed by the court or to whom the court refers cases involving the allocation of parental rights and responsibilities for the care of or visitation with minor children. Minimally qualified family mediators have: (1) a bachelor's degree or equivalent educational experience as is satisfactory to the court, (2) at least two years of professional experience with families, (3) completion of at least twelve hours of basic mediation training or equivalent experience as a mediator as is satisfactory to the court, and (4) after satisfying requirements 1-3, completion of at least forty hours of specialized family or divorce mediation training in a program approved by the Supreme Court

⁶⁶ Press, *Getting to Excellence in Court System ADR*, *supra* note 12, at 8.

⁶⁷ *Id.*

⁶⁸ Plapinger, *CPR and Georgetown Collaborate on Ethics and Standards*, NIDR NEWS, Vol. 3, No. 2, at 6 (1996).

Commission on Continuing Legal Education. "Professional experience with families" includes counseling, casework, legal representation in family law matters or equivalent experience satisfactory to the court.

Only a minority of states qualify mediators based on performance, primarily because performance-based tests are expensive to administer and difficult to develop. However, the trend toward performance-based qualifications is increasing: Oklahoma, Texas and Utah base mediator eligibility on performance, knowledge and skills.

Of particular note is the San Diego Mediation Center's performance-based credentialing program, developed in 1992. The eleven-member Credentialing Committee identified certain standards of practice, including specific skills, techniques and abilities, that predict mediator competence. The Committee created a procedure, including a performance-based test, to assess mediator competence. A credential from the San Diego Mediation Center requires that the applicant pass the performance-based test, complete a minimum of 25 hours of skills training, and have performed a minimum of six mediations (may include up to two simulated and four actual cases) within the past three years or 18 hours of actual mediating.

Most state and federal courts require mediators to complete training programs before they can handle cases. While the duration and format of the trainings vary, most states require twenty to forty hours of classroom training, often supplemented by supervised mediations and observations. Some courts ask the trainers to evaluate the candidates' performance during the training program. A few states require continuing education and apprenticeships.

Several resources exist to help lawyers and litigants evaluate the qualifications of potential mediators. The Alaska Judicial Council has developed a consumer guide to selecting a mediator that lists some of the most important skills, abilities and attributes to look for in a mediator. The Ohio Commission on Dispute Resolution has developed a consumer guide for mediation training ("what you need to know to select a trainer"). The Alaska Court System publishes information about mediators who asked to be placed in the court system's Directory of Mediators.

2. Arbitrator Qualifications

Most courts require arbitrators to be attorneys, although some courts permit non-lawyer arbitrators to serve at the parties' request. Attorney-arbitrators typically must be admitted to practice to the bar of the jurisdiction with five to fifteen years of experience as a practicing attorney, and certification from the court that the attorney is eligible to serve. Arizona requires arbitration applicants to identify three areas of legal expertise and limits their arbitration referrals to those areas. Classroom training for arbitrators is not widely required, although Florida and Georgia have required some classroom training (four to six hours).

3. Early Neutral Evaluator Qualifications

The handful of state courts that have offered early neutral evaluation have sought lawyers who are experts in the substantive areas targeted for the ENE programs. Some courts require specialized training.

E. Funding

Funding for ADR programs involves two separate yet related issues: how to pay the court's administrative costs, and how to compensate the neutrals who provide the services. States have come up with a variety of solutions to both these problems.

1. Program Funding

With regard to funding the administrative costs of ADR programs, states look to a number of sources. The most common sources include:

- ◆ state or local budget allocation;
- ◆ filing fee additions on state court filings;
- ◆ grants;
- ◆ pilot project funding;
- ◆ bar or other association funding;
- ◆ dispute resolution service fees assessed against users of the service; and
- ◆ practitioner fees (for example, for certification).⁵⁹

⁵⁹ *Court-Connected ADR*, *supra* note 2, at 8.

New Jersey is an example of a state court ADR program funded by statutory appropriations. The Denver metropolitan courts have funded individual ADR programs out of their own operating funds. In California, the Los Angeles Bar Association and the Superior and Municipal Courts of Los Angeles County jointly sponsored dispute resolution services. Oklahoma, Oregon and Texas courts have funded court ADR programs by adding surcharges to general civil filing fees. The Middlesex County, Massachusetts Superior Court has imposed a \$50 administrative fee on ADR participants in the multi-door courthouse. Florida charges participating neutrals "certification fees" which help fund ADR services.

Maine funds its ADR program using a statutorily dedicated funding stream based on retention of a percentage of ADR fees. Fees are relatively low; for example, \$120 for a domestic relations mediation, \$175 for a land/environmental mediation. For other civil case mediation, the court charges an administrative fee of \$20, and the parties pay the mediator directly.

2. Compensation of Neutrals

The second issue is that of how to compensate the neutrals. Plapinger and Shaw reported in 1992 that "the majority of federal and state court ADR programs continue to rely on volunteer neutrals."⁶⁰ However, reliance on pro bono service raises two potential problems: can volunteers be expected to handle the volume of cases referred to ADR, and how does reliance on volunteers affect the quality of the ADR services? These concerns suggest that pro bono service should be limited to ADR assignments of limited duration and infrequent service, and that pro bono neutrals should be well trained and supervised.

Many state court ADR programs that do not use pro bono neutrals require parties to pay the fees of the ADR neutral. Data collected by the National Center on State Courts in the early 1990s suggested that litigants paid neutrals in about 29% of all mediation programs handling contract and tort claims accepting referrals from state courts. Some states fund neutrals' services in the same manner as judges are funded, from their own operating budgets.

⁶⁰ PLAPINGER & SHAW, *supra* note 5, at 49.

Some states regulate neutrals' fees in an effort to minimize litigants' costs. Courts regulate fees by court rule, case-by-case or by statute. Court-regulated fees and fees paid outright by the court often fall below market rates.

III. ADR in Federal Courts

The main impetus behind ADR program adoption in the federal courts was the Civil Justice Reform Act of 1990 (28 U.S.C. §§ 471 *et seq.*).⁶¹ The CJRA changed federal court ADR procedures from individual judge-based initiatives to court-managed, district wide programs.

A. ADR in Alaska's Local District Court

Alaska's local district court has endorsed the concept of alternative dispute resolution as one that can help reduce cost and delay, but it has not established any court-connected programs. The local federal court based its decision not to implement an ADR program on the CJRA advisory group's conclusion that the district is too small and its resources too limited to offer court-connected ADR. More recently, however, the federal court has been reconsidering the possibility of establishing a court-based ADR program. A committee has been established to study the issue.

Recently, the federal court adopted a local rule on mediation. It is modeled after the state court's Civil Rule 100.⁶²

B. Program Models in Other Federal Courts

By 1995, almost all of the 94 federal districts had authorized or established at least one court-wide ADR program, including mediation, arbitration, early neutral evaluation (ENE), summary jury trials, judge-hosted settlement conferences and settlement weeks.⁶³ Some courts' programs predated the CJRA.

⁶¹ Fewer than one-third of the districts had ADR programs before the Act. PAPLINGER & STIENSTRA, *AIR AND SETTLEMENT IN THE FEDERAL DISTRICT COURTS: A SOURCEBOOK FOR JUDGES AND LAWYERS* 3 (1996) [hereinafter "FEDERAL SOURCEBOOK"].

⁶² See D.Ak.L.R. 52.2 (Mediation).

⁶³ FEDERAL SOURCEBOOK *supra* note 59, at Table 1 (pp.15-19).

Under the CJRA, Congress specifically designated three courts (the Northern District of California, the Western District of Missouri, and the Northern District of West Virginia) as "demonstration districts."⁶⁴ Congress instructed these courts to experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution. Under another provision of the CJRA, ten other districts were selected by the Judicial Conference to serve as pilot courts for implementation of six case management principles considered promising by Congress, among them alternative dispute resolution.

By 1995, nearly a dozen federal courts had appointed a full-time ADR administrator or director to manage and monitor the court's ADR programs.⁶⁵ While some courts used special funding under the CJRA to pay the ADR coordinator, others supported the position from their general budget. Courts without ADR administrators often assign part-time ADR responsibilities to a member of the clerk's office staff.

C. Types of ADR Offered in Federal Courts

The federal courts offer mediation, arbitration, early neutral evaluation and other forms of ADR, including mini-trials and judge-hosted settlement conferences.

1. Mediation

By 1995, mediation had become the primary ADR process offered in the federal district courts, followed by arbitration. Forty-nine of the federal districts had established mediation programs by 1995.⁶⁶

⁶⁴ The courts were chosen based on individual judges' demonstrated interest in and knowledge about ADR.

⁶⁵ FEDERAL SOURCEBOOK, *supra* note 59, at 12.

⁶⁶ *Id.* at Table 3.

2. Arbitration

Twenty-two federal district courts had arbitration programs in 1995.⁶⁷ Those included eighteen courts in which arbitration was statutorily authorized,⁶⁸ and two others that offered arbitration as the second step of a combined mediation/arbitration procedure. Several other courts authorized use of arbitration but had not established court-annexed procedures.

3. Early Neutral Evaluation

In 1995, fourteen federal district courts had established ENE programs.⁶⁹ Recently, one of the first two courts to use ENE, the District of Columbia, disbanded its program, finding it unnecessary in light of the court's mediation program.⁷⁰ The Western District of Missouri's early assessment program was recently evaluated by the Federal Judicial Center, which found that cases were resolved earlier at less cost to clients as compared to cases on the normal litigation track.⁷¹

4. Multi-Door

Several courts offered a variety of ADR options. Most of the ten courts authorized to establish mandatory arbitration programs added mediation to their offerings. At least six courts offered a full array of options, including arbitration, mediation, ENE and summary jury trial.⁷² The Northern District of California's ADR Multi-Option program, established in 1993, is an example of this "menu" approach to ADR.

⁶⁷ *Id.* at Table 4.

⁶⁸ Federal law authorizes ten courts to require parties to participate in arbitration and ten to offer arbitration at the parties' option. *Id.* at 4 n.1.

⁶⁹ *Id.* at Table 5.

⁷⁰ *Id.* at 5.

⁷¹ See Section I(B) for details.

⁷² FEDERAL SOURCEBOOK, *supra* note 59, at 5.

The Northern District of California's multi-option ADR program is a demonstration program. California Northern offers attorneys their choice of ADR processes. Under that program, litigants in certain civil cases are presumptively required to participate in one non-binding ADR process offered by the court. Litigants may substitute a similar process offered by a private provider if they wish. If the parties cannot agree on an ADR procedure before the case management conference, the judge discusses the ADR options at that conference. The parties may seek by motion or at the case management conference to persuade the judge that ADR would be inappropriate.⁷³

D. Referring Cases to ADR

As with the state court programs, some federal programs are mandatory and some voluntary. Within the category of mandatory referrals, referral procedures range from offering litigants a choice of ADR options (the "multi-door" courthouse), referring individually-selected cases to a specific ADR process, or referring categories of cases (usually categorized by subject matter or amount in controversy) to a particular ADR process. Generally, federal courts hold ADR sessions relatively early in the litigation.

Most of the federal court programs leave to the judge or parties the identification of cases suitable for ADR. Many courts expect attorneys to understand ADR in general and the court's ADR programs in particular. Local rules often require attorneys to discuss ADR with clients and opponents, to address ADR in case management plans, and to be prepared to discuss ADR with judges at regularly scheduled status conferences. The Northern District of California published a glossy brochure describing each of the court's numerous ADR programs and distributed the brochure with each civil complaint.

1. Mediation

Referrals to mediation programs seldom are made mandatorily and automatically by case type. Instead, most programs require the judge, often in consultation with counsel, to identify cases appropriate for ADR. In this way, judges

⁷³ *Id.* at 91-92.

educate attorneys and clients about ADR.⁷⁴ In some courts, mediation sessions are held shortly after the answer is filed. Across all courts, discovery planning often is linked to mediation, and mediation often occurs well before discovery is complete.⁷⁵

2. Arbitration

Even within the mandatory arbitration programs, referrals generally are presumptively mandatory. Courts with presumptively mandatory programs provide mechanisms for seeking removal from arbitration. Courts with voluntary arbitration programs either permit participation only if the parties voluntarily come forward or refer cases on the basis of objective criteria and then permit unquestioned opt-out by the parties.⁷⁶

3. Early Neutral Evaluation

In the Western District of Missouri's ENE program, a percentage of all civil cases (except prisoner and social security) are randomly assigned to the ENE program. The ENE meeting, which clients must attend, is held within thirty days of filing responsive pleadings. The Western District of Missouri holds the first early neutral evaluation session within thirty days of filing the answer, and the Eastern District of Pennsylvania holds the conference as soon as possible after the defendant's first appearance.

E. Qualifications and Ethics of Neutrals

Almost every district has created its own rosters of neutrals, rather than turning to outside organizations for ADR services.⁷⁷ Most courts set eligibility criteria for listing on the court roster. A significant number of courts include on the roster anyone

⁷⁴ *Id.* at 7.

⁷⁵ *Id.* at 8-9.

⁷⁶ *Id.*

⁷⁷ *Id.* at 9.

certified as an ADR neutral by a bar association or state court system.⁷⁸ Most federal courts require neutrals to be attorneys, although some permit non-lawyers to serve at the parties' request.⁷⁹

Courts take a number of different approaches to training the neutrals on their rosters. Some give no training, some accept as sufficient training from other court systems or organizations, and some courts conduct the training themselves.⁸⁰ A few federal courts have developed ethical guidelines or standards of practice for the neutrals on their rosters.

1. Mediator Qualifications

Some federal courts use judges or magistrate judges to provide mediation services; however, most districts rely on nonjudicial neutrals. Of the forty-three federal court mediation programs that used nonjudge neutrals in 1996, only three relied on an outside organization to provide ADR services. However, lawyer-neutrals on court rosters also work as private neutrals. One court (the Western District of Missouri) has hired an in-house mediator.

Like the state courts, federal courts often require mediators to possess a law degree and legal experience; however, a number of federal courts permit the appointment of nonlawyer mediators. The District of Columbia's federal court mediation program selects lawyer-mediators on the basis of recommendations from local bar association presidents and others. Federal courts also usually require mediators to complete training programs before handling cases.

2. Arbitrator Qualifications

Like the state courts, most federal courts require arbitrators to be attorneys, although some permit non-attorneys to serve at the parties' request. Attorney-arbitrators typically must be admitted to practice to the bar of the jurisdiction with five to fifteen years of experience as a practicing attorney, and certification from the court

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

that the attorney is eligible to serve. Classroom training for arbitrators is not widely required, although some courts also require a recommendation from a judge or committee stating that the candidate is competent to perform the duties of an arbitrator.⁸¹ The Northern District of California requires that attorney-arbitrators spend at least 50% of their professional time in litigation, or have substantial neutral or negotiating experience.

3. Early Neutral Evaluator Qualifications

Some federal courts use judges or magistrate judges to provide ENE services; however, most districts rely on nonjudicial neutrals. They generally seek lawyers who are experts in the substantive areas targeted for the ENE programs. The earlier programs seldom had other formal eligibility requirements, although some of the newer programs are more specific about years of practice. One federal court (the Eastern District of New York) required in addition "maturity and strong interpersonal skills." The Western District of Missouri established a sixteen-hour training requirement.

F. Funding

1. Program Funding

Unlike the state courts, the federal courts generally administer ADR programs in-house and fund discrete programs either through specific congressional appropriations or through general operating funds.⁸² Sometimes the federal courts rely on local bar associations or universities to fund ADR training, outreach or evaluations.⁸³ Occasionally, independent nonprofits provide court-related ADR services, with varying contributions from the participating court.⁸⁴

⁸¹ See e.g., District of New Jersey Rule 47.2.

⁸² PLAPINGER & SHAW, *supra* note 5, at 44.

⁸³ *Id.* at 44-45.

⁸⁴ *Id.* at 45.

2. Compensation of Neutrals

While most ADR programs started before 1990 relied on volunteers as neutrals, more recent programs usually have required parties to compensate the mediator. Of the forty-one courts offering attorney-based mediation in 1995, only nine provided that service pro bono (one provided the service through a staff mediator).⁸⁵ Fee programs have been instituted even where litigants are required to use ADR.

Courts generally have used four different approaches to determine the fee: market rate, court-set rate, pro bono, or court-set fee after a specified number of pro bono hours.⁸⁶ Ten courts used a market-rate fee, although a number reserved the right to review the reasonableness of the fee. Eight courts specified a fee (either hourly or per session).⁸⁷ Five courts authorized both a market-rate and court-set fee, at the judge's discretion. Four courts required the neutral to serve pro bono for a specified number of hours, ranging from one to six, before the parties must pay either a court-set or market-rate fee.⁸⁸ Nine of the forty-three courts offering mediation permitted low-income or indigent parties to waive or reduce the fee. Some courts required mediators to serve a specified number of pro bono hours or cases in order to provide this service.

The statutory arbitration programs are an exception to the rule that the parties pay a fee. In those programs, congressional appropriations cover arbitrators' fees.⁸⁹ Where the court paid the fee, it also usually set the fee amount. In some of the non-statutory arbitration programs, the parties shared the fee.⁹⁰

⁸⁵ FEDERAL SOURCEBOOK, *supra* note 59, at 10.

⁸⁶ *Id.*

⁸⁷ *Id.* at 11.

⁸⁸ *Id.*

⁸⁹ *See id.* at Table 3.

⁹⁰ *See id.*

Part 2:

ADR Program Proposals Recommended by the Alaska Judicial Council and the Alaska Supreme Court

The proposals detailed below in Part 2, Section II are recommended jointly by the Alaska Court System and the Alaska Judicial Council. The Council worked with the ACS Deputy Director and Staff Counsel, the Alaska Supreme Court Advisory Committee on Mediation, and the members of the Alaska Dispute Settlement Association ("ADSA"). The proposals are based on the research from other state and federal jurisdictions, a written survey of all active members of the Alaska Bar Association, interviews with judges, meetings with heads of the Alaska Bar Association's substantive law sections, input from a non-custodial parents' group and numerous written and oral comments from members of ADSA and the Bar.

The proposal to establish a task force to set neutral qualifications (Part 2, Section III) and the proposal to produce a litigant pamphlet on ADR (Part 2, Section IIB2c on Page 42) are proposed solely by the Judicial Council.

I. Background Information

A. Past Efforts of the Alaska Court System and Judicial Council

This report, and the legislative request which led to it, are only the most recent chapter concerning the use of ADR in Alaska. Both the Alaska Court System and the Judicial Council previously have taken numerous steps to encourage the use of alternative dispute resolution.

The Alaska Supreme Court originally established a Standing Advisory Committee on Mediation in 1991. The committee has worked since that time to establish and improve the use of ADR by the Alaska Court System. It worked with the Judicial Council to develop the proposals contained in this report.

Before the standing mediation committee was established, the Alaska Supreme Court established a Mediation Task Force in response to legislative intent language included in the Alaska Court System's fiscal year 1989 budget appropriation document. The Alaska Supreme Court asked the task force to explore the "uses, availability and limits of mediation" and to issue a report. The report, completed in 1990, summarized the history of mediation in Alaska and made ten recommendations to the supreme court.⁹¹

Even before this the court system had experimented with conciliation boards in rural areas. From 1975-77, the Alaska Court System used federal funds to create and evaluate conciliation boards in six southwestern Alaska villages. The evaluation concluded in part that the boards "can be viewed as a viable adjunct to the court system in the provision of limited problem-solving services in those Eskimo villages which desire them...."⁹²

Civil Rule 100, promulgated by the supreme court in 1993, authorizes judges to order parties to attend an initial mediation session upon the request of a party or on the judge's initiative. A recent survey sent by the Judicial Council to all state trial court judges showed that 71% of the trial court judges who responded had ordered mediation at least once in the past two years.⁹³ About 54% of the judges who had ordered ADR reported that they had ordered it between 1-5 times in the past year.

The court system has provided judges with information on mediation at a judicial conference and in written materials describing Civil Rule 100. In addition, the

⁹¹ The recommendations were: (1) the Alaska Court System should undertake a mediation pilot project; (2) the ACS should more widely distribute mediation information; (3) the ACS should seek statutory confidentiality for mediation; (4) the ACS should adopt a new court rule on mediation; (5) the ACS should train judges about mediation; (6) the ACS should encourage judges to use mediated settlement techniques; (7) the ACS should consider imposing a requirement in pretrial orders that attorneys advise their clients of available ADR services; (8) a system should be developed to provide mediation to indigents; (9) the ACS should support local efforts throughout Alaska to establish mediation programs; (10) the ACS should appoint a standing committee on mediation. All recommendations, except those requiring legislation, were implemented.

⁹² REPORT OF THE TASK FORCE ON MEDIATION TO THE SUPREME COURT OF ALASKA 9-10 (1990), citing from MARQUEZ & SERDAHELY, AN EVALUATION FOR THE ALASKA COURT SYSTEM'S VILLAGE CONCILIATION BOARD PROJECT (1977).

⁹³ Twenty-eight of the 50 judges responded.

Alternative Dispute Resolution Section of the Alaska Bar Association offers a continuing legal education program on ADR once a year.

One form of ADR long used by the Alaska Court System which is not generally recognized as such is the use of judges to host settlement conferences for litigants and their attorneys. Settlement conferences, usually conducted by a judge other than the one assigned to the case, are an extremely effective method of settling civil cases.

The Alaska Judicial Council has been involved in alternative dispute resolution studies, initiatives and projects since the late 1980s. One of the Council's first projects was a seventeen-month child visitation mediation pilot project created and funded by the Alaska Legislature in 1990. The Council designed, implemented and evaluated this project, which was created to provide parents with mediators to help them resolve their child visitation disputes, and to evaluate the effectiveness of visitation mediation.

The Council's next ADR effort involved researching how rural Alaskans use alternatives to the state court system to resolve local disputes. In 1992, the Council issued a report documenting how residents in three Alaskan locations (Barrow, Sitka and Minto) used local organizations, including tribal courts, to resolve disputes (RESOLVING DISPUTES LOCALLY: ALTERNATIVES FOR RURAL ALASKA). The Council issued a follow up report in 1993 (RESOLVING DISPUTES LOCALLY: A STATEWIDE REPORT AND DIRECTORY) that surveyed all the villages in rural Alaska and reported whether they had a tribal court, village council, or other local organization that included dispute resolution as a part of its activity.

In 1994, the Alaska Judicial Council requested and received funding from the State Justice Institute (SJI) to fund a brochure to help consumers evaluate mediator competence and suitability. The Judicial Council developed the brochure based on research presented at the 1993 National Symposium on Court-Connected Dispute Resolution Research sponsored by SJI and the National Institute on Dispute Resolution, and on other research. The Council solicited input from a variety of interested parties nationwide, including the American Bar Association, national mediator membership organizations, mediators, researchers and policy-makers. In 1996, the *Consumer Guide to Selecting a Mediator* was recognized by the Notable Documents Committee of the American Library Association's Government Documents Roundtable as one of the fifteen best state publications in the nation. The committee

chooses government publications which are outstanding for their content and presentation.

Over the course of these projects, Judicial Council staff have developed expertise in designing and evaluating alternative dispute resolution programs. Staff have been invited to present at mediation conferences and classes in Alaska and outside Alaska. The Judicial Council staff attorney has served on the Alaska Court System's Mediation Advisory Committee since its inception, and serves on the Executive Board of the Alternative Dispute Resolution Section of the Alaska Bar Association. In addition, the Judicial Council staff attorney serves on the board of directors of the Community Dispute Resolution Center, which offers free and low-cost community mediation services and runs the successful juvenile victim offender mediation project in Anchorage.

While this report is devoted mainly to court-connected alternative dispute resolution in Alaska, several non-court programs should be mentioned as well. One program currently operating in Anchorage as part of the municipality's Making a Difference Partnership is the Juvenile Victim-Offender Mediation Project (VOMP). VOMP is based on principles of restorative justice, attention to victims' rights, and personal accountability for juvenile offenders. The program, which is administered by the nonprofit Community Dispute Resolution Center, recruits, trains, and assigns trained, volunteer mediators to facilitate face-to-face meetings between certain non-violent juvenile offenders and their victims. Participation is voluntary for both victims and offenders; offenders are referred by juvenile intake and probation officers. During the mediation, the victim and offender address informational and emotional needs, discuss the victim's losses, and often negotiate a mutually acceptable restitution agreement. VOMP staff and volunteers monitor performance of any contracts established during the mediation.

The Judicial Council and faculty from the University of Alaska at Anchorage (Justice Center and School of Social Work) helped design the program and are evaluating its effectiveness, including whether the program is meeting its internal goals and what effect the program has on juvenile offender recidivism. VOMP's internal goals relate to the needs of victims and offenders, juvenile justice system workers and the community as a whole. The goals include: increasing offenders' feelings of accountability; providing an additional referral option for Intake and other juvenile justice workers; providing an opportunity for conciliation (or reconciliation)

between victim and offender; creating and maintaining positive community investment in the problem of (and the solutions to) juvenile crime; providing an opportunity to create and implement a restitution agreement; providing an opportunity for "healing" or closure around the criminal incident for both the victim and the offender; and empowering the victim to exert some control over the process. In 1996, VOMP collected more than \$13,000 in restitution for victims that participated in its program.

B. Ongoing Alaska Court System Projects

The Alaska Court System has been in the process of developing three ADR related projects completely independently of the legislative request which led to this report. The Alaska Supreme Court and Judicial Council agree that these are promising projects which the Court System will continue to pursue.

1. Appellate Case Settlement Program

For the past year, the Mediation Committee has been designing an appellate case settlement program at the request of the supreme court. The proposed program will run as a pilot project and initially will target only a limited number of cases. If the pilot proves successful, the court may consider whether to expand it. As currently designed, the program uses retired judges and justices to host the settlement sessions. The Mediation Committee finished designing the program in November of 1997. After review by the Appellate Rules Committee, the proposal will go to the supreme court for final consideration.

2. Mediation of Child In Need of Aid Cases

For the past two years, the court system has been participating in a federal initiative to improve the way state courts handle child abuse and neglect cases. As part of that initiative, the court system asked the Alaska Judicial Council to do a formal assessment of CINA cases in Anchorage, Bethel, Fairbanks and Sitka. The resulting report found delay to be a major problem in these cases, and recommended that the court system experiment with mediation as a way to help parties come to agreement sooner on important issues such as treatment plans and case plans. After the assessment, the court system created a special committee to implement the report's recommendations.

In November, this CINA Committee recommended that the supreme court establish a pilot mediation project in Anchorage. The committee is looking at programs developed in other states, and at the needs of the parties. The court system will use federal grant money to fund the pilot project.

3. Child Custody Mediation Pilot Projects

A significant part of the superior court's case load consists of divorce cases. Judges and attorneys favor mediation in this area,⁹⁴ and research generally shows mediation to be particularly beneficial in the family area.⁹⁵ A carefully designed child custody mediation program could increase participant satisfaction, decrease judicial workload and increase the parties' control over outcomes for their children.

The court system has received a federal grant to offer access and visitation mediation in Anchorage. The project will provide for court-ordered mediation in cases in which there are disputed issues regarding child support, custody, access and visitation. Its goals are to reduce the number of contested hearings and expedite resolution of custody and visitation matters. Another goal is to offer parties and their attorneys a non-litigious model for resolving disputes and to encourage them to use alternative dispute resolution to address future conflicts.

The office of custody investigations will administer the project and will screen cases for eligibility. Eligible cases will include original divorce actions, paternity and support actions, and post-decree motions to modify or enforce support, custody and visitation orders. The ACS plans to contract with private mediators to conduct the approximately 200 mediation sessions that it anticipates the grant will cover.

The ACS will evaluate the program as required by federal regulation. Factors likely to be addressed in the evaluation include the project's impact on the number of contested hearings, the time needed to resolve cases and the rate of subsequent filings for motions to enforce and modify custody and visitation orders. If the program is

⁹⁴ Eighty-five percent of the 20 judges who responded to the AJC's ADR survey ranked mediation of divorce cases as very promising (70% gave it a ranking of "1" on a 1-5 scale.) No other proposal received such favorable responses from the judges. Attorneys also ranked mediation of divorce cases very favorably.

⁹⁵ See pp. 5-6, *supra*, for research supporting the usefulness of mediation in divorce and custody cases.

successful in Anchorage and funds are available, the ACS may extend it to other court locations.

The Fairbanks court also is exploring how to make better use of mediation in child custody disputes. The Fairbanks custody investigators educate divorcing parents about mediation during a mandatory parent education program, and they discuss mediation with parents at their intake interview. Custody investigators recommend mediation referrals in cases in which the parents seem willing and able to settle their custody dispute in mediation. These practices are designed to encourage parents to resolve their custody disputes without an investigation. However, not all parents who are open to using mediation receive referrals, because of disincentives such as the cost of private mediation, and the fact that some judges do not follow through in ordering the recommended mediation. Thus, the Fairbanks court currently is considering ways to make mediation referrals more systematic. The supreme court currently is studying the use of custody investigators and whether their role should be expanded or changed to include mediation.

Judges on the Kenai Peninsula also are exploring increased use of mediation in child custody and divorce cases and post-decree litigation. Mediators in the Kenai/Soldotna area have begun dialogue with judges and other interested stakeholders about an ADR initiative in that area. There is support in the community and on the Kenai Superior and Homer District Court benches for a proposal to create an independent body (a nonprofit corporation modeled after the Community Justice Centers) to perform ADR intake, screening, evaluation and possibly to offer mediation services in divorce cases. While the proposal is still in the formative stages, supporters would like to work with the Supreme Court Advisory Mediation Committee as their local activity emerges.

C. The Process for Developing Further Recommendations

Although time was extremely limited, the AJC and the ACS designed the proposals described in this report in consultation with the Supreme Court Advisory Mediation Committee, the Civil Rules Committee, the Alaska Bar Association, trial lawyers' associations, the Alaska Dispute Settlement Association, mediators, judicial officers, attorneys and legislators.

AJC staff consulted regularly with ACS Deputy Administrator and Staff Counsel to understand the Alaska Court System's goals, fiscal limitations and personnel resources. In July and September, AJC staff discussed this project with the Alaska Supreme Court Advisory Mediation Committee. AJC staff sent a written survey to all state court judges and followed up with individual telephone interviews.

In July, the Alaska Bar Association generously hosted a luncheon for all the heads of substantive sections, heads of local bar associations, and representatives from plaintiff and defense trial lawyers' associations. At the luncheon, AJC staff gave a brief overview of the legislation and explained some of the most important considerations in designing a court-connected ADR program. Attendees then gave suggestions about what program design might be most useful from the Bar's perspective.

As follow up, AJC staff made presentations to three interested Bar sections (the Employment Law section, the ADR section and the Probate section). In addition, the AJC sent a written ADR survey to all members of the Alaska Bar in August. The results of that survey have been incorporated into the following recommendations.

D. Objectives of these Proposals

Successful court-related ADR programs generally respond to specific problems or needs. The Alaska Legislature's goal in passing the law was to "promote the timely, inexpensive, and efficient resolution of civil disputes." These goals encompass the specific objectives of saving litigants time and money by streamlining and speeding up case resolution. The legislation also requires consideration of the cost of the program to the Alaska Court System.

Saving the court system significant existing funding is not a realistic goal for an ADR program. While ADR can make better use of existing judicial resources and perhaps allow current staffing to better handle an expanding caseload, it will not produce a windfall of savings for the state.

The Alaska Court System's program criteria focus mainly on resource issues. From the administrators' point of view, an ADR program should not require significant additional funding, should not require significant personnel resources to administer, should be narrowly drawn, should be a pilot project of limited duration, and the pilot project should contain an evaluation component. In addition, the court system lacks

adequate financial and personnel resources to immediately implement a large, multi-faceted program. Finally, the ACS and the AJC do not believe that the ACS should license or certify mediators or other neutrals.

Goals for an ADR program mentioned by attorneys included improving the quality of pretrial practice by attorneys, encouraging early attorney and client attention to cases and having a neutral person speak candidly to clients about the merits of their case.

Goals mentioned by individual judicial officers included resolving divorce custody cases in a less adversarial forum, relieving court burdens by diverting cases from the trial track, and moving settlements earlier in the pretrial period to avoid calendaring unnecessary trials. Judicial officers also expressed interest in training to improve their own settlement skills.

Evaluations of programs in other jurisdictions suggest that realistic goals for well-designed ADR programs can include: increasing the parties' satisfaction with the process used to resolve their dispute, saving the parties money in the form of decreased attorneys' fees, and reducing judicial workloads.⁸⁶ Goals that might reasonably be achieved in Alaska include increasing litigant satisfaction, decreasing trial court workload (specifically bench time), and increasing efficiency by helping judges calendar only those cases most likely to go to trial, thus freeing the judges' calendars of cases likely to settle before trial.

⁸⁶ For example, an evaluation of the Western District of Oklahoma's voluntary mediation program showed that cases referred to mediation were more likely to terminate in dismissals than were similar cases that were not referred to mediation. Oklahoma cases not referred to mediation were more likely to receive a pretrial judgment or trial verdict (non-referred cases had almost twice as many trials). RAND, *supra* note 21, at 134-35. Also, cases not referred to mediation had more discovery motions. *Id.* In the Southern District of New York's mandatory mediation program, comparison group cases were nearly four times as likely to go to trial and more likely to have a dispositive motion made than were those in the ADR sample. *Id.* at 67. Rand's review of other mediation programs revealed varying settlement rates, impact on litigant costs, and disposition times. See discussion at pages 6-8, *supra*, for details.

II. New Proposals Recommended by the Alaska Judicial Council and the Alaska Court System

The legislation asked the Alaska Judicial Council and the Alaska Court System jointly to develop ADR programs. This section describes those proposals, some of which already are being implemented.

A. Overview of the Proposals

First, the Judicial Council and the Alaska Court System agree that the court system should continue to develop the initiatives already underway which are described above. These are specific projects that respond to specific needs, and they can be implemented with little or no additional funding from the State of Alaska.

Second, the AJC and the ACS agree that the court should undertake three additional initiatives. First, the court system will take a number of important steps to encourage the increasing tendency of Alaska attorneys and parties voluntarily to use ADR to resolve civil cases. These steps will require only relatively modest legislative funding, but are probably the most significant of all the proposals.

Also, the AJC and the ACS agree that the ACS should take steps to implement two pilot projects, one small and one relatively large scale.⁹⁷ The smaller pilot project involves mediation of probate and guardianship cases. The larger pilot project involves early neutral evaluation of non-family (primarily commercial and tort) cases. The probate mediation project will require little or no additional funding and no new legislation. The ENE pilot project does not require legislation, although it does require additional funding by the Legislature before it can be implemented.

B. Steps to Encourage More Voluntary Use of ADR

The most important and significant recommendation of this report is that the Alaska Court System, Judicial Council, Alaska Bar Association, and the Alaska Legislature take a series of steps to encourage the increasing tendency of Alaska attorneys and parties voluntarily to use ADR to resolve civil litigation. These steps are

⁹⁷ The AJC and ACS also considered an arbitration pilot project based on the program in Washington state (see page 16, *supra*). This project was rejected, primarily because of its high cost.

relatively easy and inexpensive to take, but we believe will result in significant benefits.

This proposal includes steps to educate Alaska judges, attorneys and litigants about ADR. Second, the proposal requires litigants to consider and discuss with each other the use of ADR; and that the judge follow up on this discussion.

1. Amendments to Civil Rules and Court Forms

The Alaska Supreme Court is amending its rules of court to encourage voluntary use of ADR. Civil Rule 100 will be broadened to address all three forms of court-connected ADR defined in the legislation. Other court rules will be amended to require opposing counsel to "meet and confer" very early in the litigation to develop an ADR plan, and to meet with the judge to discuss ADR options.

(a) Broaden Civil Rule 100. Civil Rule 100 (Mediation) is the only court rule that addresses alternative dispute resolution. Thus, Civil Rule 100 is the logical place to put information about other forms of ADR besides mediation. Appendix C shows how CR 100 is being amended to include information and procedures concerning early neutral evaluation and arbitration.

(b) Amend Civil Rules 26 and 16. Civil Rule 26 is being amended to require attorneys to meet and confer about ADR at the discovery planning conference.⁹⁸ It also will require attorneys to incorporate ADR into their written discovery plan (or to explain why an ADR process is not appropriate).⁹⁹ The parties will include in their case management plan a description of the ADR process they have agreed on (or why they agree that ADR is not appropriate, or a statement that they cannot agree on which ADR process to use), when the ADR process will occur (especially what if any discovery or motion practice needs to occur before the ADR process will be productive), and (possibly) their choice of neutral. (See Appendix C for revisions).

Civil Rule 16 is being amended to require the judges to educate the parties about ADR at the conference required by Rule 16. The judge will discuss possible benefits of

⁹⁸ The discovery planning conference is required by rule and occurs very early in the case.

⁹⁹ The court also should amend question 6 on form CIV-203 (Report of Parties' Planning Meeting) to include appropriate references to early neutral evaluation.

ADR and the relative merits of each process. The judge should include the parties' choice of an ADR process in the written scheduling order (See Appendix C for text of revisions).

(c) **Consider requiring attorneys to discuss ADR with their clients.** The court system's Civil Rules Committee and Mediation Committee will review and circulate for comment a proposed rule amendment to specifically require attorneys to discuss ADR with their clients in litigation cases. After taking comment, the committee will make a recommendation to the supreme court. This requirement also will be submitted to the Alaska Bar Association for comment.

2. Educational Programs

(a) **Educate Judges.** The court system will request funding from the legislature for a day-and-a-half or two-day ADR conference for judges in the fall of 1998. The conference would provide judges with information about the different types of ADR and which procedures are most effective for which cases, actual hands-on training about how to mediate and/or how to run a settlement conference, and specific training about the court system's ADR programs and initiatives. These skills would help judges conduct effective settlement conferences, as well as bring them the in-depth knowledge about ADR necessary to encourage attorneys in its use. The court system is seeking grant funding for this conference, and will ask the legislature to match the grant funding.

The funding to conduct this conference is critical to the increased use of ADR in Alaska. Experience in Alaska and elsewhere has shown that judges play an important role in encouraging voluntary use of ADR. The judges will be most effective in encouraging voluntary use of ADR if they themselves understand and support ADR.

(b) **Educate Attorneys.** Training for attorneys is particularly important in programs that rely on attorneys and parties to decide which type of ADR to use and the timing of the ADR process. A central feature of mediation and, to a lesser degree, early neutral evaluation, is that it requires lawyers and parties to do the work of settlement. Thus, lawyers need to learn how best to benefit from the ADR session. They also need to know how to prepare their clients for the session. In addition, attorneys should receive training on current research and thinking on how to evaluate a proposed neutral's qualifications to be of assistance in a given dispute.

The Alaska Court System and the Judicial Council will work with the Alaska Bar Association to train attorneys about the court system's pilot projects in ADR.

The Judicial Council recommends that the Alaska Bar Association (through the ADR section) continue to offer continuing legal education classes to teach attorneys about how, when and why to use an ADR process, and specifically about the court system's ADR programs. The brochure about the use of ADR in Alaska which is discussed immediately below also would be helpful to educate attorneys about ADR.

(c) **Educate the public.**¹⁰⁰ Finally, the Alaska Judicial Council recommends that the state provide more information to the public about ADR. The Judicial Council will request a small increment in its budget to develop and print a pamphlet explaining various ADR processes, discussing the potential benefits of ADR and explaining the court system's ADR programs. The brochure will be geared towards litigants, but also would be useful for attorneys. (Details about this brochure and its funding are provided in Appendix E.)

C. Pilot Projects

Most courts that have implemented ADR programs have begun with one or more pilot projects. Pilot projects should be discrete and should respond to a specific need or articulated goal in a particular court location. The pilot projects suggested in this section and the next are based on research from other states, suggestions from local attorneys, judges, neutrals and legislators, and on ideas or initiatives that already had been suggested or were being considered in response to a specific need or goal at a specific court location. Any pilot program should operate for two or three years, to ensure that the program has time to become established and make initial adjustments before being evaluated.

1. Probate mediation

The probate section of the Alaska Bar Association has agreed to develop a court-connected probate and guardianship mediation pilot program. Section leaders are working with the court system's probate masters and the Probate Rules Committee on

¹⁰⁰ The court system did not recommend for or against this proposal because it would be completed solely by the Judicial Council.

the details of the program, including training for mediators. Goals cited by the probate section included decreasing bottle necks encountered with creditor claims (often intra-family) and will contests. In addition, the probate section hopes mediation will cut down the number of cases needing a hearing before the master, as calendar congestion apparently has become a significant problem in Anchorage. While the probate section's initial proposal involved a pilot project in Anchorage, the Probate Rules Committee has recommended that the program be instituted statewide.

2. Early neutral evaluation pilot project

The court system will seek legislative funding to implement a structured ADR pilot project for business and commercial cases. Early neutral evaluation has been successful in reducing case disposition time and party costs in the Western District of Missouri's program. The ENE pilot project proposed here relies on existing rules of civil procedure and uses judges (and private providers if the parties request them and agree to cover the costs) as early neutral evaluators.

The goals of the ENE project would be to promote earlier settlement, to save the parties money, and to promote the efficient use of judicial resources. In addition, the procedure should be perceived by parties and attorneys to be fair. The Judicial Council will request an increment in its budget to evaluate the project. (See Appendix D for more details of the program design).

The court system will select at least one judge from three of the four judicial districts (Anchorage, Fairbanks and perhaps Kenai and Juneau or Ketchikan) to participate in the pilot project. Participating judges will receive ENE training and will act as early neutral evaluators in selected, contested civil cases. Excluded civil cases should include divorce custody cases, FEDs, children's cases, domestic violence and perhaps others.

If the legislature approves funding, the court system will sponsor a training session at which all judges learn about the goals of the program, the administration of the program, and how the ENE sessions are to be conducted. The court system also should assign someone (or assign the neutrals) to spend time talking to the bar about the program and its goals.

D. Evaluation

The Alaska Supreme Court and the Alaska Judicial Council believe that the new pilot projects should be evaluated to see what effects they may be having. Evaluations for the pilot projects should include, where possible, surveys of attorney and litigant satisfaction, time savings (parties and courts) and cost savings (parties and courts). The evaluations should focus on identifying significant variables in program design and implementation that contribute to the outcomes highlighted by the legislature: time and cost savings and efficiency. The evaluations also should seek to document how lawyers understand and employ ADR, since lawyers largely drive the pace and course of civil litigation. The Judicial Council will request an increment to conduct the evaluations. The increment is more fully described in Appendix E to this report.

The rule changes will be monitored by the Alaska Judicial Council in connection with its responsibilities for monitoring civil case settlements. The Judicial Council currently is collecting baseline data on voluntary use of ADR in civil cases. The Judicial Council can analyze any change in use after the rule changes go into effect. The Judicial Council will report to the supreme court and the legislature.

E. Program Funding

The Alaska Court System does not have extra funds to provide ADR services, although a number of its ongoing ADR initiatives can be implemented with little or no extra money. The ACS would need additional funding, from a legislative appropriation to implement the ENE pilot project.

III. Qualifications of Neutrals

The legislature asked the Alaska Judicial Council to include in this report "the qualifications of the neutral parties, including nonlawyers, who will provide dispute resolution services under the [ADR] program."

The Alaska Judicial Council recommends that qualifications of neutrals should be based as much as possible on criteria that accurately predict successful performance and ethical practice. The criteria should not be so restrictive that they exclude otherwise competent people, for example Alaska Native elders who may not have formal mediation training but who could mediate fairly and effectively in certain cases.

The criteria also should take into account as much as possible, the differences between urban and rural areas of the state.¹⁰¹

The Alaska Court System has no experience setting mediator and arbitrator qualifications. The ACS has no experience and no administrative structure for licensing or certifying neutrals. An alternative is to establish minimum qualifications by statute, and to direct an entity other than the court system to monitor the neutrals.

A. Task Force to establish minimum qualifications for neutrals

The Alaska Judicial Council recommends that the legislature should appoint a task force to establish minimum qualifications for mediators, early neutral evaluators and perhaps arbitrators. The task force ultimately would make recommendations to the legislature for establishing minimum qualifications for court-connected neutrals by statute or through some other mechanism.

The task force should include non-lawyers as well as lawyers, community mediators, a court system judge and administrator, the business community, an arbitrator, legislative representation, the Attorney General or his designee and perhaps the state ombudsman. A federal court representative or liaison also might be helpful. All task force members should demonstrate prior involvement in ADR, either as a neutral or a party. The task force should develop different qualifications for mediators, arbitrators and early neutral evaluators, since those three processes involve different skills.

The final report of the ADSA Committee on Credentialing and Standards of Practice, which has been formally adopted by ADSA's membership, would be a good starting point for the task force in considering minimum qualifications for mediators. The report was intended to "serve as threshold, minimum qualifications which a body [such as a court system] may consult." The report concluded first that all neutrals should adhere to a recognized code of ethics. It then discussed three potential paths by which a neutral could become minimally qualified to practice in Alaska. First, the report concludes that "affiliation with or credentialing by an entity or organization may serve to minimally qualify in [sic] neutral in Alaska," depending on the sufficiency of

¹⁰¹ For example, minimum qualifications for neutrals might vary depending on the size of the city or village in which the neutral practices.

the entity's training requirements and its criteria to achieve and maintain membership in good standing, among other things.¹⁰² Second, training alone may in some instances minimally qualify neutrals, depending on the quality and length of the training.¹⁰³ Finally, experience alone may minimally qualify mediators or arbitrators, depending on certain factors enumerated in the report.¹⁰⁴

The task force also should study the issue of what entity should recruit, train and supervise neutrals who receive court referrals, and how those responsibilities should be funded. Possibilities for entities that could take on the training and supervision responsibilities include the Alaska Dispute Settlement Association, the Community Dispute Resolution Center, or perhaps the Alaska Bar Association. The ACS has suggested that the Division of Occupational Licensing take on any licensing and certification functions.

The following suggestions on qualifications are not comprehensive but might be considered by the task force.

B. Ethical Standards for Neutrals

Any neutrals appointed by the court, with or without party choice, should adopt and adhere to a code of ethical standards of practice. For purposes of court appointment, the court system could recognize codes of ethics adopted by the American Arbitration Association, the Federal Mediation and Conciliation Service, the National Academy of Arbitrators, the National Association of Securities Dealers, the Society of Professionals in Dispute Resolution, the Academy of Family Mediators or the American Bar Association.¹⁰⁵ If a neutral does not adhere to one of these standards, the neutral should provide to the judge and to prospective clients information sufficient to determine whether the neutral will engage in ethical practice, for example, a written

¹⁰² ADSA CREDENTIALING AND STANDARDS OF PRACTICE COMMITTEE, FINAL REPORT ON RECOMMENDED MINIMUM QUALIFICATIONS FOR MEDIATORS AND ARBITRATORS IN ALASKA 1-2 (August, 1997).

¹⁰³ *Id.* at 5-6.

¹⁰⁴ *See id.* at 6-8.

¹⁰⁵ Appendix F contains the AAA, ABA, and SPIDR model standards of conduct for mediators.

copy of the ethical standards that the neutral has adopted and a statement of the neutral's philosophy and approach.

C. Mediator Qualifications

Mediator qualifications should be based as much as possible upon criteria likely to predict competent and ethical performance. While credentialing, certification or training alone may in some instances predict competent and ethical performance, Alaska should look to other criteria as well. One such criterion that Alaska could explore is the use of performance-based tests. Alaska should consider developing a performance-based test for mediators, perhaps combined with a classroom training requirement (twenty to forty hours) and perhaps an apprenticeship period. Mediators who wish to be appointed to handle child custody or visitation cases should demonstrate special knowledge of families and domestic violence.

D. Early Neutral Evaluator Qualifications

Based on information from the Northern District of California and the Western District of Missouri, effective ENEs usually are people with substantial litigation experience. Mediation-type skills might be helpful. Neutrals in the Northern District of California's ENE program have been a member of a state bar for at least fifteen years and a member of the bar of the court or a faculty member at an accredited law school. The neutrals have subject-matter expertise in one or more of the categories of cases eligible for the ENE program. They also have the temperament to listen well, facilitate communication and if called on, assist in settlement negotiations. Each evaluator is required to successfully complete the ENE training session.

E. Arbitrators

The Task Force need not consider qualifications for arbitrators unless the court system institutes a court-connected arbitration program. There is no need to regulate arbitrators who are hired pursuant to a private contract or other non-court-connected mandate.¹⁰⁶

¹⁰⁶ If the task force wishes to consider qualifications for court-connected arbitrators, it might consider looking to certification from another body such as the American Arbitration Association or from another state or federal court. The emphasis for arbitrators should be on area of expertise. Some disputes might lend themselves to lawyer-arbitrators, while others might require expertise possessed

IV. Summary of Recommendations to the Legislature

None of the pilot projects proposed in this report require new legislation, although a few require relatively small amounts of funding for training or other one-time start up costs. Recommended court rule changes already are being made by the Alaska Supreme Court. The only recommendation that would require new legislation is for the establishment of a task force to report back to the legislature on the issues of neutral qualifications and ethical standards.

In summary, the court system will request funding to:

- (1) hold a special judges conference on ADR and settlement;
- (2) hire a temporary program administrator to work out the details of the ENE project and to administer it; and
- (3) cover other project expenses;

The Judicial Council will request funding to:

- (1) evaluate the probate mediation and early neutral evaluation pilot projects; and
- (2) develop, print and distribute an educational pamphlet geared towards litigants;

Conclusion

This report has set out the research on ADR requested by the legislature and several alternatives which the court system can pursue to fulfill the legislative goal of increasing the use of ADR to resolve civil disputes in Alaska. We believe that these proposals will significantly increase the use of ADR in litigation cases with only a minimal monetary investment.

by a non-lawyer. The parties should not be overly limited in their ability to select the arbitrator.

Appendix A

ADR Legislation

18 * Sec. 54. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
19 legislation to create an alternative dispute resolution procedure within the existing civil
20 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
21 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
22 alternative dispute resolution procedure not later than July 1, 1998.
23 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
24 Association, review court sanctioned alternative dispute resolution programs in other states
and
25 in the federal court system, and shall confer with and obtain the approval of the Alaska Court
26 System regarding the establishment of a program for alternative dispute resolution within the
27 Alaska Court System. The Alaska Judicial Council shall submit a proposed statute or rule
28 change, or both, and a report to the legislature by December 31, 1997. The proposed statute
29 or rule change and report must include specific types of programs, specific types of cases
30 within each program that are amenable to alternative dispute resolution, the cost to the parties
31 and to the Alaska Court System under these programs, and the qualifications of the neutral
01 parties, including nonlawyers, who will provide dispute resolution services under the
program.
02 The work required under this section shall be completed for the amount of money appearing
03 on the fiscal note submitted by the Alaska Judicial Council dated March 17, 1997.
04 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
05 and early neutral evaluation.
06 * Sec. 55. APPLICABILITY. This Act applies to all causes of action accruing on or after
07 the effective date of this Act.
08 * Sec. 56. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
09 application of a provision of this Act to any person or circumstance is held invalid, the
10 remainder of this Act and the application to other persons shall not be affected.

Appendix B

**Definitions: Arbitration
Early Neutral Evaluation
Mediation**

1. MEDIATION

- 1.01 DEFINITION**
- 1.02 THE PROCESS**
- 1.03 NEUTRALS**
- 1.04 CLIENT ROLES**
- 1.05 SELECTING CASES FOR MEDIATION**
- 1.06 TIMING**
- 1.07 BENEFITS AND CONCERNS**

1.01 DEFINITION

Mediation is a flexible, nonbinding dispute resolution process in which an impartial neutral third party — the mediator — facilitates negotiations among the parties to help them reach settlement. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by going beyond the legal issues in controversy.

Mediation is considered by many the settlement process of first-choice, because of its wide applicability and relatively low cost to litigants and the court. The mediator, trained in communication and negotiation techniques, and knowledgeable about federal litigation, assists the negotiations in the following ways:

- Works to improve communication across party lines;**
- Helps each party clarify its understanding of its underlying interests and concerns, as well as those of its opponents;**
- Probes the strengths and weaknesses of each party's legal positions;**
- Explores the consequences of not settling;**
- Generates options for mutually agreeable resolution to the dispute.**

The mediation process can take various forms, depending on the nature of the dispute, the approach of the mediator, the timing of the intervention, and the goals of the court. All or part of a dispute may be mediated. Federal court mediation may occur under the auspices of a court-wide program or pursuant to individual judge initiative. Referrals may be based on party consent or mandated by the court.

1.02 THE PROCESS

A typical mediation progresses through the following stages:

- **Preparing for Mediation.** To educate the mediator about the dispute, some courts require counsel to submit key documents and short written statements shortly before the first mediation session. These materials, which describe the substance of the suit, do not become part of the court file and are returned to the parties at the conclusion of the process.
- **Locale.** Court-based mediation is generally conducted either at the courthouse or at the offices of the attorney-mediator. Some suggest that a courthouse location is preferable, space permitting, because the setting invests the process with a seriousness and dignity that is often helpful to the negotiations.
- **Initial Joint Session.** A typical mediation consists of a series of joint and separate sessions between the mediator and the parties. At the initial joint session, the mediator usually explains the mediation process, hears short presentations from each side, and asks open-ended questions to clarify positions and interests.
- **Initial Separate Sessions (or Caucuses).** The mediator often then meets privately with each party and counsel to explore in a confidential setting each party's underlying interests and concerns, both legal and non-legal, and to help them weigh the import of multiple interests and determine their priorities.
- **Subsequent Separate and Joint Sessions.** The parties are helped to develop options and alternative proposals that will result in a mutually acceptable resolution. At this stage, the mediator may help the parties generate ideas, evaluate alternatives realistically, and consider the consequences of not settling.
- **Completing the process.** Courts differ as to who will draft the agreement in cases where the parties reach settlement. Usually the mediator will record an outline of the terms, and one of the attorneys will be given responsibility for preparing a final draft. If complete settlement is not possible, the mediator will seek partial agreements and/or help the parties consider other dispute resolution options.

How long a mediation lasts varies with the complexity of the dispute. Recent data from the Southern District of New York indicate that mediation of a standard civil case takes on average nine-to-eighteen hours and involves several sessions. Some court mediation guidelines set a deadline for completing the process, e.g., 30-90 days after the referral. Other courts do not, leaving this issue to the assigned judge and/or the mediator.

1.03 THE NEUTRALS

Mediators in federal court programs are usually lawyers (although sometimes experts from other disciplines are asked to serve), who are invited by the court to serve as mediators because of their experience in federal court litigation, their standing in the local legal community, and/or their process skills.

In the better programs, the participating neutrals attend two-to-four day mediation training programs sponsored by the courts. Most serve on a volunteer basis, although some courts offer modest compensation from public funds or require parties to pay the neutral's fee. In a few districts, fees are set by the court; in others market rates prevail. In many courts, pro bono service by mediators and sliding scale fees are in place for low-income litigants.

In some courts, magistrate judges or district judges serve as mediators. Occasionally, two or more mediators are used.

1.04 CLIENT ROLES

To promote greater involvement by clients in resolving the dispute, a number of court-based mediation programs encourage or require the attendance of the client or a settlement-empowered representative at the mediation sessions. In cases involving insurance carriers, the court may also require attendance by an insurance representative with full authority to settle. Similarly, in cases involving a governmental unit, some courts require a representative of the government agency to attend, in addition to counsel.

This emphasis on client participation is also true of other court-based ADR processes, such as early neutral evaluation (*see infra at 3*), summary jury trial (*see infra at 19*), and the minitrial (*see infra at 25*). Client participation is also increasingly required in judicially-hosted settlement conferences. *See, e.g., G. Heilman Brewing Co. Inc. v. Joseph Oat Corp.*, 848 F.2d 1415 (1989). The nature of client participation differs from process to process.

1.05 SELECTING CASES FOR MEDIATION

Some mediation programs target complex cases; others select simpler cases; many are open to all or almost all civil cases. Mediation has proved useful in so many kinds of disputes that some court ADR experts favor its use in almost all cases, both for case management and settlement.

Because of mediation's wide applicability, selection guidelines are not easily articulated. Most court mediation programs do not specify precise criteria for identifying cases for mediation. A few courts divert specified categories of cases to mediation; most courts however, ask the assigned judge to assess the suitability of individual cases on his or her docket to mediation.

One commonly-used listing of selection criteria identifies the following kinds of disputes as well-suited to mediation:

- Cases involving a bench trial, where it would be inappropriate for the assigned judge to become involved in intensive settlement discussions;
- Complex cases requiring creative solutions that cannot be fashioned through traditional adjudication;
- Cases in which the parties have a continuing relationship, including employment/labor, business disputes, and family disputes;
- Environmental, regulatory, and public policy disputes involving public or private parties, or both;
- Cases in which the dispute is caused by poor communication between the parties.

Mediation has also proved useful in so many situations that this listing, while often cited, provides only partial guidance. For example, while mediation is thought to be particularly helpful in disputes involving continuing relationships, the process has also proved worthwhile in personal injury cases, consumer cases and many other cases involving *non-continuing* relationships. Additionally, mediation has been effective in many other kinds of legal disputes, involving commercial, financial and real estate transactions, construction, technology, product liability, consumers, trademark, patent and unfair competition, antitrust, insurance coverage, partnerships and joint ventures, mineral extraction, discrimination, and defamation. *For more information about ADR case selection, see Referring Cases to ADR: A Framework for Judicial Analysis, infra at 53.*

Often excluded from eligibility for mediation are:

- Cases handled by other ADR programs in the district (such as contract and tort disputes under \$100,000 referred to a mandatory arbitration program).
- Categories of cases generally resolved without hearings, such as administrative agency appeals, habeas corpus or extraordinary writs, forfeitures or bankruptcy appeals, social security, and prisoner cases.
- Cases brought by unrepresented parties.

1.06 TIMING OF MEDIATION USE

Mediation is used at every stage of litigation. Interest in mediation as an *early* settlement device is increasing, with some courts testing mediation's capacity to resolve disputes before the parties' positions are hardened and substantial costs incurred. Where parties need additional information or legal rulings to assess settlement options, early resolution of key motions and targeted disclosure or discovery can be arranged to facilitate the effort. Mediation is also used at the end of the pretrial period in some courts.

1.07 BENEFITS AND CONCERNS

Some of the principal benefits claimed for court-sponsored mediation include:

- Offers litigants a consensual problem-solving approach and the opportunity for creative, mutually satisfactory resolutions.
- Broadens the court's dispute resolution services at a relatively low cost and meets increased litigant demand for facilitated settlement assistance.
- Provides a catalyst for settlement in many kinds of cases.
- Results in high litigant satisfaction.

Concerns voiced about court-based mediation programs include:

- Concern whether courts can and will devote sufficient staff and other resources to mediation programs to ensure quality mediator training, judicial education, bar outreach, and evaluation.
- Because some cases do not settle, concern about adding an additional layer to the pretrial process and increasing litigation costs.
- Fear that referral will be used by some judges to divert litigation and litigants they consider undesirable.
- Concern that judges will exert undue pressure on litigants to mediate or that the mediation process itself will compel settlements.
- Concern about the effect unpaid or modestly-compensated mediators will have on the quality of services rendered over time.
- Concern that issues of public significance are resolved without public visibility or accountability.

2. ARBITRATION

- 2.01 DEFINITION**
- 2.02 THE PROCESS**
- 2.03 SELECTING CASES FOR ARBITRATION**
- 2.04 RESEARCH RESULTS**
- 2.05 BENEFITS AND CONCERNS**

2.01 DEFINITION

Court-annexed arbitration is an adjudicatory dispute resolution process in which one or more arbitrators issue a nonbinding judgment on the merits after an expedited, adversarial hearing. The arbitrator's nonbinding decision addresses only the disputed legal issues and applies legal standards. Either party may reject the nonbinding ruling and request a trial de novo in district court.

Court-annexed arbitration is believed to be particularly suited to contract and tort cases involving modest amounts of money, where litigation costs are often disproportionate to the amounts at stake. Federal statute currently authorizes ten federal district courts to institute mandatory court-annexed programs in which party participation is compulsory. Ten other districts are authorized to implement voluntary court-annexed programs in which parties participate by choice. Where arbitration is voluntary, the parties can make the arbitrator's decision final and binding by mutual agreement.

2.02 THE PROCESS

Court-annexed arbitration programs generally work as follows:

- Referral. Cases are referred to arbitration either by court mandate or by agreement of the parties. The hearing is conducted by a single arbitrator or a panel of three arbitrators.**
- Arbitrator. The arbitrators are lawyers who meet qualification standards set by the court and who serve for a small fee or no fee at all. Arbitrators may be assigned by one of several methods: by random draw from a pool of potential arbitrators (often with the opportunity for parties to strike names), by parties reaching consensus on a nomination, or by the court selecting the arbitrator(s).**

- **Timing.** The hearing is generally held after limited discovery and within two-to-six months of the time the case is at issue.
- **Case Presentations.** At the hearing, each side presents its case under relaxed rules of evidence.
- **Decision.** After the hearing, the arbitrator issues a decision on the merits and, where appropriate, determines an award. The decision is nonbinding.
- **Trial De Novo.** Parties dissatisfied with the decision may file a demand for trial de novo. If a demand is filed, the case returns to the regular docket for trial by the assigned judge, and the trial proceeds as though the arbitration had not occurred. In most courts, trial requests must be accompanied by a deposit equal to arbitrator's fees. If the trial requester does not improve on the arbitrator's award, the deposit is forfeited.
- **Judgment.** If a trial de novo is not demanded, the arbitration award becomes a non-appealable judgment of the court.

2.03 SELECTING CASES FOR ARBITRATION

The primary targets of *mandatory* federal court arbitration programs are small-to-moderate contract, personal injury, and property damage disputes where the amount in controversy does not exceed \$100,000. Suits involving constitutional rights, civil rights, or elective franchise, as well as claims exceeding \$100,000, are excluded by statute (except for two courts with a \$150,000 cap that pre-dated the statute). Some Civil Justice Reform Act Advisory Groups and others have recommended raising the federal monetary ceiling to \$150,000 or higher, on the theory that disputes in this range are fairly characterized as modest and well-suited to resolution through this shortened form of adjudication.

In *voluntary* federal arbitration programs, cases are selected for referral by consent of the parties and the assigned judge.

2.04 RESEARCH RESULTS

Court-annexed arbitration is the only court ADR process that has been extensively studied. The main studies suggest that the process can reduce both court burden and litigant costs, though the design and conduct of particular programs strongly affect their impact.

The following summarizes major findings of a 1990 study by the Federal Judicial Center of the ten mandatory federal programs.¹

- **Litigant Satisfaction and Views on the Fairness of Procedures.** The study found no evidence that litigants felt that they had received second-class justice. Both lawyers and parties involved in the mandatory programs approved the arbitration procedures generally and believed that the procedures used in their individual hearings were fair.
- **Increased Options for Litigants.** Arbitration offers litigants in smaller cases the opportunity to have their cases resolved by a third-party adjudicator, an option which many of the litigants found attractive. Under traditional court processes, most smaller cases terminate without a decision on the merits. Even where a trial de novo demand was made, over half of the parties and attorneys surveyed in the Federal Judicial Center research did not consider their arbitration a waste of time.
- **Cost Reduction.** Arbitration programs may reduce the costs of litigation. When asked whether they thought savings were achieved through arbitration, about two-thirds of the attorneys responded affirmatively. When asked whether their dispute was resolved at a reasonable cost, about two-thirds of the parties responded in the same way.
- **Reduction in Time to Disposition.** Parties reported reasonable case processing times for arbitration cases, and arbitration did not appear to delay resolution of de novo cases. Other research has found that arbitration programs can, but do not always, reduce disposition times.
- **Reduction in Court Burden.** A large majority of the judges supported their court's arbitration program and believed that arbitration reduced court burden.

B. Meierhoefer, *Court-Annexed Arbitration in Ten District Courts* (Federal Judicial Center 1990).

2.05 BENEFITS AND CONCERNS

In summary, some benefits claimed for court-annexed arbitration include:

- Provides litigants in small-stakes cases with a low-cost semi-formal adjudication and a "day in court."
- Ensures, when mandatory, that court-annexed arbitration programs handle

¹ B. Meierhoefer, *Court-Annexed Arbitration in Ten District Courts* (Federal Judicial Center 1990).

enough cases to reduce a court's caseload burden and justify the administrative costs of the program.

- Offers litigants a speedy and inexpensive avenue for resolution, while preserving access to full court process if litigants choose.
- Reduces judicial caseload burden so that judicial resources can be reallocated elsewhere.

Some concerns raised about court-annexed arbitration include:

- The additional staffing and other resources required by major court-annexed arbitration programs.
- Despite litigant approval, concern about the long-term impact on the public justice system of diverting large categories of federal litigants to the process, particularly the impact on the perception and reality of equal access by all litigants to the public courts.
- Uncertainty over the quality of arbitrators, the adequacy of selection and training, and the effect unpaid or modestly compensated arbitrations will have on the quality of services rendered over time.
- Uncertainty over whether mandatory referrals coupled with disincentives for rejecting awards unduly interfere with the right to trial.
- Concern about lower-stakes cases receiving second-class justice.

3. EARLY NEUTRAL EVALUATION

- 3.01 DEFINITION**
- 3.02 THE PROCESS**
- 3.03 SELECTING CASES FOR ENE**
- 3.04 RESEARCH RESULTS**
- 3.05 BENEFITS AND CONCERNS**

3.01 DEFINITION

Early Neutral Evaluation (ENE) is an ADR process that brings all parties and their counsel together early in the pretrial period to present summaries of their cases and receive a nonbinding assessment by an experienced neutral attorney with subject-matter expertise. The evaluator also provides case planning guidance and, if requested by the parties, settlement assistance.

Early neutral evaluation (ENE) began in 1983 in the Northern District of California under the aegis of the late Chief Judge Robert F. Peckham and Magistrate Judge Wayne D. Brazil. To reduce pretrial costs and to sharpen the pleading process, a court-appointed task force of lawyers proposed this confidential system for early exchange of information and case assessment by an impartial and respected attorney. The Northern District of California program became permanent in 1988, with ENE mandatory for some categories of cases. ENE has since been instituted in several other federal districts and state courts, with the Civil Justice Reform Act of 1990 (CJRA) spurring particular interest in ENE. Under the CJRA, a few districts are experimenting with ENE conferences conducted by magistrate judges.

ENE is designed to enhance pretrial practice by:

- Offering parties an early opportunity to communicate directly about the case and to exchange key information;**
- Encouraging parties and counsel to analyze their situations early in the litigation;**
- Providing counsel and their clients with an early opportunity to present their positions to their adversaries and to hear the other side present its case;**
- Offering counsel and litigants a confidential assessment of the relative strengths and weaknesses of their positions, an assessment of the judgment value of the case, and case planning assistance;**

- Providing parties with an early opportunity to negotiate settlement with the help of a skilled neutral third-party.

How does ENE differ from a Rule 16 or other case management conference? Judges and commentators answer this question in several ways. First, judicial officers usually do not have time to offer parties in-depth case planning assistance. Second, it may be inappropriate for the presiding judicial officer — who theoretically will adjudicate the matter — to offer candid case assessments early in the litigation. Third, parties are generally much less candid with judicial officers than with non-judicial evaluators. And fourth, the evaluator can often improve the quality of information offered the litigants because of his or her subject matter expertise.

3.02 THE PROCESS

The courts that use ENE vary in their case eligibility rules, the style and format of the ENE session, and the degree to which participation is mandatory.

- **Referral.** Cases are referred to ENE in three main ways: (1) certain categories of civil cases are automatically and mandatorily referred to ENE at the time of filing; (2) parties stipulate to participate, with the approval of the assigned judge; (3) the assigned judge refers the matter to ENE after an early status conference, either at a party's request or on his or her own motion. Where referral is mandatory, motions to opt-out of the process for good cause are permitted.
- **Evaluator.** After notification from the court that the case has been referred to ENE, the clerk or ADR administrator selects an evaluator with subject matter expertise and determines that no conflict of interest bars the evaluator's service. Evaluators are volunteer lawyers who are highly regarded and experienced in the types of cases for which they serve as evaluator.
- **Timing.** Once an evaluator has been appointed, the evaluator schedules the ENE session and notifies the parties. ENE sessions in the Northern District of California are required to be held within 45 days of the evaluator's appointment and within 150 days from filing of the complaint. ENE sessions may be postponed because of other activity in the case. Generally, litigation activity proceeds concurrently with the ENE.
- **Case Presentations.** ENE sessions begin with the evaluator presenting an opening statement, explaining the purposes of the sessions, and outlining the procedures to be followed. Following the opening statements, the evaluator may ask open-ended questions of both sides, attempting to clarify arguments and evidence, filling in evidentiary gaps and probing strengths and weaknesses. Next the evaluator helps the parties focus their cases and assists in identifying areas of agreement and dispute.

- **Case Assessment.** The evaluator retires to another room to prepare his or her case evaluation, generally in writing. The evaluation includes the likelihood of liability (noting the central reasons) and the range of damages (noting major elements and calculations). The assessment is intended to reflect judgment value, not settlement value.
- **Settlement Discussions.** The evaluator returns to the ENE conference room, asking the parties whether they would like to explore settlement before the case assessment is announced. If either party is unwilling to begin settlement discussions, the evaluator discloses the case evaluation. If both sides are then interested in pursuing settlement, the evaluator begins those discussions using any settlement process or format agreeable to the parties and the evaluator.
- **Case Planning.** If there are no settlement discussions or if discussions are not successful in producing a settlement, after disclosure of the evaluation, the evaluator discusses with the parties a pretrial case management plan. This may include helping to schedule motions or discovery that would put the case in a position for rapid settlement or disposition.
- **Follow-up.** After the ENE session, the parties may agree to a follow-up session or other activity. In some districts, parties may engage the evaluator for additional sessions on a compensated basis, with the consent of the court.
- **Return to Docket.** Unless settled, the case returns to the assigned judge, with no information from the confidential session relayed to the judge or included in the case file.

3.03 SELECTING CASES FOR ENE

Like mediation, ENE is thought to be widely applicable to civil cases of varying types and complexity. Several current programs select cases for referral by case type, targeting for mandatory ENE disputes involving contract, product liability, securities, labor and employment, personal injury, fraud, antitrust, banking, environmental, copyright, patent, and trademark. Where ENE referrals are made on a case-by-case basis, other kinds of selection criteria are used, such as the presence of inexperienced or poorly-prepared counsel; high levels of animosity between the parties; or complex legal disputes and multiple issues.

Some commentators recommend that ENE be made available to litigants in all civil cases, arguing that no data support limiting ENE to certain case types and that the ENE process provides useful case management assistance in all types of cases. ENE is thought to be particularly appropriate for cases where the parties differ substantially on legal or factual issues. ENE can also be appropriate in complex cases where subject matter expertise may be helpful in narrowing issues or simplifying them for trial.

Often excluded from ENE programs are class actions, cases in which the principal relief sought is injunctive, and cases involving unrepresented clients.

3.04 RESEARCH RESULTS

A study of the ENE program in the Northern District of California, conducted by the University of San Francisco School of Law in 1992 and reported by Joshua Rosenberg, Jay Folberg and Robert Barrett, produced the following findings:²

- **Litigant and Party Satisfaction.** 59% of the attorneys and 66% of the clients surveyed believed that ENE was worth the resources devoted to it, and 67% of the attorneys and 66% of the parties reported satisfaction with the process. When attorneys were asked what kind of meeting would have been most useful within the first four months of a lawsuit's filing, ENE received higher rankings than a Rule 16 conference with a judge, a settlement conference with a judge or magistrate judge, or a mediation session. 67% of the parties and 52% of the attorneys stated that they developed a more realistic assessment of the likely outcome of their case as a result of the ENE process and that their changed assessment contributed at least moderately to improved prospects for earlier settlement of the case.
- **Reducing Litigation Costs.** The study revealed a split of opinion among participants (parties and counsel) about ENE's impact on attorney costs and fees. The cost of the session was estimated at about \$3,300 by attorneys and at about \$5,800 by parties. ENE was believed to have resulted in a mean net savings of nearly 40% by attorneys' reports and 42% by clients' reports. The mean amount estimated to have been saved was about \$44,000.
- **Reducing Case Processing Time.** About half of the participants in ENE believed that the process reduced the time to final disposition, and almost half the participants believed that it reduced the time they themselves spent on the case. Reductions in case processing time were also borne out by objective measures.
- **Predicting ENE Success.** The study found that the skill of the evaluator is the most important determinant of ENE success. The next most important factor is the attitude of the assigned judge. If the judge endorses the process and makes clear to the litigants that they should pay attention to it and can expect to find it helpful, the

² J. Rosenberg, J. Folberg, R. Barrett, *Report Regarding the Early Neutral Evaluation Program of the U.S. District Court for the Northern District of California* (submitted to the Task Force on Alternative Dispute Resolution of the Civil Justice Reform Act Advisory Group for the Northern District of California) (December 1, 1992).

litigants and their attorneys report that they do tend to participate more actively and to find the process helpful.

Based on their findings, the study's authors offered the following assessment of the ENE program in the Northern District of California, as well as some guidelines for modifying current program structure:

ENE has varied markedly in both procedure and utility from case to case. Litigants and attorneys often know little about the process beforehand, and most cases are assigned to ENE automatically, rather than based on any specific characteristics of the case. Our recommendations are intended to ensure: (1) that ENE will become a more consistent, and more consistently helpful, process; (2) that evaluators, attorneys, litigants and judges will be more knowledgeable about what the ENE process entails; (3) that cases will be assigned to ENE on a more *case-specific* basis, resulting in its use in matters where ENE is most likely to be productive; and (4) that ENE will be integrated into court procedures along with other ADR options. We believe that assignment of cases to ENE and to other ADR processes should be made in coordination with the Court's new case management system, and that the choice should be made by the parties, or where the parties cannot decide, by the judge assigned to the case, with as much input as possible from the parties and the Court's professional ADR staff.³

3.05 BENEFITS AND CONCERNS

Among the main benefits asserted for ENE are:

- It enables attorneys and parties to increase their understanding of their cases, to evaluate them more realistically, and to pursue a more efficient path to resolution.
- It provides a valuable supplement to judicial case management, offering more in-depth case planning and settlement assistance than is normally possible or appropriate for the assigned judicial officer.

Among the concerns expressed about ENE are:

- Concern whether courts can and will devote sufficient resources to ENE programs to assure quality ENE training, judicial education, bar outreach, and evaluation.

³ *Id.* at 64.

- **Reluctance to add an additional layer to pretrial process.**
- **Concern about the effect unpaid or modestly-compensated evaluators will have on the quality of services rendered over time.**
- **Concern about duplication between ENE and other case management conferences.**

Appendix C

Revisions to Civil Rules 100, 26 and 16

Rule 100. Mediation, Early Neutral Evaluation, Arbitration and Settlement Conferences

(a) Application. At any time after a complaint is filed, a party may file a motion with the court requesting mediation or early neutral evaluation for the purpose of achieving a mutually agreeable settlement. The motion must address which process will be used and how the mediation or early neutral evaluation should be conducted as specified in paragraph (b), including the names of any acceptable mediators or early neutral evaluators. If domestic violence has occurred between the parties and mediation or neutral evaluation is requested in a matter covered by AS 25, mediation or neutral evaluation may only be ordered when permitted under AS 25.20.080, AS 25.24.060, or 25.24.140. In matters not covered by AS 25, the court may order mediation or neutral evaluation in response to such a motion, or on its own motion, whenever it determines that mediation or neutral evaluation may result in an equitable settlement. In making this determination, the court shall consider whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation or early neutral evaluation process or the physical safety of the domestic violence victim. Mediation or early neutral evaluation may not be ordered between the parties to, or in, a case filed under AS 18.66.100 - 18.66.180.

(b) Order. A order of mediation or early neutral evaluation must state:

- (1) the name of the mediator or neutral evaluator, or how the mediator or neutral evaluator will be decided upon;
- (2) any changes in the procedures specified in paragraphs (d) and (e), or any additional procedures;
- (3) that the costs of mediation or early neutral evaluation are to be borne equally by the parties unless the court apportions the costs differently between the parties; and
- (4) a date by which the initial mediation or early neutral evaluation conference must commence.

(c) Challenge of Mediator or Neutral Evaluator. Each party has the right once to challenge peremptorily any mediator or neutral evaluator appointed by the court if the "Notice of Challenge of Mediator" or "Notice of Challenge of Neutral Evaluator" is timely filed pursuant to Civil Rule 42(c).

(d) Mediation Briefs. Any party may provide a confidential brief to the mediator or neutral evaluator explaining its view of the dispute. If a party elects to provide a brief, the brief may not exceed five pages in length and must be provided to the mediator or neutral evaluator not less than three days prior to the mediation or evaluation. A party's mediation-brief may not be disclosed to anyone without the party's consent and is not admissible in evidence.

(e) Conferences. Mediation and early neutral evaluation will be conducted in informal conferences at a location agreed to by the parties or, if they do not agree, at a location designated by the mediator or neutral evaluator. All parties shall attend the initial conference at which the mediator or neutral evaluator shall first meet with all parties. Thereafter the mediator or neutral evaluator may meet with the parties separately. Counsel for a party may attend all conferences attended by that party.

(f) Termination. After the initial joint conference and the first round of separate conferences if separate conferences are required by the mediator or neutral evaluator, a party may withdraw from mediation or neutral evaluation, or the mediator or neutral evaluator may terminate the process if the mediator or neutral evaluator determines that mediation further efforts are likely to be unsuccessful. Upon withdrawal by a party or termination by the mediator or neutral evaluator, the mediator or neutral evaluator shall notify the court that mediation efforts have been terminated.

(g) Confidentiality. Mediation and neutral evaluation proceedings shall be held in private and are confidential. The mediator or neutral evaluator shall not testify as to any aspect of the mediation proceedings. Evidence of conduct or statements made in the course of court-ordered mediation or neutral evaluation shall be inadmissible to the same extent as conduct or statements are inadmissible under Alaska Rule of Evidence 408. This rule does not relieve any person of a duty imposed by statute.

(h) Dismissal. If the mediation or neutral evaluation is successful, the party requesting mediation or neutral evaluation shall prepare a stipulation for dismissal which dismisses all or such portions of the action as have been concluded by mediation as agreed upon at the mediation or neutral evaluation.

(i) Arbitration. The parties may stipulate to use arbitration to resolve a case without order of the court.

(j) Settlement Conference. At any time after a complaint is filed, a party may file a motion with the court requesting a settlement conference with a judge for the purpose of achieving a mutually agreeable settlement;

Rule 26. General Provisions Governing Discovery; Duty of Disclosure.

(1) Initial Disclosures. Except to the extent otherwise directed by order or rule, a party shall, without awaiting a discovery request, provide to other parties:

(A) the factual basis of each of its claims or defenses;

(B) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information and whether the attorney-client privilege applies;

(C) the name and, if known, the address and telephone number of each individual who has made a written or recorded statement and, unless the statement is privileged or otherwise protected from disclosure, either a copy of the statement or the name and, if known, the address and telephone number of the custodian;

(D) subject to the provisions of Civil Rule 26(b)(3), a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are relevant to disputed facts alleged with particularity in the pleadings;

(E) subject to the provisions of Civil Rule 26(b)(3), all photographs, diagrams, and videotapes of persons, objects, scenes and occurrences that are relevant to disputed facts alleged with particularity in the pleadings;

(F) each insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and

(G) all categories of damages claimed by the disclosing party, and a computation of each category of special damages, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such claims are based, including materials bearing on the nature and extent of injuries suffered.

Unless otherwise directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under paragraph (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by subparagraph (a)(1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Evidence Rules 702, 703, or 705.

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(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. The parties shall supplement these disclosures when required under subparagraph (e)(1).

(D) No more than three independent expert witness may testify for each side as to the same issue in any given case. For purposes of this rule, an independent expert is an expert from whom a report is required under section (a)(2)(B). The court, upon the showing of good cause, may increase or decrease the number of independent experts to be called.

(3) **Pretrial Disclosures.** In addition to the disclosures required in the preceding paragraphs, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

These disclosures shall be made at the times and in the sequence directed by the court. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

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(4) Form of Disclosures. Unless otherwise directed by the court, all disclosures under subparagraphs (a)(1) and (2) shall be made in writing, signed, and served in accordance with Rule 5.

(5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. The court may alter the limits in these rules on the number of depositions and interrogatories, the length of depositions under Rule 30, and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under paragraph (c).

(3) Trial Preparation: Materials. Subject to the provisions of subparagraph (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subparagraph (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject

matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under section (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subparagraph; and (ii) with respect to discovery obtained under section (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the judicial district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery

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other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition, after being sealed, be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery.

(1) **Timing of Discovery--Non-Exempted Actions.** In an action in which disclosure is required under Rule 26(a), a party may serve up to ten of the thirty interrogatories allowed under Rule 33(a) at the times allowed by section (d)(2)(C) of this rule. Otherwise, except by order of the court or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by paragraph (f).

(2) **Timing of Discovery--Exempted Actions.** In actions exempted from disclosure under Rule 26(a), discovery may take place as follows:

(A) For depositions upon oral examination under Civil Rule 30, a defendant may take depositions at any time after commencement of the action. The plaintiff must obtain leave of court if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service by publication if authorized, except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) the plaintiff seeks to take the deposition under Civil Rule 30(a)(2)(C).

(B) For depositions upon written questions under Civil Rule 31, a party may serve questions at any time after commencement of the action.

(C) For interrogatories, requests for production, and requests for admission under Civil Rules 33, 34, and 36, discovery requests may be served upon the plaintiff at any time after the commencement of the action, and upon any other party with or after service of the summons and complaint upon that party.

(3) **Sequence of Discovery.** Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting

discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) **Supplementation of Disclosures and Responses.** A party who has made a disclosure under paragraph (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under paragraph (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Meeting of Parties; Planning for Discovery and Alternative Dispute Resolution. Except when otherwise ordered and except in actions exempted from disclosure under Rule 26(a), the parties shall, as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, including whether an alternative dispute resolution procedure is appropriate, to make or arrange for the disclosures required by subparagraph (a)(1), and to develop a proposed discovery plan and a proposed alternative dispute resolution plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing or form of disclosures under paragraph (a), including a statement as to when the disclosures under subparagraph (a)(1) were made or will be made and what are appropriate intervals for supplementation of disclosure under Rule 26(e)(1);

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(4) the plan for alternative dispute resolution, including its timing, the method of selection a mediator, early neutral evaluator or arbitrator, or an explanation of why alternative dispute resolution is inappropriate.

(5) whether a scheduling conference is unnecessary; and

(5) any other orders that should be entered by the court under paragraph (c) or under Rule 16(b) and

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(c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the plan.

Rule 16. Pretrial Conferences; Scheduling; Management.

(a) **Pretrial Conferences; Objectives.** In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating the settlement of the case, including use of alternative dispute resolution procedures such as mediation, early neutral evaluation, arbitration and settlement conferences.

(b) **Scheduling Order; Mandatory Scheduling Conference.**

(1) Except in categories of actions exempted under Rule 16(g), the judge shall, after receiving the report from the parties under Rule 26(f), enter a scheduling order that limits or establishes the time:

- (A) to join other parties and to amend the pleadings;
- (B) to file motions;
- (C) to disclose expert witnesses and reports required under Rule 26(a)(2);
- (D) to supplement disclosures required under Rule 26(a);
- (E) to identify witnesses and exhibits;
- (F) to complete discovery; and
- (G) for trial or the trial setting conference.

The scheduling order may also address:

- (H) modification of the discovery limitations contained in these rules, including the length of depositions in light of the factors listed in Rule 30(d)(2), and the extent of discovery to be permitted;
- (I) the date or dates for conferences before trial; and

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(J) the use and timing of an alternative dispute resolution procedure; and

(K) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of the defendants. A schedule shall not be modified except upon a showing of good cause and by leave of court.

(2) The judge shall meet with the attorneys for the parties and any unrepresented parties prior to entering the scheduling order unless the parties have waived this conference in their report and the judge determines that a conference is unnecessary. The court shall distribute notice of the conference date as soon as practicable after the appearance of the defendants. The conference may be held on or off the record.

(c) Subjects for Consideration at Pretrial Conferences. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to:

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Evidence Rule 702;

(5) the appropriateness and timing of summary adjudication under Rule 56;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) the advisability of referring matters to a master;

(9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;

(10) the form and substance of the pretrial order;

- (11) the disposition of pending motions;
- (12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;
- (14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a);
- (15) an order establishing a reasonable limit on the time allowed for presenting evidence; and
- (16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) **Final Pretrial Conference.** Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) **Pretrial Orders.** After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) **Sanctions.** If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses

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unjust.

(g) Actions Exempted from Rule 16(b). The following categories of cases are exempted from the requirement of scheduling conferences and scheduling orders under Rule 16(b):

(1) special proceedings listed in Part XII of these rules, including habeas corpus petitions and dissolution of marriage and divorce actions;

(2) paternity cases;

(3) small claims cases;

(4) actions to enforce out-of-state judgments;

(5) eminent domain cases;

(6) proceedings for post-conviction relief under Criminal Rule 35.1; and

(7) proceedings to obtain a domestic violence protective order under AS 18.66.100 and AS 18.66.110.

Appendix D

Early Neutral Evaluation Pilot Project

MEMORANDUM

TO: Alaska Supreme Court
FROM: Alaska Judicial Council
DATE: November 24, 1997
RE: Early Neutral Evaluation Pilot Project

The Alaska Court System has agreed to request legislative funding to implement a two-year early neutral evaluation pilot project in 1998-99. This memo describes the program's goals, scope, design and evaluation.

I. Goals

This program is designed to promote the timely and efficient resolution of selected civil cases in a manner that parties and attorneys perceive to be fair, and to promote the efficient use of judge time. Specifically, the project's goals are:

- (1) to promote earlier case settlement,
- (2) to save the parties money, and
- (3) to promote the efficient use of judicial resources,
- (4) the program should be perceived by parties and attorneys to be fair.

II. Scope

The program will target the non-family (primarily commercial and tort) caseloads of participating judges, and will involve at least five judges at four court locations who volunteer to participate. The project will test the hypothesis that cases will settle earlier, at less cost to the parties, and will require less judge time if the judge takes an early, active case management and settlement role. The program will run for two years. The Alaska Court System will consider expanding it statewide if it is successful.

III. Program Design

Civil Rule 16(b) currently requires judges to meet with counsel very early in the life of a contested case to set the case for trial and discuss other scheduling matters. The judges participating in this pilot project will include clients in the 16(b) meeting and will use this meeting to help the parties structure and evaluate the case for early settlement.

Before the 16(b) meeting, the judge will review the case file and the parties' written report of their discovery planning meeting. If necessary, the judge will research the cause of action and other legal issues. The judge will be prepared to discuss settlement with the attorneys and parties at the 16(b) meeting, or if the parties prefer, the judge will arrange for another judge or a private mediator or other neutral to discuss settlement. This procedure will require participating judges to change the way they handle their caseloads by actively encouraging and helping the parties to settle the case, or to structure the case for earlier settlement.

IV. Training

Before the project begins, the Alaska Court System will train all judges in early neutral evaluation and other settlement techniques. The judges participating in this project will receive additional training on the goals and procedures of this project.

V. Conduct of Rule 16(b) Meetings

The goal of the meeting should be to settle the case. The participating judges will be trained to conduct the ENE sessions in a way that facilitates early and friendly communications between opposing sides. Both lawyers and clients will be required to attend the sessions, since participation and education of the parties is necessary for earlier case resolution. The attorney who will be primarily responsible for handling the case at trial also will be required to attend.

At the ENE session, the judge will advise the parties and their lawyers of the various ADR options available, refine the parties' discovery plan to facilitate early settlement (if necessary), and help the parties explore areas of agreement and explore the possibility of settling the case at the meeting. If the parties wish to try to settle the case there, the judge can begin a settlement conference. Or, if the parties requested someone other than the assigned judge, the judge can refer them to another judge, a private mediator, or a private early neutral evaluator.

The judge/evaluator will help the parties realistically discuss of the relative strengths and weaknesses of their respective cases. The process should aim to confront facts and issues before the attorneys engage in expensive and time-consuming discovery. The judge/evaluator should help the parties evaluate their cases, understand the other side's view, and lay the groundwork for settlement by identifying needed information. If the case can not settle at this meeting, the meeting should be used to determine whether another ADR process would be suitable and to schedule it to occur.

VI. Monitoring and Evaluation

The court will hire a full-time, temporary project director to monitor the program, respond to unanticipated problems and field complaints and questions.

The Alaska Judicial Council will evaluate the program's success. The Council will provide limited feedback during the time the project is in operation, and will prepare a final report at the end of the project.

The evaluation will include quantitative and qualitative measures. First, the evaluation will collect descriptive information about the types of cases in the program,

including the case type, number of parties and the cases' complexity. Second, the evaluation will monitor settlement rates and disposition times of participating judges' cases and compare them to similar caseloads of judges who did not participate. Third, the evaluation will compare the amount of time participating judges spent per case to the amount of time spent by judges who had similar case loads. Fourth, the Judicial Council will survey all attorneys and litigants who participated in the program to ask their opinions of the fairness and effectiveness of the program, and their level of satisfaction with it. The Council also will interview each of the participating judges for their impressions of the usefulness of the program, and how it might be improved.

VII. Budget

The Alaska Court System will request increments in its FY 1999 and FY 2000 budgets to implement this program. The Alaska Judicial Council will request increments in its FY 1999 and FY 2000 budgets to evaluate the program.

Appendix E

Judicial Council FY99 ADR Budget Increments

Attachment A

ADR Information Brochure

To implement the alternative dispute resolution provisions of the Alaska legislature's 1997 "tort reform" legislation, the Judicial Council requests an increment to develop, print and distribute a short brochure explaining various alternative dispute resolution procedures such as mediation, arbitration and early neutral evaluation. The brochure will be aimed at litigants, as well as attorneys.

In response to the alternative dispute resolution provisions of the legislature's 1997 "tort reform" legislation, the Alaska Supreme Court is amending several of its rules of civil procedure to increase the voluntary use of ADR processes such as mediation. In addition, the court system is developing several initiatives for ADR programs in child custody, probate, guardianship and commercial cases. Thus, litigants will need more information about ADR. The Judicial Council proposes using ADR guides developed in other states to design a guide for Alaska's litigants. The information also will be useful for attorneys. The booklet will be similar in format to others developed by the Judicial Council: concise, easy to read, relatively short (10-20 pages), and attractively laid out. The Council also will distribute the booklet in electronic format to attorneys who wish to print out copies for their clients and to other members of the public who request them. The Council will post the booklet on its web site, and distribute printed copies to court locations statewide. The aim is to provide Alaskan litigants with information on how they can minimize litigation costs by using forms of alternative dispute resolution.

Costs

This booklet will be relatively inexpensive to develop; the main costs will include printing and dissemination.

Staff. The Council will use existing staff to research and write the guide.

Layout/Design/Typesetting: The Council will contract with a graphic designer to layout the brochure: \$4,000.

Printing: The Council initially will print 5,000 to 7,500 copies of the booklet, \$5,000. (In subsequent years when we will distribute the booklet over the entire fiscal year, printing will be increased.)

Postage: The brochure will be posted on the Council's web site using existing staff. The Council will rely on the Alaska Court system to disseminate copies at all its court locations. The Council will mail copies of the brochure or diskettes to Alaskans who request them: \$100.

Supplies. Costs for 100 computer disks and diskette mailing envelopes, \$200.

Total Costs: Staff, travel, postage, printing, and supplies will total \$9,300.

Attachment B

Evaluations of Court System's Alternative Dispute Resolution Pilot Projects

In response to the alternative dispute resolution (ADR) provisions of the 1997 "tort reform" legislation, the Alaska Court System is planning two ADR pilot projects. The first is an early neutral evaluation (ENE) pilot project for commercial cases, and the second involves mediation of probate and guardianship cases. The ENE project will use judges and some private subject-matter experts to help parties settle non-family cases earlier and at less cost. The probate/guardianship mediation project will use trained, private mediators to help parties resolve those cases in a less adversarial manner and with fewer court hearings. The Alaska Court System has asked the Alaska Judicial Council to evaluate these experimental projects to determine whether they are meeting their goals. The AJC requests an increment to evaluate the projects.

In response to the alternative dispute resolution provisions of the 1997 "tort reform" legislation, the Alaska Court System is planning two ADR pilot projects. The first is an early neutral evaluation (ENE) pilot project for commercial cases, and the second involves mediation of probate and guardianship cases. The Alaska Court System has asked the Alaska Judicial Council to evaluate these programs to determine whether they are meeting their goals. The ACS and the Legislature need to know whether the projects are successful in order to decide whether to continue to devote resources to them. In addition, the Court system will take steps to encourage the voluntary use of ADR. These efforts also should be evaluated.

1. ENE Pilot Project Evaluation. The ENE pilot project will target non-family cases and use judges (and some private experts) to help attorneys and clients settle these cases earlier, with less cost to the parties and more efficient use of judges' time. Assuming the court system receives funding, the Early Neutral Evaluation Pilot Project could begin as soon as November of 1998. The project will run for two years in order to give cases time to work through the system. However, the evaluation will need to begin as soon as the project begins, with the final report anticipated at the end of the project (November of 2000).

To evaluate this pilot project, the Judicial Council will compare results in cases that received early neutral evaluation conferences to results in cases that did not. The Council also will collect information from attorneys and litigants whose cases received early neutral evaluations, and from the judges who performed the early neutral evaluations. The evaluation of this project thus would include both qualitative and quantitative measures. The data will be gathered over a two year period, beginning in July of 1998.

First, the AJC will compare cases from judges that held early neutral evaluation sessions to the case loads of judges who did not. The AJC will gather information from the experimental and

control case files, including the number of parties involved, the nature of the case, the causes of action, how long the case took to be resolved, how it was resolved and how many hearings occurred. The AJC will enter the data onto an electronic database for analysis.

Second, the AJC will send written surveys to attorneys and clients who participated in the pilot project cases. The surveys will ask about satisfaction with the early neutral evaluation session, whether they thought it was fair, whether they found it helpful, and how many hours the attorney spent on the case.

Finally, the AJC will interview the judges who participated in the pilot project and those who did not, and compare how the judges handled their cases. In addition, the pilot project judges will keep track of the amount of time they spent on each case; this information will be compared to baseline data that the court system collected several years ago to see whether the pilot judges spent more or less time on their cases than judges who did not participate in the pilot project.

Costs for ENE Pilot Project Evaluation

Existing Judicial Council staff will manage the project, analyze the data and write the final report. The main expenses incurred for this two-year project thus will be for data collection and data entry.

Staff:

During the first year, a researcher will collect data from 200 control cases in Anchorage, 50 control cases in Fairbanks, 30 control cases in Kenai and 25 control cases in Ketchikan (approximately 180 hours total). In addition, the researcher will begin collecting file data from experimental cases in Anchorage and Fairbanks as they begin to close, probably toward the end of the year (50 cases in Anchorage and 25 in Fairbanks), for a total of approximately 35 hours. The researcher will spend about 70 hours cleaning the case file data. In addition, the researcher will spend about 40 hours entering and cleaning data from the attorney and litigant surveys. Finally, the researcher will enter the judge time data (30 hours). Total = 355 hours, 11E, \$13,585.

A secretary will spend about 230 hours over the course of the first year sending out litigant and attorney surveys and following up on those; the secretary also will spend about 50 hours

performing general secretarial and administrative support for the project. Total = 280 hours, 11D, \$6,493.

Travel:

The researcher will travel to Fairbanks, Kenai and Ketchikan to collect the case file data. In addition, Judicial Council staff will make one trip to each location to observe an ENE session and interview the judges in that location. Airfare and per diem for these trips will total \$3,500.

Contractual:

Consultant. The Judicial Council will contract with an academic consultant to help design the data collection instruments and the overall evaluation design. The consultant will spend 20 hours @ \$75/hour for a total of \$1,500.

Postage: The Judicial Council will mail attorney and litigant surveys. Postage will cost \$400.

Printing: The Court System will print the attorney and litigant surveys at no cost.

Supplies:

Envelopes, paper, and miscellaneous supplies for survey and data collection instruments. Costs will be \$647.

Total: Staff, travel, postage, printing, and supplies will total = \$21,000.

2. Evaluation of Probate Mediation Pilot Project. At the recommendation of the Probate Section of the Alaska Bar Association and the Alaska Court System's Probate Rules Committee, the Alaska Supreme Court is amending its probate rules to specifically authorize use of mediation in estate and guardianship cases. Judges will be authorized to order mediation on their own motion or at the parties' request. The court system will request funding to train mediators to handle these disputes. Project goals include resolving guardianship disputes and estate disputes in a more non-adversarial manner than litigation, speeding the resolution of cases, and decreasing the number of cases needing a hearing before a master. The Judicial Council requests a small increment to evaluate whether the rule change is effective in achieving these goals during its first year.

The Judicial Council proposes an evaluation that relies on information from case files and from surveys of attorneys, litigants, mediators and other involved parties. The Council will work with the court system to identify cases ordered to mediation. The Council then will gather information from the case files, including the type of case, the identities of the parties, how the case was resolved and when it was resolved. The Council will send written surveys to the attorneys, litigants, mediators and others involved in the cases (for example, public guardians) about whether they thought the mediation was fair, their satisfaction with mediation and their satisfaction with the outcome of the case. The Judicial Council will write a report containing its findings and conclusions, and will disseminate it to legislators, the court system, the Office of Public Advocacy, members of the Probate Section of the Alaska Bar Association, and other interested agencies and individuals.

Costs

Staff:

The Council will use existing staff to design data collection instruments, to set up the data base, to analyze the information collected and to write the final report. No cost.

During FY 1999, a researcher will locate and review approximately 50 probate files statewide that have been ordered into mediation, enter the data into a database and clean the data (about 30 hours). In addition, the researcher will enter and clean the survey data (about 30 hours). Total = 60 hours, 11E, \$1,430.

A secretary will send out surveys to the litigants, attorneys and mediators involved in the cases and will follow up on those. The secretary will spend about 80 hours over the course of the year. Total = 80 hours, 11D, \$1,855.

Contractual:

Postage. The Judicial Council will mail attorney, litigant and mediator surveys (approximately five per case). The Council will mail the final report to legislators, the court system, members of the Probate Section of the Alaska Bar Association and other interested individuals and agencies. Postage will cost \$900.

Printing. The Court System will print attorney, litigant and mediator surveys, and the final report, at no cost.

Supplies:

Envelopes, paper, and miscellaneous supplies for the report, and survey and data collection instruments. Costs will be \$1,215.

Total: Staff, travel, postage, printing, and supplies will total \$5,400.

3. Evaluation of ADR Education and Court Rule Changes. In response to the legislature's "tort reform" legislation, the Alaska Supreme Court is changing three court rules to encourage the voluntary use of alternative dispute resolution. The goal of these rule changes is to increase the frequency with which attorneys and litigants use mediation, arbitration, and early neutral evaluation. In addition, the Alaska Court System intends to train its judges to better understand the various ADR processes so that they can assist and encourage litigants to choose an ADR process that suits their needs.

The Judicial Council proposes evaluating whether the rules changes and judge training are effective in increasing the appropriate use of ADR to resolve civil cases. The Council's evaluation will survey attorneys (and some litigants) about whether the rule changes and encouragement and information from the judges affected their decision to use ADR, and if so, how. The Council also would ask about satisfaction with the ADR process. The Council already is collecting baseline data on the frequency of ADR use, in connection with its statutory responsibility to collect information about the resolution of civil cases. The evaluation thus would use the data already collected to identify increased use of ADR, and to identify litigants and attorneys who reported using ADR.

The Judicial Council will write a report containing its findings and disseminate it to legislators, the court system, the Office of Public Advocacy, members of the Probate Section of the Alaska Bar Association, and other interested agencies and individuals.

Costs

Staff:

The Judicial Council would use existing staff to design data collection instruments, to set up the data base, to analyze the information collected, and to write the final report. No cost.

During FY 1999, a researcher will identify approximately 100 closed civil cases in which ADR was used. The researcher will enter the data into a database and clean the data (about 30 hours). In addition, the researcher will enter and clean the survey data (about 25 hours). Total = 55 hours, 11E, \$1,311.

A secretary will send out surveys to the litigants, attorneys and mediators involved in the cases and will follow up on those. The secretary will spend about 80 hours over the course of the year. Total = 80 hours, 11D, \$1,855.

Contractual:

Postage. The Judicial Council will mail attorney, litigant and mediator surveys (approximately five per case). The Council will mail the final report to legislators, the court system, selected members of the Alaska Bar Association and other interested individuals and agencies. Postage will cost \$1,500.

Printing. The Court System will print attorney, litigant and mediator surveys, and the final report, at no cost.

Supplies:

Envelopes, paper, and miscellaneous supplies for the report, and survey and data collection instruments. Costs will be \$1,534.

Total: Staff, travel, postage, printing, and supplies will total \$6,200.

Appendix F

Model Standards of Conduct for Mediators

MODEL STANDARDS OF CONDUCT FOR MEDIATORS

Introductory Note

The initiative for these standards came from three professional groups: the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

The purpose of this initiative was to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners in it - a beginning, not an end. The standards are intended to apply to all types of mediation. It is recognized, however, that in some cases the application of these standards may be affected by laws or contractual agreements.

Preface

The Model Standards of Conduct for Mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, organizations, and institutions involved in mediation.

Mediation is a process in which an impartial third party - a mediator - facilitates the resolution of a dispute by promoting voluntary agreement (or "self-determination") by the parties

to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement. These standards give meaning to this definition of mediation.

I. Self-Determination: A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

COMMENTS: • The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.

- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

II. Impartiality: A Mediator Shall Conduct the Mediation in an Impartial Manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

COMMENTS: • A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.

- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially.
- A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

III. Conflicts of Interest: A Mediator Shall Disclose all Actual and Potential Conflicts of Interest Reasonably Known to the Mediator. After Disclosure, the Mediator Shall Decline to Mediate Unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest Also Governs Conduct that Occurs During and After the Mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

COMMENTS: • A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.

- Potential conflicts of interest may arise between the administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressures from outside of the mediation process should never influence the mediator to coerce parties to settle.

IV. Competence: A Mediator Shall Mediate Only When the Mediator Has the Necessary Qualifications to Satisfy the Reasonable Expectations of the

Parties.

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

COMMENTS: • Mediators should have available for the parties information regarding their relevant training, education and experience.

- The requirements for appearing on a list of mediators must be made public and available to interested persons.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

V. Confidentiality: A Mediator Shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.

The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party

expects to be confidential unless given permission by all parties or unless required by law or other public policy.

COMMENTS: • The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.

- If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.
- Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation, of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to

individual case files, observations of live mediations, and interviews with participants.

VI. Quality of the Process: A Mediator Shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

COMMENTS: • A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.

- Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.
- The presence or absence of persons at a mediation depends on the agreement of the parties and mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.
- The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client

relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should therefore refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other professions.

- A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial.
- A mediator shall withdraw from the mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.
- Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

VII. Advertising and Solicitation: A Mediator Shall Be Truthful in Advertising and Solicitation for Mediation.

Advertising or any other communication with the public concerning services offered or

regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

COMMENTS: • It is imperative that communication with the public educate and instill confidence in the process.

- In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

VIII. Fees: A Mediator Shall Fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering, among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

COMMENTS: • A mediator who withdraws from a mediation should return any unearned fee to the parties.

- A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
- Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.
- A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

IX. Obligations to the Mediation Process: Mediators have a duty to improve the practice of mediation.

COMMENTS: • Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.