HB

9

SENATE COMMITTEE REPORT

DATE: 2/10/99

FURTHER:

DATE TURNED
IN TO OFFICE: ______________________

Judiciary Committee considered HOUSE BILL NO. 9

"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

and recommends:

[ ] be **replaced** with ______ CS ______________________(________)

[ ] adopt **previous** _____ CS ______________________(________)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by __________________ Committee

[ ] further referral to the __________________ Committee

Senate Bill:
[ ] same title
[ ] new title
House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR* ______

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Rick Halford	✓				
Dave Donley	✓				
CHAIR: Robin Taylor	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Administration	2/1	✓	
Ak Court	1/27	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

No: 2

FISCAL NOTE

Bill Version: HB 9

(H) Publish Date: 2/5/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date/Time ______

Dept. Affected: Administration

Title: "An act relating to the collection of settlement information in civil litigation and providing for an effective date."

BRU: Risk Management

Component: Risk Management

Sponsor: Rep. Porter

Requester: (H) JUD

Component Serial No. 71

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

There is no fiscal impact to the Division of Risk Management.
Bill adds new reporting requirement to the Alaska Judicial Council upon the settlement or compromise of any civil case(excluding those explicitly exempt).
Required information is retreivable from existing Risk Management claims management information system records and can be easily reported.

Prepared by: Brad Thompson, Director — Phone: 465-5723

Division: Risk Management — Date/Time: ______

Approved By: Commissioner Robert P Poe Jr. — Date: 2/1/99

Agency: Administration

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

(Rev 10/98) [illegible]

FISCAL NOTE

No: 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 9
(H) Publish Date: 2/5/99

Revision Date		Dept. Affected	Alaska Court system
Title	Collection of Settlement Information in Civil Litigation	BRU	Alaska Court system
		Component	Trial Courts
Sponsor	Representative Porter		
Requester	House Judiciary	Component Serial No.	769

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: ________

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

No fiscal impact.

Prepared by: C. S. Christensen III, General Counsel
Phone: 264-8228
Agency: Alaska Court System
Date/Time: 1/27/99 12:32 PM

Approved by: Stephanie J. Cole, Administrative Director
Date: 1/27/99
Agency: Alaska Court System

(Rev 1/99)

COMMITTEE COPY

ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

MEMORANDUM

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Representative Brian Porter
Speaker of the House

RE: Request for Hearing

DATE: February 10, 1999

Please consider this request to schedule House Bill 9: Persons Required to File Settlement Information before the Senate Judiciary Committee at your earliest possible convenience.

Back up material is attached with this memorandum.

Thank you for your consideration of my request. Please do not hesitate to contact my staff, Tom Wright, or myself if you have questions or need further information.

Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4930 Fax: (907) 465-3834
Interim: 716 West 4th Avenue, Suite 300, Anchorage, Alaska 99501 • Phone: (907) 269-0155 Fax: (907) 269-0154

ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

SPONSOR STATEMENT – HOUSE BILL 9

One section of the Tort Reform legislation enacted into law two sessions ago requires the collection of settlement and other data in certain categories of civil litigation cases. These provisions appear in AS 09.68.130.

It has become apparent since the enactment of tort reform legislation that five minor housekeeping amendments are needed. The first makes mandatory the reporting of data by attorneys and persons representing themselves. Apparently, some individuals interpret the data collection provisions of the Tort Reform Law to be optional. This amendment clarifies the mandatory nature of these reporting requirements in order to ensure that accurate statistics will be compiled. Information must be submitted within 30 days after the settlement or final resolution of all covered cases.

Second, the Alaska Judicial Council has recommended that certain non-tort cases be added to the types of cases already excluded from the reporting requirements. The Tort Reform Law excluded divorce and other categories of cases from reporting requirements. The amendment, offered in Section 1 of House Bill 9, adds several categories of cases that should also be excluded.

Third, the bill clarifies that the reporting requirements arise only after final appeals as to cases that are fully litigated. Should any one of multiple plantiffs, defendants or third party defendants settle out of litigation before its final disposition, the obligation to submit required data arises as of the date the case is fully resolved as it pertains to that party.

Fourth, the bill has the effect of amending two court rules since it limits civil actions found under AS 09.68.130 (a) and specifies who is required to provide settlement information.

Fifth, the effective date as to the collection of settlement and other data is changed to clarify that reporting requirements are applicable to civil litigation cases which are settled or finally adjudicated on or after the bill is signed into law. The reporting requirements are not retroactive to the effective date of the Tort Reform Law.

Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4930 Fax: (907) 465-3834
Interim: 716 West 4th Avenue, Suite 300, Anchorage, Alaska 99501 • Phone: (907) 269-0155 Fax: (907) 269-0154

ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

SECTIONAL ANALYSIS – HOUSE BILL 9

Section 1: Amends AS 09.68.130 (c), Collection of settlement information. The amendment adds to the list of cases that are excluded from the reporting requirements currently found under this section. The following cases to be added for exclusion are:

- forcible entry and detainer cases
- administrative appeals
- motor vehicle impound or forfeiture actions under municipal ordinance.

Section 2: Adds a new subsection (d) to AS 09.68.130, Collection of settlement information. This new subsection states that attorneys and persons representing themselves in all applicable civil cases are under a mandatory duty to furnish settlement and other data to the Alaska Judicial Council within 30 days after the case is settled or finally resolved. The required information is to be submitted on a form specified by the Alaska Judicial Council.

Section 3: The provision found under Section 1 of this bill also has the effect of amending Rule 41.(a) (3), Alaska Rules of Civil Procedure, and Rule 511 (e), Alaska Rules of Appelate Procedure, by limiting civil actions subject to AS 09.68.130 (a) and by specifying who is required to provide settlement information.

Section 4: This section establishes an effective date as to the reporting requirements for all applicable civil litigation cases which close by way of settlement or other final judicial resolution. The effective date is on or after the date this bill is signed.

Section 5: Immediate effective date.

Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4930 Fax: (907) 465-3834
Interim: 716 West 4th Avenue, Suite 300, Anchorage, Alaska 99501 • Phone: (907) 269-0155 Fax: (907) 269-0154

Sec. ▸▸09.68.130◂◂. Collection of settlement information.

(a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other resolution of all civil litigation. The information shall be collected on a form developed by the council for that purpose and must include

(1) the case name and file number;

(2) a general description of the claims being settled;

(3) if the case is resolved by way of settlement,

(A) the gross dollar amount of the settlement;

(B) to whom the settlement was paid;

(C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before disbursement to the claimant;

(D) the net amount actually disbursed to the claimant;

(E) the total costs and attorney fees paid by or owed by all parties; and

(F) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid;

(4) if the case is resolved by dismissal, summary judgment, trial, or otherwise,

(A) the gross dollar amount of the judgment;

(B) the amount of attorney fees awarded and to which party;

(C) the amount of costs awarded and to which party;

(D) the net amount, after deduction of (B) and (C) of this paragraph, for which the prevailing party has judgment;

(E) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant;

(F) the total costs and attorney fees paid by defending parties; and

(G) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid.

(b) The information received by the council under (a) of this section is confidential. This restriction does not prevent the disclosure of summaries and statistics in a manner that does not allow the identification of particular cases or parties.

(c) The requirements of (a) of this section do not apply to the following types of cases:

(1) divorce and dissolution;

(2) adoption, custody, support, visitation, and emancipation of children;

(3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;

(4) domestic violence protective orders under AS 18.66.100 - 18.66.180;

(5) estate, guardianship. and trust cases filed under AS 13;

(6) small claims under AS 22.15.040 .

---

the judge who is assigned the case is not available and the application concerns a stipulation or uncontested motion; a petition for emergency domestic violence injunction; a motion for temporary restraining order or other emergency motion; findings, judgments and orders based upon decisions previously announced by the judge assigned to the case; or other matters when the application is presented to the presiding judge, or in the presiding judge's absence, to any other available judge within the state, upon good cause shown.

(e) **Continuances.***

(1) All cases set for trial shall be heard on the date set unless the same are continued by order of the court for cause shown. The presiding judge of a judicial district may require that a visiting or pro tem judge obtain approval from the presiding judge before granting any continuance of trial.

(2) Unless otherwise permitted by the court, application for the continuance of the trial of the case shall be made to the court at least five days before the date set for trial. The application must be supported by the affidavit of the applicant setting forth all reasons for the continuance. If such case is not tried upon the day set, the court in its discretion may impose such terms as it sees fit, and in addition may require the payment of jury fees and other costs by the party at whose request the continuance has been made.

(3) When parties are present in court and ready for trial on the day set for trial, but their case is not reached on that day, they will retain their relative position on the calendar and on the next open trial day they will be entitled to precedence over cases set for trial on the last-mentioned day.

(Adopted by SCO 5 October 9, 1959; amended by SCO 36 effective May 8, 1961; by SCO 44 effective February 26, 1962; by SCO 193 effective November 1, 1974; by SCO 229 effective January 1, 1976; by SCO 393 effective January 2, 1980; by SCO 710 effective September 15, 1986; by SCO 717 effective September 15, 1986; by SCO 766 effective March 15, 1987; by SCO 894 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; and by SCO 1279 effective July 31, 1997)

***EDITOR'S NOTE:** Subsection (e) (3) of Alaska Civil Rule 40 is hereby suspended for the Anchorage trial courts until further notice. The presiding judge shall determine appropriate alternative calendaring procedures.

Note: In 1997 the legislature enacted AS 18.16.030(c), which required the court to hold a hearing in a proceeding to bypass parental consent to an abortion within five days after the petition is filed. According to ch. 14, § 7 SLA 1997, this provision has the effect of amending Civil Rule 40 by setting a specific timetable for hearing certain cases. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass proceedings. *See* Probate Rule 20.

Annotations

Cases

Refusal to grant a continuance will generally not be disturbed on appeal unless an abuse of discretion is demonstrated. **Gregoire v. National Bank of Alaska**, Op. No. 336, 413 P2d 27 (Alaska 1966).

Counsel's insistence on a full 30-day continuance in order to attempt to honor all conflicting trial commitments except the case for which this continuance was sought, was unwarranted and denial of the continuance by trial judge no abuse of discretion where the trial setting of the instant case was senior to all of counsel's other commitments and counsel might have asked for day-to-day continuances or for a definite short term continuance. **Gregoire v. National Bank of Alaska**, Op. No. 336, 413 P2d 27 (Alaska 1966).

Where appellant had been granted previous continuances and 5½ months' notice had been accorded for his eventual trial setting, counsel was not entitled to insist on a further full 30-day continuance which he had sought on the ground that he had committed himself to the trial of three criminal matters in the month of the trial in another state in which counsel was also admitted to the practice of law. **Gregoire v. National Bank of Alaska**, Op. No. 336, 413 P2d 27 (Alaska 1966).

The "with prejudice" aspect of a judgment of dismissal was set aside and trial judge directed to allow appellants their day in court upon terms and conditions appropriate under this rule, where continuance had been properly denied because of appellant's failure to make a timely attempt to obtain substitute counsel, but the supreme court entertained some doubt that the failure was such that dismissal with prejudice of appellant's counterclaim and third party complaint should stand. **Gregoire v. National Bank of Alaska**, Op. No. 336, 413 P2d 27 (Alaska 1966).

Attorney's understanding that the calendar clerk would call him on September 7 if the trial was to take place as scheduled on September 8 did not justify his failure to call the clerk before instructing his client not to appear, and the trial court's refusal to grant the attorney's request for a continuance on the ground that his client was not present was not an abuse of discretion. **W.E.W. v. D.A.M.**, Op. No. 2272, 619 P2d 1023 (Alaska 1980).

A judge may not be appointed to sign orders in place of the absent judge originally assigned to the case unless good cause specifically is shown. **Fairbanks North Star Borough v. Nolan**, Op. No. 2351, 628 P2d 36 (Alaska 1981).

Successor judge's vacation of orders and judgment was not abuse of discretion since she erred in signing them when judge who heard case on merits was still available. **Gallagher v. Gallagher**, Op. No. 4041, 866 P2d 123 (Alaska 1994).

Rule 41. Dismissal of Actions.

(a) **Voluntary Dismissal — Effect Thereof.**

(1) *By Plaintiff — By Stipulation.* Subject to the provisions of Rule 23(c), of Rule 66 and of any

statute of the state, an action may be dismissed by the plaintiff without an order of the court: [a] by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or [b] by filing a stipulation of dismissal signed by all parties who have appeared in the action. The notice or stipulation must include a certification that the settlement information required under AS 09.68.130 and (a)(3) of this rule has been submitted to the Alaska Judicial Council or that the case is exempt from this requirement because it is one of the types listed in (a)(3) or because all causes of action accrued before August 7, 1997. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, or of any other state, or in any court of the United States, an action based on or including the same claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(3) *[Applicable to causes of action accruing on or after August 7, 1997.] Settlement Information.* If a voluntary dismissal under this rule is the result of compromise or other settlement of the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. The following types of cases are exempt from this requirement:

(A) divorce and dissolution;

(B) adoption, custody, support, visitation, and emancipation of children;

(C) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;

(D) domestic violence protective orders under AS 18.66.100 — 18.66.180;

(E) estate, guardianship, and trust cases filed under AS 13;

(F) small claims under AS 22.15.040.

(b) **Involuntary Dismissal — Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event that a motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then weigh the evidence, evaluate the credibility of witnesses and render judgment against the plaintiff even if the plaintiff has made out a prima facia case. Alternately, the court may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) **Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) **Costs of Previously Dismissed Action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) **Dismissal for Want of Prosecution.**

(1) The court on its own motion or on motion of a party to the action may dismiss a case for want of prosecution if

(A) the case has been pending for more than one year without any proceedings having been taken, or

(B) the case has been pending for more than one year, and no trial or mandatory pretrial scheduling conference has been scheduled or held.

(2) The clerk shall review all pending cases semi-annually and in all cases that are subject to dismissal under (e)(1), the court shall hold a call of the calendar or the clerk shall send notice to the parties to show cause in writing why the action should not be dismissed.

(3) If good cause to the contrary is not shown at a call of the calendar or within sixty days after distribution of the notice, the court shall dismiss the

action. The clerk may dismiss actions under this paragraph if a party has not opposed dismissal.

(4) A dismissal for want of prosecution is without prejudice unless the court states in the order that the case is dismissed with prejudice.

(5) If a case dismissed under this paragraph is filed again, the court may make such order for the payment of costs of the case previously dismissed as it may deem proper, and may stay the proceedings in the case until the party has complied with the order.

(Adopted by SCO 5 October 9, 1959; amended by SCO 239 effective March 1, 1976; by SCO 258 effective November 15, 1976; by SCO 465 effective June 1, 1981; by SCO 798 effective March 15, 1987; by SCO 834 effective August 1, 1987; by SCO 1153 effective July 15, 1994; by SCO 1266 effective July 15, 1997; and by SCO 1283 effective September 2, 1997)

Annotations

Cases

- I. In General
- II. Voluntary Dismissal
  - A. Conditions
  - B. Termination of Right to Dismiss
- III. Involuntary Dismissal
  - A. Conditions
  - B. Denial of Motion to Dismiss
- IV. Dismissal for Want of Prosecution

I. In General

An order of dismissal "with prejudice" operates as an adjudication on the merits. **Miller v. Johnson**, Op. No. 70, 370 P2d 171, 173 (Alaska 1962).

One and one-half page memorandum devoid of authorities was not statement required by Civil Rule 77(b) (2), so that motion to dismiss was frivolous and issue was not joined, precluding award of attorney's fees. **State v. Alaska International Air, Inc.**, Op. No. 1409, 562 P2d 1064 (Alaska 1977).

Party seeking relief from judgment of dismissal must show the existence of a meritorious claim. **Corso v. Commissioner of Education**, Op. No. 1412, 563 P2d 246 (Alaska 1977).

To show the existence of meritorious claim, party must show facts which if established, might reasonably be said to meet affirmative defenses of adversary. **Corso v. Commissioner of Education**, Op. No. 1412, 563 P2d 246 (Alaska 1977).

Proper test for granting motion to dismiss without prejudice involves balancing the interests of both plaintiff and defendant to obtain a result which will be fair and equitable under the circumstances of each case. **Dome Laboratories v. Farrell**, Op. No. 1917, 599 P2d 152 (Alaska 1979).

A judgment of dismissal without prejudice is considered a final judgment for purposes of appeal. **Farrell v. Dome Laboratories**, Op. No. 2556, 650 P2d 380 (Alaska 1982).

Trial court had jurisdiction under rule allowing relief from judgment to amend a voluntary dismissal entered without prejudice under this rule. **Farrell v. Dome Laboratories**, Op. No. 2556, 650 P2d 380 (Alaska 1982).

Where defendant does not object to plaintiff's notice of dismissal under this rule, the validity of the dismissal will not be questioned on review. **Sisters of Providence v. Van Linder**, Op. No. 2678, 663 P2d 956 (Alaska 1983).

Once an action has been dismissed as of right by a plaintiff pursuant to this rule, the trial court lacks jurisdiction to enforce an interlocutory order entered prior to the dismissal. **Sisters of Providence v. Van Linder**, Op. No. 2678, 663 P2d 956 (Alaska 1983).

The "lack of jurisdiction" exception to the rule that an involuntary dismissal operates as an adjudication on the merits includes dismissals due to a corporation's statutory incapacity to sue. **Blake v. Gilbert**, Op. No. 2947, 702 P2d 631 (Alaska 1985).

A stipulation to dismiss claims with prejudice operates as an adjudication on the merits; it is just as valid as a final judgment resulting from a trial on the merits, and is res judicata as to all issues that were raised or could have been determined under the pleadings. **Tolstrup v. Miller**, Op. No. 3129, 726 P2d 1304 (Alaska 1986).

Order No. 798, adopting an amendment to Civil Rule 41(b), effective March 15, 1987, was signed by three justices. Two justices filed a dissent to the order, expressing doubt that the amendment would result in an overall saving of judicial time and their belief that it creates a distinct risk of premature and inaccurate decisions. **Supreme Court Order 798, dissenting statement of Chief Justice Rabinowitz and Justice Matthews, dated January 14, 1987.**

Where liability and damages issues are tried by the court, prejudgment motion for dismissal rather than for a directed verdict is appropriate. **Frank v. Golden Valley Elec. Ass'n, Inc.**, Op. No. 3264, 748 P2d 752 (Alaska 1988).

A court need not make explicit findings concerning alternatives to dismissal; the record need only clearly indicate a reasonable exploration of possible and meaningful alternatives. **Power Constructors v. Acres American**, Op. No. 3689, 811 P2d 1052 (Alaska 1991).

Civil Rule 16.1 provides the exclusive procedure for dismissing "fast-track" cases and supersedes this and other civil rules in conflict therewith. **Ford v. Municipality of Anchorage**, Op. No. 3703, 813 P2d 654 (Alaska 1991).

In liquidation proceeding, trial court's denial, for lack of jurisdiction, of motion to set aside and terminate irrevocable trust did not constitute dismissal upon which collateral estoppel could be based. **Matter of Pacific Marine Ins. Co.**, Op. No. 4100, 877 P2d 264 (Alaska 1994).

The sanctions of Civil Rule 16.1(g) and Civil Rule 41(d) afford courts the tools necessary to deter litigants from judge shopping through voluntary or involuntary dismissals. **Staso v. State, Department of Transportation**, Op. No. 895 P2d 988 (Alaska 1995).

Consolidated Rule 16.1 cases retain their "fast-track" status and can be dismissed only by following Rule 16.1 dismissal procedures, not Rule 41 dismissal procedures. **Prazak v. Alaska Local No. 1**, Op. No. 4277, 904 P2d 428 (Alaska 1995).

If meaningful alternative sanctions are available, trial court must ordinarily impose those sanctions rather than dismissal with prejudice. **Arbelovsky v. Ebasco Services, Inc.**, Op. No. 4382, 922 P2d 225 (Alaska 1996).

II. Voluntary Dismissal

A. Conditions

Voluntary dismissal of plaintiff's causes of action was with prejudice pursuant to terms stated in the stipulation. **Albritton v. Estate of Larson**, Op. No. 413, 428 P2d 379 (Alaska 1967).

This rule does not authorize court to regard the condemnor's dismissals of its appeals from a master's awards as matters to be determined within the condemnor's discretion and to be granted on such terms as it might think proper. **Inglima v. Alaska State Housing Authority**, Op. No. 594, 462 P2d 1002 (Alaska 1970).

Under AS 09.55.320, which provides that an interested party may appeal a master's award in which case there shall be a trial by jury on the question of the amount of damages and the value of property, unless the jury is waived by the consent of all parties, a condemnee against whom an appeal is taken is entitled to a jury trial as a matter of right. A condemnor cannot, after the jury has rendered verdicts higher than the master's awards, obtain a dismissal of its appeal without the consent of the condemnees. **Inglima v. Alaska State Housing Authority**, Op. No. 594, 462 P2d 1002 (Alaska 1970).

The primary purpose of this rule is to allow the plaintiff to dismiss as a matter of right before an issue has been joined. **Miller v. Wilkes**, Op. No. 788, 496 P2d 176 (Alaska 1972).

Where defendant is dismissed under Civil Rule 41(a)(1)[a] before service of any pleading or motion by defendant that would have required trial court to consider merits of controversy, there is no joinder of issue, or prevailing party, and an award of attorney's fees is precluded. **State v. Alaska International Air, Inc.**, Op. No. 1409, 562 P2d 1064 (Alaska 1977).

No findings of fact should be made in conjunction with a voluntary dismissal when the court has no evidentiary basis for such findings. **Sherry v. Sherry**, Op. No. 2271, 622 P2d 960 (Alaska 1981).

Where plaintiff moved for a voluntary dismissal without prejudice of her motion to modify a child custody agreement, it was abuse of discretion for the court to condition the grant of dismissal on plaintiff not attempting to modify the decree for two years and on a prohibition on psychological or psychiatric examination without the consent of both parents. **Sherry v. Sherry**, Op. No. 2271, 622 P2d 960 (Alaska 1981).

Superior court abused its discretion in amending a prior judgment of voluntary dismissal without prejudice in order to require the plaintiff to refile his suit against defendant by a certain date. **Farrell v. Dome Laboratories**, Op. No. 2556, 650 P2d 380 (Alaska 1982).

Since responses filed by defendants to plaintiff's petition seeking to perpetuate testimony before filling of action required trial court to consider merits of petition, voluntary dismissal without order of court was no longer possible, and condition imposed by court on dismissal, that plaintiff bring no further action on matter until he paid defendants' fees and costs, was not abuse of discretion. **Stahlman v. State**, Op. No. 3987, 856 P2d 1162 (Alaska 1993).

It was abuse of discretion for trial court to condition voluntary dismissal on payment of attorney fees by public interest litigant. **Eyak Elders Council v. Sherstone, Inc.**, Op. No. 4273, 904 P2d 420 (Alaska 1995).

B. Termination of Right to Dismiss

Where an affidavit which is filed by the defendant denies several factual allegations of the plaintiff and a memorandum filed by the defendant raises four defenses, such documents are tantamount to an answer and the plaintiff's right to dismiss the suit is terminated. Thus, although the plaintiff files a voluntary dismissal of the suit the trial court has the authority to award to defendant attorney fees. **Miller v. Wilkes**, Op. No. 788, 496 P2d 176 (Alaska 1972).

If an issue has been joined by means other than those specified in this rule, the plaintiff's right to dismiss by notice is nonetheless terminated. **Miller v. Wilkes**, Op. No. 788, 496 P2d 176 (Alaska 1972).

Not every action by the defendant cuts off the right of the plaintiff to dismiss under this rule, but only those actions which would require the court to consider on the merits of the controversy or which involve considerable expense and effort on the part of the defendant. **Miller v. Wilkes**, Op. No. 788, 496 P2d 176 (Alaska 1972).

Since responses filed by defendants to plaintiff's petition seeking to perpetuate testimony before filling of action required trial court to consider merits of petition, voluntary dismissal without order of court was no longer possible, and condition imposed by court on dismissal, that plaintiff bring no further action on matter until he paid defendants' fees and costs, was not abuse of discretion. **Stahlman v. State**, Op. No. 3987, 856 P2d 1162 (Alaska 1993).

III. Involuntary Dismissal

A. Conditions

The "lack of jurisdiction" exception to the rule that an involuntary dismissal operates as an adjudication on the merits includes dismissals due to a corporation's statutory incapacity to sue. **Blake v. Gilbert**, Op. No. 2947, 702 P2d 631 (Alaska 1985).

Where plaintiff's evidence does not establish a prima facie case, a motion to dismiss made at the close of plaintiff's case should be granted. **Pope v. Anderson**, Op. No. 72, 370 P2d 185, 187 (Alaska 1962); **Correa v. Stephens**, Op. No. 418, 429 P2d 254 (Alaska 1967).

The trial court's dismissal of a previous complaint brought by another on the behalf of all electors contesting a bond election, on the grounds that plaintiff had not delivered on the borough as sensible a written notice of contest of the election as required by a borough ordinance, operates as an adjudication on the merits in the absence of a specification by the trial court to the contrary and is res judicata to a suit brought by the plaintiff challenging the same bond election. **Jefferson v. Greater Anchorage Area Borough**, Op. No. 536, 451 P2d 730 (Alaska 1969).

Even though a complaint alleges basis for a claimed illegality of a bond election not mentioned in a previous complaint brought by another on behalf of all electors, the doctrine of res judicata is applicable and dismissal of the complaint is not error. **Jefferson v. Greater Anchorage Area Borough**, Op. No. 536, 451 P2d 730 (Alaska 1969).

Where the general doctrine of res judicata is inapplicable and supports the dismissal of a complaint, the contention that the trial court should have permitted ten of the plaintiffs to belatedly sign the complaint is as rendered moot. **Jefferson v. Greater Anchorage Area Borough**, Op. No. 536, 451 P2d 730 (Alaska 1969).

Where plaintiff had received ample notice from opinion on earlier appeal that it was incumbent upon him to promptly take steps to prosecute claim upon his release from prison, and

during seven-month period had taken no such steps, denial of motion to reconsider dismissal for lack of prosecution was not abuse of discretion. Brown v. State, Op. No. 1418, 563 P2d 275 (Alaska 1977).

On appeal from grant of a Civil Rule 41(a)(2) motion, appellant must show that trial court failed to exercise or abused its discretion, or exercised an unpermitted discretion. Dome Laboratories v. Farrell, Op. No. 1917, 599 P2d 152 (Alaska 1979).

Where defendants had not incurred extensive expenses in preparation for trial or pecuniary judgment hearing was not abuse of discretion for trial judge to deny award of attorney fees to defendant. Dome Laboratories v. Farrell, Op. No. 1917, 559 P2d 152 (Alaska 1979).

Where plaintiff established a prima facie case of breach of contract, superior court was precluded from granting an involuntary dismissal under this rule. Glover v. Sager, Op. No. 2703, 667 P2d 1198 (Alaska 1983).

When the trial court dismisses a complaint on the ground that the plaintiff has shown no right to relief, it must enter findings of fact and conclusions of law. Winn v. Mannhalter, Op. No. 2988, 708 P2d 444 (Alaska App. 1985).

In order to withstand a motion for involuntary dismissal under this rule, plaintiff must have presented evidence that the defendant breached a duty, thereby causing injury to the plaintiff. Winn v. Mannhalter, Op. No. 2988, 708 P2d 444 (Alaska 1985).

B. Denial of Motion to Dismiss

The function of the trial court is to deny a motion to dismiss at the close of plaintiff's evidence, if the evidence would be, in a jury case, sufficient to take the case to the jury although the court as trier of the facts would find against the plaintiff on the evidence. Thus where plaintiff has presented a prima facie case based upon unimpeached evidence the trial judge should not grant the motion even though he is the trier of the facts and may not himself feel at that point of the trial that the plaintiff has sustained his burden of proof. Rogge v. Weaver, Op. No. 63, 368 P2d 810, 812-13 (Alaska 1962).

Where plaintiff at the close of his evidence presents a prima facie case based on unimpeached evidence, the trial judge should not grant a motion for involuntary dismissal, but should follow the alternative provided by Civil Rule 41(b) and decline to render any judgment until the close of all the evidence. Trusty v. Jones, Op. No. 71, 369 P2d 420 (Alaska 1962).

Where an action by a prisoner against the state for injuries allegedly sustained while being transported in a truck after a hip operation is dismissed on the merits without any findings of fact being made, the case will be remanded for purposes of making adequate findings of fact and conclusions of law, including findings as to the court's judgment of credibility of the plaintiff and his witnesses. Bohm v. State, Op. No. 543, 453 P2d 410 (Alaska 1969).

Motions under this rule should not invariably be resolved by weighing the evidence. Where the plaintiff has presented a prima facie case based on unimpeached evidence, the trial judge should not grant the motion even though he is the trier of facts and may not himself feel at that point that the plaintiff has sustained the burden of proof. King v. Alaska State Housing Authority, Op. No. 917, 512 P2d 887 (Alaska 1973).

The failure of the plaintiff's son, the only witness to the occurrence giving rise to a suit, to appear for deposition is not an appropriate basis for motion to dismiss the suit. Schandelmeier v. Winchester Western, Op. No. 1013, 520 P2d 70 (Alaska 1974).

When noncompliance with a discovery order is in issue, this rule, rather than Rule 37, is the source of the court's authority to impose sanctions. Schandelmeier v. Winchester Western, Op. No. 1013, 520 P2d 70 (Alaska 1974).

Where plaintiff has been in prison for most of the period since filing his action, is unavailable for deposition and unable to obtain another attorney when his original counsel withdraws, and otherwise attempts to prosecute his complaint, the dismissal for failure to prosecute is an abuse of discretion. Brown v. State, Op. No. 1089, 526 P2d 1365 (Alaska 1974).

This rule calls for the exercise of sound discretion by the trial court, and should not be permitted to work an injustice where there are special circumstances impeding the plaintiff's efforts to prosecute his complaint. Brown v. State, Op. No. 1089, 526 P2d 1365 (Alaska 1974).

IV. Dismissal for Want of Prosecution

This rule applies only where a motion to dismiss is filed before the period of lapse is terminated by some affirmative action. Where the last act in the record occurred more than one year prior to a motion to dismiss and where the plaintiff's motion terminates the lapse, and a motion for summary judgment and a motion to set for trial are filed subsequent to the lapse and prior to the defendant's motion to dismiss, the lapse is insufficient to allow dismissal. First National Bank of Fairbanks v. Taylor, Op. No. 723, 488 P2d 1026 (Alaska 1971).

Unless there is another indication by judge dismissal sua sponte for want of prosecution for one year is without prejudice. Champion Oil Co. v. Herbert, Op. No. 1293, 552 P2d 670 (Alaska 1976).

Case that had been reinstated and set for trial should not have been dismissed for want of prosecution. Atlas Enterprises, Inc. v. Consolidated Construction Co., Op. No. 1526, 572 P2d 68 (Alaska 1977).

Where letter from plaintiffs requesting trial date was sent prior to filing of defendant's motion to dismiss, dismissal under Civil Rule 41(e) was improper. Zeller v. Poor, Op. No. 1610, 577 P2d 695 (Alaska 1978).

Although a case may be dismissed with prejudice under Civil Rule 41(e), this sanction should be reserved only for gross violations of the rule; alternative remedies which do not bar a litigant from his day in court are favored. Zeller v. Poor, Op. No. 1610, 577 P2d 695 (Alaska 1978).

A "proceeding" as the term is used in this rule is a step, act or measure of record, by the plaintiff, which reflects the serious determination by the plaintiff to bring the suit to a resolution; or a step, act or measure of record, by either party, which reflects that the suit is not stagnant. Shiffman v. "K", Inc., Op. No. 2603, 657 P2d 401 (Alaska 1983).

The filing of an answer by the defendant was a "proceeding" within the meaning of this rule which indicated that the suit was not stagnant. Shiffman v. "K", Inc., Op. No. 2603, 657 P2d 401 (Alaska 1983).

A case stands stagnant and may be dismissed when to the court it appears that for lack of activity of record neither party has taken the steps, acts or measures to be reasonably expected

in pursuit or defense of the particular cause of action. **Shiffman v. "K", Inc.**, Op. No. 2603, 657 P2d 401 (Alaska 1983).

Plaintiffs' note asking the court not to dismiss their action for want of prosecution because they had not been able to find an attorney was not a "proceeding" within the meaning of this rule. **Cleary Diving Service v. Thomas, Head and Greisen**, Op. No. 2873, 688 P2d 940 (Alaska 1984).

Appellate court could not dismiss complaint for failure of timely prosecution where the trial court did not hold a call of calendar or send a show cause notice to the parties. **Reed v. Municipality of Anchorage**, Op. No. 3218, 741 P2d 1181 (Alaska 1987).

A pretrial memorandum filed after the court issues a notice of dismissal does not constitute a "proceeding" under this rule. **Power Constructors v. Acres American**, Op. No. 3689, 811 P2d 1052 (Alaska 1991).

Substitution of counsel and the consequent need for more time to review the case did not, standing alone, constitute good cause for plaintiff's 16-month delay prosecuting the case. **Power Constructors v. Acres American**, Op. No. 3689, 811 P2d 1052 (Alaska 1991).

Plaintiff's unexcused failure to proceed with its case for three years justified dismissal with prejudice. **Power Constructors v. Acres American**, Op. No. 3689, 811 P2d 1052 (Alaska 1991).

Where order gave plaintiff 180 days to take action to prepare malpractice case for trial, here filing of amended complaint and request for appearance of nonresident attorney satisfied the order, thus trial court erred in dismissing case for want of prosecution even though original complaint was not filed until two days before expiration of limitations period and defendant was not served with complaint until 20 months later. **Johnson v. Siegfried**, Op. No. 3890, 838 P2d 1252 (Alaska 1992).

Trial court is not under duty to explore meaningful alternatives before entering dismissal without prejudice for want of prosecution. **Willis v. Wetco, Inc.**, Op. No. 3963, 853 P2d 533 (Alaska 1993).

Pretrial memorandum filed after court issued notice of dismissal did not constitute "proceeding" under rule authorizing dismissal for want of prosecution. **Willis v. Wetco., Inc.**, Op. No. 3963, 853 P2d 533 (Alaska 1993).

Counterclaimant's statement that his injuries at hand of plaintiff were continuing to accumulate did not constitute good cause for failure to prosecute counterclaim. **Willis v. Wetco, Inc.**, Op. No. 3963, 853 P2d 533 (Alaska 1993).

A "proceeding" occurs for purposes of this rule when step is taken by either party which reflects that suit is not stagnant. **Novak v. Orca Oil Co., Inc.**, Op. No. 4091, 875 P2d 756 (Alaska 1994).

Plaintiff's motion to disqualify defendant's attorney was proceeding within meaning of this rule that prevented dismissal of defendant's counterclaim, notwithstanding trial judge's ruling that proceeding did not relate to counterclaim. **Novak v. Orca Oil Co., Inc.**, Op. No. 4091, 875 P2d 756 (Alaska 1994).

Rule 42. Consolidation—Separate Trials—Change of Judge.

(a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

A motion requesting consolidation shall be filed in the court where the case is sought to be consolidated. The motion shall contain the name of every case sought to be consolidated. A notice of filing together with a copy of the motion shall be filed in all courts and served on all parties who would be affected by consolidation.

(b) **Separate Trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Alaska Constitution and Statutes of Alaska.

(c) **Change of Judge as a Matter of Right.** In all courts of the state, a judge or master may be peremptorily challenged as follows:

(1) *Nature of Proceedings.* In an action pending in the Superior or District Courts, each side is entitled as a matter of right to a change of one judge and of one master. Two or more parties aligned on the same side of an action, whether or not consolidated, shall be treated as one side for purposes of the right to a change of judge, but the presiding judge may allow an additional change of judge to a party whose interests in the action are hostile or adverse to the interests of another party on the same side. A party wishing to exercise the right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice may be signed by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit.

(2) *Filing and Service.* The notice of change of judge shall be filed and copies served on the parties in accordance with Rule 5, Alaska Rules of Civil Procedure.

(3) *Timeliness.* Failure to file a timely notice precludes change of judge as a matter of right. Notice of change of judge is timely if filed before the commencement of trial and within five days after notice that the case has been assigned to a specific judge. Where a party has been served or enters an action after the case has been assigned to a specific judge, a notice of change of judge shall also be

to determine a reasonable award of attorney's fees. **Carr-Gottstein Properties, Op. No. 4230, 899 P2d 136 (Alaska 1995).**

A superior court acting as an intermediate court of appeal from a decision of an administrative agency has broad discretion to award attorney's fees under this rule. **Brodigan v. Alaska Department of Revenue, Op. No. 4234, 900 P2d 728 (Alaska 1995).**

Superior court did not abuse its discretion in awarding $700 of attorney's fees to the State, approximately 20% of the fees it actually incurred, despite appellants' claims that it was not clear that the State was the prevailing party and that they were public interest litigants. **Brodigan v. Alaska Department of Revenue, Op. No. 4234, 900 P2d 728 (Alaska 1995).**

This rule governs awarding attorney's fees in superior court or an appeal from an administrative decision. The award of these fees is committed to the discretion of the superior court and will not be overturned absent an abuse of discretion. The superior court need not explain its basics for awarding fees; it must only explain denials. **North Slope Borough v. Barraza, Op. No. 4285, 906 P2d 1377 (Alaska 1995).**

Superior court's use of the factor of "measure of success" in awarding attorney's fees in an administrative appeal did not on its face constitute an abuse of discretion. **North Slope Borough v. Barraza, Op. No. 4285, 906 P2d 1377 (Alaska 1995).**

Action of judge of trial court was unnecessary to obtain writ of execution from clerk of trial clerk on supreme court's award of appellate costs and fees. **Barber v. Barber, Op. No. 4345, 915 P2d 1204 (Alaska 1996).**

Fact that prevailing government entity litigated through in-house counsel did not preclude award of attorney's fees. **Agen v. State, CSED, Op. No. 4874, 945 P2d 1215 (Alaska 1997).**

It was error for superior court acting as intermediate appellate court to award fees under Civil Rule 82 rather than under this rule, thus remand was required for recalculation in accordance with this rule. **Agen v. State, Op. No. 4874, 945 P2d 1215 (Alaska 1997).**

In federal diversity cases, Federal Rule of Appellate Procedure 38 preempts this rule. **Hinde v. Provident Life and Acc. Ins. Co., 112 F3d 412 (9th Cir. 1997).**

Rule 509. Interest.

If a judgment for money in a civil case is affirmed, interest at the rate prescribed by law shall be payable from the effective date of the judgment of the trial court. If in a civil case a judgment is modified or reversed with directions that a judgment for money be issued by the trial court, interest on the new judgment at the rate prescribed by law shall be payable from the effective date of the prior judgment which was modified or reversed.

(SCO 439 effective November 15, 1980; amended by SCO 509 effective July 1, 1982)

Rule 510. Monetary Sanctions.

(a) **When Appeal Brought for Delay.** Where an appeal or petition for review shall delay the proceedings in the trial court or the enforcement of the judgment or order of the trial court, and shall appear to have been filed merely for delay, monetary sanctions may be awarded in addition to interest, costs and attorney's fees.

(b) **Infraction of Rules.** For any infraction of these rules, the appellate court may withhold or assess costs or attorney's fees as the circumstances of the case and discouragement of like conduct in the future may require; and such costs and attorney's fees may be imposed upon offending attorneys or parties.

(c) **Fines.** In addition to its authority under (a) and (b) of this rule and its power to punish for contempt, the appellate court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed $500 against any attorney who practices before it for failure to comply with these rules or any other rules promulgated by the Supreme Court.

(SCO 439 effective November 15, 1980; amended by SCO 476 effective August 17, 1981)

Annotations

Cases

For specific misconduct on the part of either party, actual costs and fees may be awarded under this rule. **Kenai Peninsula Bor. v. Cook Inlet Reg., Op. No. 3671, 807 P2d 487 (Alaska 1991).**

There would have been an impermissible double recovery of attorney's fees if both the award of sanctions and the award of attorney's fees had been allowed to stand. **Kenai Peninsula Bor. v. Cook Inlet Reg., Op. No. 3671, 807 P2d 487 (Alaska 1991).**

Order denying appellant's fifth request for extension of time to file opening brief and dismissing her appeal was vacated, but appellant's attorney was ordered to pay $500 fine for dedication and to pay appellee's reasonable fees and costs in opposing motion for extension. **Brown v. Brown, Order No. 28, 854 P2d 732 (Alaska 1993).**

Instead of merely referring to a party's "dilatory conduct" in reducing an award of attorney's fees, the superior court should have specified the particular conduct which might have supported a finding that an infraction of the rules had occurred. **North Slope Borough v. Barraza, Op. No. 4285, 906 P2d 1377 (Alaska 1995).**

Rule 511. Dismissal of Causes.

(a) **Dismissal by Agreement.** Whenever the parties, by their attorneys of record, shall file with the clerk of the appellate court an agreement in writing that an appeal or petition be dismissed, specifying the terms with respect to costs, and shall pay to the clerk any fees that may be due the clerk, the clerk shall enter an order of dismissal without further reference to the court.

(b) **Dismissal by Appellant or Petitioner.** (1) Whenever an appellant or petitioner in the appellate court, by the appellant's or petitioner's attorney of record, shall file with the clerk of that court a motion to dismiss a proceeding to which such appellant or petitioner is a party, with proof of service as prescribed by these rules, and shall tender to the clerk any fees and costs that may be due, the adverse party, within seven days after service thereof, may file an objection, after which time the matter shall be determined by the court.

(2) If no objection is filed, the clerk shall enter an order of dismissal without further reference to the court.

(c) **Certification.** An agreement or motion for dismissal filed under (a) or (b) of this rule must include a certification that the settlement information required under AS 09.68.130 and (e) of this rule has been submitted to the Alaska Judicial Council or that the case is exempt from this requirement because it is one of the types listed in (e) or because all causes of action accrued before August 7, 1997.

(d) **Voluntary Dismissal by Criminal Defendant.** A motion or stipulation for the voluntary dismissal of an appeal by a criminal defendant under paragraph (a) or (b) shall not be granted unless the motion or stipulation includes either:

(1) A signed statement by the defendant stating that the defendant understands the consequences of the dismissal and consents to it, or

(2) Explicit certification by counsel for the defendant that counsel has explained the consequences of dismissal to the client and is satisfied that the client understands the consequences of dismissal and consents to it.

(e) **[Applicable to causes of action accruing on or after August 7, 1997.] Settlement Information.** If a dismissal under (a) or (b) of this rule is the result of a compromise or other settlement between the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. The following types of cases are exempt from this requirement:

(1) divorce and dissolution;

(2) adoption, custody, support, visitation, and emancipation of children;

(3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;

(4) domestic violence protective orders under AS 18.66.100 — 18.66.180;

(5) estate, guardianship, and trust cases filed under AS 13;

(6) small claims under AS 22.15.040.

(f) **Mandate Not Required.** No mandate shall issue on a dismissal under this rule or Rule 511.5 without an order of the court. However, the clerk shall notify the court whose judgment was appealed.

(SCO 439 effective November 15, 1980; amended by SCO 510 effective August 30, 1982; by SCO 728 effective December 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1283 effective September 2, 1997; and by SCO 1301 effective January 15, 1998)

Annotations

Cases

Where appellee fails to move to dismiss an appeal from a ruling which is not appealable under these rules and the points raised are briefed as they would have been had a petition for review been sought, the supreme court is entitled to pass on the merits of the controversy. **Stokes v. Van Seventer**, Op. No. 18, 355 P2d 594 (Alaska 1960).

An order of dismissal by the supreme court is not in itself a mandate. **Singletary v. State**, Op. No. 1711, 583 P2d 847 (Alaska 1978).

Rule 511.5. Dismissal for Failure to Prosecute.

(a) If an appellant or an appellant's counsel fails to comply with these rules, the clerk shall notify the appellant and the appellant's counsel in writing that the appeal will be dismissed for want of prosecution unless the appellant remedies the default within 14 days after the date of notification, time to be computed in accordance with Rule 502 (c). If the appellant fails to comply within the 14-day period, the clerk shall issue an order dismissing the appeal for want of prosecution. In no case, except by order of the court on a motion to reinstate the appeal, shall the appellant be entitled to remedy the default after the appeal has been dismissed under this rule.

(b) The dismissal of an appeal under subsection (a) shall not limit the authority of the court to impose monetary sanctions under Rule 510.

(c) The court may, upon motion of a party or its own motion, dismiss an appeal for failure to comply with these rules, whether or not prior notice of default has been given.

(SCO 510 effective August 30, 1982; amended by SCO 1153 effective July 15, 1994)

Annotations

Cases

Appellant was not entitled to a fourteen-day grace period in which to file her opening brief after failing to file a brief for eighteen months. **Cowitz v. Alaska Workers' Compensation Board**, Op. No. 3078, 721 P2d 635 (Alaska 1986).

Trial court did not abuse its discretion in dismissing appeal for want of prosecution where court notified appellant that appeal would be dismissed if she did not transmit record and she did not do so. **Geczy v. State, Dept. of Natural Resources**, Op. No. 4409, 924 P2d 103 (Alaska 1996).

Legislative Reference Library 130 Seward St. Suite 400

alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1969 (907) 279-2526 FAX (907) 276-5046
http:/ /www.ajc.state.ak.us E-Mail: postmaster@ajc.state.ak.us

EXECUTIVE DIRECTOR
William T. Cotton

NON-ATTORNEY MEMBERS
Janice Lienhart
Mary Matthews
Vicki A. Otte

ATTORNEY MEMBERS
Paul J. Ewers
Thomas G. Nave
Robert H. Wagstaff

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

September 26, 1997

Representative Brian Porter
716 W. 4th Ave.
Anchorage, AK 99501-2133

RE: Collection of Civil Case Data Effective Date

Dear Brian:

I am writing to keep you informed about the Council's collection of civil case data under the tort reform legislation. (The letter to attorneys and the form are attached.) I would recommend a legislative change which would exclude administrative appeals to superior court and forcible entry and detainer cases (FED). More importantly, I believe the Act's effective date may cause some problems.

The act's effective date is August 7, 1997. However section 55 of the act indicates that the changes only apply to causes of action that accrue on or after that date:

> Sec. 55. APPLICABILITY. This Act applies to causes of action accruing on or after the effective date of this Act.

Section 1, which describes the legislative intent of the act, also states that the act only applies to causes of action that accrue on or after the effective date:

> Sec. 1. LEGISLATIVE INTENT. In enacting this bill, it is the intent of this legislature as a matter of public policy to
>
> * * * *

(11) ensure that this Act does not apply to or in any way have an effect on existing litigation or a civil cause of action that accrues before the effective date of this Act; it is the specific intent of the legislature that this Act not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095 Civ. (D. Alaska) or any other federal admiralty action now or in the future.

These provisions do not distinguish between rule changes made by the act and changes to substantive law. Given this legislative language, the Supreme Court added the language referring to causes of actions accruing after the effective date to the court rules changes made in the legislation.

Unfortunately, from a data gathering perspective we would like attorneys to begin sending us the civil case data for all cases that close after the effective date of the act. Otherwise, it will be years before we get useful data. For this reason, we loosely interpreted the reporting requirement in our letter to attorneys (and implicitly in the form itself) to apply to all cases closed August 8, 1997 or later. I believe the legislature wished us to gather data immediately even if the exact legislative language seems to lead to a different conclusion.

We hope to get a significant number of forms immediately (some have already come in), but I anticipate non-compliance with the reporting requirement will be higher because of the effective date problem. We have had quite a few inquiries on this point, including complaints about our interpretation. I would like to ask you to consider adding a specific effective date for the reporting requirement to the added language I previously suggested. The effective date for the reporting requirement could be set retroactively to August 7, 1997 (or perhaps better to whenever the amendment goes into effect).

Thank you for your assistance.

Very truly yours,

William T. Cotton
Executive Director

WTC:sl

Attachment

Bill History/Action Display

BILL: HB 9 SHORT TITLE: PERSONS REQUIRED TO FILE SETTLEMENT INFO
BILL VERSION:
SPONSOR(S): REPRESENTATIVES(S) PORTER, Kerttula, Croft, Berkowitz, Cowdery, Smalley, Green, Bunde, Therriault, Murkowski

CURRENT STATUS: (S) JUD STATUS DATE: 2/10/99

TITLE: "An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

HB 9 IS SAME AS HB 293.
HB 293 DIED IN (S) JUD.
BOTH BILL MINUTES ARE ATTACHED.

Full Text Bill/Resolution has Zero Fiscal Note(s).

Committee Action With Bill History

Jrn-Date	Jrn-Page		Action
1/19/99	20	(H)	PREFILE RELEASED 1/8/99
1/19/99	20	(H)	READ THE FIRST TIME - REFERRAL(S)
1/19/99	20	(H)	JUDICIARY
2/03/99	135	(H)	COSPONSOR(S): KERTTULA, CROFT
2/05/99	141	(H)	JUD RPT 6DP
2/05/99	141	(H)	DP: CROFT, MURKOWSKI, GREEN, KOTT,
2/05/99	141	(H)	ROKEBERG, KERTTULA
2/05/99	141	(H)	2 ZERO FISCAL NOTES (ADM, COURT)
2/08/99	167	(H)	RULES TO CALENDAR 2/08/99
2/08/99	167	(H)	READ THE SECOND TIME
2/08/99	168	(H)	ADVANCED TO THIRD READING UNAN CONSENT
2/08/99	168	(H)	READ THE THIRD TIME HB 9
2/08/99	168	(H)	PASSED Y40
2/08/99	168	(H)	EFFECTIVE DATE(S) SAME AS PASSAGE
2/08/99	168	(H)	COURT RULE(S) SAME AS PASSAGE
2/08/99	173	(H)	COSPONSOR(S): BERKOWITZ, COWDERY,
2/08/99	173	(H)	SMALLEY, GREEN, BUNDE, THERRIAULT,
2/08/99	173	(H)	MURKOWSKI
2/08/99	174	(H)	TRANSMITTED TO (S)
2/10/99	198	(S)	READ THE FIRST TIME - REFERRAL(S)
2/10/99	198	(S)	JUD

Similar Subject Match or Exact Subject Match
ATTORNEYS
CIVIL PROCEDURE
COURT RULES
COURTS

Bill Root:

Return to BASIS Main Menu(21th Legislature)
BASIS Last Updated 2/25/99 11:00 AM

HOUSE JUDICIARY STANDING COMMITTEE
February 3, 1999
1:07 p.m.
HB 9 - PERSONS REQUIRED TO FILE SETTLEMENT INFO

CHAIRMAN KOTT announced the only order of business is HB 9, "An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

CHAIRMAN KOTT explained that HB 9 is familiar to some because it passed the House last year. It got hung up in the Senate in the never ending battle towards the end of session. Chairman Kott called on Tom Wright from Representative Porter's office, sponsor of the bill, to present the sponsor statement.

Number 0067

TOM WRIGHT, Staff to Representative Brian Porter, Alaska State Legislature, stated the bill is simplistic. It is the same bill that passed the House last year - HB 293. It is a housekeeping measure that involves the collection of settlements and other data in certain categories of civil litigation cases. He explained the following changes that the bill provides:

1) It makes mandatory the reporting of date by attorneys and persons representing themselves. Apparently, some individuals interpret the data collection provisions of the tort reform law to be optional. This amendment clarifies the mandatory nature of these reporting requirements in order to ensure that accurate statistics will be compiled. Information must be submitted within 30 days after the settlement or final resolution of all covered cases.

2) The Alaska Judicial Council has recommended that certain non-tort cases be added to the types of cases already excluded from the reporting requirements. The tort reform law excluded divorce and other categories of cases from reporting requirements. The amendment, offered in Section 1, adds several categories of cases that should also be excluded.

3) The bill clarifies that the reporting requirements arise only after final appeals as to cases, that are fully litigated. Should any one of multiple plaintiffs, defendants or third party defendants settle out of litigation before its final disposition, the obligation to submit required data arises as of the date the case is fully resolved as it pertains to that party.

4) The bill has the effect of amending two court rules since it limits civil actions found under AS 09.68.130 (a) and specifies who is required to provide settlement

information.

5) The effective date as to the collection of settlement and other data is changed to clarify that reporting requirements are applicable to civil litigation cases which are settled or finally adjudicated on or after the bill is signed into law. The reporting requirements are not retroactive to the effective date of the tort reform law.

Number 0259

REPRESENTATIVE CROFT asked Mr. Wright where HB 293 got stuck in the Senate last year.

MR. WRIGHT replied it got stuck in the Senate Judiciary Committee.

Number 0278

REPRESENTATIVE MURKOWSKI asked Mr. Wright whether HB 9 is the identical bill that was passed by the House last year.

MR. WRIGHT replied correct.

REPRESENTATIVE MURKOWSKI noted that the committee members exchanged glances and chuckles when mentioning that the bill got stuck in the Senate last year and asked Mr. Wright whether there was a problem with the bill itself or the contents of the bill.

MR. WRIGHT replied he doesn't know. He was not staff to Representative Porter last year. He has an idea about what happened, but does not think it would be fair to represent it at this time.

REPRESENTATIVE MURKOWSKI noted that she would discuss the issue further with fellow members of the committee after the meeting.

Number 0338

CHAIRMAN KOTT stated that the there was not any difficulties with the contents of the bill last year; it got stuck for other reasons. He would classify the bill as a housekeeping measure.

Number 0353

REPRESENTATIVE KERTTULA asked Mr. Wright whether the bill would clarify paperwork and information gathering that the clerks are already doing and exempt some categories.

MR. WRIGHT replied correct.

Number 0401

REPRESENTATIVE CROFT made a motion to move HB 9 out of committee with individual recommendations and the attached zero fiscal note(s). There being no objection, HB 9 was so moved from the House Judiciary Standing Committee.

01/19/99 **House Journal** **Page 20**
HB 9
(Prefile released January 8, 1999)
HOUSE BILL NO. 9 by Representative Porter, entitled:

"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

was read the first time and referred to the Judiciary Committee.

02/03/99 **House Journal** **Page 135**
HB 9
Representatives Kerttula and Croft added their names as cosponsors to:

HOUSE BILL NO. 9
"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

02/05/99 **House Journal** **Page 141**
HB 9
The Judiciary Committee has considered:

HOUSE BILL NO. 9
"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

The report was signed by Representative Kott, Chair, with the following individual recommendations:

Do pass (6): Croft, Murkowski, Green, Kott, Rokeberg, Kerttula

The following fiscal notes apply:

Zero fiscal note, Dept. of Administration, 2/5/99
Zero fiscal note, Alaska Court System, 2/5/99

HB 9 was referred to the Rules Committee for placement on the calendar.

02/08/99 **House Journal** **Page 167**
HB 9
The following was read the second time:

HOUSE BILL NO. 9
"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

HB 9
with the: Journal Page

JUD RPT 6DP 141
2 ZERO FISCAL NOTES (ADM, COURT) 141

Representative Green moved and asked unanimous consent that HB 9 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 9 was read the third time.

The question being: "Shall HB 9 pass the House?" The roll was taken with the following result:

HB 9
Third Reading
Final Passage

YEAS: 40 NAYS: 0 EXCUSED: 0 ABSENT: 0

Yeas: Austerman, Barnes, Berkowitz, Brice, Bunde, Cissna, Coghill, Cowdery, Croft, Davies, Davis, Dyson, Foster, Green, Grussendorf, Halcro, Harris, Hudson, James, Joule, Kapsner, Kemplen, Kerttula, Kohring, Kookesh, Kott, Masek, Morgan, Moses, Mulder, Murkowski, Ogan, Phillips, Porter, Rokeberg, Sanders, Smalley, Therriault, Whitaker, Williams

And so, HB 9 passed the House.

Representative Green moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

Representative Green moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the court rule changes. There being no objection, it was so ordered.

HB 9 was referred to the Chief Clerk for engrossment.

02/08/99 House Journal Page 173
HB 9
Representatives Berkowitz, Cowdery, Smalley, Green, Bunde, Therriault and Murkowski added their names as cosponsors to:

HOUSE BILL NO. 9
"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

02/08/99 House Journal Page 174
HB 9
HB 9 was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

HOUSE JUDICIARY STANDING COMMITTEE
February 16, 1998
1:08 p.m.
SSHB 293 - PERSONS REQUIRED TO FILE SETTLEMENT INFO

Number 1721

CHAIRMAN GREEN announced the next item of business would be Sponsor Substitute for HB 293, "An Act relating to collection of settlement information in civil litigation; and providing for an effective date."

Number 1730

REPRESENTATIVE PORTER, sponsor, described SSHB 293 as a straightforward cleanup bill. He reminded members that the previous year, they had passed a lengthy tort reform bill in which they had asked that settlement information be reported so that they could get a good track record on just what is involved in the settlement of civil cases involving torts.

REPRESENTATIVE PORTER explained that the Alaska Judicial Council, which has the task of collecting that information, had made two suggestions, which were reviewed by the Department of Law; amendments were then made to the original legislation that conform with the position of Gail Voigtlander, who handles liability for the state.

Number 1812

REPRESENTATIVE PORTER stated, "And now with Bill Cotton [Executive Director, Alaska Judicial Council] and Gail Voigtlander both on vacation today, I have been asked to submit their bill. Basically, what it does in Section 1 is lay out several areas of the law that we would not want reporting done on, as they do not fall within the tort area, and it would be unnecessary for attorneys or parties - or the court - to report. And in Section 2, it goes to establish that not only the court but a party or their attorney should furnish this information also when a case is settled."

REPRESENTATIVE PORTER advised members there was originally an inclusion of retroactivity to cases filed before the tort reform bill passed. He stated, "What we're saying now is that we're not interested in getting the information unless the settlement itself, or decision, comes after the effect of this bill. So, it could be a case that's in existence now, but we're not going to go back and try to get judgments, settlements or decisions that occurred prior to the passage of this bill, which was of some concern to the bar association."

Number 1897

REPRESENTATIVE JAMES made a motion to adopt the proposed committee substitute, Version H [0-LS1144\H, Ford, 2/3/98], as a work draft. There being no objection, it was so ordered.

Number 1926

REPRESENTATIVE BERKOWITZ asked whether the sponsor would mind his joining in as a cosponsor.

REPRESENTATIVE PORTER replied, "Not in the least."

Number 1958

REPRESENTATIVE JAMES made a motion to move Version H out of committee with individual recommendations and the attached fiscal note.

CHAIRMAN GREEN asked whether there was any objection. There being none, CSSSHB 293(JUD) moved from the House Judiciary Standing Committee.

Bill Root: [ ] [Display History/Action] [Clear Bill Root]

Return to BASIS Main Menu(20th Legislature)
BASIS Last Updated 12/31/98

Sponsor Statement for HB 9

RIGHT OF CRIME VICTIMS AND VICTIMS OF JUVENILE OFFENSES TO BE PRESENT AT COURT PROCEEDINGS

The Constitution of the State of Alaska was amended in 1994 by adding to Article 1, a new Section 24, which specifically extended to crime victims "the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present..."

Currently at least two Superior Court judges are interpreting the Alaska Statutes, and Rule 615 , Alaska Rules of Evidence, to exclude victims of crimes and juvenile offenses from being present in the courtroom during a trial of the accused until after the victim has testified.

This bill is then offered to implement the mandate of the 1994 Amendment to the Constitution and to make absolutely clear to the judiciary a crime victim's right to be present at the trial and other proceedings of the accused, including juvenile proceedings, whenever the accused has the right to be present.

NFIB Alaska

NFIB/Alaska 1999 Ballot Results

The Alaska Chapter of the National Federation of Independent Business is comprised of 3000 small and independent business owners. The typical NFIB/Alaska member employs five workers and rings up gross sales of about $181,000 per year. In total, the organization's members employ more than 43,000 workers.

The legislative agenda of NFIB is determined by ballot. A majority vote of the members in response to the poll sets the policy and position on legislative issues. Ballots for the last 5 years are used to establish the full legislative agenda. Following are the ballot results for 1999.

Tort Reform
Frivolous Lawsuits

Should the Alaska Legislature enact legislation to allow attorneys as well as their clients to be assessed damages for knowingly or recklessly filing false claims?

96% YES 2% NO 2% Undecided

Tort Reform
Collection of Settlement Information

Do you support the mandatory reporting of out of court settlement information such as attorneys fees and dollar amounts paid to claimants?

72% YES 22% NO 6% Undecided

Biennial State Budget

Do you favor a State Constitutional amendment to create a two-year budget cycle?

52% YES 36% NO 12% Undecided

National Federation of Independent Business
217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128

...and NFIB works for small business.

Department of Environmental Conservation Fees

The Alaska Department of Environmental Conservation (ADEC) currently has the authority to assess fees for permits, inspections, certifications and training for a broad range of regulatory programs. Should these fees be limited to "actual direct costs," which do not include travel, overhead and administrative support costs?

81% YES 13% NO 6% Undecided

Should DEC establish reasonable fixed fees for certain department services to cover actual direct costs?

83% YES 9% NO 8% Undecided

If requested by the applicant, should DEC have the ability to negotiate a fee based on a maximum number of hours that may include associated travel costs?

69% YES 21% NO 10% Undecided

Unemployment Insurance

Students under 18 are not eligible to collect unemployment benefits. Should full time students under the age of 18 and their employers be exempt from paying unemployment tax?

93% YES 6% NO 1% Undecided

Distributed by Thyes Shaub
NFIB/Alaska Lobbyist