

HB

249

Alaska State Legislature

Session
State Capitol Building, Room 118
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax 9907) 269-0249

Chair, Judiciary Committee

Vice-Chair, House Committee on
Economic Development,
Trade and Tourism

Member
Oil & Gas Committee

Representative Lesil McGuire *House District 28*

MEMORANDUM

To: Senator Ralph Seekins, Chair,
Senate Judiciary Committee

From: Representative Lesil McGuire *jm*

Date: April 24, 2003

Re: Request for Hearing, HB 249: Restraint of Trade: Fees and Costs

I respectfully request that HB 249: Restraint of Trade: Fees and Costs, be scheduled for a hearing at your earliest convenience☺. I have attached the following for your information:

1. Sponsor Statement
2. CSHB 249 (JUD) am
3. CSHB 249
4. HB 249
5. House Journal Text
6. Relevant Statutes and Rules
7. Zero Fiscal Note

If you have any questions please feel free to contact me personally, or my staff, Vanessa Tondini, at 4990.

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House District 28

Sponsor Statement CSHB 249(JUD) am

“An Act relating to the award of costs and attorney fees to defendants under court rule in civil actions brought under monopoly and restraint of trade statutes; and providing for an effective date.”

This bill clarifies the provision of the Alaska Antitrust Act that governs the award of attorney fees and costs to the prevailing party.

Since 1962, Alaska statutes have authorized the Alaska Supreme Court to adopt court rules providing that the losing party in a lawsuit shall pay all or part of the costs and attorney fees of the prevailing party. The Supreme Court has adopted such a rule, specifically Alaska Rule of Civil Procedure 82(a), which provides that as a matter of course, the losing party in litigation in Alaska is ordered to pay costs and partial attorney fees to the prevailing party. These rules discourage meritless lawsuits and encourage valid claims and defenses by providing the successful party with partial reimbursement for the costs of litigation.

The Alaska Antitrust Act includes a provision specifically declaring that a successful plaintiff may recover at least partial attorney fees, and in some circumstances may recover full attorney fees. See AS 45.50.576(a). The Act does not state expressly how, if at all, this special statutory provision is intended to affect the right of a successful antitrust defendant to recover partial attorney fees from the losing plaintiff, in accordance with Rule 82.

The history of the Alaska Antitrust Act confirms that there was never an intent to preclude a successful antitrust defendant from recovering partial attorney fees. However, some courts have reached a different interpretation by assuming that successful antitrust defendants could not recover any attorney fees because the current statute does not explicitly authorize such an award. This bill is designed to clarify that the standard attorney fee rules, applicable to essentially all civil cases, apply to successful antitrust defendants. It ensures that the provision that authorizes recovery of attorney fees to successful antitrust plaintiffs will not be misinterpreted to prohibit successful antitrust defendants from partial recovering attorney fees in accordance with standard court rules. This bill was also amended to clarify that if the plaintiffs in an action in which the defendant prevails are a class certified pursuant to Alaska Civil Procedure Rule 23, any

award of attorney fees to the defendant may be satisfied only through funds, if any, that the plaintiff class has collected from settlements with or judgments against other defendants and that the attorney fee award shall not be a liability of any individual member of the class.

It is unfair to permit a situation where antitrust defendants, if they go to trial and lose a complex lawsuit, must be prepared to pay part or all of the plaintiffs' attorney fees, while plaintiffs face no risk of paying even part of the defendants' fees if a jury decides that plaintiffs' claims are meritless. This bill does not even demand full equity, because successful defendants would be enabled to recover only partial attorney fees, in contrast to some successful plaintiffs' ability to recover full attorney fees. However, this bill ensures that some right of recovery, along with some risk of having to pay damages, applies to both sides in an antitrust case.

The Legislature enacted a very similar statutory provision in 1998 concerning attorney fees in consumer protection and unfair trade practice cases, which are closely related to antitrust cases. AS 45.50.537 states expressly that a successful plaintiff in a consumer protection and unfair trade practice case shall recover full reasonable attorney fees, and a successful defendant shall recover partial attorney fees in accordance with standard court rules.

Because this bill does not create any change in law, but merely clarifies existing law, it is appropriate for the bill to take effect immediately upon passage.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 249(JUD)
 (H) Publish Date: 4/11/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Monopolies and restraint of trade BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative McGuire
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of HB 249.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 4/8/03 4:55 PM
 Approved by: Stephanie Cole, Administrative Director Date 4/8/2003
 Agency: Alaska Court System

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Current Law:

Sec. 45.50.576. Suits by persons injured; treble damages.

(a) A person who is injured in business or property by a violation of AS 45.50.562 - 45.50.570, or a person so injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570, may bring a civil action

(1) for damages sustained by the person, and if the judgment is for the plaintiff and the trier of fact finds that the defendant's conduct was wilful, the plaintiff shall be awarded threefold the amount of damages sustained by the person, plus the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and if judgment is for the plaintiff, the plaintiff may be awarded the costs of the suit, including reasonable attorney fees.

(b) When the state, a home rule or general law city or borough, or other governmental entity is injured by reason of a violation of AS 45.50.562 - 45.50.570, it may maintain an action in the same manner as prescribed in (a) of this section for an injured person; and the state, city, borough, or other governmental entity is entitled to the same relief as provided in (a) of this section.

(b) A person may not bring an action under (a) of this section unless

(1) the person first provides written notice to the seller or lessor who engaged in the unlawful act or practice that the person will seek an injunction against the seller or lessor if the seller or lessor fails to promptly stop the unlawful act or practice; and

(2) the seller or lessor fails to promptly stop the unlawful act or practice after receiving the notice. (§ 5 ch 96 SLA 1998)

Effective dates. — Section 5, ch. 96, SLA 1998, which enacted this section, took effect on September 10, 1998.

Sec. 45.50.536. Mediation. Notwithstanding the other provisions of AS 45.50.471 — 45.50.561, a civil action under AS 45.50.531 or 45.50.535 may be submitted to mediation under the Alaska Rules of Civil Procedure. The mediation must begin within 30 days after the court's order for mediation. During mediation, the court may, if it is determined appropriate by the court, enjoin the defendant from engaging in the act or practice that is the subject of the civil action. (§ 5 ch 96 SLA 1998)

Effective dates. — Section 5, ch. 95, SLA 1998, which enacted this section, took effect on September 10, 1998. provides that the 1998 enactment of this section "applies only to causes of action that accrue on or after September 10, 1998."

Editor's notes. — Section 7, ch. 96, SLA 1998

Sec. 45.50.537. Attorney fees, costs, and damages. (a) In an action brought by a private person under AS 45.50.471 — 45.50.561, a prevailing plaintiff shall be awarded costs as provided by court rule and full reasonable attorney fees at the prevailing reasonable rate.

(b) Unless the action is found to be frivolous, in an action brought by a private person under AS 45.50.471 — 45.50.561, a prevailing defendant shall be awarded attorney fees and costs as provided by court rule. If the action is found to be frivolous, the attorney fees to be awarded to the defendant shall be full reasonable attorney fees at the prevailing reasonable rate.

(c) Notwithstanding the other provisions of this section, in an action brought by a private person under AS 45.50.471 — 45.50.561, if the plaintiff is not the prevailing party and if the court finds that the action was brought by the plaintiff to obtain a competitive business advantage, the court shall award a prevailing defendant costs as provided by court rule, full reasonable attorney fees at the prevailing reasonable rate, and any damages suffered by the prevailing defendant as a result of the plaintiff's allegations.

(d) In this section, "frivolous" means

(1) not reasonably based on evidence or on existing law or a reasonable extension, modification, or reversal of existing law; or

(2) brought to harass the defendant or to cause unnecessary delay or needless expense. (§ 5 ch 96 SLA 1998)

Effective dates. — Section 5, ch. 96, SLA 1998, which enacted this section, took effect on September 10, 1998.

NOTES TO DECISIONS

Cited in *Garrison v. Dixon*, 19 P.3d 1229 (Alaska 2001).

Sec. 45.50.541. Nonnegotiability of consumer paper. (a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument, or evidence of indebtedness

Gregoire v. National Bank of Alaska, Op. No. 336, 413 P2d 27 (Alaska 1966).

Where a client states by affidavit that he has discharged his attorney by means of letter, it is not error to allow that attorney to withdraw, even though the attorney does not serve the client with notice of hearing on a motion to be allowed to withdraw. *Moran v. Kenai Towing and Salvage, Inc.*, Op. No. 1056, 523 P2d 1237 (Alaska 1974).

Where there is no dispute as to the material terms of a settlement, the provisions of paragraph (e) of this rule are met if both parties admit either in a writing filed with the clerk or orally in open court that a settlement had been reached. *Interior Credit Bureau, Inc., v. Bussing*, Op. No. 1366, 559 P2d 104 (Alaska 1977).

Trial court did not err in holding that plaintiff, who was both a doctor and a lawyer, could either represent himself or be represented by counsel, but not both, in his action against hospital for its failure to renew his staff privileges. *Eufemio v. Kodiak Island Hosp.*, Op. No. 3868, 837 P2d 95 (Alaska 1992)

Trial court abused its discretion in denying attorney's properly presented motion to withdraw as counsel. *Devincenzi v. Wright*, Op. No. 4136, 882 P2d 1263 (Alaska 1994).

Rule 82. Attorney's Fees.

(a) **Allowance to Prevailing Party.** Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) **Amount of Award.**

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

Judgment and, if awarded, Prejudgment Interest	Contested With Trial	Contested Without Trial	Non-Contested
First \$ 25,000	20%	18%	10%
Next \$ 75,000	10%	8%	3%
Next \$400.00	10%	6%	2%
Over \$500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

(A) the complexity of the litigation;

(B) the length of trial;

(C) the reasonableness of the attorneys' hourly rates and the number of hours expended;

(D) the reasonableness of the number of attorneys used;

(E) the attorneys' efforts to minimize fees;

(F) the reasonableness of the claims and defenses pursued by each side;

(G) vexatious or bad faith conduct;

(H) the relationship between the amount of work performed and the significance of the matters at stake;

(I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;

(J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and

(K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

(c) **Motions for Attorney's Fees.** A motion is required for an award of attorney's fees under this rule or pursuant to contract, statute, regulation, or law. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case must specify actual fees.

(d) **Determination of Award.** Attorney's fees upon entry of judgment by default may be deter-

mined by the clerk. In all other matters the court shall determine attorney's fees.

(e) **Equitable Apportionment Under AS 09.17.080.** In a case in which damages are apportioned among the parties under AS 09.17.080, the fees awarded to the plaintiff under (b)(1) of this rule must also be apportioned among the parties according to their respective percentages of fault. If the plaintiff did not assert a direct claim against a third-party defendant brought into the action under Civil Rule 14(c), then

(1) the plaintiff is not entitled to recover the portion of the fee award apportioned to that party; and

(2) the court shall award attorney's fees between the third-party plaintiff and the third-party defendant as follows:

(A) if no fault was apportioned to the third-party defendant, the third-party defendant is entitled to recover attorney's fees calculated under (b)(2) of this rule;

(B) if fault was apportioned to the third-party defendant, the third-party plaintiff is entitled to recover under (b)(2) of this rule 30 or 20 percent of that party's actual attorney's fees incurred in asserting the claim against the third-party defendant.

(f) **Effect of Rule.** The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

(Adopted by SCO 5 October 9, 1959; amended by SCO 497 effective January 18, 1982; by SCO 712 effective September 15, 1986; by SCO 921 effective January 15, 1989; by SCO 1006 effective January 15, 1990; by SCO 1066 effective July 15, 1991; repealed and reenacted by SCO 1118am effective July 15, 1993; amended by SCO 1195 effective July 15, 1995; by SCO 1200 effective July 15, 1995; by SCO 1241 effective July 15, 1996; by SCO 1246 effective July 15, 1996; by SCO 1281 effective August 7, 1997; by SCO 1340 effective January 15, 1999; and by SCO 1455 effective July 15, 1993)

Note to SCO 1118am: By adopting these amendments to Civil Rule 82, the court intends no change in existing Alaska law regarding the award of attorney's fees for or against a public interest litigant, see, e.g., *Anchorage Daily News v. Anchorage School Dist.*, 803 P.2d 402, 404 (Alaska 1990); *City of Anchorage v. McCabe*, 568 P.2d 986, 993-94 (Alaska 1977); *Gilbert v. State*, 526 P.2d 1131, 1136 (Alaska 1974), or in the law that an award of full attorney's fees is manifestly unreasonable in the absence of bad faith or vexatious conduct by the non-

prevailing party. See, e.g., *Malvo v. J.C. Pen Co.*, 512 P.2d 575, 588 (Alaska 1973); *Demosh New*, 737 P.2d 780, 788 (Alaska 1987).

Note: AS 25.25.313(c), added by § 6 of ch. 57 § 1995 (the Uniform Interstate Family Support Act) has the effect of amending Civil Rule 82 by requiring the court to award costs and fees against a party who requests a hearing primarily for delay in a proceeding listed in AS 25.25.301.

RABINOWITZ, Justice dissenting.

I dissent from the court's adoption of the amendments to Civil Rule 82 called for in [SCO 1118]. In my view no compelling case has been demonstrated for these changes.¹ From my judicial hunch is that these amendments to Civil Rule 82, in particular the new provisions reflecting (b)(3)(A) through (K), will unnecessarily and automatically increase litigation over attorney's awards both in our trial courts as well as in court.²

¹In this regard I note that the Alaska Judicial Council is scheduled to conduct an in depth empirical study of the workings of Civil Rule 82. My preference is to await the results of the Council's study before deciding whether any of the current provisions of Rule 82 should be amended. Such a study should position this court to make a more informed assessment as to whether the current rule operates in a fashion which unjustly denies access to our courts. I further note that our Civil Rules Committee recently surveyed the Alaska Bar membership on discrete aspects of Civil Rule 82. A clear majority of those responding to the committee's question indicated: that Civil Rule 82 does not deter people from filing moderate means from filing valid claims; that the rule does not put excessive pressure on middle income people to settle valid claims; and that the rule is needed to discourage frivolous litigation.

²Any attorney worth his or her salt will, pursuant to the expansive provisions of (b)(3)(A) through (K) request variations from the attorney's fees as called for under either the monetary recovery rule provisions of (b)(1), or the provisions of (b)(3) which apply where no money judgment is recovered by the prevailing party.

Note to SCO 1281: In 1997 the legislature amended AS 09.30.065 concerning offers of judgment according to ch. 26, § 52, SLA 1997, the amendment to AS 09.30.065 has the effect of amending Civil Rules 68 and 82 by requiring the offeree to pay cost reasonable actual attorney fees on a sliding scale based on percentages in certain cases, by eliminating provisions relating to interest, and by cha

provisions relating to attorney fee awards. According to § 55 of the session law, the amendment to AS 09.30.065 applies "to all causes of action accruing on or after the effective date of this Act." However, the amendments to Civil Rule 68 adopted by paragraph 5 of this order are applicable to all cases filed on or after August 7, 1997. See paragraph 17 of this order.

Note: Chapter 94 SLA 1998 adopts AS 46.03.761, which allows the Department of Environmental Conservation to impose administrative penalties against an entity that fails to construct or operate a public water supply system in compliance with state law or a term or condition imposed by the department. According to section 5 of the act, subsection (j) of this statute has the effect of amending Civil Rules 79 and 82 by allowing the recovery of full reasonable attorney fees and costs in an action to collect administrative penalties assessed under AS 46.03.761.

Annotations

Cases

- I. In General
- II. Prevailing Party
- III. Review
 - A. Standard
 - B. Abuse of Discretion or Error
- IV. Fee Schedule

I. In General

The common law did not permit allowance of attorney's fees as costs to the prevailing party, but in Alaska such allowance is of relatively ancient origin and prior to attainment of statehood the matter was regulated by statute. *McDonough v. Lee*, Op. No. 378, 420 P2d 459 (Alaska 1966).

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

Where a mechanics' lienor files a four-count complaint against the beneficiary of a deed of trust to foreclose the mechanics' liens but prevails on only one count, the trial court may properly refuse to award either party costs or attorney's fees. *Brand v. First Federal Savings & Loan Association of Fairbanks*, Op. No. 658, 478 P2d 829 (Alaska 1970).

This rule does not apply where plaintiffs seek an injunction and are awarded an injunction which is to be void if the defendant pays certain damages, since the rule in such case is not an accurate criterion for determining a fee. *Stauber v. Granger*, Op. No. 777, 495 P2d 67 (Alaska 1972).

The purpose of this rule is only to partially compensate a client for the productive work done by his attorney. It is irrelevant that actual attorney's fees are several times the amount awarded. *State v. Abbott*, Op. No. 804, 498 P2d 712 (Alaska 1972).

The determination of which party prevails and is entitled to costs is within the discretion of the trial judge. *DeWitt v. Liberty Leasing Co. of Alaska*, Op. No. 818, 499 P2d 599 (Alaska 1972).

A party is not barred from appealing from the disallowance of costs and attorney's fees by his acceptance of payment of the judgment and by signing a document entitled "Satisfaction of Judgment." *DeWitt v. Liberty Leasing Co. of Alaska*, Op. No. 818, 499 P2d 599 (Alaska 1972).

Under this rule, an award of prejudgment interest is to be included in the amount of the "money judgment." *Era Helicopters, Inc. v. Digicon Alaska, Inc.*, Op. No. 999, 518 P2d 1057 (Alaska 1974).

Under this rule, a trial judge may award attorney fees without a formal motion and without a hearing, especially in a situation where the parties seeking to be heard did not file a formal request for fees. *Urban Development Company v. Dekreon*, Op. No. 1083, 526 P2d 325 (Alaska 1974).

This rule does not apply in a divorce action. *Burrell v. Burrell*, Op. No. 1169, 537 P2d 1 (Alaska 1975).

A trial judge may award attorney's fees without a formal motion and without a hearing. *National Bank of Alaska v. J.B.L. & K. of Alaska, Inc.*, Op. No. 1239, 546 P2d 579 (Alaska 1976).

A "hold harmless" indemnity clause includes the cost of recovery in the clause itself. *Manson-Osberg Co. v. State*, Op. No. 1292, 552 P2d 654 (Alaska 1976).

Where parties' potential liability for payment of actual recovery greatly exceeded potential liability for cost of defense, the main issue could not be said to be the cost of defense. *Continental Ins. Co. v. U.S. Fid. & Guar. Co.*, Op. No. 1298, 552 P2d 1122 (Alaska 1976).

The cost of in-house counsel is not an attorney's fee within the meaning of this rule. *Continental Ins. Co. v. U.S. Fid. & Guar. Co.*, Op. No. 1298, 552 P2d 1122 (Alaska 1976).

Attorney's fees should be computed on basis of net, not gross, recovery. *Fairbanks Builders, Inc. v. Sandstrom Plumbing & Heating, Inc.*, Op. No. 1324, 555 P2d 964 (Alaska 1976).

Attorney's fees are not recoverable under this rule in an action in federal court grounded on both admiralty and diversity jurisdiction. *Kalanback, Inc. v. Insurance Co. of the State of Pennsylvania, Inc.*, 422 FS 44 (USDC Alaska 1976).

Where defendant is dismissed under Civil Rule 41(a)(1)(a) before service of any pleading or motion by defendant but would have required trial court to consider merits of controversy, there is no joinder of issue, no 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).

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).

When condemnee is eligible for attorney's fees in eminent domain action, he must receive full compensation under Civil Rule 72, not partial compensation under Civil Rule 82. *Greater Anchorage Area Borough v. Ten Acres*, Op. No. 1417, 563 P2d 269 (Alaska 1977).

It was proper to allow party attorney's fees for defending against one party, and separate fee for prevailing on cross-claim against third party. *Kaps Transport, Inc. v. Henry*, Op. No. 1527, 572 P2d 72 (Alaska 1977).

When a public corporation's active representation in litigation is by in-house counsel rather than retained counsel, award of attorney's fees pursuant to Rule 82 is proper. *Greater Anchorage Area Borough v. Sisters, Etc.*, Op. No. 1550, 573 P2d 862 (Alaska 1978).

An oral explanation on the record by the trial judge is adequate to justify decision denying attorney's fees. *Larry v. Dupree*, Op. No. 1652, 580 P2d 326 (Alaska 1978).

Civil Rule 82 applies only to "costs of the action," and not to attorney's fees incurred in the conduct of a prior arbitration. *Alaska State Housing v. Riley Pleas, Inc.*, Op. No. 1765, 586 P2d 1244 (Alaska 1978).

Attorney's fees could not be assessed against a public school teacher whose dismissal from employment was upheld by the superior court where the teacher had a statutorily guaranteed right to contest his dismissal in the courts. *Crisp v. Kenai Peninsula Borough Sch. Dist.*, Op. No. 1771, 587 P2d 1168 (Alaska 1978).

Civil Rule 82 had no application to claim for attorney fees by defendant retailer in suit based on strict tort liability against retailer and manufacturer, but retailer could recover costs based on indemnification obligation of manufacturer. *Heritage v. Pioneer Brokerage & Sales*, Op. No. 1855, 604 P2d 1059 (Alaska 1979).

Plaintiffs were jointly and severally liable for costs and attorney's fees although they filed separate complaints, where cases were consolidated for trial. *Stepanov v. Gavrilovich*, Op. No. 1823, 594 P2d 30 (Alaska 1979).

Civil Rule 82 does not govern appeals to Superior Court from administrative agency decision. *Kodiak Western Alaska v. Bob Harris Flying Service*, Op. No. 1820, 592 P2d 1200 (Alaska 1979).

A client's absence of obligation to pay for legal services rendered does not preclude an award of attorney's fees. *Arctic Slope Native Assoc. v. Paul*, Op. No. 2058, 609 P2d 32 (Alaska 1980).

Where prevailing party's attorneys, apparently motivated by considerations of professional courtesy, charged him for their services at the rate of \$30.00 per hour rather than the customary rate of \$75.00 per hour, the court would be justified in valuing those services using the customary rate. *Arctic Slope Native Assoc. v. Paul*, Op. No. 2058, 609 P2d 32 (Alaska 1980).

In determining the amounts of attorney's fees on appeal in public interest litigation, the same considerations are applicable as at the trial level, and it is therefore appropriate to award full attorney's fees on appeal to a successful public interest litigant. *Thomas v. Bailey*, Op. No. 2094, 611 P2d 536 (Alaska 1980).

It was not unreasonable for the superior court to find that plaintiffs exercising their rights under the election contest statute, were public interest litigants against whom an assessment of attorney's fees would be improper. *Thomas v. Croft*, Op. No. 2135, 614 P2d 795 (Alaska 1980).

Where the defendants in litigation stemming from a contested gubernatorial election were the state and the primary winners, it was proper to award attorney's fees against the state as a coprevailing party since the litigation was caused by the irregularities of state election officials in the conduct of the election. *Thomas v. Croft*, Op. No. 2135, 614 P2d 795 (Alaska 1980).

Under this rule, trial court could in its discretion order co-defendant to pay all of the fees awarded to the prevailing party, especially where the court believed that participant co-defendant to be the wrongdoer. *Muses v. McGarvey*, No. 2139, 614 P2d 1363 (Alaska 1980).

This rule does not require the court to limit its award to amount requested. *State v. Fairbanks North Star Borough School Dist.*, Op. No. 2257, 621 P2d 1329 (Alaska 1981).

To the extent that work performed is duplicative unnecessary, it should not be considered in determining proper award under this rule. *State v. Fairbanks North Star Borough School Dist.*, Op. No. 2257, 621 P2d 1329 (Alaska 1981).

An attorney-litigant who defends an action through retained counsel should not be reimbursed for his own participation unless the court clearly segregates his compensable time expended as an attorney active in the litigation, and noncompensable time, expended as client. *Sherry v. She*, Op. No. 2271, 622 P2d 960 (Alaska 1981).

The decision in *Crisp v. Kenai Peninsula Borough School District*, 587 P2d 1168 (Alaska 1978) does not apply to appeals of administrative decisions if the consequences are for less significant than in the *Crisp* case, and courts continue to assess reasonable attorney's fees against the litigant in such cases. *Sjong v. State*, Op. No. 2269, 622 P2d 1329 (Alaska 1981).

While attorney's fees are costs, they are not covered by literal requirements of Civil Rule 79(b). *State v. University of Alaska*, Op. No. 2303, 624 P2d 807 (Alaska 1981).

Under this rule an attorney is entitled to attorney's fees punitive damage award unless the court in its discretion specifically states otherwise. *Sturm, Ruger & Co. v. Day*, No. 2330, 627 P2d 204 (Alaska 1981).

Superior court does not have authority to award costs fees in a child in need of aid proceeding. *Cooper v. State*, No. 2453, 638 P2d 174 (Alaska 1981).

Award of costs and fees in child custody action may include costs or fees incurred in any other action, such as child in need of aid proceeding, no matter how closely related the issues might be. *Cooper v. State*, Op. No. 2453, 638 P2d 174 (Alaska 1981).

On appeal to superior court of a municipal zoning decision it was error for the court to award attorney's fees to prevailing parties based upon the civil rules rather than appellate rules. *Royal Crest Const. v. Anchorage*, Op. No. 2400, 640 P2d 133 (Alaska 1981).

Award of attorney's fees under this rule to prevailing party in state action arising out of the admiralty jurisdiction of the United States was proper. *Williams v. Eckert*, Op. No. 2443, 643 P2d 991 (Alaska 1982).

Where natural parent consented to adoption of her child then unsuccessfully sought to withdraw such consent, an award of substantial attorney's fees to the prevailing party manifestly unreasonable. *S.O. v. W.S.*, Op. No. 2491, 643 P2d 997 (Alaska 1982).

Where it was unclear what the parties intended in a joint offer and acceptance which provided that attorney fees be provided under the terms of "an Alaska Civil Rule endorsement" contained in an insurance policy of defense, remittal was appropriate to determine whether there was a meeting of the minds of the parties on the issue of attorney fees.

fees. *Salmine v. Knagin*, Op. No. 2501, 645 P2d 148 (Alaska 1982).

Where a judgment on offer and acceptance was signed January 18, but the action was not dismissed by court order until July 24, a request by counsel filed August 1 for a hearing on the amount of attorney fees was timely, July 24 being the proper date from which the request period should have been calculated. *Salmine v. Knagin*, Op. No. 2501, 645 P2d 148 (Alaska 1982).

In a proceeding to modify the terms of a property settlement incorporated into a divorce decree, an award of attorney's fees and costs is properly made pursuant to this rule. *Stoue v. Stone*, Op. No. 2522, 647 P2d 582 (Alaska 1982).

Trial court's award of twenty percent of prevailing party's costs and fees in case where no recovery was had was not abuse of discretion. *Alvey v. Pioneer Oilfield Services*, Op. No. 2532, 649 P2d 599 (Alaska 1982).

When assessing attorney's fees in litigation under the Truth-in-Lending Act, the standards set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F2d 714 (5th Cir. 1974) should be applied. *Hayer v. National Bank of Alaska*, Op. No. 2658, 663 P2d 547 (Alaska 1983).

Given the dissimilar underlying policies between awards of attorney's fees under this rule and 15 U.S.C. § 1640(a)(3) of the Truth-in-Lending Act, it was error for the trial court to resort to the guidelines of this rule in determining its fee award under the federal act. *Hayer v. National Bank of Alaska*, Op. No. 2658, 663 P2d 547 (Alaska 1983).

Where the right to the conveyance of certain real property was the "main issue" in litigation involving a demand for specific performance and a claim of unlawful detainer, the party prevailing on the "main issue" was entitled to attorney's fees notwithstanding that the final accounting between the parties showed that on balance the prevailing party owed damages to the other party. *Currington v. Johnson*, Op. No. 2828, 685 P2d 73 (Alaska 1984).

Where State's motion for attorney's fees cited Appellate Rule 508 as authority for its request for fees, the court's order granting the State's motion, which appeared on the very same document, could not reasonably be construed as based on any other authority. *Rosen v. State Bd. of Public Accountancy*, Op. No. 2880, 689 P2d 478 (Alaska 1984).

Unsuccessful challenger to a rezoning decision on ground that open meetings act was violated qualified as a public interest litigant under this rule. *Brookwood Area Homeowners v. Anchorage*, Op. No. 2953, 702 P2d 1317 (Alaska 1984).

In a divorce action, the "prevailing party" standard of this rule does not apply. *H.P.A. v. S.C.A.*, Op. No. 2961, 704 P2d 205 (Alaska 1985).

Although award of attorney fees was not unreasonable, the judgment for attorney's fee had to be vacated since part of the judgment on which it was based was reversed. *Dillingham Comm. Co. v. City of Dillingham*, Op. No. 2966, 705 P2d 410 (Alaska 1985).

In unsuccessful negligence action by sawmill employee against state for alleged failure of state to properly inspect the sawmill for safety violations, it was not manifestly unreasonable to award \$65,000 to the state for attorney fees even though the employer insisted on full satisfaction of its compensation lien, making settlement impossible. *Smith v. State*, Op. No. 2984, 706 P2d 1160 (Alaska 1985).

An explanation is required in all cases where the trial court refuses to award attorney fees to the prevailing party. *Pratt v. Kirkpatrick*, Op. No. 3054, 718 P2d 962 (Alaska 1986).

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

Failure of the judgment to grant attorney's fees on punitive damage award was a legal error, but trial judge had discretion to waive the thirty-day rule for correcting such errors so as to grant a late request for modification of the judgment. *Alaskan Village, Inc. v. Smalley*, Op. No. 3069, 720 P2d 945 (Alaska 1986).

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

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

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

Superior court's award of \$55,000 in attorney's fees, which amounted to approximately 60 percent of the requested amount and 45 percent of the actual fees incurred, was sustained on appeal. *Dahle v. Atlantic Richfield Co.*, Op. No. 3120, 725 P2d 1069 (Alaska 1986).

Where party successfully enjoined nonjudicial foreclosure of deed of trust, award of \$50,000 in attorney fees, based upon the party's potential liability of \$57,000, the amount by which he was alleged to be in default, was not manifestly unreasonable. *Tolstrup v. Miller*, Op. No. 3129, 726 P2d 1304 (Alaska 1986).

Award of 80 percent of prevailing party's attorney fees was not manifestly unreasonable where trial court characterized the losing party's defense as bordering on bad faith. *Crook v. Mortenson-Neal*, Op. No. 3128, 727 P2d 297 (Alaska 1986).

In computing prejudgment interest on negligence action award to plaintiff, trial court correctly computed the interest on the entire judgment amount rather than computing the interest on the judgment amount less worker's compensation benefits paid to plaintiff. *Alyeska Pipeline Service Co. v. Beadles*, Op. No. 3151, 731 P2d 572 (Alaska 1987).

Trial court's award of 75 percent of the prevailing party's actual attorney's fees was not manifestly unreasonable. *Steenmeyer Corp. v. Mortenson-Neal*, Op. No. 3154, 731 P2d 1221 (Alaska 1987).

Award to plaintiff of \$700 in interim attorney's fees for its cost in litigating defendant's successful motion to have defendant's own admissions withdrawn was proper. *City of Kenai v. Ferguson*, Op. No. 3155, 732 P2d 184 (Alaska 1987).

The purpose of this rule is to compensate a prevailing party partially, not fully, for attorney's fees; an award of full attorney's fees is "manifestly unreasonable" in the absence of bad faith or vexatious conduct by the losing party. *Demoski v. New*, Op. No. 3184, 737 P2d 780 (Alaska 1987).

Contract provision allowing the prevailing party "reasonable" attorney fees justified trial court's award of full instead of partial attorney fees since the plain meaning of a contract provision prevails over any limitation otherwise imposed by this rule. *Ursiu Seafoods v. Keener Packing Co.*, Op. No. 3217, 741 P2d 1175 (Alaska 1987).

Trial court had no authority to require the state to pay costs or attorney's fees as a sanction in a juvenile case. *State v. Superior Court, Third Jud. Dist.*, Op. No. 744, 743 P2d 381 (Alaska App. 1987).

Although workers' compensation claim by employees against an adjuster was not made in bad faith, it was frivolous, justifying an award of full attorneys' fees. *Crawford and Co. v. Vienna*, Op. No. 3243, 744 P2d 1175 (Alaska 1987).

This rule does not apply to judgments in divorce cases. *L.L.M. v. P.M.*, Op. No. 3323, 754 P2d 262 (Alaska 1988).

The "prevailing party" standard and the divorce action judgment exception to this rule are inappropriate standards for determining the question of attorney's fees in connection with motions to amend or enforce child custody orders. *L.L.M. v. P.M.*, Op. No. 3323, 754 P2d 262 (Alaska 1988).

The statutory standard of "willfully and without just excuse" is appropriate for determining the question of attorney's fees after a motion to amend or enforce a custody or visitation order is adjudicated; in this way any unsuccessful party who reasonably, and in good faith, believes that his or her action was justified by the best interests of the children will not be deterred from action by the possibility of an award of fees and costs. *L.L.M. v. P.M.*, Op. No. 3323, 754 P2d 262 (Alaska 1988).

Projected attorney's fees under this rule based on a stipulated projected verdict were a part of a wrongful death defendant's liability insurance policy limits. *Schultz v. Travelers Indem. Co.*, Op. No. 3325, 754 P2d 265 (Alaska 1988).

Whether an entity is a public interest litigant cannot depend on the interests of a single member; rather, it must depend on the interests of typical members; accordingly, where only a few out of more than 100 members of a nonprofit corporation bringing suit had sufficient personal economic incentive to bring such a suit, the nonprofit corporation could qualify as a public interest litigant. *Citizens For The Preservation v. Sheffield*, Op. No. 3368, 758 P2d 624 (Alaska 1988).

In child support modification action, trial court did not err in awarding attorney's fees to the Child Support Enforcement Division under this rule. *Patch v. Patch*, Op. No. 3379, 760 P2d 526 (Alaska 1988).

The prevailing party rule for determining attorney fee awards under this rule does not apply to fee awards in divorce cases. *Mann v. Mann*, Op. No. 3491, 778 P2d 590 (Alaska 1989).

The divorce judgment exception to this rule does not extend to post-judgment modifications and enforcement motions. *Hartland v. Hartland*, Op. No. 3459, 777 P2d 636 (Alaska 1989).

Clause in lease/option agreement providing for full reasonable attorney's fees to prevailing party in any legal action relating to the demised premises was not superseded by subsequent earnest money agreement which did not mention attorney's fees. *Jackson v. Barbero*, Op. No. 3456, 776 P2d 786 (Alaska 1989).

The "prevailing party" rule used for determining attorney fees under this rule does not apply to divorce cases; instead relevant considerations are the relative economic situation and earning power of each party. Also, the court may award attorney fees where there is bad faith. *Streb v. Streb*, Op. No. 3443, 774 P2d 798 (Alaska 1989).

Trial court erred in awarding attorney fees to the prevailing party in a post-judgment child custody and support case after a finding that the other party acted in bad faith. *House v. House*, Op. No. 3498, 779 P2d 1204 (Alaska 1989).

Award of attorney fees in a child custody and support case between unmarried individuals is to be governed by the standard used in divorce actions rather than the prevailing party standard. *Bergstrom v. Lindback*, Op. No. 3516, 779 P2d 1235 (Alaska 1989).

Superior court did not err in allowing the prevailing party to file a supplemental memorandum five months after the party's initial motion for attorney fees was made, where the supplemental memorandum itemized fees requested for work done after the initial motion was filed in opposing the losing party's motion for relief from judgment. *Kenai Peninsula Borough v. English Bay Village*, Op. No. 3517, 781 P2d 6 (Alaska 1990).

Trial court erred in taking past settlement negotiations into account in making an award of attorney fees under this rule. *Doyle v. Peabody*, Op. No. 3519, 781 P2d 957 (Alaska 1990).

Trial court did not abuse its discretion in ruling that reformation of attorney fees, filed 70 days after entry of judgment, was filed within a reasonable time, absent any substantial prejudice resulting from the delay. *T & G Aviation, Inc. v. Foothold*, Op. No. 3609, 792 P2d 671 (Alaska 1990).

In suit by insured against insurer for violating insurance agreement, trial court erred in permitting jury to award attorney fees beyond those authorized by this rule. *Alaska Pacific Assurance Co. v. Collins*, Op. No. 3614, 792 P2d 936 (Alaska 1990).

A non-attorney pro se litigant is not entitled to attorney fees under this rule. *Alaska Federal S & L v. Bernhardt*, Op. No. 3562, 794 P2d 579 (Alaska 1990).

The argument that trial courts should never be permitted to award fees in excess of those established under "noncontested" or "without trial" schedules of Civil Rule 68 was rejected. *Van Dort v. Culliton*, Op. No. 3630, 797 P2d 642 (Alaska 1990).

In arbitration proceeding by borough against brokerage firm in which the brokerage firm sued certain borough officials for contribution, ascertain by brokerage firm that law firm had a conflict of interest in representing both the borough in the arbitration proceeding and the individual defendants in the contribution case, and should therefore be barred on public policy grounds from receiving an award of attorney fees. *Integrated Res. Equity v. Fairbanks Borough*, Op. No. 3633, 799 P2d 295 (Alaska 1990).

Where nationwide class action law suit was not submitted to Alaska attorney general as required by A

statute, the action was deemed frivolous as to Alaska claimants; accordingly, the defendant, as prevailing party vis-a-vis the Alaska claimants, was entitled to recover for its attorney fees spent in Alaska. *Deadwyler v. Volkswagen of America, Inc.*, 748 F. Supp. 1146 (W.D.N.C. 1990).

In property dispute case, award of attorney fees to an adverse possessor was appropriate notwithstanding argument that the award amounted to an unjustified "windfall." *Nome 2000 v. Fagerstorm*, Op. No. 3638, 799 P2d 304 (Alaska 1990).

The appellate rules rather than the civil rules control an award of attorney fees when the superior court determines an administrative appeal. *Diedrich v. City of Ketchikan*, Op. No. 3661, 805 P2d 362 (Alaska 1991).

The divorce judgment exception to this rule does not apply to post-judgment modification and enforcement motions; accordingly, fees in such cases are awarded under the prevailing party standard of this rule for post-judgment money and property issues, under which the parties' relative economic positions are irrelevant. *Lowe v. Lowe*, Op. No. 3726, 817 P2d 453 (Alaska 1991).

Any award of attorney fees for legal services incurred subsequent to a judgment for past due child support is a cost of the action to the extent the fees are attributable to reasonable and necessarily incurred legal efforts to collect the judgment. *Cameron v. Hughes*, Op. No. 3805, 825 P2d 882 (Alaska 1992).

The four criteria for determining whether a particular lawsuit involves the public interest are: (1) Is the case designed to effectuate strong public policies? (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit? (3) Can only a private party have been expected to bring the suit? (4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance? *Anchorage Daily News v. Anchorage School Dist.*, Op. No. 3652, 803 P2d 402 (Alaska 1990); *Citizens Coalition v. McAlpine*, Op. No. 3686, 810 P2d 162 (Alaska 1991); *Loeb v. Rasmussen*, Op. No. 3786, 822 P2d 914 (Alaska 1991).

Any award of attorney fees for legal services incurred subsequent to a judgment for past due child support is a cost of the action to the extent the fees are attributable to reasonable and necessarily incurred legal efforts to collect the judgment. *Cameron v. Hughes*, Op. No. 3805, 825 P2d 882 (Alaska 1992).

Award of attorney fees in divorce cases is not governed by this rule. *Hilliker v. Hilliker*, Op. No. 3831, 828 P2d 1205 (Alaska 1992).

The "prevailing party" standard of this rule does not apply in divorce actions; instead, court must base award of fees on parties' relative economic situations and earning power. *Jones v. Jones*, Op. No. 3856, 835 P2d 1173 (Alaska 1992).

Argument that this rule violates due process clauses of state and federal constitutions because risk of incurring large attorney fee award deters many plaintiffs from bringing suit was rejected. *Van Huff v. Sohio Alaska Petroleum Co.*, Op. No. 3857, 835 P2d 1161 (Alaska 1992).

Opposing party should have been allowed ten days to file motion opposing award of attorney's fees. *McGill v. Wahl*, Op. No. 3886, 839 P2d 393 (Alaska 1992).

Where a statute expressly calls for an award of reasonable attorney's fees to successful plaintiffs, full fees should be awarded as long as those fees are reasonable. *Boblich v. Stewart*, Op. No. 3913, 843 P2d 1232 (Alaska 1992).

In awarding attorney fees and costs to plaintiffs who successfully challenged state legislative redistricting plan, trial court did not err by (1) failing to apportion awards by issue, (2) awarding fees for post-trial litigation in which plaintiffs did not prevail, and (3) awarding fees and costs for work attributable to both state case and noncompensable Department of Justice proceedings. *Hickel v. Southeast Conference*, Op. No. 4055, 868 P2d 919 (Alaska 1994).

Award of attorney's fees under this rule must relate solely to attorney's services performed in case in which judgment is entered and must only provide compensation for services performed up to time of judgment. *Torrey v. Hamilton*, Op. No. 4073, 872 P2d 186 (Alaska 1994).

Attorney's fees incurred in adversary proceeding in bankruptcy were not recoverable as costs of collection for original state court judgment. *Torrey v. Hamilton*, Op. No. 4073, 872 P2d 186 (Alaska 1994).

It is within the trial court's discretion to consider a party's pre-litigation fees in determining an award of attorney's fees. *Bowman v. Blair*, Op. No. 4169, 889 P2d 1069 (Alaska 1995).

It is error for the court to rule on a motion for an award of attorney's fees before the opposing party in given an opportunity to respond. *Bowman v. Blair*, Op. No. 4169, 889 P2d 1069 (Alaska 1995).

Attorney's fees award was vacated in light of ruling requiring remand of case for further evidencing hearing. *Sweet v. Sisters of Providence in Washington*, Op. No. 4200, 893 P2d 1252 (Alaska 1995).

An award of only approximately thirty percent of the prevailing party's attorney's fees was within the court's discretion since the case was the first Alaska case dealing with arbitral immunity. *Feichtinger v. Conant*, Op. No. 4189, 893 P2d 1266 (Alaska 1995).

When a trial court awards attorney's fees, it may, but need not, take into account the existence of an unaccepted Rule 68 offer if the claimant-offeree fails to better the offer. *Fairbanks North Star Borough v. Lakeview Enterprises, Inc.*, Op. No. 4218, 897 P2d 47 (Alaska 1995).

Given the amendments to Civil Rule 82 effective July 15, 1993, pre-amendment case law discussing the impact of successful Rule 68 offers on attorney's fees awards have limited application. *Fairbanks North Star Borough v. Lakeview Enterprises, Inc.*, Op. No. 4218, 897 P2d 47 (Alaska 1995).

Where case was in process when new Rule 82 went into effect, new rule was to be applied of attorney's fees. *Bishop v. Municipality of Anchorage*, Op. No. 4233, 899 P2d 149 (Alaska 1995).

Non-profit corporation organized for purpose of discouraging prostitution which brought action to abate house of prostitution qualified as public interest litigant. *SAC v. Lot 3, Block 3, Evergreen*, Op. No. 4245, 902 P2d 766 (Alaska 1995).

Amendment to this rule effective July 15, 1993, should have been applied to case where summary judgment was entered on June 7, 1993, defendants were declared prevailing parties on August 16, 1993; and attorney's fees were award on November

1, 1993. *Nielson v. Benton*, Op. No. 4258, 903 P2d 1049 (Alaska 1995).

The rule of *Cameron v. Hughes*, 825 P2d 882 (Alaska 1992), that legal costs reasonably and necessarily incurred in collecting a judgment for past-due child support should be treated as "costs of the action" and awarded to the collecting party, applies only to post-judgment fees incurred after a support obligation has been reduced to a unitary, fixed-sum judgment and only in child support cases. It does not apply in an action to reduce a spousal support obligation to judgment. *Saltz v. Saltz*, Op. No. 4272, 903 P2d 1070 (Alaska 1995).

While this rule does not generally apply to divorce cases, it does apply to post-judgment enforcement and modification motions. *Saltz v. Saltz*, Op. No. 4272, 903 P2d 1070 (Alaska 1995).

Native Alaskan Council of elders which filed suit to prevent clearcut harvesting of tract of timber believed to be location of historic Eyak village and burial ground qualified as public interest litigant. *Eyak Elders Council v. Sherstone, Inc.*, Op. No. 4273, 904 P2d 420 (Alaska 1995).

This rule does not preempt applicability of common fund doctrine, wholly or in part. *Edwards v. Alaska Pulp Corp.*, Op. No. 4362, 920 P2d 751 (Alaska 1996).

This rule, a fee-shifting tool which provides partial reimbursement of prevailing party's legal fees, was not intended to cap recovery of attorney fees under common fund doctrine, a fee-spreading mechanism which prevents unjust enrichment of those who derive benefit from efforts of others. *Edwards v. Alaska Pulp Corp.*, Op. No. 4362, 920 P2d 751 (Alaska 1996).

Where class representatives agreed to pay their lawyers whatever fees the court awarded, determination by court of "actual" fees was not necessarily limited to hourly fees. *Municipality of Anchorage v. Gentile*, Op. No. 4388, 922 P2d 248 (Alaska 1996).

Where police officers and fire fighters prevailed in class action against municipality to prevent reduction of post-retirement medical benefits, and class representatives had agreed to pay their attorneys whatever attorney fees were awarded by trial court, trial court had discretion to use risk enhancement and common fund doctrine as factors in calculating fee award and to require class members to contribute to attorney fees from benefits created or protected by class action. *Municipality of Anchorage v. Gentile*, Op. No. 4388, 922 P2d 248 (Alaska 1996).

All motions for attorney fees, including motions grounded on statutes, made after July 15, 1996, must be made within 10-day time frame of this rule. *Jones v. Jones*, Op. No. 4430, 925 P2d 1339 (Alaska 1996).

Excess insurer was not responsible for part of attorney's fees paid by primary insurer. *Safety Nat. Cas. v. Pacific Employees*, Op. No. 4440, 927 P2d 748 (Alaska 1996).

Trial court's ruling that labor organization representing city firefighters in litigation against city was not entitled to full, reasonable attorney fees under bad faith exception to this rule was not clearly erroneous. *Fairbanks Fire Fight. Ass'n v. Fairbanks*, Op. No. 4801, 934 P2d 759 (Alaska 1997).

Final findings of fact and conclusions of law in which trial court denied grandparents' petition for adoption and awarded physical custody of child to father was final judgment triggering 10-day period for filing of motion for attorney fees and

costs; petition for review of interim custody order had on finality of trial court's entry of findings and cor and stay of trial court's order did not affect trial jurisdiction to entertain motions for costs and attorney fees. *D.L.M. v. M.W.*, Op. No. 4840, 941 P2d 900 (Alaska 1997).

Contractors who filed declaratory judgment action that amendments to Little Davis-Bacon Act should their pre-existing contracts failed to qualify as public interest litigants since each had substantial economic incentive suit. *Eastwind, Inc. v. State*, Op. No. 4927, 951 P2d 900 (Alaska 1997).

Court does not abuse its discretion if it fails to let prevailing party's victory on subsidiary issue as "factor" mandating reduction of award to prevailing party. *Nielson v. Benton*, Op. No. 4978, 957 P2d 971 (Alaska 1997).

Award of attorney fees to property claimant forfeiture proceeding had to be reversed if property used fictitious name. *State v. Johnson*, Op. No. 4991, 958 P2d 440 (Alaska 1998).

Where trial court unquestionably possessed jurisdiction over state in civil forfeiture proceeding power to award attorney's fees against state notwithstanding that court released jurisdiction over res prior to award. *Johnson*, Op. No. 4991, 958 P2d 440 (Alaska 1998).

Superior court hearing appeal from administrative awards attorney's fees under Appellate Rule 508, in violation of Rule 82. *Stalnaker v. Williams*, Op. No. 5003, 960 P2d 1000 (Alaska 1998).

Argument that losing plaintiff in civil rights action be shielded from liability for fees and costs under this rule unless plaintiff's lawsuit is frivolous, unreasonable or without foundation was rejected. *Moody-Herrera v. State of Alaska Natural Resources*, Op. No. 5050, 967 P2d 79 (Alaska 1998).

Divorce exception to this rule did not apply to post-judgment action. *Rubright v. Arnold*, Op. No. 5083, 973 P2d 1000 (Alaska 1999).

Where trial ended after three days when directed verdict motion was granted, case did in fact go "to trial" for purposes of this rule. *Martin v. State*, Op. No. 1622, 973 P2d 1000 (Alaska App. 1999).

This rule is not authority for assessing attorney's fees against counsel. *Wilson v. Municipality of Anchorage*, Op. No. 5111, 977 P2d 713 (Alaska 1999).

Civil Rules 79(h) and 82(e), which address the allocation of costs and attorney's fees respectively between third-party plaintiffs and third-party defendants joined in an action under Alaska's equitable apportionment statute, do not apply if the original plaintiff has made a direct claim against the third-party defendant; in such cases, the usual Alaska practice awarding costs and attorney's fees to the prevailing party applies. *City of Kodiak v. Parish*, Op. No. 5170, 986 P2d 1000 (Alaska 1999).

Award of attorney's fees in any proceeding arising under Alaska's Uniform Landlord and Tenant Act should be under AS 34.03.350 rather than Civil Rule 82. *Sullivan v. Subramanion*, Op. No. 5270, 2 P3d 66 (Alaska 2000).

Because child support case was settled without reference to attorney's fees and because alleged prevailing party failed to notify other party of her intent to pursue recovery of attorney's fees in addition to terms negotiated in settlement,

agreement, any award of Rule 82 attorney's fees was barred. *Sanders v. Barth*, Op. No. 5328, 12 P3d 766 (Alaska 2000).

Award of attorney fees under this rule may not include fees incurred in defending against 42 U.S.C. § 1988 claims. *Brown v. Ely*, Op. No. 5347, 14 P3d 257 (Alaska 2000).

Where plaintiffs' claims were based upon common law and the Unfair Trade Practices Act, trial court had discretion to look to both this rule and the statute in deciding attorney's fees. *Garrison v. Dixon*, Op. No. 5378, 19 P3d 1229 (Alaska 2001).

This rule does not allow for awards of "several" attorney's fees against multiple non-prevailing parties; an award is based on the amount of the prevailing party's actual reasonable attorney's fees, and the number of non-prevailing parties is inconsequential. *Garrison v. Dixon*, Op. No. 5378, 19 P3d 1229 (Alaska 2001).

Where there is no dispute about the reasonableness of attorney's fees awarded under Civil Rights 68, the factors listed in this rule cannot be applied to reduce the award. *Kellis v. Crites*, Op. No. 5380, 20 P3d 1112 (Alaska 2001).

Where defendant prevails on state law claims brought in state court that are integrally related to federal civil rights claims, defendant is entitled to award of attorney's fees without showing that plaintiff's claims were frivolous, unreasonable or without foundation. *Sengupta v. University of Alaska*, Op. No. 5397, 21 P3d 1240 (Alaska 2001).

In action for reformation of recorded easement, this rule, which provides for award of partial attorney's fees to prevailing party, was overridden by provision in easement agreement calling for "reasonable attorney's fees," which was interpreted as meaning full reasonable attorney's fees. *Gamble v. Northshore Partnership*, Op. No. 5445, 22 P3d 457 (Alaska 2001).

This rule only applies to "costs of action," not attorney's fees incurred in conduct of prior arbitration. *Holderness v. State Farm Fire and Casualty Co.*, Op. No. 5425, 24 P3d 1235 (Alaska 2001).

Alaska R. Civ. P. 82(a) provides for an award of attorney's fees to the prevailing party "except as otherwise provided by law." If a specific statutory scheme for attorney's fees or costs exists, Alaska R. Civ. P. 79 and 82 do not apply. *Enders v. Parker*, Op. No. 5446, 28 P3d 280 (Alaska 2001).

Court can award costs and attorney's fees even after it concludes that it lacks subject matter jurisdiction over a party's claims. *Foster v. State*, Op. No. 5504, 34 P3d 1288 (Alaska 2001).

Accepting a motion for attorney's fees despite the fact that it was one day past the Alaska R. Civ. P. 82(c) deadline was well within the superior court's discretion. *Kaiser v. Sakata*, Op. No. 5526, 40 P3d 800 (Alaska 2002).

II. Prevailing Party

Even though there has not been a final determination on the merits in the case, where the complaint has been dismissed for failure to comply with an order to produce corporate records, the defendant is the "prevailing party," and as such is entitled to attorney fees as costs. *Hart v. Wolff*, Op. No. 724, 489 P2d 114 (Alaska 1971).

A party may be the "prevailing party" within this rule if he is successful with regard to the main issues in the action. *Corper v. Carlson*, Op. No. 907, 511 P2d 1305 (Alaska 1973).

The prevailing party in each case should not automatically be awarded the full amount of attorney fees incurred. *Malvo v. J.C. Penney Co., Inc.*, Op. No. 901, 512 P2d 575 (Alaska 1973).

The purpose of this rule is to partially compensate the prevailing party for the costs and fees incurred where such compensation is justified, not to penalize a party for litigating a goodfaith claim. *Malvo v. J. C. Penney Co., Inc.*, Op. No. 901, 512 P2d 575 (Alaska 1973).

The purpose of this rule is to compensate partially a prevailing party for costs which he has incurred in litigation. *City of Valdez v. Valdez Development Company*, Op. No. 1051, 523 P2d 177 (Alaska 1974).

It is not the purpose of this rule to penalize a party for litigating goodfaith claim but rather partially to compensate the prevailing party where such compensation is justified. *Gilbert v. State*, Op. No. 1085, 526 P2d 1131 (Alaska 1974).

Generally, for purposes of awarding costs and attorney fees to the prevailing party, the "prevailing party" is considered to be the party who has successfully prosecuted or defended against the action — the one who is successful on the main issue of the action and in whose favor the decision or verdict is rendered and the judgment entered. Adoption of *v. M.C.*, Op. No. 1103, 528 P2d 788 (Alaska 1974).

Determination of prevailing party does not automatically follow if party receives an affirmative recovery, but is grounded in which party prevails on the main issues. *Continental Ins. Co. v. U.S. Fid. & Guar. Co.*, Op. No. 1298, 552 P2d 1122 (Alaska 1976).

Litigant may be prevailing party if he is successful with regard to the main issue in the action, even if other side receives some affirmative recovery. *Alaska Placer Co. v. Lee*, Op. No. 1294, 553 P2d 54 (Alaska 1976).

When trial court does not award attorney's fees to a prevailing party who was not awarded a money judgment, it must state the basis for its decision. *Stordahl v. Government Employees Insurance Co.*, Op. No. 1422, 564 P2d 63 (Alaska 1977).

Attorney's fees are to be awarded to plaintiff who prevails in public interest case, although they would not be assessed against him if he did not prevail. *Anchorage v. McCabe*, Op. No. 1490, 511 P2d 986 (Alaska 1977).

The trial court retains discretion to refrain from characterizing either party as "prevailing" for purposes of awarding attorney's fees. *Tobeluk v. Lind*, Op. No. 1781, 589 P2d 873 (Alaska 1979).

The purpose of Civil Rule 82 is to compensate a prevailing party partially, not fully, for costs and attorney's fees incurred. *Stepanov v. Gavrilovich*, Op. No. 1823, 594 P2d 30 (Alaska 1979).

Where jury assessed damages against principal, failure to assess damages against agent did not convert agent into prevailing party entitled to attorney's fees in discretion of court. *Dowling Supply & Equipment v. Gardner*, Op. No. 1974, 602 P2d 1250 (Alaska 1979).

Two teachers who brought suit against their school district for a salary increase allegedly due them did not meet the "public interest" exception to the normal rule permitting a discretionary award of attorney's fees to the prevailing party. *Rouse v. Anchorage School Dist.*, Op. No. 2106, 613 P2d 263 (Alaska 1980).

If a debtor raises a claim under the Truth-in-Lending Act as a partial defense, the debtor may be awarded a reasonable attorney's fee pursuant to the provisions of that act for successful assertion of his claim; however, success on one claim does not necessarily make the debtor the prevailing party in the entire action, and need not preclude the court from awarding offsetting attorney's fees to the prevailing party under this rule. *Hayer v. National Bank of Alaska*, Op. No. 2211, 619 P2d 474 (Alaska 1980).

The party who obtains an affirmative recovery is not necessarily the prevailing party within the meaning of this rule, and it is error for a court to rely solely on that factor in awarding attorney's fees. *Hayer v. National Bank of Alaska*, Op. No. 2211, 619 P2d 474 (Alaska 1980).

A dispute between the state and three individuals concerning valuable private property seized for violating state laws regulating a commercial enterprise does not fall within the "public interest" exception to the normal award of attorney's fees to the prevailing party. *F/V American Eagle v. State*, Op. No. 2227, 620 P2d 657 (Alaska 1980).

Where disposition of issues presented on appeal clearly established husband as the prevailing party, award of attorney's fees to wife, who initiated action seeking modification of terms of property settlement incorporated into divorce decree, was properly vacated and remanded to afford husband an opportunity to seek award of attorney's fees. *Stone v. Stone*, Op. No. 2522, 647 P2d 582 (Alaska 1982).

Class action against state and borough asserting that service area provisions of statute violated constitutional rights of all borough residents was public interest litigation, thus court's failure to award attorney's fees to the borough as prevailing party was not error. *Falke v. Fairbanks North Star Borough*, Op. No. 2530, 648 P2d 597 (Alaska 1982).

Plaintiff had sufficient private economic reasons to litigate decision by Alaska Department of Health and Social Services, which allowed a "certificate of need" for a hospital facility to remain in effect indefinitely, to justify superior court's award of attorney's fees to defendant as the prevailing party, against plaintiff's contention that the case came within the public interest litigation exception to this rule. *Sisters of Providence v. Dept. of Health, Etc.*, Op. No. 2536, 648 P2d 970 (Alaska 1982).

In applying the public interest exception to this rule, it makes no difference whether the defendant is a private rather than a public entity. *Southeast Alaska Conservation Council v. State*, Op. No. 2662, 665 P2d 544 (Alaska 1983).

In action by a private conservation council against the state challenging on constitutional and statutory grounds a timber sales contract entered into between the state and a timber company, it was a violation of the public interest exception to this rule for the court to award attorney's fees against the conservation council. *Southeast Alaska Conservation Council v. State*, Op. No. 2662, 665 P2d 544 (Alaska 1983).

Where grant of summary judgment against corporations for violating implied duty of good faith and fair dealing in employment contract was reversed, award of attorneys' fees to the corporations was vacated even though the corporations prevailed with respect to other related issues. *Mitford v. de Lasala*, Op. No. 2679, 666 P2d 1000 (Alaska 1983).

If a condemnee asserts counterclaims that are basically common law actions, such as negligence, the condemnor can be awarded costs and attorney's fees if it is the prevailing party

on those issues. *Stewart v. State, Dept. of Transportation*, Op. No. 2895, 693 P2d 827 (Alaska 1984).

Once the State agreed to dismissal of condemnation act, condemnation was no longer an issue, thus State was entitled attorney's fees thereafter incurred in successfully defending against condemnee's counterclaims seeking to prevent the State from removing trees and building a retaining wall on State's own property. *Stewart v. State, Dept. of Transportation*, Op. No. 2895, 693 P2d 827 (Alaska 1984).

Unsuccessful challenger to a rezoning decision on ground that open meetings act was violated qualified as a public interest litigant under this rule. *Brookwood Area Homeowners v. Anchorage*, Op. No. 2953, 702 P2d 1317 (Alaska 1985).

In a divorce action, the "prevailing party" standard of rule does not apply. *H.P.A. v. S.C.A.*, Op. No. 2961, 704 P2d 205 (Alaska 1985).

Unsuccessful suit by Labor Federation to enforce the requirements of the Little Davis-Bacon Act was motivated principally by private rather than public concerns, hence Federation was not a public interest litigant; therefore, court's award of attorney fees to the prevailing party was an abuse of discretion. *Alaska State Federation of Laborers v. State*, Op. No. 3014, 713 P2d 1208 (Alaska 1986).

In contested marriage and partnership dissolution proceeding, trial court did not abuse its discretion in awarding prevailing party actual attorney's fees of \$21,032 due vexatious conduct by the losing party. *Horton v. Hansen*, Op. No. 3072, 722 P2d 211 (Alaska 1986).

Generally, since a dismissal with prejudice is an adjudication on the merits, a "prevailing party" determination possible for purposes of this rule. *Municipality of Anchorage v. Baugh Const.*, Op. No. 3083, 722 P2d 919 (Alaska 1986).

Defendant was clearly the prevailing party even if two other affirmative defenses were rejected. *Municipality of Anchorage v. Baugh Const.*, Op. No. 3083, 722 P2d 919 (Alaska 1986).

Trial court did not abuse its discretion in awarding prevailing party \$12,000 for attorney fees instead of \$22,594 actually incurred, since although the losing party's case was weak, it was not vexatious or brought in bad faith. *Wickwire v. Arctic Circle Air Services*, Op. No. 3084, 722 P2d 930 (Alaska 1986).

Where taxpayer paid the challenged tax under protest, then sued for a refund on constitutional grounds and lost, judgment merely upheld the constitutionality of the tax statute and did not result in a money judgment, thus the state as prevailing party was only entitled to attorney fees "in a reasonable amount" rather than attorney fees "commensurate with amount and value of legal services rendered." *Atlantic Refining Co. v. State*, Op. No. 3096, 723 P2d 1249 (Alaska 1986).

A contribution-claim defendant is not a prevailing party entitled to costs and attorney's fees when it secures summary judgment against the contribution-claimant by settling with injured plaintiff. *Foss Alaska Line, Inc. v. Northland Services*, Op. No. 3112, 724 P2d 523 (Alaska 1986).

A party who successfully defeats a claim of great potential liability may be the prevailing party even if the other side is successful in receiving an affirmative recovery. *Hutchins v. Schwartz*, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

Defendant, who faced a potential liability of \$275,000 was required to pay only \$1,937 less 40 percent, was

prevailing party. *Hutchins v. Schwartz*, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

The "prevailing party" standard and the divorce action judgment exception to this rule are inappropriate standards for determining the question of attorney's fees in connection with motions to amend or enforce child custody orders. *L.L.M. v. P.M.*, Op. No. 3323, 754 P2d 262 (Alaska 1988).

The statutory standard of "willfully and without just excuse" is appropriate for determining the question of attorney's fees after a motion to amend or enforce a custody or visitation order is adjudicated; in this way any unsuccessful party who reasonably, and in good faith, believes that his or her action was justified by the best interests of the children will not be deterred from action by the possibility of an award of fees and costs. *L.L.M. v. P.M.*, Op. No. 3323, 754 P2d 262 (Alaska 1988).

The prevailing party rule used for determining attorney's fees awards under this rule does not apply to fee awards in divorces. *Rhodes v. Rhodes*, Op. No. 3339, 754 P2d 1333 (Alaska 1988).

As long as defense costs are reasonable, a successful defendant may recover whatever portion the trial court in its sound discretion sees fit to award; attorney's fees which prevailing defendants may recover are not limited as a matter of law by the amount of damages the unsuccessful plaintiff sought. *Stevens By Park View Corp. v. Richardson*, Op. No. 3313, 755 P2d 389 (Alaska 1988).

Plaintiff, who successfully prosecuted his action against defendant for moneys owed from the 1984 fishing season and defeated defendant's counterclaim for damages, was the prevailing party despite failing on his claim for moneys owed from the 1982 season and on his claim that he was defendant's employee rather than an independent contractor. *Day v. Moore*, Op. No. 3422, 771 P2d 436 (Alaska 1989).

For purposes of awarding fees pursuant to this rule, the general rule is that the prevailing party is the one who has successfully prosecuted or defended against the action, the one who is successful on the main issue of the action and in whose favor the decision or verdict is rendered and the judgment entered. *Day v. Moore*, Op. No. 3422, 771 P2d 436 (Alaska 1989).

A party does not have to prevail on all the issues in the case to be a "prevailing party"; one who defeats a claim of great potential liability may be the prevailing party even though the other side receives an affirmative recovery. *Day v. Moore*, Op. No. 3422, 771 P2d 436 (Alaska 1989).

In personal injury action by plaintiffs against helicopter owner following plaintiff's settlement with the helicopter component manufacturers, where defendant ultimately did not have to pay plaintiffs anything after the verdict in the plaintiff's favor was reduced by the amount of their previous settlements, the trial court did not abuse its discretion in holding that the defendant was the prevailing party. *Buoy v. ERA Helicopters, Inc.*, Op. No. 3423, 771 P2d 439 (Alaska 1989).

Trial court did not abuse its discretion in concluding that each side should bear its own costs and attorney fees since each side prevailed in substantial areas of the litigation. *Orksmith v. Brusich*, Op. No. 3434, 774 P2d 191 (Alaska 1989).

The divorce judgment exception to this rule does not apply to post-judgment modification and enforcement motions; accordingly, fees in such cases are awarded under the prevailing party standard of this rule for post-judgment money and

property issues, under which the parties' relative economic positions are irrelevant. *Lowe v. Lowe*, Op. No. 3726, 817 P2d 453 (Alaska 1991).

Estate of deceased minor, which prevailed in action for damages against store that illegally sold alcohol to the minor, did not satisfy the "public interest" litigant criteria, thus was not entitled to actual attorney fees. *Loeb v. Rasmussen*, Op. No. 3786, 822 P2d 914 (Alaska 1991).

The four criteria for determining whether a particular lawsuit involves the public interest are: (1) Is the case designed to effectuate strong public policies? (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit? (3) Can only a private party have been expected to bring the suit? (4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance? *Anchorage Daily News v. Anchorage School Dist.*, Op. No. 3652, 803 P2d 402 (Alaska 1990); *Citizens Coalition v. McAlpine*, Op. No. 3686, 810 P2d 162 (Alaska 1991); *Loeb v. Rasmussen*, Op. No. 3786, 822 P2d 914 (Alaska 1991).

Where insureds prevailed on their claim of policy coverage and received \$50,000 on that claim, but failed on their claim of bad faith against insurance company, trial court erred in designating insurance company rather than insureds as prevailing party. *Hudson v. Nationwide Mut. Fire Ins. Co.*, Op. No. 3971, 855 P2d 1321 (Alaska 1993).

Public interest litigant's general prevailing party status did not mean litigant should recover fees incurred in bringing or defending petitions for review on which it did not prevail. *Hickel v. Southeast Conference*, Op. No. 4055, 868 P2d 919 (Alaska 1994).

Plaintiff, whose recovery was slight compared to \$700,000 in damages requested, but who succeeded in obtaining full damages requested for past medical expenses and \$16,000 for past and future physical impairment and pain and suffering, was prevailing party. *Blumenshine v. Baptiste*, Op. No. 4060, 869 P2d 470 (Alaska 1994).

The "prevailing party" is the party who is successful with regard to the main issues in the action, even if the other party receives some affirmative recovery. *Bowman v. Blair*, Op. No. 4169, 889 P2d 1069 (Alaska 1995).

Party who retained ownership of the majority of the disputed items in a probate case was the prevailing party for purposes of awarding attorney's fees. *Bowman v. Blair*, Op. No. 4169, 889 P2d 1069 (Alaska 1995).

Trustee bank was neutral party in action concerning whether sale of trust property would be in best interest of all trust beneficiaries; as such, beneficiary input regarding proposed course of action could not be contrary to trustee's interests, thus award of fees against beneficiary and to trustee was unjustified. *Barber v. Barber*, Op. No. 4345, 915 P2d 1204 (Alaska 1996).

In state court action by merchant mariners against ship owners and asbestos manufacturers for injuries and wrongful deaths caused by exposure to asbestos which was dismissed on forum non conveniens grounds, court did not err in awarding attorney fees and costs to defendants as prevailing parties, nor did such award conflict with admiralty law. *Hughes v. Foster*, Op. No. 4790, 932 P2d 784 (Alaska 1997).

Alaska Wage and Hour Act, prior to its amendment in August 1995, did not permit award of attorney fees and costs to

prevailing employer. *Grimes v. Kinney Shoe Corp.*, Op. No. 4815, 938 P2d 997 (Alaska 1997).

Where main issue in action for reformation of public trust was approval or rejection of settlement agreement, intervenor who prevailed on that issue was entitled to attorney's fees even if intervenor's legal arguments did not directly, primarily or necessarily cause court's favorable decision. *Alaska Center For the Environment v. State*, Op. No. 4830, 940 P2d 916 (Alaska 1997).

Prevailing defendants in actions to recover wages under Alaska Wage and Hour Act are not entitled to award of attorney's fees pursuant to this rule. *Schorr v. Frontier Transp. Co.*, Op. No. 4847, 942 P2d 418 (Alaska 1997).

In an in rem civil forfeiture proceeding in which trial court dismissed state's forfeiture complaint because of state's delay and ordered res released to claimant, claimant was prevailing party for purposes of attorney fee award even though res was seized by federal government when claimant did not show to take receipt of res. *State v. Johnson*, Op. No. 4991, 958 P2d 440 (Alaska 1998).

Trial court did not abuse its discretion by splitting prevailing party status for divergent claims. *Bliss v. Bobich*, Op. No. 5043, 971 P2d 141 (Alaska 1998).

In cases involving mixed causes of action, some governed by attorney fee provisions of this rule and some governed by attorney fee provisions of Alaska Wage and Hour Act, determination of prevailing party status remains matter of trial court discretion. *Bliss v. Bobich*, Op. No. 5043, 971 P2d 141 (Alaska 1998).

Prevailing plaintiff did not waive its claim to an enhanced attorney's fee award, even though it did not request an enhanced award in its original motion for fees. *Alderman v. Iditarod Props., Inc.*, Op. No. 5486, 32 P3d 373 (Alaska 2001).

III. Review

A. Standard

The trial judge has large discretion in allowing attorney's fees for the prevailing party, but the supreme court will reduce the allowance where the amount awarded is unduly high. *Davidson v. Kirkland*, Op. No. 38, 362 P2d 1068, 1070 (Alaska 1961).

Court-initiated amendment as to attorney's fees awarded as costs under this rule, did not affect the running of the time for appeal as provided under Supreme Court Rule 7(a). *Radich v. Fairbanks Builders, Inc.*, Op. No. 285, 399 P2d 215 (Alaska 1965).

Where appellant employer, albeit rightly so, prosecuted an appeal in a workmen's compensation case and thereby imposed upon employee the necessity to engage counsel to represent him in the superior court, trial judge did not abuse his discretion under this rule in denying an attorney's fee to appellant. *M-B Contracting Company v. Davis*, Op. No. 275, 399 P2d 433 (Alaska 1965).

Even if it may be assumed that appellant were "prevailing party" within the meaning of Civil Rule 54(d) and 82(a)(1), the trial court's determination as to denial of attorney's costs where the action was settled pursuant to Civil Rule 68 was not disturbed on appeal in the absence of a showing of clear abuse of the wide discretion allowed under this rule. *Albritton v. Estate of Larson*, Op. No. 413, 428 P2d 379 (Alaska 1967).

Awarding attorney's fees to the prevailing party is committed to the broad discretion of the trial court. *Da v. Gi Anchorage Area Borough*, Op. No. 476, 439 P2d 790 (1968); *Froelicher v. Hadley*, Op. No. 486, 442 P2d 51 (1968).

The award of \$1,300 as attorney's fees rather than \$ requested on the basis of hourly charges of \$30 and \$4 hour and \$350 per day for trial, is not an abuse of discretion. *Connelly v. Peede*, Op. No. 577, 459 P2d 362 (Alaska 1970).

The supreme court will interfere with the trial court's exercise of discretion in awarding attorney's fees as cost where such discretion has been abused. An abuse of discretion is established where it appears that the trial court's determination is manifestly unreasonable. *Palfy v. Rice*, Op. No. 473 P2d 606 (Alaska 1970).

The award of \$7,100 attorney's fees in an action arising out of a collision of an automobile and a tractor trailer combination on an ice and snow-covered curve of a highway is not an abuse of discretion, in view of the complexity of the factual issues, the length of the trial and the potentially large liability parties. *Ferrell v. Baxter*, Op. No. 688, 484 P2d 250 (1971).

Where an affidavit which is filed by the defendant in support of several factual allegations of the plaintiff and a memorandum filed by the defendant raises four defenses, such document tantamount to an answer and the plaintiff's right to dismissal is terminated. Thus, although the plaintiff files a motion for dismissal of the suit, the trial court has the authority to award defendant attorney fees. *Miller v. Wilke*, Op. No. 78 P2d 176 (Alaska 1972).

Where a subcontractor is the prevailing party in an action against a contractor for recovery of prepayments, an award of \$10,000 as attorney's fees to the subcontractor is not an abuse of discretion in view of the potentially large liability of the subcontractor. *Owen Johnson Sons, Inc. v. C.R. Lewis Co., Inc.*, Op. No. 795, 497 P2d 176 (Alaska 1972).

A trial court does not necessarily abuse its discretion in refusing to award attorney's fees to a property owner who successfully defends a suit for specific performance contract to sell property. *Hollaus v. Arend*, Op. No. 89 P2d 1074 (Alaska 1973).

The award of attorney's fees is discretionary with the trial judge and is reviewable on appeal only for an abuse of discretion. *Cooper v. Carlson*, Op. No. 907, 511 P2d 1305 (1973).

Although an award of attorney's fees to a prevailing party is not mandatory, the denial of a motion for such fees may be arbitrary or capricious or result from improper motive. *Cooper v. Carlson*, Op. No. 907, 511 P2d 1305 (Alaska 1973).

In an action against the state to recover additional compensation arising out of a contract, an award to the state of attorney's fees of \$22,633.91 is not an abuse of discretion, where the case was pending for over four years, the case involved potential liability of over \$500,000 and culminated in a five-day trial against the contention that the state should receive no award greater than the equivalent to the hourly salary of the trial court's paid assistant attorney general who worked on the case multiplied by the number of hours allowed by the trial court. *Morrison-Knudson Co., Inc. v. State*, Op. No. 1012, 511 P2d 834 (Alaska 1974).

The amount award as attorney fee: is within the sound discretion of the trial court. Review is limited to question of whether the court exceeded that discretion. *City of Valdez v. Valdez Development Company*, Op. No. 1051, 523 P2d 177 (Alaska 1974).

The refusal to award attorney's fees in a case where each party prevails in part, and in which each award is of approximately equal value, it is not an abuse of discretion. *City of Valdez v. Valdez Development Company*, Op. No. 1051, 523 P2d 177 (Alaska 1974).

The award of attorney's fees is vested in the sound discretion of the trial court, and will be interfered with on appeal only when that discretion is manifestly abused. *Grasle Electric Co. v. Clark*, Op. No. 1073, 525 P2d 1081 (Alaska 1974).

Where the trial in a personal injury action lasts over four days and involves complicated medical and psychiatric issues, an award of attorney's fees of over \$15,000, based entirely on the schedule set out in this rule, is not an abuse of discretion. *Grasle Electric Co. v. Clark*, Op. No. 1073, 525 P2d 1081 (Alaska 1974).

Both the award of costs and attorney fees to a prevailing party and the actual determination of who the "prevailing" party is are within broad discretion of the trial court. Only on a clear abuse of discretion will the supreme court interfere with its exercise, such abuse being established only where it appears that the trial court's determination is manifestly unreasonable. *Adoption of V.M.C.*, Op. No. 1103, 528 P2d 788 (Alaska 1974).

In reviewing a trial court's settlement of attorneys' fees granted at its discretion, the supreme court will disturb such a finding only upon a showing that a warrant was manifestly unreasonable. *Western Airlines, Inc. v. Lathrop Co.*, Op. No. 1146, 535 P2d 1209 (Alaska 1975).

Determination of which party prevails and is entitled to costs is within discretion of the trial judge. *First National Bank of Fairbanks v. Enzler*, Op. No. 1170, 537 P2d 517 (Alaska 1975).

Moot issues will not be reviewed solely to provide a means of contesting trial court's award of attorney's fees. *Munroe v. City Council for City of Anchorage*, Op. No. 1236, 545 P2d 165 (Alaska 1976).

To require widow to pay \$10,750 in attorney's fees to defendant in wrongful death action whose counsel was provided by insurance carrier was not improper. *Sloan v. Atlantic Richfield Co.*, Op. No. 1195, 552 P2d 157 (Alaska 1976).

Determination of which party is the prevailing party is in the trial judge's discretion and is reviewable only for abuse. *Continental Ins. Co. v. U. S. Fid. & Guar. Co.*, Op. No. 1258, 552 P2d 1122 (Alaska 1976).

Trial court's discretion in awarding attorney's fees will be interfered with only when manifestly unreasonable. *Alaska Placer Co. v. Lee*, Op. No. 1294, 553 P2d 54 (Alaska 1976).

An award of attorney's fees under this rule will not be reversed unless manifestly unreasonable, arbitrary or designed for a purpose other than justly deserved compensation. *Fairbanks Builders, Inc. v. Sandstrom Plumbing & Heating, Inc.*, Op. No. 1324, 555 P2d 964 (Alaska 1976).

It was not abuse of discretion to award additional attorney's fees as compensation for efforts to force opposing party to answer interrogatories and appear at depositions. *Fairbanks*

Builders, Inc. v. Sandstrom Plumbing & Heating, Inc., Op. No. 1324, 555 P2d 964 (Alaska 1976).

Trial court's discretion under this rule is broad enough to warrant the denial of attorney's fees altogether. *Haskins v. Sheldon*, Op. No. 1357, 558 P2d 487 (Alaska 1976).

Trial court's discretion under this rule will be interfered with only when abuse is established by a "manifestly unreasonable" award. *Haskins v. Sheldon*, Op. No. 1357, 558 P2d 487 (Alaska 1976).

In view of complexity of issues, time during which case was pending before trial, amount of potential liability, and amount of trial preparation and presentation, trial court was not manifestly unreasonable in awarding \$192,111 attorney's fees. *Beech Aircraft Corp. v. Harvey*, Op. No. 1338, 558 P2d 879 (Alaska 1976).

Award of \$14,000 in attorney's fees where \$1,750 would have been awarded under this rule was not abuse of discretion in six-day trial with extensive pre- and post-trial briefing and with a significant number of difficult and complex legal issues. *Chugach Electric Association v. Northern Corp.*, Op. No. 1408, 562 P2d 1053 (Alaska 1977).

An award of attorney's fees which represented 86 percent of the total bill submitted by plaintiffs' counsel was somewhat high but not manifestly unreasonable under the circumstances of the case. *Hausam v. Wodrich*, Op. No. 1558, 574 P2d 805 (Alaska 1978).

It was not manifestly unreasonable in determining attorney's fees and costs for the court to take into account that it ruled against the prevailing party on one of the contested issues. *Alaska State Bank v. Gen. Ins. Co.*, Op. No. 1564, 579 P2d 1362 (Alaska 1978).

Court did not abuse its discretion in denying attorney's fees to defendant who prevailed in paternity suit brought in good faith even though denial was based in part on fact that defendant admitted to having sexual relations with a minor. *Larry v. Dupree*, Op. No. 1652, 580 P2d 326 (Alaska 1978).

Where plaintiffs' status as a prevailing party could not be inferred from the settlement agreement because of the political nature of the case, the trial court did not err in denying plaintiffs' claim for attorney fees. *Tobeluk v. Lind*, Op. No. 1781, 589 P2d 873 (Alaska 1979).

Attorney fee award of \$9,861 was not abuse of discretion where party had agreed to accept legal services in partial consideration of claim against attorney and the value of the attorney services was well in excess of \$10,000. *Puritan Life Ins. Co. v. Guess*, Op. No. 1881, 598 P2d 900 (Alaska 1979).

Complexity of a case may be considered in determining the amount of attorney's fees, but that factor alone does not justify an award of full fees. *Moses v. McGarvey*, Op. No. 2139, 614 P2d 1363 (Alaska 1980).

Award of \$55,000 in attorney's fees was not manifestly unreasonable for complex litigation which extended for over two years. *F/V American Eagle v. State*, Op. No. 2227, 620 P2d 657 (Alaska 1980).

Award of \$15,000 for attorney's fees to successful public interest plaintiff was not abuse of discretion where the award did not cover actual attorney's fees but did constitute full "reasonable" attorney's fees. *City of Yakutat v. Ryman*, Op. No. 2581, 654 P2d 785 (Alaska 1982).