

**HB**

**107**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 107(RES)  
(H) Publish Date: 2/18/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
Title Atty Fees: Hunting/Fishing Interferenc RDU \_\_\_\_\_  
Component \_\_\_\_\_  
Sponsor Representative Ramras \_\_\_\_\_  
Requester House Resources Committee Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006    | FY 2007    | FY 2008    | FY 2009    | FY 2010    | FY 2011    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**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) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2005) cost: 0.0  
Mark this box (X) if funding for this included in the Governor's FY 2006 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)  
Passage of this legislative would have no fiscal impact.

Prepared by: Sarah Gilbertson Phone 465-6137  
Division: Legislative Liaison Date/Time 1/28/05 8:35 a.m.  
Approved by: Acting Commissioner Wayne Regelin Date 1/28/2005  
Agency: Alaska Department of Fish & Game

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSHB 107(JUD)  
(H) Publish Date: 3/7/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act providing for the award of full actual RDU CIVIL  
attorney fees and costs to a person aggrieved by unlawful..." Component Torts and Workers' Compensation  
Sponsor Representative Ramras  
Requester House Resources Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006    | FY 2007    | FY 2008    | FY 2009    | FY 2010    | FY 2011    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

|                        |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES ( ) |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|

**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) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

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

This bill amends AS 16.05.791(b) by allowing a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or the viewing of fish or game to recover full actual attorney fees and costs of action to collect damages, fees, and costs. An actual award of fees and costs against the State would be requested in the judgments & claims section of the annual supplemental appropriations bill and are thus not included in this fiscal note. The bill makes an exception for a law enforcement officer while performing the duties of the office.

Passage of this legislation is not anticipated to result in a fiscal impact for the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
Division Administrative Services Division Date/Time 3/1/05 1:45 PM  
Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/1/2005  
Agency Department of Law

amendment pg 2

24-LS0444\S

lines 18-19

CS FOR HOUSE BILL NO. 107(JUD)

24

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/7/05

Referred: Finance

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to unlawful obstruction or hindrance of hunting, fishing, trapping, or  
 2 viewing of fish or game; and amending Rule 82, Alaska Rules of Civil Procedure, and  
 3 Rule 508, Alaska Rules of Appellate Procedure."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 16.05.790(a) is amended to read:

6 (a) Except as provided in (e) of this section, a person may not intentionally  
 7 obstruct or hinder another person's lawful hunting, fishing, trapping, or viewing of fish  
 8 or game by

9 (1) placing one's self in a location in which human presence may alter  
 10 the

11 (A) behavior of the fish or game that another person is  
 12 attempting to take or view; or

13 (B) feasibility of taking or viewing fish or game by another  
 14 person; [OR]

1 (2) creating a visual, aural, olfactory, or physical stimulus in order to  
2 alter the behavior of the fish or game that another person is attempting to take or view;

3 or

4 (3) physically interfering or tampering with equipment being used  
5 for lawful hunting, fishing, trapping, or viewing purposes.

6 \* Sec. 2. AS 16.05.790(d) is amended to read:

7 (d) In a prosecution under this section, it is an affirmative defense that the  
8 person was

9 (1) a law enforcement officer engaged in performing the duties of  
10 the office; or

11 (2) lawfully entitled to obstruct or hinder the hunting, fishing, trapping,  
12 or viewing of fish or game.

13 \* Sec. 3. AS 16.05.791(b) is amended to read:

14 (b) A person aggrieved by a violation of AS 16.05.790 is entitled to recover  
15 general damages and special damages, including license and permit fees, travel costs,  
16 guide-outfitting fees, costs for special equipment and supplies, and other related  
17 expenses. The prevailing party in an action described in this subsection, other  
18 than an action relating to commercial fishing, is entitled to costs and 90 percent  
19 of reasonable actual attorney fees.

20 \* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 INDIRECT COURT RULE CHANGE. The provisions of AS 16.05.791(b), amended  
23 by sec. 3 of this Act, have the effect of amending Rule 82, Alaska Rules of Civil Procedure,  
24 and Rule 508, Alaska Rules of Appellate Procedure, by providing for the award of 90 percent  
25 of reasonable actual attorney fees to the prevailing party in an action brought by a person  
26 aggrieved by a violation of AS 16.05.790.

ADOPTED 3/15/05 N/O

AMENDMENT I

OFFERED IN THE HOUSE  
TO: CS HB 107 (JUD)

BY REPRESENTATIVE HAWKER

- 1 Page 2, lines 18-19:
- 2 Delete "90 percent of"
- 3
- 4 Page 2, lines 24-25:
- 5 Delete "90 percent of"

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**NATIONAL RIFLE ASSOCIATION OF AMERICA**

INCORPORATED 1871

**11260 WAPLES MILL ROAD  
FAIRFAX, VA 22030**

February 17, 2005

The Honorable Jay Ramras  
Alaska State House of Representatives  
Alaska State Capitol  
Juneau, AK 99801

Dear Representative Ramras:

I would like to commend you on having the foresight and courage to introduce legislation designed to preserve the rights of Alaska's outdoorsmen and women. HB 107, "An Act relating to the unlawful obstruction or hindrance of hunting, fishing, trapping or viewing of fish or game is a significant step in the right direction to protect law abiding citizens.

As you may be aware, I have been intricately involved in the rights of Alaska's outdoor community for well over 25 years. Over that time period I have found the environmental/animal rights activists are the most relentless crusaders against our traditional values and way of life. They are in fact "true believers" who care little or nothing for the rights of others, and are especially disdainful of others personal values and viewpoints.

Since the days when Alaskans battled unsuccessfully with "outside interests" over D-2, the environmental community has not wavered from its consistent effort to erode or eliminate such traditional Alaskan activities like hunting and trapping. Although millions of acres were set aside in ANILCA for their sole benefit, it was not enough. To this day they continue in their crusade to shut down more areas, and are becoming bolder in their rhetoric and actions against those of us who choose to live a more natural lifestyle.

HB 107 will go a long way toward preventing the kind of unlawful activities groups like PETA and HSUS encourage their members to take against hunters and other outdoor users. Although hunters have never attempted to pass rules or regulations coercing non-hunters to participate in their activities, or keep them from pursuing activities of their choice, the anti-hunting community has continually supported actions to eliminate hunting and trapping. Tools like those provided in HB 107 are an unfortunate, but necessary remedy to protect the rights of Alaskans who continue to live with a strong connection to the land.

Once again, thank you for introducing such an important piece of legislation. If there is anything I can do to assist you in this endeavor, please don't hesitate to let me know.

Sincerely,

Eddie Grasser  
NRA Field Rep.

Representative Jay Ramras  
Co-Chair, House Resources  
V-Chair, Economic Develop.  
Tourism & Trade  
House State Affairs  
119 N. Cushman St. Suite 207  
Fairbanks, Alaska 99701  
Phone: (907) 452-1088  
Fax: (907) 452-1146

## Alaska State Legislature



While in Session  
State Capitol, Room 104  
Juneau, Alaska 99801-1182  
(907) 465-3004  
Fax: 465-2070  
Toll Free: (877) 465-3004

House District 10

### House of Representatives

### Sponsor Statement

### CS for HB 107(JUD)

Committee Substitute for House Bill 107 (JUD) is a change to existing statute regarding persons who hunt, fish, trap, or view wildlife in Alaska. Presently, if any of these people are obstructed from participating in this most basic of Alaskan experiences, they can seek relief in our courts. The courts are permitted to grant damages for most of the expenses except reasonable actual attorney's fees and costs. CSHB 107 will allow the judge to grant full costs and up to 90% of Attorney fees.

There is a growing sentiment across the country that disturbing wildlife in any manner is unacceptable. Hunting, fishing, trapping, and viewing wildlife are considered an important part of why we live in Alaska and why thousands of tourists visit our state each year. Those individuals or groups who would hinder a wildlife experience know that most people will not take them to court because of the attorney fees and costs involved with litigation.

Alaskans and visitors should not be subjected to having to pay because of interference, obstruction, or hindrance of their most basic rights. CSHB 107 will allow an opportunity for the prevailing party to recoup most of those costs associated with hindering an Alaskan Wildlife Experience.

Representative Jay Ramras  
Co-Chair, House Resources  
V-Chair, Economic Develop.  
Tourism & Trade

House State Affairs  
119 N. Cushman St. Suite 207  
Fairbanks, Alaska 99701  
Phone: (907) 452-1088  
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Toll Free: (877) 465-3004

House District 10

### House of Representatives

## MEMO

To: House Finance Committee Members

Fm: Jim Pound

Cc:

Date: March 9, 2005, 12:07 PM

Re: Changes to HB 107

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Page 2 Line 4 & 5

Added language: This is based on a criminal situation in which the individual actually cut a trap line and released the animals. Because of existing statute the individual was charged with Criminal Mischief.

Page 2 Line 9 & 10

Added Language: This is based on a situation where a Fish and Wildlife helicopter was operating at a low altitude. The complainant in this case alleged that that helicopter cause to largest set of his life to jump out of the net.

Page 2 lines 17-19

Allows for the prevailing part to collect full costs and 90 percent of reasonable actual attorney fees.

Sec. 16.05.790. Obstruction or hindrance of lawful hunting, fishing, trapping, or viewing of fish or game.

Statute text

(a) Except as provided in (e) of this section, a person may not intentionally obstruct or hinder another person's lawful hunting, fishing, trapping, or viewing of fish or game by

(1) placing one's self in a location in which human presence may alter the

(A) behavior of the fish or game that another person is attempting to take or view; or

(B) feasibility of taking or viewing fish or game by another person; or

(2) creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the fish or game that another person is attempting to take or view.

(b) For purposes of (a) of this section, "lawful" means

(1) in compliance with

(A) this title, regulations adopted under this title, or applicable federal statutes and regulations;

(B) the Marine Mammal Protection Act (P.L. 92-522) or the Endangered Species Act (P.L. 93-205); or

(C) federal regulations adopted under 16 U.S.C. 3111 - 3126 relating to subsistence hunting, fishing, or trapping on federal land; and

(2) with the permission of the private landowner if the hunting, fishing, trapping, or viewing of fish or game occurs on private land.

(c) Notwithstanding AS 12.25, only a peace officer may arrest a person for violating this section. A peace officer who has probable cause to believe that a person has violated this section may arrest or cite the person or order the person to desist.

(d) In a prosecution under this section, it is an affirmative defense that the person was lawfully entitled to obstruct or hinder the hunting, fishing, trapping, or viewing of fish or game.

(e) This section does not apply to

(1) lawful competitive practices among persons engaged in lawful hunting, fishing, or trapping;

(2) actions taken on private property with the consent of the owner; or

(3) the obstruction or hindrance of the viewing of fish or game by a person actively engaged in lawful fishing, hunting, or trapping.

(f) A person who violates this section is guilty of a misdemeanor and is punishable by a fine of not more than \$500 or imprisonment for not more than 30 days, or both.

History

(§ 1 ch 47 SLA 1991)

Rule 79. Costs — Taxation and Review.

Text

(a) Allowance to Prevailing Party. Unless the court otherwise directs, the prevailing party is entitled to recover costs allowable under paragraph (f) that were necessarily incurred in the action. The amount awarded for each item will be the amount specified in this rule or, if no amount is specified, the cost actually incurred by the party to the extent this cost is reasonable.

(b) Cost Bill. To recover costs, the prevailing party must file and serve an itemized and verified cost bill, showing the date costs were incurred, within 10 days after the date shown in the clerk's certificate of distribution on the judgment. Failure of a party to file and serve a cost bill within 10 days, or such additional time as the court may allow, will be construed as a waiver of the party's right to recover costs. The prevailing party must have receipts, invoices, or other supporting documentation for each item claimed. This documentation must be available to other parties for inspection and copying upon request and must be presented to the clerk upon request. Documentation may be filed only if requested by the clerk or in response to an objection.

(c) Objection and Reply. A party may object to a cost bill by filing and serving an objection within 7 days after service of the cost bill. The prevailing party may respond to an objection by filing and serving a reply within 5 days after service of the objection.

(d) Taxing of Costs by Clerk. Promptly upon expiration of the time for filing objections, or if an objection is filed, the time for filing a reply, the clerk shall issue an itemized award of costs allowable under this rule. No cost bill hearing will be held unless requested by the clerk. If a hearing is held, it will be limited to issues identified by the clerk in the notice of hearing. The clerk may deny costs requested by the prevailing party on grounds that

- (1) the cost is not allowed under paragraph (f);
- (2) the party failed to provide an adequate description or adequate supporting documentation following a request by the clerk or another party; or
- (3) the amount claimed by the prevailing party is unreasonable.

The clerk may not deny costs on grounds that the costs were not necessarily incurred in the action. If a party objects on this basis, the party must seek review under paragraph (e) of the clerk's action in awarding the cost.

(e) Review by Court. A party aggrieved by the clerk's action in awarding costs may file a motion for review of the clerk's award. The motion must be filed and served within five days after the date shown on the clerk's certificate of distribution on the award. The motion must particularly designate each ruling of the clerk to which objection is made. Matters not so designated will not be considered by the court.

Costs awarded by the clerk are presumed to be reasonable.

(f) Allowable Costs. The following items are the only items that will be allowed as costs:

- (1) the filing fee;
- (2) fees for service of process allowable under Administrative Rule 11 or postage when process is served by mail;
- (3) other process server fees allowable under Administrative Rule 11;
- (4) the cost of publishing notices required by law or by these rules;
- (5) premiums paid on undertakings, bonds, or security stipulations where required by law, ordered by the court, or necessary to secure some right accorded in the action;
- (6) the cost of taking and transcribing a deposition allowed by Civil Rule 30(a) or 31(a) (including a deposition that is ordered by the court or agreed to by the parties under those rules), as follows:

- (A) the court reporter's fee and travel expenses to communities where a local court reporter is not available;
- (B) expenses allowed by Civil Rule 30.1(e) for recording, editing, or using an audio or audio-visual deposition; and
- (C) the cost of the original plus one copy of the transcript;
- (7) witness fees allowed under Administrative Rule 7;
- (8) the fee of an interpreter or translator for a witness when that witness is entitled to a fee under Administrative Rule 7;
- (9) travel costs allowed under paragraph (g) of this rule;
- (10) long distance telephone charges for telephonic participation by an attorney or party at court proceedings, depositions, the meeting of the parties required by Civil Rule 26(f), and interviews of witnesses other than the party;
- (11) charges paid by the prevailing party's attorney for computerized legal research;
- (12) copying costs for paper copies, photographs, and microfilm, the cost of scanning, imaging, coding, and creating electronic media files, such as computer diskettes or tapes, and the cost of duplicating text files or otherwise copying documents or data in an electronic medium, as follows:
  - (A) for copies from the court, a copy center, or a person or entity other than the prevailing party's attorney, the amount charged for the copies; and
  - (B) for copies from the prevailing party's attorney, the amount charged by the attorney or \$.15 per copy, whichever is less.
- (13) exhibit preparation costs;
- (14) the cost of transcripts ordered by the court; and
- (15) other costs allowed by statute.
- (g) Travel Costs. (1) Travel costs will be allowed for
  - (A) one attorney to attend trial, hearings on dispositive motions, settlement conferences, and the meeting of the parties required by Civil Rule 26(f), but only if no local attorney is present; if more than one out-of-town attorney attends a proceeding at which no local attorney is present, travel costs will be allowed for the attorney who traveled the shortest distance to the trial site;
  - (B) one attorney to attend depositions, interviews of witnesses who are not deposed, and meetings to review documents produced in the course of discovery;
  - (C) one legal assistant or investigator to interview witnesses who are not deposed or to review documents produced in the course of discovery; and
  - (D) witnesses to the extent permitted by Administrative Rule 7.
- (2) Travel costs are subject to the following limitations:
  - (A) air fare is allowed at the coach class fare or the actual fare, whichever is less;
  - (B) ground transportation, including car rental, is allowed outside the traveler's home city; and
  - (C) food and lodging is allowed at the same per diem rate allowed for court employees.
- (3) In unusually complex cases, the court may allow a prevailing party to recover travel costs for more than one attorney to participate in the activities described in section (g)(1)(A) of this rule. To request travel costs for more than one attorney, the prevailing party must file a motion for court review of the clerk's award as provided in paragraph (e) and must include supporting documentation for each item claimed. These costs should not be included in the cost bill filed with the clerk.

(4) To recover travel costs, the prevailing party must include the following information for each trip: the name of the traveler, whether the traveler is an attorney, legal assistant, or investigator, the reasons for the travel, and the travel dates.

(h) Equitable Apportionment Under AS 09.17.080. In a case in which damages are apportioned among the parties under AS 09.17.080, costs must be apportioned and awarded according to the provisions of Civil Rule 82(e).

Rule 82. Attorney's Fees.

Text

(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:

Judgement and, if awarded prejudgement interest

|                   | Contested with trial | Contested without trial | Non Contested |
|-------------------|----------------------|-------------------------|---------------|
| First<br>\$25,000 | 20%                  | 18%                     | 10%           |
| Next<br>\$75,000  | 10%                  | *8%                     | *3%           |
| Next<br>\$400,000 | 10%                  | *6%                     | *2%           |
| Over<br>\$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 determined 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.

Rule 508. Costs.

Text

(a) Dismissal or Denial. If an appeal is dismissed or petition denied by the appellate court, costs shall not be allowed to the appellee or respondent, unless otherwise ordered by the court.

(b) Affirmance of Judgment. In all cases of affirmance of a judgment or any order or decision of the superior court, costs shall be allowed to the appellee or respondent unless otherwise ordered by the court.

(c) Reversal or Partial Reversal. In cases of reversal of any judgment, order or decision of the superior court, costs shall be allowed the appellant or petitioner unless otherwise ordered by the court. In cases of partial affirmance and partial reversal, the court will determine which party, if any, shall be allowed costs.

(d) Costs to be Awarded. When costs are awarded in the appellate court, they shall include, unless the court otherwise orders and subject to Rules 210(b)(6) and (c)(6), the filing fee, the costs of preparing the transcript, premiums for any bond under Rule 204(c) or 204(d), and the costs of duplicating and mailing briefs and excerpts of records. Duplicating costs will not be awarded in excess of the rate generally charged by printers in the city in which counsel is located.

(e) Attorney's Fees. Attorney's fees may be allowed in an amount to be determined by the court. If such an allowance is made, the clerk shall issue an appropriate order awarding fees at the same time that an opinion or an order under Rule 214 is filed. If the court determines that an appeal or cross-appeal is frivolous or that it has been brought simply for purposes of delay, actual attorney's fees may be awarded to the appellee or cross-appellee.

(f) Procedure.

(1) Bill of Costs. At the time an opinion or an order under Rule 214 is filed, the clerk shall notify the party or parties entitled to recover costs under subsections (b) and (c) of this rule. That party or parties shall serve and file an itemized and verified bill of costs within 10 days after the date of notice of the opinion or order. Date of notice is defined in Civil Rule 58.1(c). The bill of costs shall be limited to the items specified in subsection (d) of this rule. Failure to file a timely bill of costs is a waiver of the right to recover costs. Objections to the bill of costs may be filed within 7 days after service of the bill. Promptly after expiration of the time for filing objections, the clerk shall issue an itemized award of costs. A hearing on the bill of costs shall not be held unless requested by the clerk. The clerk may not delegate to a deputy clerk the authority to award costs in cases in which objection is filed, except with the approval of the chief justice. Return of the record shall not be delayed pending the award of costs.

(2) Reconsideration. A party aggrieved by an order awarding costs under subsection (f)(1) of this rule or an order awarding attorney's fees under subsection (e) of this rule may file a motion for reconsideration within ten days after the date of notice of the order. The non-moving party may file a response within seven days after service of the motion. Reconsideration of an award of costs or attorney's fees under (f)(1) or (e) will be determined by an individual justice or judge. Full court reconsideration of such individual justice's or judge's decision may be sought pursuant to Appellate Rule 503(h)(2)(B).

(3) Rehearing. If a timely petition for rehearing is filed, the clerk shall not award costs until the court has disposed of the case on rehearing. Supplemental or amended bills of costs may not be filed after disposition of a petition for rehearing unless requested by the court.

(g) Exemptions.

(1) Workers' Compensation Appeals. In an administrative appeal from the Alaska Workers' Compensation Board or in an appeal from a denial of a claim of benefits under the Employment Security Act, an award of costs or attorney's fees shall not be made against the claimant in either the supreme court or the superior court unless the court finds that the claimant's position was frivolous, unreasonable, or taken in bad faith.

(2) In an administrative appeal from the Alaska Workers' Compensation Board, full reasonable attorney's fees will be awarded to a successful claimant. Counsel for the claimant shall serve and file an affidavit of services rendered on appeal within 10 days from the date of notice of an opinion or an order under Rule 214. Objections to the affidavit of services may be filed within 7 days of service of the affidavit. An individual justice shall determine the amount of fees to be awarded.

(h) Execution. Upon proper application, the clerk of the trial court may issue writs of execution upon the award of costs and attorney's fees made pursuant to this rule, without the approval of a judge of the trial court.

(SCO 439 effective November 15, 1980; amended by SCO 507 effective July 1, 1982; by SCO 508 effective July 1, 1982; by SCO 512 effective October 1, 1982; by SCO 552 effective February 1, 1983; by SCO 554 effective April 4, 1983; by SCO 562, effective May 2, 1983; by SCO 583 effective February 1, 1984; by SCO 619 effective June 15, 1985; by SCO 847 effective January 15, 1988; by SCO 1024 effective July 15, 1990; by SCO 1155 effective July 15, 1994; by SCO 1279 effective July 31, 1997; by SCO 1440 effective October 15, 2001; and by SCO 1482 effective October 15, 2002)

Note: In 1997 the legislature enacted AS 18.16.030(m), which provides that a filing fee may not be required of, and court costs may not be assessed against, a minor in a proceeding to bypass parental consent to an abortion. According to ch. 14, § 10 SLA 1997, AS 18.16.030(m) has the effect of amending Administrative Rule 9, Civil Rule 79, and Appellate Rule 508 by prohibiting filing fees and assessment of court costs in certain actions. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass proceedings in the superior court and a separate rule on judicial bypass appeals. See Probate Rule 20 & Appellate Rule 220.