

HB

153

<TARGET><BILL>HB 153</BILL><SUBJECT>HB
153</SUBJECT><COMM>HJUD27</COMM></TARGET>

Alaska State Legislature

Interim:

50 Front Street, Suite 203
Ketchikan, AK 99901
Phone: (907) 247-4672
Fax: (907) 225-7157



Session:

State Capitol, Room 114
Juneau, AK 99801-1182
Phone: (907) 465-3424
Fax: (907) 465-3793

Representative Kyle Johansen
House District 1



DATE: February 25, 2011

TO: Rep Carl Gatto, Chair, House Judiciary Committee

FROM: Rep. Kyle Johansen 

RE: Hearing request for HB 153, "An Act relating to the scheduling and rescheduling of certain substances as controlled substances."

I kindly request a hearing for HB 153 in the House Judiciary Committee. Additionally, I request that the Ketchikan LIO be teleconferenced for the hearing.

Alaska State Legislature

Interim:

50 Front Street, Suite 203
Ketchikan, AK 99901
Phone: (907) 247-4672
Fax: (907) 225-7157



Session:

State Capitol, Room 114
Juneau, AK 99801-1182
Phone: (907) 465-3424
Fax: (907) 465-3793

Representative Kyle Johansen

House District 1

HB 153 – "An Act relating to the scheduling and rescheduling of certain substances as controlled substances."

HB 153 updates and strengthens Alaska's anti-drug laws. Specifically, this legislation adds **Salvia divinorum (Salvinorin A)** to the list of Schedule IIA drugs, and moves **buprenorphine** from a Schedule VA up to a Schedule IIIA drug.

Salvia is a psychoactive plant which can induce dissociative effects and is a potent producer of "visions" and other hallucinatory experiences. It is banned in several countries and 24 states as of September 2010. The classification of Salvia as a Schedule IIA drug places it in the same group as other hallucinogens.

Buprenorphine is a semi-synthetic opioid that, like methadone, is used to treat opioid addiction in higher dosages and to control moderate pain in non-opioid tolerant individuals in lower dosages. Like methadone and other opioids, its use as a recreational drug can lead to dependence. The reclassification of this drug as a Schedule IIIA will place it in a group that has a higher potential for abuse and will increase enforceability against violators.

These proposed changes to statute make these substances harder to obtain and abuse for recreational purposes. The reclassification creates or increases the penalties for their abuse, creating additional deterrents.

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version HB153
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) HB153-DPS-LAB-01-11-12 Dept. Affected Public Safety
 Title "An Act relating to the scheduling and rescheduling of certain substances as controlled substances." Appropriation Statewide Support
 Allocation Laboratory Services
 Sponsor Representative Johansen
 Requester (H) JUD OMB Component Number 527

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated on new fiscal note form.

Prepared by Orin Dym, Laboratory Manager
 Division Scientific Crime Detection Laboratory
 Approved by Joe Masters, Commissioner
Department of Public Safety

Phone (907) 269-5743
 Date/Time 1/11/12 10:15 AM
 Date _____

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. HB153

Analysis

This legislation would amend AS 11.71.150 through the addition of Salvia Divinorum and Salvia A (Divinorin A) to the Schedule IIA list of controlled substances.

Passage of the bill could expand the responsibilities of the Alaska Scientific Crime Detection Laboratory through an increase in submissions to the controlled substance section of the crime lab.

The laboratory does not estimate the increase would cause fiscal impact.

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version HB 153
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) HB153-LAW-CRIM-12-07-11 Dept. Affected Law
 Title An Act relating to the scheduling and rescheduling of Appropriation Criminal
certain substances as controlled substances. Allocation Criminal Justice Litigation
 Sponsor Representative(s) Johansen
 Requester (H) Judiciary OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								
--------------------	--	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated for new fiscal year form.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 12/07/11 3:20PM
 Date 12/7/2011

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. HB 153

Analysis

This bill adds two controlled substances to Schedule IIA and one controlled substance to Schedule IIIA of Alaska Controlled Substances act.

There is no fiscal impact to the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB153
 () Publish Date _____

Identifier (file name) HB153-DPS-DET-03-04-11 Dept. Affected Public Safety
 Title "An Act relating to the scheduling of certain substances as controlled substances." Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Representative Johansen
 Requester House Judiciary OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Lt. Rodney Dial
 Division Alaska State Troopers
 Approved by Joseph Masters, Commissioner
Department of Public Safety

Phone (907) 247-4480
 Date/Time 3/4/11 10:30 AM
 Date 3/4/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB153

Analysis

This legislation would amend AS 11.71.150 by adding Salvia Divinorum and Salvia A (Divinorin A) as schedule IIA controlled substances.

It is not estimated that this bill will significantly increase the workload of the division of Alaska State Troopers. There is no fiscal cost to the AST as a result of this legislation.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB153 IA
 () Publish Date _____

Identifier (file name): HB153-LAW-CRIM-03-04-11
 Title An Act relating to the scheduling and rescheduling of certain substances as controlled substances.
 Sponsor Representative(s) JOHANSEN
 Requester (H) Judiciary
 Dept. Affected Law
 Appropriation Criminal
 Allocation Criminal Justice Litigation
 OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 3/4/11 2:00 PM
 Date 3/4/2011

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

BILL NO. HB 153

Analysis

This bill adds two controlled substances to Schedule IIA and one controlled substance to Schedule IIIA of Alaska Controlled Substances act.

There is no fiscal impact to the Department of Law.



LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

(907) 465-3991 phone
(907) 465-3908 fax
research@legis.state.ak.us

March 9, 2010

Memorandum

TO: Representative Kyle Johansen
FROM: Patricia Young, Manager
RE: State Laws Regulating *Salvia Divinorum*
LRS Report 10.201

You asked for information on state regulation of *salvia divinorum*. According to a recent compilation by the National Conference of State Legislatures (NCSL), at least 17 states criminalize some aspect of the use, possession, or distribution of this substance. We include this document as Attachment A.

Attachment B is a copy of "The Legal Status of *Salvia Divinorum*," by Daniel Siebert, an independent researcher who closely follows this issue. Mr. Siebert's article, last updated on March 4, 2010, identifies 19 states with laws addressing the legality of *salvia divinorum*. This article also provides further discussion of pending bills and passed legislation in states as well as in 20 countries that prohibit some aspect of the possession, sale, or use of the substance. For your convenience, we insert a table from Mr. Siebert's article here:

<p>US States with Laws Prohibiting Salvia</p> <p>Illegal (Schedule I)</p> <ul style="list-style-type: none"> Delaware Florida Hawaii Illinois Kansas Mississippi Missouri Nebraska North Dakota Ohio Oklahoma South Dakota Virginia <p>Only Legal When Not Intended for Human Consumption</p> <ul style="list-style-type: none"> Louisiana North Carolina Tennessee <p>Legal for Adults, but Illegal To Sell to Minors</p> <ul style="list-style-type: none"> California Maine (possession by minors also illegal) <p>Illegal to Manufacture, Deliver, or Sell Salvinorin A, but Legal to Possess</p> <ul style="list-style-type: none"> Wisconsin <p>Source: Daniel Siebert, "The Legal Status of Salvia Divinorum," updated, March 4, 2010.</p>	<p>Other Countries with Laws Prohibiting Salvia</p> <p>Illegal to Possess or Sell</p> <ul style="list-style-type: none"> Australia Belgium Croatia Denmark Germany Italy Japan Latvia Lithuania Poland Romania South Korea Sweden <p>Illegal to Sell, but Legal to Possess</p> <ul style="list-style-type: none"> Chile Spain <p>Illegal to Grow or Sell, but Legal to Possess</p> <ul style="list-style-type: none"> Russia <p>Treated as a Medicinal Herb that Requires a Doctor's Prescription</p> <ul style="list-style-type: none"> Estonia Finland Iceland Norway
--	--

We hope this information is useful. If you have questions or need additional information, please let us know.

Attachment A

National Conference of State Legislatures, "State Laws on *Salvia Divinorum*," March 2010

State Laws on Salvia Divinorum

In recent years, the drug Salvia Divinorum, or Salvia, has gained the attention of state legislators. Since 2006, at least 17 states have passed laws regulating or controlling the drug.

Salvia is an herb related to mint that is known for its psychoactive effects. The plant is native to parts of Mexico, where historically it has been used as part of indigenous religious rituals. Common methods of ingestion include infusing leaves into a tea; smoking dried herbs; and chewing. In the United States, use of Salvia is most common among 18-25 year olds and to a much lesser extent among adolescents (see chart below).

	12 or Older		12 to 17		18 to 25		26 or Older	
	Percent	SE	Percent	SE	Percent	SE	Percent	SE
Hallucinogen								
LSD	0.3%	0.02	0.4%	0.05	1.2%	0.10	0.1%	0.02
PCP	0.1%	0.02	0.2%	0.04	0.2%	0.04	0.0*	0.02
Ecstasy	0.9%	0.04	1.2%	0.09	3.8%	0.19	0.3%	0.04
Ketamine	0.1%	0.02	0.1%	0.03	0.2%	0.04	0.1%	0.02
DMT/AMT/Foxy	0.0*	0.01	0.1%	0.02	0.2%	0.05	0.0*	0.01
<i>Salvia divinorum</i>	0.3%	0.02	0.6%	0.06	1.7%	0.12	0.0*	0.01

Source: Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (February 14, 2008). *The NSDUH Report - - Use of Specific Hallucinogens: 2006*. Rockville, MD. <http://www.oas.samhsa.gov/2k8/hallucinogens/hallucinogens.htm>

Effects of Salvia

Salvia originally became popular as a legal alternative to marijuana. However, the effects are markedly different. The effects of Salvia are hallucinogenic and vary based on method of ingestion. For example, smoking Salvia can lead to strong, instantaneous effects, whereas chewing or drinking tea can lead to longer lasting scenarios, but less intense. Some common effects include uncontrollable laughter, visions, dysphoria, experiencing multiple realities, and loss of physical coordination. So far, there has been limited study into the long-term effects of Salvia or its potential for addiction or abuse or its potential medicinal benefits. Initial studies have found that since Salvia increases dopamine levels in the brain, it contains potential as an addictive substance. Other studies, though, have found that Salvia could have potential as a treatment for gastrointestinal disorders.

Legal Status

No Federal statutes control or regulate distribution of Salvia. So far, at least 17 states have felt the need to act, passing laws ranging from banning possession or sale for minors to outright bans. Some states have classified Salvia as a Schedule 1 substance, modeled after the federal Controlled Substances Act, where Schedule 1 substances are considered to have a high potential for dependency and no accepted

medical use.

State Laws Regulating Salvia Divinorum (Current as of March 2010)	
California <u>Penal Code Section 379</u>	Every person who sells, dispenses, distributes, furnishes, administers, gives, or offers to sell, dispense, distribute, furnish, administer, or give Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A, to any person who is less than 18 years of age, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.
Delaware <u>16 Del.C. § 4714</u>	Lists Salvia as a Schedule I controlled substance.
Florida <u>Annotated Title XLVI, Crimes Chapter 893. Drug Abuse Prevention and Control 893.03.</u>	Lists Salvia as a Schedule I controlled substance.
Illinois <u>Illinois Compiled Statutes Annotated, Chapter 720. Criminal Offenses, Act 570. Illinois Controlled Substances Act, Article II. Schedules of Controlled Substances</u>	Lists Salvia as a Schedule I controlled substance.
Kansas <u>Statute 61-4104. Controlled Substances</u>	Lists Salvia as a Schedule I controlled substance.
Louisiana <u>Louisiana Revised Statutes, Title 40— Public Health and Safety. Chapter 4— Food and Drugs. Part X. §989.1</u>	Lists Salvia as a Schedule I controlled substance.
Maine <u>Maine Revised Statute Title 17: CRIMES. Chapter 70: Salvia Divinorum</u>	A person may not transfer Salvia divinorum to a minor. A minor may not Purchase, possess or use Salvia divinorum
Mississippi <u>Miss. Code Ann. § 41-29-113</u>	Lists Salvia as a Schedule I controlled substance.
Missouri <u>Missouri Revised Statutes, Chapter 195. Drug Regulations, Section 195.017</u>	Lists Salvia as a Schedule I controlled substance.
North Dakota <u>CHAPTER 19-03.1. UNIFORM CONTROLLED SUBSTANCES ACT</u>	Lists Salvia as a Schedule I controlled substance.
Nebraska <u>Nebraska Revised Statutes 28-405</u>	Lists Salvia as a Schedule I controlled substance.
North Carolina <u>North Carolina General Statutes Annotated §§401-23</u>	(a) It shall be unlawful for any person to knowingly or intentionally manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver Salvia divinorum or Salvinorin A. (b) It shall be unlawful for any person to knowingly or intentionally possess Salvia

	divinorum or Salvinorin A.
Ohio <u>Ohio Revised Code Title 37, Chapter 3719.41, Controlled substance schedules.</u>	Lists Salvia as a Schedule I controlled substance.
Oklahoma <u>Oklahoma Statutes Citationized Title 63, Public Health and Safety Chapter 2 - Uniform Controlled Dangerous Substances Act, Article 2 - Standards and Schedules, Section 2-204 - Schedule I</u>	Lists Salvia as a Schedule I controlled substance.
South Dakota <u>South Dakota Codified Laws 22-42-22</u>	Possession of Salvia divinorum or salvinorin A prohibited--Felony or misdemeanor. No person may knowingly possess Salvia divinorum or salvinorin A. It is a Class 1 misdemeanor to possess two ounces or less of Salvia divinorum or salvinorin A. It is a Class 6 felony to possess more than two ounces of Salvia divinorum or salvinorin A.
Tennessee <u>Tennessee Code Annotated 39-17-438</u>	(a) It is an offense to knowingly produce, manufacture, distribute, possess or possess with intent to produce, manufacture, or distribute the active chemical ingredient in the hallucinogenic plant Salvia divinorum A. (b) The provisions of this section shall not apply to the possession, planting, cultivation, growing, or harvesting of the hallucinogenic plant strictly for aesthetic, landscaping, or decorative purposes. (c) The provisions of this section shall not apply to any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the Federal Food and Drug Administration as a homeopathic drug. (d) A violation of subsection (a) is a Class A misdemeanor.
Wisconsin <u>Wisconsin Statute 941.318</u>	Except as provided in sub. (3), whoever manufactures, distributes, or delivers salvinorin A with intent that it be consumed by an individual may be fined not more than \$10,000. (3) (a) Subsection (2) does not apply to the manufacture of any dosage form of salvinorin A that may be obtained from a retail establishment without a prescription and that is recognized by the U.S. Food and Drug Administration as a homeopathic drug. (b) Subsection (2) does not apply to the distribution or delivery to an individual who is 18 years of age or older of any dosage form of salvinorin A that may be obtained from a retail establishment without a prescription and that is recognized by the U.S. Food and Drug Administration as a homeopathic drug.

For more information, contact

Matthew Gever
Policy Specialist
Forum for State Health Policy Leadership
National Conference of State Legislatures
444 North Capitol Street, NW, Suite 515
Washington, DC 20001
Ph: 202.624.3576
Fax: 202.737.1069

www.ncsl.org

Attachment B

Daniel Siebert, "The Legal Status of *Salvia Divinorum*," Updated March 4, 2010;
www.sagewisdom.org/legal_status.html

THE LEGAL STATUS OF *SALVIA DIVINORUM*

(This page was last updated on March 4, 2010)

This page and the *Salvia divinorum* website information center
is created and maintained by
Daniel Siebert

Legal Status

Salvia divinorum is a valuable medicinal herb. Because it produces profoundly introspective states of awareness, it is intrinsically unsuitable for recreational use (i.e., it is not a “party drug”). It is not habit-forming, not addictive, and does not present a significant risk to public health or safety. Because it is a powerful consciousness-altering herb, some regulation of sales is sensible and appropriate. It is reasonable to require that vendors provide detailed safety information and guidelines for responsible use. It also makes sense to limit the salvinorin A content of extracts sold in bulk form—extremely potent extracts should only be sold in pre-measured individual doses. It is appropriate to prohibit delivery to minors. It is also appropriate to prohibit reckless use, such as driving a vehicle while inebriated. There are many already-existing non-drug-specific laws that can be enforced against reckless salvia users (e.g., laws that prohibit public endangerment, public intoxication, reckless driving, etc.). Legislation should only penalize irresponsible use, not all use. Legislation that imposes punishment for possession of *Salvia divinorum* is neither useful nor humane. The idea of making any species illegal is absurd—after all, every species is a precious and irreplaceable part of our natural heritage. A sensible approach would be to regulate *Salvia divinorum* in a similar manner as alcohol and tobacco. Another sensible option would be to regulate it as a prescription medication, as some US states have done with cannabis. Certainly, physicians and psychiatrists should be able to prescribe salvia to patients who might benefit from it. It should also remain available for use in psychotherapy.

Decisions regarding the regulation of *Salvia divinorum* (or any substance) should always be based on science. The evidence shows that this herb is relatively safe and non-addictive. The pharmacology of its primary active constituent, salvinorin A, is unique and shows great promise as a lead compound for the development of useful medications. Excessively restrictive regulation would seriously impede further scientific research. For a well-reasoned, scientifically informed, perspective on the relative safety of *Salvia divinorum* and its importance in medical research, I encourage you to read [“The Evidence”](#) by Dr. Roland Griffiths and Dr. Matthew Johnson of Johns Hopkins University School of Medicine, which were presented as testimony opposing efforts to make salvia a Schedule I controlled substance in the state of Maryland. I also encourage you to read my [“Letter to Legislators”](#) which I have sent to legislators in several states.

Unfortunately, several countries have enacted laws that prohibit possession and/or sale of *Salvia divinorum*. In some cases, the penalties for violating these laws are quite severe. There are some countries that do not prohibit possession or sale, but do prohibit importation. The following listing describes all of the laws, regulations, and proposed legislation pertaining to *Salvia divinorum* that I am currently aware of. Because of the controversial nature of vision-inducing substances in general, it is probable that the legal status of *Salvia divinorum* will continue to change in the future. To stay abreast of changes in the legal status of *Salvia divinorum*, I encourage you to subscribe to my free email newsletter.

If you are aware of any attempts to prohibit *Salvia divinorum* in countries or states not listed below, please [click here](#) to send me an email.

US States with Laws Prohibiting <i>Salvia</i>	Other Countries with Laws Prohibiting <i>Salvia</i>
<p>Illegal (Schedule I)</p> <ul style="list-style-type: none"> Delaware Florida Hawaii Illinois Kansas Mississippi Missouri Nebraska North Dakota Ohio Oklahoma South Dakota Virginia 	<p>Illegal to Possess or Sell</p> <ul style="list-style-type: none"> Australia Belgium Croatia Denmark Germany Italy Japan Latvia Lithuania Poland Romania South Korea Sweden
<p>Only Legal When Not Intended for Human Consumption</p> <ul style="list-style-type: none"> Louisiana North Carolina Tennessee 	<p>Illegal to Sell, but Legal to Possess</p> <ul style="list-style-type: none"> Chile Spain
<p>Legal for Adults, but Illegal to Sell as Products</p> <ul style="list-style-type: none"> California Maine (possession by minors also illegal) 	<p>Illegal to Grow or Sell, but Legal to Possess</p> <ul style="list-style-type: none"> Russia
<p>Legal to Manufacture, Distribute or Sell, but Not Legal to Possess</p> <ul style="list-style-type: none"> Wisconsin 	<p>Prohibited except for medicinal purposes</p> <ul style="list-style-type: none"> Estonia Finland Iceland Norway

Australia

Australia was the first country to prohibit *Salvia divinorum* and salvinorin A. The committee responsible for the ban has admitted that there is "no evidence of a major public health hazard." The ban went into effect June 1, 2002. Anyone living in Australia or its territories who is considering being involved with this plant is urged to first obtain professional legal advice. Readers are urged *not* to ship *Salvia divinorum*, or products made from it, to Australia or its territories because the person who receives the shipment could face severe criminal penalties. Please go [here](#) for more details on this recent action by Australia's government and to learn what you can do to fight it.

Denmark

Salvia divinorum and salvinorin A have been placed in category B of the Danish list of controlled substances. Category B includes psilocybin mushrooms, cocaine, amphetamine, and several other substances that are only legal for medicinal and scientific purposes. Possession of *Salvia divinorum* in Denmark now carries a penalty of up to 2 years in prison. The law

Drug Fact Sheet



FOR MORE DRUG FACTS, VISIT www.GetSmartAboutDrugs.com/facts

Salvia Divinorum

Overview

Salvia Divinorum is a perennial herb in the mint family that is abused for its hallucinogenic effects.

Street names

Maria Pastora, Sally-D, Salvia

Looks like

Spade-shaped variegated green leaves that look similar to mint. The plants themselves grow to more than 3 feet high, have large green leaves, hollow square stems, and white flowers with purple calyces.



Methods of abuse

Chewed or smoked.

Affect on mind

Psychic effects include perceptions of bright lights, vivid colors, shapes, and body movement, as well as body or object distortions. Salvia divinorum may also cause fear and panic, uncontrollable laughter, a sense of overlapping realities, and hallucinations. Salvinorin A, also called Divinorin A, is believed to be the ingredient responsible for the psychoactive effects of Salvia divinorum.

Affect on body

Adverse physical effects may include loss of coordination, dizziness, and slurred speech.

Drugs causing similar effects

When Salvia divinorum is chewed or smoked, the hallucinogenic effects elicited are similar to those induced by ketamine, mescaline, and psilocybin.

Overdose effects

It is not possible to overdose from Salvia divinorum.

Legal status in the United States

Neither Salvia Divinorum or Salvinorin A has an approved medical use in the United States, but neither are controlled under the Controlled Substances Act (CSA). Salvia divinorum is, however, controlled by a number of states. Click here to find which states have controlled Salvia, and where legislation is pending http://www.deadiversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm. Since Salvia is not controlled by the CSA, some online botanical companies and drug promotional sites have advertised Salvia as a legal alternative to other plant hallucinogens like mescaline.

Common places of origin

Salvia is native to certain areas of the Sierra Mazaleca region of Oaxaca, Mexico. It is one of several plants that are used by Mazatec Indians for rituals and healing. Salvia Divinorum plants can be grown successfully outside of this region. They can be grown indoors and outdoors, especially in humid semitropical climates.

This content came from a United States Government, Drug Enforcement Administration (DEA) website.



***Intelligence Bulletin:
Buprenorphine: Potential for Abuse***

Publication Date: **September 2004**

Document ID: **2004-L0424-013**

Archived on: July 1, 2009. This document may contain dated information. It remains available to provide access to historical materials.

This bulletin addresses the use of buprenorphine, a drug recently approved for use in opiate addiction therapy. It examines the drug's effects, advantages of traditional treatment options, and vulnerability to diversion and abuse.



Diversion

Buprenorphine is a synthetic opiate and produces the euphoric effects sought by opiate abusers; therefore, it is susceptible to abuse in both of the forms approved for treating opiate addiction. Subutex, the form that does not contain naloxone, is more vulnerable to abuse because it can be crushed and injected or snorted without causing withdrawal symptoms in the abuser. The FDA recommends that physicians limit the use of Subutex to supervised administration sessions; however, physicians are not required to do so, creating opportunities for Subutex diversion. Subutex has been prescribed legally for years in some foreign countries, where its diversion for illicit use is common. There are lucrative black markets for diverted Subutex in Germany, New Zealand, and the United Kingdom. In France, India, and Scotland, where buprenorphine is far more common in opiate addiction therapy than methadone, many individuals are addicted to Subutex. Suboxone is not available in these countries.

Suboxone also can be diverted and abused; however, it is more likely to be abused by individuals who are addicted to low doses of opiates since it can precipitate withdrawal symptoms in high doses. The naloxone in Suboxone guards against abuse by causing withdrawal symptoms in abusers who crush and either inject or snort the drug; however, law enforcement and pharmacist reporting indicates that Suboxone is being abused successfully when snorted.

Using buprenorphine and heroin in combination does not produce increased effects, but if buprenorphine and methadone are abused together, the effects of both drugs are enhanced.

Consequently, diverted buprenorphine may be attractive to patients currently using methadone for opiate addiction therapy.

Despite controls designed to make buprenorphine diversion-proof, there have been reports of buprenorphine diversion throughout the United States, primarily in the Northeast region.

- **Chittenden County, Vermont.** A pharmacist in this area reports that Suboxone is being diverted and sold for \$25 per 8-milligram tablet. Abusers are grinding the tablets and snorting them.
- **Washington County, Maine.** The Washington County Sheriff's Office reports that buprenorphine is being diverted in that area and sold for \$50 per tablet. The size of the tablet is unknown, and it is unclear whether Subutex or Suboxone tablets are being diverted in this case.
- **Pennsylvania.** The Pennsylvania Department of Health reports that diverted Subutex and Suboxone are being illegally distributed on the street. Specific locations have not been identified.

Outlook

It is unlikely that buprenorphine will render methadone therapy obsolete because it is not as effective in patients who require large doses of opiates in maintenance therapy. However, buprenorphine can provide opiate addiction therapy to individuals addicted to lower doses of opiates, to those in rural areas with inadequate access to treatment, and to those in areas where methadone clinics have reached full capacity. With more physicians obtaining certification to prescribe buprenorphine every day, this form of therapy has the potential to become as common as methadone therapy.

Because of its ceiling effect and ability to precipitate withdrawal symptoms if taken in high doses, buprenorphine is more susceptible to abuse by individuals who are addicted to low doses of opiates or individuals in the early stages of opiate addiction. The drug also can be abused in combination with methadone, making buprenorphine diversion more problematic in areas where heroin abuse and methadone therapy are common, such as the Northeast region. As buprenorphine therapy becomes more widespread, the potential for increased diversion of Subutex and Suboxone should be closely monitored.

[\[print friendly page\]](#)

Buprenorphine

Press Room

News Releases
E-mail updates 
Speeches & Testimony
Multi-Media Library

About Us

Mission
Leadership
History
Organizational Chart
Programs & Operations
Wall of Honor
DEA Museum
Office Locations

Careers at DEA

DEA Drug Information

Drug Information Resources

Law Enforcement

Most Wanted
Major Operations
Threat Assessment
Training Programs
Stats & Facts
Additional Resources

Drug Prevention

For Young Adults
For Parents
Additional Drug Resources

Diversions Control & Prescription Drugs

Registration
Cases Against Doctors

Drug Policy

Controlled Substances Act
Federal Trafficking Penalties
Drug Scheduling

Legislative Resources

Publications

Acquisitions & Contracts



This drug is a semi-synthetic narcotic derived from thebaine and is currently being investigated for the treatment of narcotic addiction. Like methadone and LAAM, buprenorphine is potent (30 to 50 times the analgesic potency of morphine), has a long duration of action, and does not need to be injected. The buprenorphine products under development are sublingual tablets. Unlike the other treatment drugs, buprenorphine produces far less respiratory depression and is thought to be safer in overdose. Buprenorphine is currently available in the United States as an injectable Schedule III narcotic analgesic (Buprenex®) for human and veterinary use.

proposed judgment, is harmless error. **Jefferson v. Greater Anchorage Area Borough**, Op. No. 536, 451 P2d 730 (Alaska 1969).

It is not the intent of this rule to delegate to counsel for the successful party the trial judge's primary duty of finding the facts under Rule 52. **Fairbanks Builders, Inc. v. Morton DeLima, Inc.**, Op. No. 682, 483 P2d 194 (Alaska 1971).

Where a defendant's motion for relief from judgment alleges they were denied the opportunity to object to the judgment, such motion is not based on an error of law. It therefore need not be brought within 30 days from entry of the judgment. **Alaska Placer Co. v. Lee**, Op. No. 840, 502 P2d 128 (Alaska 1972).

A judgment is not illegal if it is signed in chambers rather than rendered in open court. **Jefferson v. City of Anchorage**, Op. No. 930, 513 P2d 1099 (Alaska 1973).

Where the court announces its decision regarding the main issue in a case on June 8th, where the plaintiff submits on June 27th proposed findings, which the defendant objects to where the proposed partial judgment is entered on August 1st, and where findings of fact, conclusions of law, and final judgment are entered on January 12th, the defendant is not denied the five-day period within which to object to the proposed findings, even though he receives the findings of fact and conclusions of law with respect to the final judgment on January 9th. The court is merely acting within its authority to modify documents which had earlier been submitted to it. **Moran v. Kenai Towing and Salvage, Inc.**, Op. No. 1056, 523 P2d 1237 (Alaska 1974).

The trial court's failure to hold a hearing on appellant's objections to appellee's proposed findings and conclusions is not error; such a hearing is discretionary. **Urban Development Co. v. Dekreon**, Op. No. 1083, 526 P2d 325 (Alaska 1974).

Provision in this rule for written objections to findings of fact is discretionary. **Frontier Saloon, Inc. v. Short**, Op. No. 1345, 557 P2d 779 (Alaska 1976).

Defendant did not waive right to challenge judgment where it did not object under Civil Rule 78(b) but filed timely Rule 59(f) motion to amend judgment. **Beech Aircraft Corp. v. Harvey**, Op. No. 1338, 558 P2d 879 (Alaska 1976).

A trial court is entitled to adopt findings and conclusions prepared by counsel so long as they reflect the court's independent view of the weight of the evidence. **Industrial Indemnity Co. v. Wick Const. Co.**, Op. No. 2791, 680 P2d 1100 (Alaska 1984).

When judgment is entered on a secured note, the note merges with judgment, and any further proceedings will be to enforce the judgment rather than the note. **Moening v. Alaska Mut. Bank**, Op. No. 3274, 751 P2d 5 (Alaska 1988).

A judgment recovered upon a promissory note secured by a deed of trust did not merge the deed of trust nor operate as a discharge, abandonment, or release of the deed of trust; in essence, the judgment creditor ended up with a secured judgment. **Moening v. Alaska Mut. Bank**, Op. No. 3274, 751 P2d 5 (Alaska 1988).

Although trial court could have canceled promissory note after entering judgment on the note, conditionally canceling the note was not an abuse of discretion. **Moening v. Alaska Mut. Bank**, Op. No. 3274, 751 P2d 5 (Alaska 1988).

Rule 79. Costs—Taxation and Review.

(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;

Rule 79

ALASKA COURT RULES

(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;

(15) other costs allowed by statute; and

(16) any sales or other taxes necessarily incurred by the party in connection with a cost allowed in this subsection.

(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).

(Adopted by SCO 5 October 9, 1959; amended by SCO 56 effective November 1, 1963; by SCO 258 effective November 15, 1976; by SCO 554 effective April 4, 1983; by SCO 1085 effective January 15, 1992; by SCO 1118 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1200 effective July 15, 1995; by SCO 1246 effective July 15, 1996; and by SCO 1279 effective July 31, 1997; rescinded and readopted by SCO 1306 effective January 15, 1998; amended by SCO 1340 effective January 15, 1999; and by SCO 1631 effective April 16, 2007.)

l
i
a
c
N
w
c
p
A
ef
A
of
inc
ha:
the
ap

No
all
imp
con
corr
the
(j) o
82 t
and
asses

Note
and 4
court
remoi
court
Act, 7
by al
situati
the pr

Cases
Ten-d:
at the c
docketin
judgmen
1964).
Appella
recover i
P2d 433
Taxing i
Elliott, O
Refusal t
no abuse
had failed
or when tl
Elliott, O
Failure to
issue on ap
951 (Alask
Trial con
abuse of d

Note: AS 25.25.313(c), added by § 6 of ch. 57 SLA 1995 (the Uniform Interstate Family Support Act), has the effect of amending Civil Rule 79 by requiring the court to award costs and fees against a party who requests a hearing primarily for delay in a support proceeding listed in AS 25.25.301.

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.

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.

Note: Chapter 136 SLA 03 (HB 151) amends Chapters 10 and 45 of Title 9 of the Alaska Statutes relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings and limits on when certain court actions may be brought. According to Section 4(2) of the Act, AS 09.45.889(b) has the effect of amending Civil Rule 79 by allowing the court to deny costs to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the prevailing party.

Annotations

Cases

Ten-day period for service and filing of a cost bill commenced only at the date of docketing of the formal judgment and not at the date of docketing of the verdict without any direction by the court as to the entry of judgment. **Patterson v. Cushman**, Op. No. 233, 394 P2d 657 (Alaska 1964).

Appellant who did not serve cost bill and notice waived its right to recover costs. **M-B Contracting Company v. Davis**, Op. No. 275, 399 P2d 433 (Alaska 1965).

Taxing of costs rests in the sound discretion of the trial court. **Beaulieu v. Elliott**, Op. No. 443, 434 P2d 665 (Alaska 1968).

Refusal to allow as costs expenses incident to the taking of depositions was no abuse of discretion where in a personal injury case the prevailing plaintiff had failed to point out what depositions were involved, when they were taken, or when the concession of liability was made by the defendant. **Beaulieu v. Elliott**, Op. No. 443, 434 P2d 665 (Alaska 1968).

Failure to contest costs within the time limit of this rule bars raising the issue on appeal. **A.R.C. Industries, Inc. v. State**, Op. No. 1283, 551 P2d 951 (Alaska 1976).

Trial courts award of costs will be affirmed unless there has been a clear abuse of discretion. **Kaps Transport, Inc. v. Henry**, Op. No. 1527, 572

P2d 72 (Alaska 1977).

Where defendant could properly defend in main suit by prosecuting cross-claim, costs for expert witness fees were properly charged to cross-claim defendant. **Kaps Transport, Inc. v. Henry**, Op. No. 1527, 572 P2d 72 (Alaska 1977).

Allowance of costs for unused depositions of key witness who testified at trial was not abuse of discretion. **Kaps Transport, Inc. v. Henry**, Op. No. 1527, 572 P2d 72 (Alaska 1977).

An award of costs to the prevailing parties which included expenses incurred by their attorney for travel, food and lodging was not an abuse of discretion where the attorney had to travel from his office in Juneau to Nome for the proceedings. **Davis v. Hallett**, Op. No. 1772, 587 P2d 1170 (Alaska 1978).

Alaska does not include prejudgment interest among the items allowed as costs. **Guin v. Ha**, Op. No. 1810, 591 P2d 1281 (Alaska 1979).

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

Trial court did not abuse its discretion in permitting a request for attorney's fees thirteen days after judgment. **State v. University of Alaska**, Op. No. 2303, 624 P2d 807 (Alaska 1981).

The taxing of costs for witness fees is governed by Civil Rule 83 and Administrative Rule 7(c) rather than the general provisions of Civil Rule 79(b). **Miller v. Sears**, Op. No. 2447, 636 P2d 1183 (Alaska 1981).

The premium on a supersedeas bond was properly included in an award of costs. **Isaacson Steel v. Armco Steel**, Op. No. 2466, 640 P2d 812 (Alaska 1982).

Filing of bill of costs prior to entry of judgment violated this rule, but did not constitute a waiver of the right to recover costs. **Isaacson Steel v. Armco Steel**, Op. No. 2466, 640 P2d 812 (Alaska 1982).

Superior court erred in awarding costs at the time judgment was entered because it prevented the losing party from objecting at a hearing on costs before the clerk of the court to the inclusion of specific expenditures in the award, which in turn prevented these objections from being considered on appeal. **Isaacson Steel v. Armco Steel**, Op. No. 2466, 640 P2d 812 (Alaska 1982).

Award of air travel costs incurred by prevailing party to bring its Seattle-based attorneys to Alaska for trial was not abuse of discretion. **Eagle Air v. Corroon, Etc.**, Op. No. 2538, 648 P2d 1000 (Alaska 1982).

Given previous conduct of defendant in removing assets from the state, trial court was justified in appointing an individual to supervise and prevent the removal or destruction of defendant's assets, which were the subject of a prejudgment attachment, and ordering defendant to pay the reasonable cost of the individual's employment. **Eagle Air v. Corroon, Etc.**, Op. No. 2538, 648 P2d 1000 (Alaska 1982).

Refusal to award food costs incurred in the taking of depositions was not abuse of discretion. **Truckweld Equipment Co. v. Swenson Trucking**, Op. No. 2545, 649 P2d 234 (Alaska 1982).

Where the depositions in question were not used solely for discovery purposes, but were used to prepare for and to assert a motion to dismiss, trial court did not abuse its discretion in requiring the losing party to pay for the cost of the depositions. **Gold Bondholders, Etc. v. Atchison, Topeka and Santa Fe Ry. Co.**, Op. No. 2608, 658 P2d 776 (Alaska 1983).

It was within the superior court's discretion to affirm an award of travel expenses necessarily incurred in taking deposition used to prepare for and to assert a pre-trial motion to dismiss. **Gold Bondholders, Etc. v. Atchison, Topeka and Santa Fe Ry. Co.**, Op. No. 2608, 658 P2d 776 (Alaska 1983).

The Civil Rules do not preclude a party from requesting attorney's fees

(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; by SCO 1455 effective July 15, 1993; and by SCO 1670 effective July 1, 2009)

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. Penney Co.**, 512 P.2d 575, 588 (Alaska 1973); **Demoski v. New**, 737 P.2d 780, 788 (Alaska 1987).

Note: AS 25.25.313(c), added by § 6 of ch. 57 SLA 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 support 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 1118am.] In my view no compelling case has been made demonstrating the need for these changes. ¹ Further, my judicial hunch is that these amendments to Civil Rule 82, in particular the new provisions reflected in (b)(3)(A) through (K), will unnecessarily and dramatically increase litigation over attorney's fees awards both in our trial courts as well as in this court. ²

¹ In 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 questionnaire indicated: that Civil Rule 82 does not deter people of moderate means from filing valid claims; that the rule does not put excessive pressure on moderate income people to settle valid claims; and that the rule is needed to discourage frivolous litigation.

² Any 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 awards called for under either the monetary recovery schedule provisions of (b)(1), or the provisions of (b)(2) 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, sec. 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 costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by eliminating provisions relating to interest, and by changing provisions relating to attorney fee awards. According to sec. 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.

Note: Chapter 136 SLA 03 (HB 151) amends Chapters 10 and 45 of Title 9 of the Alaska Statutes relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings and limits on when certain court actions may be brought. According to Section 4(1) of the Act, AS 09.45.889(b) has the effect of amending Civil Rule 82 by allowing the court to deny attorney fees to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the prevailing party.

Note (effective July 1, 2009): Chapter 92 SLA 2008 (HB 65) added a new chapter to AS 45 relating to security of personal information, effective July 1, 2009. According to section 6(b) of the Act, AS 45.48.200(a), 45.48.480(b), 45.48.560, and 45.48.750(d), enacted by section 4, have the effect of changing Civil Rule 82 by changing the criteria for determining the amount of attorney fees to be awarded to a party in an action under AS 45.48.200(a), 45.48.480(b), 45.48.560, or 45.48.750(d).

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