

HB

83

<TARGET><BILL>HB 83</BILL><SUBJECT>HB
83</SUBJECT><COMM>SJUD29</COMM></TARGET>

ALASKA STATE LEGISLATURE

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REPRESENTATIVE GABRIELLE LEDOUX
WWW.GABRIELLELEDoux.COM

Date: January 25, 2016
To: Senator Lesil McGuire
Senate Judiciary Committee
From: Representative Gabrielle LeDoux *GL*
House District 15
SUB: Request for Hearing – HB 83

I respectfully request a hearing on HB 83 in the Senate Judiciary Committee at your earliest convenience.

HB 83 eliminates the automatic reporting of information about civil case settlements currently required by law. This bill follows the advice of the Judicial Council, which has recommended that the legislature do away with this requirement.

Attached you will find the following documents:

HB 83 Sponsor Statement

CS for HB 83

HB 83 Sectional Analysis

HB 83 Fiscal Note – JUD

HB 83 Fiscal Note – LAW

HB 83 Committee Report

HB 83 Supporting Documents

- AS 09.68.130 Collection of Settlement Information
- Civil Case Data
- Civil Case Form
- Civil Case Report 2001

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REPRESENTATIVE GABRIELLE LEDOUX
WWW.GABRIELLELEDoux.COM

HB 83 “An Act relating to collecting information about civil litigation”

Sponsor Statement

HB 83 eliminates the automatic reporting of information about civil case settlements currently required by law. This bill follows the advice of the Judicial Council, which has recommended that the legislature do away with this requirement. Passing this bill would save money and time by freeing attorneys and litigants from an unnecessary and functionally useless submission of data which the Judicial Council sees no point in collecting.

It is part of the job of the legislature to eliminate waste and to make government more effective. Discarding needless data collection requirements is an easy way to achieve cost-savings and streamline government. HB 83 does exactly this.

I urge your support for the swift passage of HB 83.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

February 20, 2015

SUBJECT: Sectional Summary (CSHB 83()); Work Order No. 29-LS0414\H)

TO: Representative Gabrielle LeDoux
Attn: Clark Bickford

FROM: Megan A. Wallace *MAW*
Legislative Counsel

This is a correction to the sectional summary dated February 18, 2015. This corrects an error in the explanation of changes section of the memorandum, on page 2, where the work order was cited in the fifth line of that paragraph.

You have requested a sectional summary of the above-described bill, as well as its previous version, HB 83; Work Order No. 29-LS0414\W.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

CSHB 83(); Work Order No. 29-LS0414\H

Section 1. Repeals Rule 41(a)(3), Alaska Rules of Civil Procedure and Rules 511(c) and (e), Alaska Rules of Appellate Procedure.

Section 2. Repeals AS 09.68.130, relating to collection of settlement information by the Alaska Judicial Council.

Section 3. Provides that the Act will only take effect if sec. 1 of the Act receives the two-thirds majority vote required by the Constitution of the State of Alaska for a court rule change.

Section 4. Provides that the Act will take effect immediately if it receives the two-thirds majority vote under sec. 3 of the Act.

HB 83; Work Order No. 29-LS0414\W

Section 1. Repeals and reenacts AS 09.68.130. Provides that the Alaska Judicial Council shall periodically collect and evaluate settlement information. Provides that a party to a civil action, or the party's attorney, shall provide settlement information to the Alaska Judicial Council upon request. Provides an exemption to collection of settlement

Representative Gabrielle LeDoux
February 20, 2015
Page 2

information in certain types of cases. Provides that information received by the Alaska Judicial Council is confidential, except that the council may disclose summaries and statistics that do not identify a particular litigation or party.

Section 2. Repeals Rule 41(a)(3), Alaska Rules of Civil Procedure and Rules 511(c) and (e), Alaska Rules of Appellate Procedure.

Section 3. Provides that the Act will only take effect if sec. 2 of the Act receives the two-thirds majority vote required by the Constitution of the State of Alaska for a court rule change.

Section 4. Provides that the Act will take effect immediately if it receives the two-thirds majority vote under sec. 3 of the Act.

Explanation of Changes

CSHB 83(); Work Order No. 29-LS0414\H repeals AS 09.68.130, relating to collection of settlement information by the Alaska Judicial Council, while HB 83; Work Order No. 29-LS0414\W modifies the existing statute. Under CSHB 83(); Work Order No. 29-LS0414\H, the Alaska Judicial Council will no longer have any obligation to collect settlement information. Under HB 83; Work Order No. 29-LS0414\W, the Alaska Judicial Council would be obligated to periodically collect and evaluate settlement information. Both bills contain identical provisions that seek to repeal Rules 41(a)(3), Alaska Rules of Civil Procedure and Rules 511(c) and (e), Alaska Rules of Appellate Procedure. Both bills also contain identical conditional effect and effective date provisions.

Please let me know if you have any questions or if I can be of further assistance.

MAW:dla
15-098.dla

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version: HB 83
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB083-LAW-CIV-01-31-15
Title: JUDICIAL COUNCIL: CIVIL LITIGATION INFO
Sponsor: LEDOUX
Requester: (H) JUDICIARY

Department: Department of Law
Appropriation: Civil Division
Allocation: Deputy Attorney General's Office
OMB Component Number: 2205

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES	FY 2016	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
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 (Operating Only)

None							
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 (FY2015) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Prepared By:	Valerie Rose, Budget Analyst	Phone:	(907)465-3674
Division:	Administrative Services Division	Date:	01/30/2015 11:04 AM
Approved By:	Craig W. Richards, Attorney General	Date:	01/31/15
Agency:	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

BILL NO. HB83

Analysis

HB 83 would repeal and reenact AS 09.68.130. The bill requires the Alaska Judicial Council to periodically collect and evaluate information relating to the resolution of civil litigation. The information collected may include, among other things, general case information; a description of settlement or judgments; and attorney's fees. Parties to civil litigation must submit this information within 30 days of a written request from the Judicial Council.

The bill also would repeal two related court rules—conditionally effective upon a two-thirds vote of the Legislature—requiring parties to submit the foregoing information to the Judicial Council.

Certain types of litigation (e.g. divorce, adoption, estate matters, and administrative appeals) are exempt from the reporting requirement.

We note that under both the current version of AS 09.68.130 and the related court rules, parties to litigation are *automatically* required to report specified information to the Judicial Council within 30 days of case resolution. HB 83 would shift that burden to the Judicial Council, making the information available to the Judicial Council only upon its written request.

We foresee no fiscal impacts to the Department of Law from this bill.

AS 09.68.130. Collection of Settlement Information.

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

- (1) the case name and file number;
- (2) a general description of the claims being settled;
- (3) if the case is resolved by way of settlement,
 - (A) the gross dollar amount of the settlement;
 - (B) to whom the settlement was paid;
 - (C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before disbursement to the claimant;
 - (D) the net amount actually disbursed to the claimant;
 - (E) the total costs and attorney fees paid by or owed by all parties; and
 - (F) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid;
- (4) if the case is resolved by dismissal, summary judgment, trial, or otherwise,
 - (A) the gross dollar amount of the judgment;
 - (B) the amount of attorney fees awarded and to which party;
 - (C) the amount of costs awarded and to which party;
 - (D) the net amount, after deduction of (B) and (C) of this paragraph, for which the prevailing party has judgment;
 - (E) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant;
 - (F) the total costs and attorney fees paid by defending parties; and
 - (G) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid.

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

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

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under AS 47.12;
- (4) domestic violence protective orders under AS 18.66.100 - 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040 ;
- (7) forcible entry and detainer cases;
- (8) administrative appeals;
- (9) motor vehicle impound or forfeiture actions under municipal ordinance.

(d) A party to a civil case, except a civil case described in (c) of this section, or, if the party is represented by an attorney, the party's attorney shall submit the information described in (a) of this section to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council.

You may also fill out and submit this form on the Internet at www.ajc.state.ak.us

Information about the Resolution of Civil Cases

Send to Judicial Council:
Not Court

Complete Both Sides
Confidential

Attorneys/parties must submit the information contained in this form upon the resolution (whether by dismissal, settlement, final judgment, etc.) of most civil cases in Alaska state courts. See AS 09.68.130; Civil Rule 41(a)(3); Appellate Rule 51 1(e). Complete all the information on both sides of this page. The only excluded civil case types are:

1. divorce and dissolution;
2. adoption, custody, support, visitation, and emancipation of children;
3. children-in-need-of-aid cases under 47.10 or delinquent minors cases under 47.12;
4. domestic violence protective orders under AS 18.66.100-18.66.180;
5. estate, guardianship, and trust cases filed under AS 13;
6. small claims under AS 22.15.040;
7. forcible entry and detainer (FED) cases;
8. administrative appeals; and
9. motor vehicle impound/forfeiture actions under municipal ordinance.

The information collected in this form is confidential and will be used only to compile statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

Trial Court Case Number

Case Name

_____ - _____ - _____ CI

V. _____

Case Type (check all applicable)

- | | |
|--|---|
| <input type="radio"/> Medical Malpractice | <input type="radio"/> Property Damage - Auto |
| <input type="radio"/> Legal Malpractice | <input type="radio"/> Property Damage - Other |
| <input type="radio"/> Other Malpractice | <input type="radio"/> Employment |
| <input type="radio"/> Personal Injury - Auto | <input type="radio"/> Debt |
| <input type="radio"/> Personal Injury - Premises | <input type="radio"/> Other Business Dispute |
| <input type="radio"/> Personal Injury - Product | <input type="radio"/> Real Estate |
| <input type="radio"/> Personal Injury - Other | <input type="radio"/> Other Civil |

Date Filed:

____/____/____

Date Disposed:

____/____/____

Relief Sought

- Compensatory: Actual
- Compensatory: Non-Economic
- Punitive
- Costs/Attorney Fees
- Injunctive Relief

Total Judgment/Settlement
\$ _____

**% of Judgment Covered
by Liability Insurance**
_____ %

**Disposition
(pick one):**

- Dismissed
- Settlement
- Judgment

**Disposition After?
(check all applicable)**

- Bench Trial
- Jury Trial
- Appeal Filed Appeal # _____

Non-Economic Award \$ _____

Punitive Award \$ _____

Declaratory Relief Award? Yes No

Send the completed form to:
Alaska Judicial Council
510 L Street, Suite 450
Anchorage, AK 99501

This form may be filled in and submitted on the Council's Internet home page at <http://www.ajc.state.ak.us>.
Call the Council at (907) 279-2526 for copies of the form.
E-mail lcohn@ajc.state.ak.us with questions.

Each party, including pro se parties, must complete this form.

The Party's Own Fees and Costs				
Party Name/Type	Fee Type	Percent of Judgment if contingent; hourly rate if hourly ¹	Total (of the party's own) Attorney Fees	Total (of the party's own) Costs
First name: _____ Last name: _____ <input type="radio"/> Plaintiff/Petitioner <input type="radio"/> Defendant/Respondent <input type="radio"/> Other (specify below) _____	<input type="radio"/> Contingent <input type="radio"/> Hourly <input type="radio"/> Flat Fee <input type="radio"/> State/Local <input type="radio"/> In-house <input type="radio"/> Pro Se <input type="radio"/> Other	_____% of Judgment OR \$ _____/Hr if Hourly	\$ _____	\$ _____

Attorney Fees/Costs for (payable to) this Party by Another Party; or Against this Party to Another Party		
Attorney Fees Awards	Costs Awards	Total money to Client after all Fees/Costs ² Deducted (if any)
Not Separable? <input type="radio"/> ³ \$ _____ For \$ _____ Against	Not Separable? <input type="radio"/> ³ \$ _____ For \$ _____ Against	\$ _____

Did you use Alternative Dispute Resolution?

Mediation
 Arbitration
 Early Neutral Evaluation
 Settlement Conference

Did your case settle as a result of ADR?

Yes No

¹ Round all money amounts to the nearest dollar.
² "Costs" as used on this form is limited to litigation costs (excluding attorney fees) and does not include such things as medical expenses.
³ If attorney fees/costs are not separable from the gross judgment (usually the case for settlements), check this box and go to the next item.

Notes

Other Parties	Their Attorney

 Signature (of attorney, or party if no attorney)

 Printed Name (of attorney, or party if no attorney)

 Date Form Submitted

 Telephone Number

Alaska Civil Case Data 2001-2010

November 2011

alaska judicial council



Summary

Alaska law requires attorneys to report information about the resolution of civil cases to the Alaska Judicial Council. However, the data provided to the Council are insufficient for meaningful analysis. It is a waste of money to continue to collect these data. The legislature should substitute a requirement that information about the resolution of civil cases be provided only in response to a specific request. Proposed legislation is appended. (Appendix B)

Background

AS 9.28.130 (Appendix A) requires the Alaska Judicial Council to collect information concerning the resolution of many types of civil cases. AS 9.28.130 was enacted to help the legislature gauge the consequences of tort reform enacted in 1997. The legislature also amended Alaska Civil Rule 41(a) and Alaska Appellate Rule 511 to require attorneys and litigants to submit this information to the Judicial Council. The legislature added \$19,200 to the Council's budget to facilitate the Council's collection and analysis of this information.

Past Reports

The Council issued its first analysis of civil case data in February 2000. The Council's analysis was based on information collected from cases that were resolved between September 1997 and May 1999. The Judicial Council issued its second analysis in May 2001. This analysis considered civil cases closed between June 1999 and December 2000.

In its 2001 report, the Council recommended that the legislature eliminate the automatic reporting of civil case information and substitute a requirement that information be provided only in response to a specific request by the Judicial Council. The Council based its recommendation on providing a more targeted and less burdensome method of compiling information about the compromise or other resolution of civil cases.

Data Collection Since 2001

The Council has continued to collect data provided by attorneys and litigants pursuant the reporting requirement. However, much more often than not, attorneys and litigants have failed to comply with the reporting requirement. The Council lacks authority and resources to enforce the reporting requirement. From 1/1/2001 through 12/31/2010:

- 88,873 cases were resolved in the Alaska Court System that were subject to the reporting requirement.
- Because each case had at least two parties, the Council should have received 177,746 or more reports. This is a conservative estimate because many cases had more than two parties.
- The Council received 23,257 reports. This represents 13% of the Council's conservative estimate of the number of reports it should have received.
- The Council received at least one report for 18,387 cases, about 21% of the cases

resolved during this time.

The low rate of reporting is the reason that the Council has not issued a report since 2001. An analysis based on less than 13% of potentially available data would not be reliable. There is no reason to believe that the information provided to the Council is a representative sample of all available information.

Division of Insurance

AS 21.06.087, enacted at the same time, required the Division of Insurance to compile information to evaluate the effect of the tort reform legislation on the availability and cost of insurance in Alaska. The law requires that the information collected under this provision be reported annually to the governor and the judiciary committees of both houses of the legislature. Since 1997, the Division of Insurance has issued four reports. The most recent report was issued in 2004, seven years ago.

Reports issued in 2000, 2003, and 2004 included the results of surveys sent by the Division to insurers transacting casualty business in Alaska. On each occasion, the Division observed that insurers reported that there had been no change on the costs and availability of insurance or that they had been unable to assess the effect of tort reform on the costs and availability of insurance in Alaska.¹ A fourth report, issued in 2001, summarized two public teleconferences to discuss available data to evaluate the effects of tort reform on the costs and availability of insurance. After these teleconferences, the Division similarly concluded that it had not been able to identify specific types of information that would provide reliable estimates of the impact of tort reform.²

Recommendation

The Council renews its recommendation that the legislature substitute a requirement that information about the resolution of civil cases be provided only in response to a specific request by the Council. Proposed legislation is appended. (Appendix B)

It is a waste of state resources to collect data that cannot be credibly analyzed. If legislation is enacted to repeal the automatic reporting requirement, the Council will file a negative fiscal note in the amount of \$19,200 so that these funds can be put to better use. In the future, if the Council or the legislature identifies a need to collect information about specific types of case resolutions, the Council will seek additional funding.

¹Division of Insurance Reports dated 11/7/00, 12/18/03, and 11/11/04.

²Division of Insurance Report, undated, but attributed to 2001 (e-mail from Director of Insurance Linda Hall to Council Executive Director Larry Cohn dated 8/12/11).

Appendix A AS 09.68.130

Sec. 09.68.130. Collection of settlement information.

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

- (1) the case name and file number;
- (2) a general description of the claims being settled;
- (3) if the case is resolved by way of settlement,
 - (A) the gross dollar amount of the settlement;
 - (B) to whom the settlement was paid;
 - (C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before disbursement to the claimant;
 - (D) the net amount actually disbursed to the claimant;
 - (E) the total costs and attorney fees paid by or owed by all parties; and
 - (F) any non-monetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid;
- (4) if the case is resolved by dismissal, summary judgment, trial, or otherwise,
 - (A) the gross dollar amount of the judgment;
 - (B) the amount of attorney fees awarded and to which party;
 - (C) the amount of costs awarded and to which party;
 - (D) the net amount, after deduction of (B) and (C) of this paragraph, for which the prevailing party has judgment;
 - (E) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant;
 - (F) the total costs and attorney fees paid by defending parties; and
 - (G) any non-monetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid.

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

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

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (4) domestic violence protective orders under [AS 18.66.100](#) - 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under [AS 22.15.040](#);
- (7) forcible entry and detainer cases;
- (8) administrative appeals;
- (9) motor vehicle impound or forfeiture actions under municipal ordinance.

(d) A party to a civil case, except a civil case described in (c) of this section, or, if the party is represented by an attorney, the party's attorney shall submit the information described in (a) of this section to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council.

Appendix B Proposed Legislation

A BILL

FOR AN ACT ENTITLED

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

***Section 1.** AS 09.68.130 is repealed and reenacted to provide:

(a) The Alaska Judicial Council shall periodically collect and evaluate information relating to the compromise or other resolution of civil litigation. The information collected shall include, but need not be limited to:

(1) general case information such as the characteristics of the case and the parties;

(2) case processing information about the court civil justice process;

(3) information about the relief sought by each party;

(4) information about the settlement or judgment, including attorneys fees and costs awarded to or paid by each party to the case;

(5) information about any insurance coverage and contribution.

(b) A party to a civil case or, if the party is represented by an attorney, the party's attorney shall submit the civil case information required by (a) of this section to the Alaska Judicial Council if requested to do so by the Council. The information must be submitted within 30 days after receipt of a written request from the Council requesting the information, and must be on a form specified by the Alaska Judicial Council.

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

***Section 2.** The court rules amendments made by ch.26 §§ 41 & 46 SLA 1997 and ch. 14 § 3SLA 1999 are repealed.

***Section 3.** This Act takes effect immediately under AS 01.10.070 (c).

Alaska Civil Cases
June 1999 - December 2000

May 2001

Alaska Judicial Council

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Table of Contents

Introduction	1
Chapter I - Background of Report.	3
Purpose of Legislation	4
1999 Revisions to Legislation	6
Judicial Council Changes to Improve Data Collection	7
Structure of Database	9
Chapter II - Civil Case Data.	11
Characteristics of Cases	11
Characteristics of Judgments	16
Characteristics of Attorneys' Fees and Costs:	
Types, Hourly Rates, Case Types	21
Trials	28
Chapter III - Conclusions and Recommendations	35
Findings	35
Recommendations	37

Appendix A: Alaska Statute 09.68.130

Appendix B: 1999 Legislation - House Bill 9

Appendix C: 1999 Letter to Bar Members Describing Changes

Appendix D: Alaska Court Jury Verdicts: 1985-1995

Appendix E: Civil Case Data Form

Appendix F: Recommended Revised Civil Case Data Form

Appendix G: Recommended Court Rules Revisions

Appendix H: Recommended Statutory Change

This publication was released by the Alaska Judicial Council at a cost of \$3.73 per copy and was printed in Anchorage, Alaska.

Introduction

In 1997, responding to public interest in tort reform and the work of the Governor's Advisory Task Force on Civil Justice,¹ the legislature passed tort reform legislation. One part of the legislation responded to the Task Force's recommendation that the Alaska Judicial Council report on closed civil cases, using data from forms completed by attorneys and parties in the cases.² The Council made a preliminary report in February 2000 on the limited data collected between September 1997 and May 31, 1999.³ The present report summarizes the findings from the data reported to the Council from June 1, 1999 through December 1, 2000, and from data collected from court case files in various locations. Included with this report are recommendations for future data collection and changes to the legislation.

¹ *Report of the Governor's Advisory Task Force on Civil Justice Reform*, p. 7, Office of the Governor, December 1996 (hereafter, *Civil Justice Reform*).

² *Id.*, pp. 52 -54.

³ *An Analysis of Civil Case Data Collected from September 1997 - May 1999*, Alaska Judicial Council, February 2000.

Chapter I Background of Report

For over twenty-five years,⁴ attorneys, legislatures, insurance companies and a variety of other interests have debated the need to reform the civil justice system. Some groups have argued that frivolous litigation and excessive jury awards cost the public through higher insurance premiums, increased health care costs and more expensive products. Others contended that product liability, health care and malpractice litigation have increased the safety of products, recompensed seriously injured victims and improved health care. States have legislated a variety of reforms, including caps on non-economic damages, statutes of limitations and punitive damages.

In 1995-96, Alaska's legislators adopted a tort reform bill that Governor Knowles vetoed. He established the Advisory Task Force on Civil Justice Reform to develop a new bill through an open public process. The Task Force's goals were:

[To] make the civil liability system more efficient and reduce frivolous litigation; to provide for fair but not excessive compensation for injured victims; to lower liability insurance rates; and to provide for reasonable punitive damages awards to deter practices that harm innocent Alaskans, without chilling the business environment or allowing windfall recoveries.⁵

The Task Force found itself seriously hampered in its work by the lack of information about most tort cases. Although it studied tort jury verdicts,⁶ the Task Force noted that most civil cases did not go to trial. Parties rarely agree to make settlement information public, leaving no way to gauge the effects of new legislation on litigation. The Task Force concluded that "further information is necessary for an informed public policy debate on tort reform."⁷ The legislature incorporated the Task Force recommendation into its 1997 legislation, requiring attorneys to provide information to the Judicial Council and asking the Council to prepare reports periodically.

⁴ "Letting the Air out of Tort Reform," *ABA Journal*, May 1997, p.68. "Enacted in 1975, . . . MICRA [California's Medical Injury Compensation Recovery Act] is one of the first so-called 'tort reforms' adopted by any jurisdiction in the United States."

⁵ *Supra*, note 1, *Civil Justice Reform*, p. 6.

⁶ *Id.*, p. 7 and p. 105, Appendix C.

⁷ *Id.*, p. 7.

This introductory chapter presents background on the civil case data project, and discusses limitations of the data. Chapter II presents the data for the civil cases covered by the legislation. Chapter III presents the Council's findings and recommendations.

The report's appendices include the data collection form used by the Council to capture the data for this report, the statutory amendment passed by the legislature in 1999 that changed the data collection process, and the Council's letter informing attorneys of the changes. Another appendix is the Council's earlier study of tort jury verdicts, for ease of comparison with the data and findings from the present database. Additional appendices include recommended changes.

A. Purpose of Legislation

The general stated purposes of the legislation included: "(1) encourage the efficiency of the civil justice system by discouraging frivolous litigation and by decreasing the amount, cost, and complexity of litigation without diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive, compensation for tortious injuries caused by others. . . ." ⁸ AS 09.68.130 required the Alaska Judicial Council to collect information concerning the resolution of many types of civil cases. ⁹

Sec. 09.68.130 Collection of settlement information. (a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other resolution of all civil litigation. The information shall be collected on a form developed by the council for that purpose and must include:

- (1) the case name and file number;
- (2) a general description of the claims being settled;
- (3) if the case is resolved by way of settlement,
 - (A) the gross dollar amount of the settlement;
 - (B) to whom the settlement was paid;
 - (C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount. ¹⁰

⁸ Ch. 26, SLA 1997.

⁹ Ch. 26, Section 32, SLA 1997. Another section of the legislation required the Council to work with the Court System to develop alternative dispute resolution proposals. The December 1997 report, *Report to the Alaska Legislature: Alternative Dispute Resolution in the Alaska Court System* that fulfilled this requirement is available from the Council and at <http://ajc.state.ak.us/Reports/adrframe.htm>.

¹⁰ AS 09.68.130 is cited in full in Appendix A.

Part (c) excluded a variety of non-tort civil cases from the information collection requirement. Among these were all divorce and dissolution cases, children's cases, domestic violence protective orders, and probate cases. The requirement applied to attorneys or pro se parties, and to trial court cases and appellate court cases.

To carry out these provisions, legislators amended Alaska Civil Rule 41(a)¹¹ and Alaska Appellate Rule 511¹² to require the submission of the civil case data when cases were dismissed pursuant to these rules. The Alaska Supreme Court updated the court rules to reflect the additions. The Court also added language concerning the effective date of the legislation that limited the reporting requirement to cases accruing on or after the legislation's effective date of August 7, 1997.¹³

¹¹ Ch. 26, Section 41, SLA 1997 added a new subparagraph to Civil Rule 41(a) to provide:

(3) Settlement Information. If a voluntary dismissal under this rule is the result of compromise or other settlement of the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A notice of dismissal made under (1)[a] of this subsection must be accompanied by a certification signed by or on behalf of the plaintiff that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of dismissal made under (1)[b] of this subsection must be accompanied by a certification signed by or on behalf of all parties who have appeared in the action. The requirements of this paragraph do not apply to the types of cases listed in AS 09.68.130(c).

¹² Ch. 26, Section 46, SLA 1997 added a new paragraph to Appellate Rule 511 to provide:

(e) Settlement Information. If a dismissal under (a) or (b) of this rule is the result of compromise or other settlement between the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A dismissal by agreement under (a) of this rule must be accompanied by a certification signed by the attorneys of record for all parties that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the appellant or petitioner made under (b) of this rule must be accompanied by a certification signed by the appellant's or petitioner's attorney of record. The requirements of this subsection do not apply to the types of cases listed in AS 09.68.130(c).

¹³ Civil Rule 41(a)(3) provided:

(3) Information about the Resolution of Civil Cases. If an action is voluntarily dismissed under paragraph (a) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted with 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

Appellate Rule 511(e) now provides:

B. 1999 Revisions to Legislation

Based on the legislation, the Judicial Council designed and distributed a form to collect the civil case data. Early experience with the 1997 statute led the Council to recommend several changes which were adopted by the legislature in 1999.

1. Exclude additional types of cases and include appropriate cases resolved by any means.

a) The 1999 legislation added administrative appeals, DWI forfeitures and forcible entry and detainer actions (FEDs) to the list of excluded case types in AS 09.68.130(b). The Legislature probably did not anticipate needing information about these cases. The cases typically involved relatively small amounts of money and the information did not help understand the dynamics of civil litigation. See Appendix B.¹⁴

b) The 1997 legislation imposed an affirmative obligation on attorneys and pro se litigants to submit the information in civil cases that were resolved with certain types of dismissals.¹⁵ These specific types of dismissals constituted only a fraction of the types of cases in which the legislature was interested. The 1999 amendment resolved this problem, by imposing an express duty on attorneys and unrepresented litigants to complete and submit the Council's civil case data form for all civil litigation not specifically excluded.

2. Limit the time in which to submit forms.

(e) Information about the Resolution of Civil Cases. If a proceeding is dismissed under paragraph (a) or (b) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the proceeding is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

¹⁴ Several additional types of civil cases probably should be excluded: 1) Habeas corpus petitions under Civil Rule 86 and post-conviction relief applications under Criminal Rule 35.1. These actions are nominally civil (and are assigned a civil case number) but are in substance attacks on criminal convictions. 2) Debt, quiet title and tax foreclosure cases. These tend to be small routine cases (with some exceptions) that are unaffected by any of the tort reform measures. Continuing to require attorneys and parties send information about most of these cases creates unneeded work and does not help understand tort litigation.

¹⁵ 41(a)(3) was amended to require an attorney who was voluntarily dismissing a case to file the form. Appellate Rule 511(e) was amended to require attorneys to file the form when appellate cases were dismissed under Rule 511(a) or (b). However, these two situations represent only a small minority of civil cases.

The initial legislation did not set a time frame for filing the civil case information form with the Judicial Council. The 1999 revisions specified that attorneys and pro se parties had to file the form in all applicable cases within thirty days after the case was finally resolved.

- 3. Include all cases resolved after a given date rather than just cases accruing on or after a specific date.**

The 1997 statute's effective date inadvertently required attorneys and litigants to submit data to the Council only in cases arising after August 7, 1997. This was the general implementation date for the tort reform statute. While tying the implementation date to the accrual date of civil actions was logical for the 98% of the "tort reform" legislation that applied new rules and limitations to bringing and conducting civil cases, it meant that the Council would only slowly begin receiving data on civil cases.

C. Judicial Council Changes to Improve Data Collection

After making its first report, the Judicial Council took several steps to increase the responses from attorneys.

1. The Council redesigned the form, based on its experience during the previous years of data collection, and on suggestions made by attorneys and others. The form emphasized the types of cases excluded from the data collection, added space for information about other parties in the case, and reorganized some of the information requested for clarity and ease of completion of the form.
2. The Council developed and publicized a system for completing the forms using the Internet, to make the process more convenient for attorneys and parties. Of the 3,837 forms included in this report, attorneys sent in 1,043 using the Internet (37%).
3. The Council sent a letter to every member of the Bar,¹⁶ describing the 1999 changes to the legislation, the changes to the forms, the reduced numbers and types of cases for which the forms needed to be filed, and including a copy of the new form.
4. The Council reviewed each form submitted by an attorney for completeness of the data. If attorneys had not filled out the form completely (the most common omissions included the type

¹⁶ See Appendix C.

of attorney fee, rate charged, judgment amount and money to client), the Council sent a letter to the attorney submitting the form asking for more information. Of the 226 letters sent (some to one attorney asking for information about several cases), 69% of the attorneys responded with the information. In many cases, staff called for certain types of information; the response rate for phone calls was virtually 100%.

5. The Council added new fields to the form that asked respondents to list other parties in the case. The Council then sent a letter to the other parties in the case if they did not send in their forms. Of the 274 letters sent to attorneys or parties asking for their forms to complete the case information, 121 (44%) were returned.
6. During the review of closed court case files for this study, the Council sent letters to attorneys who were listed in the court case files, but from whom the Council had not received a form for that case. About 422 letters were sent to attorneys, again with some listing more than one case in which the attorney had participated. Forty-eight percent of the attorneys receiving those letters responded by completing the forms sent to them and returning the forms to the Judicial Council.

Effectiveness of Efforts to Improve Attorney Response Rates - A little fewer than half the attorneys¹⁷ contacted by mail with a request to send in their forms actually completed and returned the forms. If an attorney already had sent in the form and the Council simply asked for completion of some of the information, response was better. Sixty-nine percent responded to a letter request, and close to 100% responded to a phone call. Sometimes, the attorneys noted that although the case had closed, final arrangements still needed completion. In others, despite a request for more complete information, attorneys did not always supply it. The Council cannot say with certainty that the improved form design, ease of filing over the Internet, or follow-up by mail and phone have improved response rates from attorneys. It does appear that follow-up measures increased responses.

D. Structure of Database

Data compiled for this report came from 3,837 forms representing 2,951 court cases submitted by attorneys on paper and via the Internet,¹⁸ and from a sample of 875 qualified civil cases closed

¹⁷ About 48% of the attorneys identified through collection of data from court cases, and 44% of the attorneys identified as participating in a case on a form filed by another attorney or party sent back forms.

¹⁸ Of 3,837 forms, 1,043 (37%) were sent over the Internet, and 2,794 (63%) were filed on paper forms with the Judicial Council. Forms for the 2,951 cases came from Anchorage (63%), Fairbanks (12%), Juneau, Kenai and Palmer (5% each), Bethel and Ketchikan (2% each), and smaller numbers from Nome, Kotzebue, Sitka,

between July 1, 1999 and May 31, 2000 in Anchorage, Fairbanks, Juneau, Bethel, Nome and Kotzebue.¹⁹ The database included information about the types and characteristics of cases submitted; the amounts of judgments, attorneys' fees and costs; whether the parties submitting forms were defendants or plaintiffs, and the use of alternative dispute resolution and trials to dispose of cases.

1. Types of cases for which Attorneys Sent in Forms

Generally, the cases reviewed for this study probably corresponded to about 4% of the district court cases and 6% of the superior court cases disposed of by the courts in FY'99. "Other" civil cases of the types for which data were collected for this report constituted about 12% of district court cases statewide in FY'99 and 19% of superior court cases.²⁰ The legislatively required cases included only an estimated one-third of the "Other" civil cases shown in the court system's report. Many common offenses such as FED (forcible entry and detainer), administrative appeals, DWI forfeitures, and others were excluded. Thus, although the cases included in this study receive a great deal of attention, they form a numerically small proportion of the court's total caseload.

Attorneys tended to send in forms for tort cases, real estate, and employment cases at disproportionately high rates, when the Judicial Council's database is compared to court case filings for a comparable period. They sent relatively fewer forms for debt, other civil and other contract or business cases. Overall, the types of cases for which attorneys sent forms to the Council probably reflect the types of cases in which the legislature was most interested when it created the reporting requirement.

Barrow, Cordova, Petersburg, Dillingham, Glennallen, Homer, Kodiak, Naknek, Valdez, Seward, Tok and Healy.

¹⁹ The Council asked the court to provide a list of all civil trials in these case types to compare to the tort trial verdict study completed in 1996 (see Appendix D). Based on the court's list of trials, the Council reviewed case files for all of the trials, tort and non-tort, bench and jury. A total of 127 trials was found.

²⁰ *Alaska Court System: 2000 Annual Report*, pages S-21 and S-47.

2. Limitations of Court Case File Data Collection

Court case files came from Anchorage, Fairbanks, Juneau, Bethel, Nome and Kotzebue. In Anchorage, staff reviewed all trials, and a random selection of qualified cases without trials. Staff also reviewed all Juneau and Fairbanks trials, and recorded data from selected qualified cases.²¹ Nome, Kotzebue and Bethel had few enough cases that staff reviewed all cases during the July 1, 1999 to May 31, 2000 period.

The court case file analysis is limited by the fact that court case files often contained half a dozen forms, a notice of dismissal and little else; and by the fact that attorneys did not submit case information forms to the Judicial Council for many of the court case files reviewed. In order for the case to be closed, the court rule required attorneys to file a certification that they had, or would within 30 days, send the required information to the Judicial Council. For 268 of the 875 court cases (31%), the only information available came from the court case file because none of the attorneys in the case submitted a form.²² For 607 of the 875 court cases reviewed, attorneys submitted a total of 950 forms. The great majority of cases had two or more attorneys²³ so the Council probably should have received at least 1,750 forms for these 875 cases. One hundred and seventy-two court case files, or 20%, had forms filed by all attorneys in the case.

In 71 court case files reviewed (about 2%), attorneys stated in the case file that the rule did not require them to file the information although in all of the cases the court rule required it. These statements probably stemmed from misunderstandings about the scope of the requirement after the legislature broadened it in 1999. In about half (46%) of the cases one or both of the attorneys signed a form certifying that they had filed or would file the information. In the remaining 52% of the cases, the case file did not contain a certification at the time Council staff reviewed it. Even without a certification in the case file, one or more of the attorneys actually did send the Judicial Council forms in the majority of these court cases (although perhaps only in response to a contact by the Council).

²¹ Selected cases included all torts, real estate, delinquent taxes, employment and some other civil and other business disputes.

²² Letters were sent to each of the attorneys of record in the 875 cases if their forms were not already in the Council's database, notifying them of the Council's review of cases and asking them to submit the information about the case. Of the 875 cases, even with this follow-up, 268 have no corresponding attorney forms (31%), 298 have one attorney form (34%), 281 have two attorney forms, 22 have three attorney forms, and 6 have four attorney forms. These figures suggest that with the follow up letter and occasionally, phone calls, as many as half the attorneys in the state may be complying at least partially with the statutory requirement.

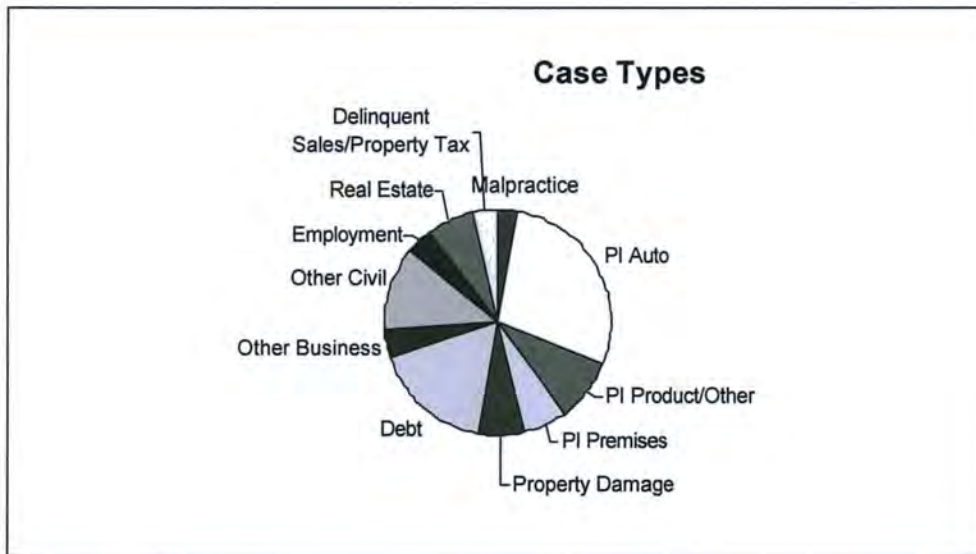
²³ Twenty-four plaintiffs and ten defendants who filed forms identified themselves as pro se litigants.

Chapter II Civil Case Data

A. Characteristics of Cases

1. Types of Cases Included

This analysis included 2,951 civil cases received by the Council or closed between the dates of June 1, 1999 and December 1, 2000.²⁴ Types of cases in the database included debt (17%), other civil and other business disputes (16%), personal injuries (43% total: auto 28%, premises 6%, product and other 9%) and several smaller groups including malpractice (3%), property damage (7%), real estate (7%), delinquent taxes (3%) and employment (4%).



Most (81%) of the cases in the court case database had only one plaintiff. Another 15% had two plaintiffs, and only 4% of the cases had three or more plaintiffs. In contrast, 13% of the cases in the

²⁴ As noted above, the data come from 3,837 forms submitted by attorneys on paper or the Internet and from 875 selected court case files from several locations throughout Alaska. For 268 of the 2,951 unique cases reported here the only information came from the court case file because none of the attorneys in the case filed forms with the Judicial Council. Of the court cases used, 238 came from district court and 587 cases came from superior court.

court file database had three or more defendants. About two-thirds (66%) had one defendant and 21% had two defendants.

2. Location of Cases in State

The majority (62%) of the cases included in the 2,951 cases analyzed came from Anchorage. The next largest group of cases were sent in from (or involved court case files in) Fairbanks (14%). Smaller percentages came from Juneau (5%), Kenai and Palmer (4% each), Bethel (2.5%) and Ketchikan (2%). One percent or less of the cases came from fifteen other court locations throughout the state.²⁵

3. Relief sought in complaint

Most parties filing cases included in this report sought compensation for actual damages (91%). Smaller numbers asked for compensation for non-economic damages (45%) and punitive damages (17%). Most parties asked for attorneys' fees and costs (80%) and a few requested injunctive relief (6%). A party could have requested more than one type of relief, so percentages do not add to 100%.

4. Time to Disposition, Time in Court

Parties disposed of about half the cases (45%) between 61 and 360 days (about two to twelve months), with 10% disposed of in one to sixty days and 45% taking more than 360 days.²⁶ The length of time to disposition of the case correlated significantly with the amount of the judgment. Most (80%) of the cases with judgments of \$500,000 or more required more than 360 days to complete. The correlation was not symmetrical. Many cases that resulted in smaller judgments took longer also.²⁷ Twenty percent of cases with judgments less than \$1,000 took 361 days or more, and 38% of them took 181 days or more. Nearly one-third (32%) of the cases with judgments between \$1,000 and

²⁵ The Court System's 2000 Annual Report, *supra* note 20, p. S-37 shows 2,174 cases of comparable types filed between July 1, 1999 and June 30, 2000 (superior court only). Of those, 56% were filed in Anchorage, 12% in Fairbanks, 6% each in Kenai and Palmer, 5% in Juneau and 4% each in Ketchikan and Bethel. It appears that the proportions are roughly similar to the percentages of forms filed for cases in each area, with a few more cases from Anchorage than might be expected.

²⁶ New time standards for the trial courts, adopted by the supreme court on February 17, 2000 call for having 75% of all civil cases resolved in 365 days. These data suggest that at least 55% of the types of civil cases appearing in this data base had been disposed of within that time frame. The time standards apply to the most routine civil cases and the most complex. Many of the case types discussed in this report tend to fall toward the more complex end of the spectrum, accounting in part for the longer times required to disposition.

²⁷ Some of the cases with smaller judgments or no judgment amount that took longer times to disposition may be cases in which defendants prevailed; others may reflect cases involving smaller amounts at issue that were lengthy for other reasons.

\$4,999 took 361 days or more, as did 44% of the cases between \$5,000 and \$19,999. A majority of all cases with amounts of \$20,000 or more took 361 days or more to complete.

Time to disposition also correlated significantly with the type of case. The fastest cases were delinquent tax cases, 81% of which ended within 120 days. Debt cases also moved quickly, with 74% closing within the 1 to 360 day time frame. Real estate (64%), property damage (60%), other civil (58%) and other business (53%) all had a majority of the cases resolved within 360 days. Slowest were malpractice (72% took 361 days or more), personal injury or other product liability, personal injury premises and employment (64% to 65% of each took 361 days or more), and personal injury auto (51% took 361 days or more).

For the court case files used in the analysis, staff compiled data on the number of days that the parties spent in court. Any appearance in court counted as one day; total days in court equals the total number of dates on which the parties spent any amount of time in court. Although the majority of cases (58%) showed no time spent by the parties in court, judges still may have had significant responsibilities for motion decisions and other case review. The time available for data collection did not permit any assessment of how much time judges spent on cases off the bench. About equal numbers spent one day in court (19%) or two to five days (18%). The remainder (5%) spent six or more days. This data may help the court understand how judges' time is spent in the types of cases covered by this report.

5. How cases ended

Most persons filing forms, and most case files, showed that the case ended with a settlement (66%). Parties described 18% as "dismissed." Sixteen percent showed some type of judgment (including trials, dispositive motions, and defaults).

Among the 875 court case files, the largest number ended with a stipulation to dismiss (55%). An almost equal number ended with a default judgment (13%) or a judgment (12%). Smaller numbers recorded a plaintiff dismissal (10%) or a court dismissal (7%). Other events showing as disposition of the case included satisfaction of judgment, confession or consent judgment, and findings of fact.

The database included 64 bench trials and 63 jury trials. Even if the case went to trial, the final disposition came about from settlement or dismissal in some cases. Of the jury trials, 37% (N=23) ended with a settlement following the jury verdict, and 6% (N=4) were dismissed. Of the bench trials, 19% (N=12) settled following the verdict and 8% (N=5) ended with dismissal. A separate section of this report discusses tried cases.

6. Use of Alternative Dispute Resolution

a) Type of ADR Used

More persons noted that they used mediation (9%) than other types of ADR. Settlement conferences occurred in 7% of the cases, early neutral evaluation in 2% and arbitration in .6% (N=19) cases. Persons filing forms could have reported more than one form of ADR, so the percentages cannot be added. Use of ADR in a case did not necessarily settle or dispose of the case, and did not preclude the occurrence of a trial. A separate question on the form asked whether the ADR used actually resolved the case; in 10% of the cases (N = 296), the answer was "yes."

b) Types of Cases Using ADR

The cases with a greater chance of ending because the parties used ADR differed significantly from other types of cases.²⁸ Cases that ended directly because of ADR tended to be tort cases, particularly malpractice (19%) and personal injury premises (20%). Personal injury auto (14%), personal injury other and product liability cases (15%) and employment cases (16%) all had sizable percentages of cases settling with ADR. In contrast, most real estate (7% ended with ADR), other business (8%), other civil (6%), property damage (6%) and debt (2%) cases ended in another fashion even if parties used ADR during the litigation.

Parties chose significantly different types of ADR for different types of cases. Early neutral evaluation appeared most frequently in personal injury auto cases. It was used in 5% of those cases, and 2% each of personal injury premises and "other business" types of cases. Settlement conferences appeared most frequently in personal injury premises cases (14% of them), employment (13%) and personal injury auto and other business (10% each). Mediation appeared in 21% of malpractice cases, 18% of personal injury premises cases, 14% of personal injury other or product liability cases, 13% of personal injury auto cases, and 12% of employment cases.

²⁸ Use of ADR in a case did not necessarily settle or dispose of the case, and did not preclude the occurrence of a trial.

c) Size of case related to ADR

The larger the case, as judged by the sum of all attorneys' fees in the case,²⁹ the more likely the case was to have been settled using an alternative dispute resolution method. For the smallest cases, those with total fees of \$499 or less, only .4% used ADR. Even with fees between \$2,000 to \$4,999, only 5% of the cases used ADR. As the sum of the fees in the case increased, the percentage of cases using ADR increased, to a high of 27% of cases with fees of \$50,000 or more having settled using ADR. This finding was statistically significant. Plaintiffs were more likely than defendants to report that a case in which they were involved settled because of ADR in the \$50,000 or more fee range (38% of plaintiffs reported this, as compared to 22% of defendants). Overall, defendants were somewhat more likely to report that a case settled because of ADR than were plaintiffs (18% of defendants, as compared to 12% of plaintiffs).

Within specific forms of ADR, however, different patterns appeared. For example, early neutral evaluation was most likely to have been used in cases with attorneys' fees between \$2,000 and \$4,999 (consistent with the finding above that it was most likely to have been used in auto personal injury cases). Defendants' attorneys reported using early neutral evaluation in the fee ranges between \$2,000 and \$9,999 about twice as often as plaintiffs' attorneys.

Settlement conferences followed the general pattern of increasing use with increasing size of the case. Again, defendants' attorneys reported engaging in settlement conferences more frequently than did plaintiffs' attorneys. Defendants' attorneys were more likely to have used settlement conferences in the largest cases with fees ranging upward from \$10,000. Plaintiffs' attorneys reported heaviest use of settlement conferences in cases with fees ranging between \$5,000 and \$9,999, with slightly less use for the larger cases.

Mediation was most heavily used in the largest cases. Of the cases in which mediation occurred, 31% had an attorneys' fees sum of \$50,000 or more. Defendants' attorneys reported using mediation in 32% of the largest cases; plaintiffs' attorneys said they had used it in 40% of the largest cases. For cases with fees ranging between \$5,000 and \$49,999, defendants' attorneys were slightly more likely to have used mediation than were plaintiffs' attorneys.

Looking at judgment amounts and use of ADR, the same pattern is emphasized even more strongly. Of the cases in which mediation was used, 41% had judgment amounts of \$500,000 or greater, and

²⁹ Both plaintiffs' and defendants' attorneys fees were added together to indicate the size of the case. This measure is useful because some complex cases may have ended without any significant amount of money paid to either party. If only one party/attorney had sent in the form, those attorneys' fees were used to indicate the size of the case.

29 had awards between \$100,000 and \$499,999. Settlement conferences did show a different pattern, with most frequent use at the \$20,000 to \$49,999 range. Early neutral evaluation did not appear to have been used in cases with judgments of \$500,000 or more, and its use was spread fairly evenly among the categories between \$5,000 and \$499,999.

B. Characteristics of Judgments

1. Amount of Judgment

Judgment (which includes settlements, default judgments, dispositive motions and trial verdicts) amounts ranged from zero, to 75 cases with judgment amounts of \$500,000 or more. Thirty-two judgments exceeded one million dollars. Some of these came about through settlement, others after trials. For 20% of the forms (N=597), the judgment amount³⁰ was missing or shown as \$0.00. The data supplied did not allow the analysis to distinguish accurately between cases with a settlement amount of \$0.00 and those for which attorneys supplied no information. As a result, this section of the analysis looks only at cases with a settlement of \$1 or more.

Of the forms that showed a dollar amount for judgment, 56% were less than \$20,000, and 75% were less than \$50,000.³¹ The amounts suggest that judges and juries and parties actually resolved most cases for amounts well under the district court jurisdictional limits, even though many of the cases were resolved in the superior court.

a) Plaintiffs' Attorneys' Cases

The data were analyzed by the amount of the judgment, type of attorney, and the type of fee arrangement. Of the 984 forms filed by plaintiffs' attorneys who charged a contingent fee and whose client received some amount of money, about one-third (35%) received a total judgment (before the deduction of fees, costs, and any subrogated amounts³²) of \$50,000 or more. A majority of the clients

³⁰ The form asked for judgment amounts to be shown in two different locations, on page one and page two. Because an amount was shown more consistently on page one, the data used throughout the report comes from that page. See Appendix E for a copy of the form on which attorneys submitted judgment information.

³¹ This section of the analysis includes all cases in the database - jury and bench trial verdicts that were the final judgment (N=82, or about 3% of the judgments), defaults, and dispositive motions along with settled and dismissed cases for which information was available.

³² The legislation mandating data collection did not address the issue of subrogation. The Council's forms did not ask for information about subrogation and the data do not allow any analysis. Some attorneys accounted for subrogation by showing a smaller amount to the client than would have been expected after deduction of fees and costs. Most did not account for it, even if the client had to pay part or all of the judgment to the insurance company

in this category (58%) received at least \$20,000. In contrast, clients of plaintiffs' attorneys charging hourly fees (N=549) were more likely to have received amounts less than \$20,000 (69%). This agrees with other findings that plaintiffs in non-contingent fee arrangements often may be businesses filing relatively routine types of small business, debt and tax cases.³³ Most plaintiffs' attorneys who characterized themselves as representing state or local governments also could be described this way. Two-thirds (67%) of the judgments received by their clients were less than \$5,000. All of the sixteen plaintiffs who described themselves as pro se had judgment amounts of less than \$19,999.

b) Defendants' Attorneys' Cases

A total of 1,470 forms from defendants' attorneys and seven pro se defendants showed different patterns.³⁴ Most of the defendants either charged an hourly fee (82%) or were state/local counsel (4%) or in-house counsel (10%). About equal percentages of these three types of defendants' fee arrangements were associated with judgments of \$50,000 or greater (33% for hourly, 35% for state/local and 32% for in-house). State/local attorneys appeared to work with smaller case amounts at the low end of the continuum, with 21% of their cases in the \$1 to \$4,999 range, as compared to 13% of the cases handled by defendants' attorneys with an hourly fee and 12% of cases handled by defendants' attorneys who were in-house.

2. Tort and Non-tort Judgments

The analysis divided cases into tort (60% of the 2,354 cases with judgments of \$1 or more)³⁵ and non-tort cases (40% of the same group).³⁶ Significantly more non-tort cases had small judgment amounts, of less than \$5,000. Forty-four percent of the non-tort cases had small judgment amounts as compared to 13% of the tort cases. At the upper end, 4% of the tort cases had judgments of \$500,000 or more

to reimburse money paid out by the company. Because the forms did not ask for the information and attorneys recorded it differently, the report cannot make any findings about the role of subrogation in settlements.

³³ About 10% of the forms filed in the study appeared to come from defendants who could be identified as businesses. About 7% came from plaintiffs who could be identified as businesses.

³⁴ All seven of the pro se defendants were involved in cases with judgments between \$1,000 and \$19,999.

³⁵ The tort cases were further divided into those cases with information collected from the court case files and those whose information came only from the mailed/Internet forms submitted by attorneys. One hypothesis was that attorneys would be more likely to file or not file forms, depending on the size of the case. This hypothesis proved incorrect. There was no difference, by size of judgment, in the cases collected from the sample of court cases and those with information supplied by attorneys. This finding suggests that attorneys do not look at the size of the case in deciding whether to file or not file the required case information forms with the Judicial Council.

³⁶ This analysis excluded cases with a judgment amount of zero.

as compared to 2% of the non-tort cases. Just over half (56%) of the torts with a judgment amount resulted in judgments of \$20,000 or more, but only 26% of the non-tort cases. The substantial majority of the cases in this database with judgments of \$5,000 or more were tort cases.

The tort cases were further divided into those cases with information collected from the court case files and those whose information came only from the mailed/Internet forms submitted by attorneys. One hypothesis was that attorneys would be more likely to file or not file forms, depending on the size of the case. This hypothesis proved incorrect. There was no difference, by size of judgment, in the cases collected from a random sample of court cases and those with information supplied by attorneys. This finding suggests that attorneys do not look at the size of the case in deciding whether to file or not file the required case information forms with the Judicial Council.

3. Liability Insurance to Cover Judgment

The form asked parties to record the percent of the judgment that liability insurance covered. Many forms (65%) did not enter the information or entered zero. Of the forms that said that liability insurance covered a percentage of the judgment, almost all (98%, N = 1,013) said that it covered 100%. Many cases in which insurance covered some percentage of the judgment were personal injury automobile cases (63%). Smaller percentages of the cases covered by liability insurance were personal injury product and other types of personal injury cases (11%), personal injury premises cases (12%) and property damage cases (4%).

A few types of cases were more likely than others to have liability coverage. Most -- 78%-- of personal injury auto cases had liability coverage, virtually all of which was 100% coverage. Personal injury premises cases also were very likely to have coverage -- 67% did. None of the other case types had a majority of the cases covered by liability insurance. Personal injury "other" or product liability cases were covered 43% of the time. Forty percent of the malpractice cases fell in the category of insured, as did 22% of the property damage cases. Of other types of cases, only 3% (debt) to 11% (employment) were insured.³⁷

Not all attorneys provided the information about insurance, and the form did not permit a firm distinction between those who meant that the case had zero liability insurance involved and those who

³⁷ A study of California trials showed slightly different results, with most tried malpractice cases having 100% coverage from liability insurance. The present study did not have enough tried malpractice cases to draw accurate conclusions about the chances that tried malpractice cases would be more likely to have 100% liability insurance than those ended by other means. A reasonable hypothesis would be that defendants with 100% liability insurance might be more likely to go to trial than defendants with lesser coverage. Gross and Syverud, "Don't Try: Civil Jury Verdicts in a System Geared to Settlement," 44 *UCLA LAW REVIEW* 1 (1996).

did not provide the information. If only one party filed the form, it is possible that the party did not have the information. It is likely that more parties had liability insurance, particularly for some types of personal injury cases than these data show. However, there is no reason to think that the proportions shown here are incorrect. In other words, it appears likely that most personal injury auto cases had liability insurance, and most debt and business cases did not.³⁸

The study also looked at the types of cases that went to trial and whether tried cases had 100% liability insurance, to test the hypothesis that parties would be more likely to go to trial if liability insurance covered 100% of the judgment.³⁹ Although the study relied on self-reported data from attorneys, the analysis may provide some information about types of cases with liability insurance in the trial courts.

The analysis showed that six malpractice cases (of 83) went to trial. Three of the five cases (60%) that went to jury trial had 100% liability insurance; the other two and the bench trial either had less than 100% insurance or did not provide the information.⁴⁰ Twenty-one personal injury auto cases went to trial, twenty before juries. Of those 20, 12 (60%) had 100% liability insurance.⁴¹ Only four of the 14 personal injury “other” or product liability cases that went to jury trial appeared to have 100% liability insurance, and smaller percentages of other types of cases. Although the malpractice and personal injury auto information appears to resemble the data available in the California study, which showed fairly high rates of 100% liability insurance for most personal injury and malpractice cases, the lack of correspondence with the remaining Alaska case types suggests that the Alaska data are not complete enough to draw firm conclusions. In categories other than personal injury and malpractice, most cases lacked 100% liability insurance, a finding consistent with the California study.⁴²

³⁸ UCLA, *id.* p. 22. The California study found that cases going to trial showed a pattern similar to the Alaska pattern for all cases, with two thirds or more of the personal injury cases having full coverage and most other types of tried cases have partial or no liability insurance.

³⁹ The UCLA LAW REVIEW article, *id.*, p. 26 suggests that parties are more likely to go to trial if their costs are covered by another source: “In sum, few parties play this game with their own money. On the plaintiff side, where the vast majority are individuals, attorneys’ fees are almost always contingent . . . On the defendant side, most are fully insured against any possible verdict, and more have no responsibility for the legal costs of the defense.” It also suggests that even if insurance does not cover 100% of the damages, it may cover all of the costs of defending the case. Our data did not include information about who paid the costs of defense in a case.

⁴⁰ In the California study, *id.*, p. 22, 89% of the medical malpractice verdicts had 100% insurance coverage. The Alaska data includes all types of malpractice, so differences in case types may account for some of the difference in likelihood of insurance.

⁴¹ This is much closer to the finding of the California study, *id.*, where 67% of vehicular negligence cases had 100% liability insurance.

⁴² Only 17% of commercial cases, and 29% of other tort and miscellaneous cases had 100% liability insurance. *Id.*

4. Punitive, non-economic, and declaratory relief awards

Only eight judgments included punitive amounts, although parties requested them in 488 cases (17%). The amounts awarded for punitive damages in judgments ranged from \$15,000 to four amounts more than \$100,000. Three punitive damages cases involved bench trials (awards ranged from \$17,500 to \$102,500); four had jury trials (the smallest award in the database, \$15,000; and the three largest awards, ranging from \$2,600,000 to \$150,000,000).⁴³ Parties in one case with a punitive award used mediation to settle the case. Three cases involved appeals. The case types with punitive damages included personal injury (auto), property damage, other civil case and employment.

Nineteen awards included declaratory relief. One hundred and twenty-four judgments included non-economic damages (4%).

5. Amount of judgment paid to client

The data in this analysis comes from a second database in the report that analyzes data by attorney rather than case. It includes 3,837 forms and case files. The data about amounts to clients were missing for 58% of the forms and cases.⁴⁴ Of the 42% of forms and cases that showed any amount of money to clients, 11% showed an amount of less than \$1,000. About one-quarter (24%) showed that the client received between \$1,000 and \$4,999, and 31% showed the client receiving an amount between \$5,000 and \$19,999. About 3% (N=40) showed clients receiving amounts of \$500,000 or more.

⁴³ The information about whether these amounts were upheld after appeals or other post-trial actions was not available for all cases. The court case file with the \$150,000,000 punitive award showed that the case settled post-judgment for \$7.5 million on the record. The case that included punitive damages and settled because of mediation was a wage and hour case, in which the punitive damages were statutory. The \$2.6 million and \$8.4 million punitive awards were insurance bad faith cases.

⁴⁴ The information was either missing or the amount to the client was zero. The data available did not permit the analysis to distinguish between the two possibilities. As noted above, some attorneys may have accounted for subrogated amounts by deducting them before showing money to the client; others did not. Because the form did not ask for information about subrogation specifically, the analysis cannot distinguish these cases from others.

6. Prevailing Party

The forms submitted by attorneys did not have a variable asking for information about which party prevailed. Staff reviewed each form submitted, and the case files from which data were collected and made a determination about the prevailing party in the case, to the extent possible. For purposes of this analysis, staff made the assumption that if some sum of money was paid to the client in the settlement, the plaintiff prevailed. It is understood that the defendant may in fact have prevailed because the defendant avoided very substantial liability. Or the defendant may have prevailed on all of the main issues and only paid a small amount on a secondary allegation. The information was not available to make this determination. In 60% of the cases, the plaintiff clearly prevailed, and in 3% of the cases it was clear the defendant prevailed. In another 17% of the cases, it appeared that the plaintiff probably prevailed.

In 393 cases (13% of the 2,951 reviewed), no money was shown in the judgment amount variable, the court granted no injunctive relief, and nothing else in the information available suggested which party might have prevailed. In about 1% of the cases, neither prevailed or both parties received money or other substantial benefits from the judgment. For 5% of the cases that came from the court case files, no attorney information was available.

C. Characteristics of Attorneys' Fees and Costs: Types, Hourly Rates, Case Types

1. Types of Fee Arrangements by Types of Parties

Many attorneys filing forms charged on an hourly basis (55% of all attorneys), whether they served as plaintiffs' or defendants' attorneys. Eighty-one percent of defendants' attorneys charged this way, as did 34% of plaintiffs' attorneys. Fifty percent of plaintiffs' attorneys charged contingency fees (28% of all attorneys filing forms). Four percent of all attorneys characterized their fee arrangement as "state/local government" (5% of the defendants' attorneys were state/local government attorneys, as were 3% of the plaintiffs' attorneys) and 5% said they were in-house counsel (10% of the defendants' attorneys were in-house counsel and 1% of plaintiffs' attorneys (N=15)). Pro se litigants filed 1% of the forms,⁴⁵ about 2% of the attorneys had charged a flat fee (1% of the defendants' attorneys had charged a flat fee), and small percentages did not provide the information or answered

⁴⁵ Pro se litigants filed forms in a few tort cases, and a handful of employment and real estate cases. Twelve (35% of the pro se litigants) filed forms in debt cases and 24% in "other civil" cases.

in other ways.⁴⁶ The remainder of the cases had information only from the court case file and did not have information about the fee arrangement,⁴⁷ or used another fee arrangement, or did not give the information.

Thirty-four cases were pro se. Twelve of the pro se cases were characterized as debt cases, and eight as other civil. Three were property damage, and three were other business cases. Ten of the pro se parties said that they were defendants; twenty-four were plaintiffs.

Plaintiffs' attorneys who charged hourly fees clustered in debt (35%), other civil (19%), real estate (16%) and other business (9%) cases. A handful (3%) of plaintiffs' attorneys represented state and local governments, mostly in delinquent tax cases, and a smaller number (2%) charged flat fees in debt or real estate cases. Among defendants' attorneys, about 5% worked for state and local governments in other personal injury cases or other civil cases and about 10% served as in-house counsel, mostly in personal injury auto cases.

2. Amount of Judgment by Type of Fee Arrangement

The analysis considered the relationships between types of fee arrangements (primarily contingent or hourly), type of party (plaintiff or defendant), and judgment amount (any judgment amount greater than \$0). Plaintiffs with contingent fee arrangements had a higher percentage of judgments in the \$20,000 or more ranges (57% of 984 plaintiffs' cases with contingent fee arrangements). Plaintiffs with hourly fee arrangements had more cases in the less than \$20,000 range (69% of 549 plaintiffs' cases with hourly fees). Of the 65 judgments with information from plaintiffs' attorneys in which the judgment was \$500,000 or more, 50 (77%), had a contingent fee arrangement, and 10 (15%) had an hourly fee arrangement.⁴⁸

⁴⁶ The database included information from 3,837 attorneys regarding the 2,951 cases studied. Information about attorneys' fees could have come from one or more parties or attorneys in a case. The previous analysis of civil case data (1997 - May 1999) limited the discussion of attorneys' fees by characterizing each case by only one form (usually only one form per case had been filed). In this analysis, the database is much more complete, and the analysis of attorneys' fees shows all of the data collected. This means that neither the attorneys nor the cases in this part of the analysis are unique. A total of 818 attorneys filed forms with the Council during this period. Many attorneys filed forms in more than one case, and many cases had forms filed by more than one attorney.

Plaintiffs or their attorneys filed 2,097 of the forms (55%), defendants or their attorneys filed 1,693 forms (44%) and other/third parties or their attorneys filed 1% of the forms. Plaintiffs appeared more likely to file forms than did defendants. Of the 2,951 cases in this database, 71% had information from one or more plaintiffs. Fifty-four per cent had information from one or more defendants.

⁴⁷ That is, the case was included in the selection of civil case files studied by the Judicial Council and the attorneys had not provided the civil case data forms to the Council.

⁴⁸ The other two plaintiffs' cases of \$500,000 or more had other types of fee arrangements.

3. Amounts of attorneys' fees

Attorneys provided information about the type of fee arrangement, the rates that they charged, and the total amount of their fees and costs in each case. The database included information for 1,707 plaintiffs' attorneys and 1,469 defendants' attorneys. Only 36 people filing forms characterized themselves as "other" or "third-party," almost all charging hourly fees. The following analysis does not include them.

a) Amount of Fees Charged

About 47% of the attorneys said that they had charged less than \$5,000 to handle the case. This is consistent with the earlier finding that 56% of the judgment amounts were less than \$20,000. Seventeen per cent of the fees fell between \$5,000 and \$9,999, and 28% of the cases showed fees between \$10,000 and \$49,999. Eight per cent of the attorneys said that their fees for the case were more than \$50,000.

b) Rates Charged for Hourly Fees, Generally

Overall, the 2,109 cases in which attorneys charged hourly fees showed fees falling into a well-defined set of ranges. In about 10% of the cases, attorneys charged between \$1 and \$125 per hour. In 29%, attorneys charged between \$126 and \$149, and in 22%, \$150. In 13%, attorneys charged \$151 to \$169 per hour, and in 23% of the cases, the attorneys charged \$170 or more. Four percent said that they charged by the hour but did not say how much. Seventy-three percent charged less than \$170 per hour (Figure 1).⁴⁹

c) Plaintiffs' Attorneys' Rates

Over half (55%) of the group of plaintiffs' attorneys for whom the database contains information about fee amount charged contingency fees. Nearly two-thirds of them (65%) showed \$5,000 or more in attorneys' fees. In sharp contrast, just over two-thirds of plaintiffs' attorneys who charged hourly fees showed less than \$5,000 in total fees. Most attorneys who charged contingency fees handled tort cases, and most plaintiffs' attorneys who charged hourly fees handled debt (35%), other

⁴⁹ In the previous study, 83% of those submitting forms and describing their hourly rates showed a rate of less than \$170/hour. The substantial increase (from 17% of the attorneys filing forms to 27% of the attorneys filing forms) in the percentage of attorneys charging \$170/hour or more filing forms is partially because a very small number of attorneys charging the higher rates submitted forms in many routine cases. As an added note, some attorneys charging high hourly rates collected very small amounts of money per case.

civil or other business (28%) or real estate (16%) cases. Of the plaintiffs' attorneys showing \$50,000 or more in fees, 78% had charged a contingency fee and 20% charged an hourly fee.

i. Contingent Fee as a Percentage of the Judgment

Of the 1,017 attorneys who provided information about contingency fee arrangements, 19% said that they charged between 1% and 30% of the judgment or settlement amount. Most (68%) charged 31% to 33%. About 8% charged 34 to 40% of the judgment amount and 5% charged more than 40%.

ii. Types of Contingent Fee Cases

Plaintiffs' attorneys who used a contingent fee arrangement (50% of all plaintiffs' attorneys in the cases analyzed, including some for whom fee amounts were not available) handled mostly tort cases. Half (50%) of the cases that this group handled were personal injury auto cases, 12% were other personal injury or products liability cases, 11% were personal injury premises cases, and 6% were property damage cases. These types of cases together constituted 83% of all cases handled by plaintiffs' attorneys under contingent fee arrangements. In addition, 3% were malpractice cases, and 4% were employment cases (some of which probably were torts). These data show that the great majority of all contingency fee cases are tort cases. The only other significant group of cases was debt cases, which constituted 10% of the plaintiffs' contingency fee cases.

iii. Rates for Hourly Fees Charged by Plaintiffs' Attorneys

About 32% of the plaintiffs' attorneys in the cases analyzed charged hourly fees and gave information about the hourly rates charged. The mean (average) rate charged was about \$158/hour, and both the median and mode were \$150/hour. Ten percent of plaintiffs' attorneys charged \$125 an hour or less, and 13% charged between \$126 and \$149/hour. Nearly one-third had charged \$150/hour, and a little over one-third (37%) had charged \$170/hour or more.⁵⁰ About one-quarter (23%) charged \$149/hour or less.

d) Defendants' attorneys

Most defendants' attorneys (91%) who provided information about the amount of the fees charged in the cases analyzed used an hourly fee as the basis for billing clients. The majority of those charging an hourly rate (60%) showed total fees of \$5,000 or more. The mean (average) rate was \$145/hour, with the median at \$145/hour and the mode at \$150/hour. Eleven percent of the defendants' attorneys

⁵⁰ Caution must be used in interpreting these data. A sizable number of the cases in which \$170 was the attorneys' fee came from one attorney in one type of case.

charged \$125/hour or less, and 38% charged between \$126 and \$149. Only 19% charged \$150, and 18% charged \$170 or more.⁵¹

4. Comparison of Plaintiffs' and Defendants' Hourly Rates and Total Fees

The average rate per hour was higher for plaintiffs' attorneys who charged hourly fees (\$158/hour) than for defendants' attorneys charging by the hour (\$150/hour). The overall pay scale was lower for defendants' attorneys, about two-thirds of whom (68%) charged \$150 or less, compared to 53% of plaintiffs' attorneys with hourly fees. The percentage of plaintiffs' attorneys charging \$170/hour or more was 37%, just more than double the percentage (18%) of defendants' attorneys charging the same hourly rates (Figure 2).

Caution must be used in interpreting this information about attorneys' fees. Although the database contains information about 2,591 cases, only 818 different attorneys filed forms. A number of the attorneys filed forms in many cases. Thus, the average fee for defendants' attorneys comes out to about \$145/hour because that is the hourly rate charged by a small number of defendants' attorneys working on many similar cases (e.g., personal injury auto). Similarly, a small number of plaintiffs' attorneys charged hourly fees in a limited number of types of cases (debt, delinquent taxes, other civil), and a smaller number charged relatively high hourly rates. However, the high hourly rates translated into low amounts of attorneys' fees overall because the cases often were routine filings, and often ended in default judgment with little or no judicial participation in the case.

The story was different for total fees charged. In contrast to plaintiffs' attorneys, 52% of whom had cases with less than \$5,000 in attorneys' fees, only 41% of the defendants' attorneys showed less than \$5,000 in fees. About equal percentages (8%) of both plaintiffs' and defendants' attorneys showed fees of \$50,000 or more. About one-quarter (25%) of plaintiffs' attorneys, as compared to 31% of defendants' attorneys charged total fees between \$10,000 and \$49,999.

These differences in fee ranges, with defendants' attorneys tending to have charged more in total fees than plaintiffs' attorneys may reflect differences in the types of cases for which attorneys filed forms. A review of case type by plaintiff/defendant did show a statistically significant difference. Significantly more defendants' attorneys than plaintiffs' attorneys filed forms with the Judicial Council in tort cases. A higher proportion of plaintiffs' attorneys, particularly those charging hourly

⁵¹ In comparison to defendants' attorneys, 37% of the plaintiffs' attorneys who charged hourly fees charged \$170 or more.

rates, filed forms in debt cases and other business or other civil types of cases. In many of those cases the plaintiff tended to be a corporation or government and the defendant often was an individual. A total of 70% of the cases in which plaintiffs' attorneys charged hourly fees fell into one of these three categories. Also, in a different calculation, 69% of the plaintiffs' attorneys charging hourly rates received total fees of less than \$5,000.

5. Costs

Most (78%) of the 3,837 forms gave information about the costs of the party filing the form. In 28% of the known cases, costs were shown as ranging between \$1 and \$149. For 25% of the cases, costs fell between \$150 and \$499. In 28% of the cases, costs ranged between \$500 and \$2,499. Costs exceeded \$2,499 in only 20% of the cases in the database for which attorneys provided the information.

Costs varied significantly by type of case. For tort cases, including malpractice, personal injury and product liability, half or more of the cases had costs of \$500 or more. Employment cases fit this pattern also. A majority of all other types of cases had costs of \$499 or less. Costs also varied by judgment amount, with increasing judgment amounts directly and significantly associated with increasing costs.

Party type also appeared to be related to costs in the case. Defendants' costs appeared to be at the high end of the range (24% had costs of \$2,500 or more, compared to 17% of plaintiffs' attorneys), or the low end (16% had costs of \$1 to \$69, compared to 9% of plaintiffs' attorneys). Plaintiffs' costs tended more to the middle, with 53% of the plaintiffs in the \$150 - \$2,499 range.

D. Trials

A stated purpose of the 1997 legislation was to "reduce the amount of litigation proceeding to trial."⁵² Before looking at the characteristics of cases that did go to trial, this report provides a more general overview of percentages of cases going to trial. Table 1 shows data from the Alaska Court Systems' annual reports between the years of 1994 and 2000. Although the case types included in the court's analysis differ somewhat from the case types included in the Judicial Council database, the differences do not significantly affect this analysis. The total numbers of cases going to trial in the superior court ranged from a low of 1.9% in 1996 to a high of 3.4% in 2000.⁵³ The table shows that for each of the

⁵² *Supra*, note 8.

⁵³ The percentage of district court civil cases with jury trials has been under 1% since 1995, and is not included in this discussion.

four categories of trials, trials as a percentage of the overall caseload either were about the same or increased during the three years after the tort reform legislation passed compared to the three years before the tort reform legislation.

Parties in district court were substantially less likely to go to trial than were parties in superior court. When district court litigants did choose trial, they favored judge trials, by large margins. Parties in superior court used judge trials and jury trials with about equal frequency.

The trial rates from the court report data show that in 1997, the year of the tort reform legislation, trials increased from their earlier levels and have remained higher than previously in the years since. In superior court (probably the focus of most of the concern for tort reformers), jury trials increased in 1997 from their earlier levels, dropped a little in 1998, went up sharply in 1999, and remained high in 2000. These data suggest that the tort reform legislation did not reduce the amount of litigation going to trial in any significant way.⁵⁴

The data from the Alaska Court System are consistent with other findings about the percentages of tort cases going to trial throughout the United States. A 1996 UCLA Law Review article reviewed civil litigation patterns, and stated that “only a few percent [of civil lawsuits] are tried to a jury or a judge.”⁵⁵ The authors cite a 1995 study that showed that only 2.9% of all civil cases in both state and federal courts went to trial, and that nearly half of those were judge trials without a jury.⁵⁶ A comparison with Alaska superior court figures above suggests that Alaska trial rates have been lower than or about the same as the national civil case trial rate.

⁵⁴ Although more cases may be using ADR, this did not appear to affect the trial rates, but may have changed the types of cases going to trial. No baseline data exist against which to measure possible increases in the use of ADR, or effects on trial rates for different types of cases. The earlier discussion of alternative dispute resolution techniques did suggest that substantial percentages of cases, particularly larger cases, involved ADR at some point in the case.

⁵⁵ *Supra*, note 37, p.2.

⁵⁶ *Id.*, footnote 2, citing a draft study by Professor Theodore Eisenberg and the National Center for State Courts.



1. Characteristics of Trial Cases

The database for this report included about 127 trials overall. The 87 trials analyzed in this section of the report included both non-tort and tort cases.⁵⁷ Within this group of trials, some types of cases predominated.⁵⁸ Twenty-two percent of the cases were other civil cases, 17% were personal injury auto, 16% were personal injury other or product liability, and 14% were debt. Although almost equal percentages of bench trials and jury trials occurred, some types of cases were far more likely to go to jury trial and others to bench trial. Of the personal injury auto cases tried, attorneys tried twenty of twenty-one to juries. Five of the six malpractice trials went to juries, as did fourteen of twenty other personal injury and product liability cases. Parties choosing bench trials were much more likely to have had debt, other civil and real estate cases.⁵⁹

Bench trials typically required less time in court for the whole case than did cases that involved a jury trial. Three-quarters (75%) of bench trial cases took a total of one to five court days,⁶⁰ and none required more than twenty days. In contrast, nearly two-thirds (65%) of the cases that involved a jury trial took six or more days in court, and 35% took two to five days. Only one jury trial in this database required more than twenty days in court.⁶¹

⁵⁷ The remaining forty trials for which data were collected came from periods outside the scope of the report, or did not qualify for inclusion for other reasons.

⁵⁸ The distribution of case types within the Council's database does not necessarily match the distribution of cases within the court system for two reasons. First, forms have not been provided to the Council by all attorneys involved in closed cases, and second, for purposes of this study, the Council reviewed all trials in the time frame studied, not a random selection.

⁵⁹ These data all are consistent with Bureau of Justice Statistics Bulletins reporting findings for civil and contract cases in large counties throughout the United States. DeFrances and Litras, "Civil Trial Cases and Verdicts in Large Counties, 1996," (BJS, September 1999) and Gifford, DeFrances and Litras, "Contract Trials and Verdicts in Large Counties, 1996." (BJS, April 2000). Those studies showed, consistent with Alaska data, that malpractice and automobile personal injury cases were far more likely to go to jury trials than to be tried before a judge sitting alone. On the other hand, property and contract cases were more likely to be tried before a judge than a jury.

⁶⁰ These totals included all days spent in court during the case processing, not just trial days. Any court appearance was counted as one day in court, because of limitations on resources for more detailed calculations during the data collection. However, the counts of total days as defined here serves as a rough measure for comparison of different types of cases and trials.

⁶¹ These data were consistent with national findings that showed bench trials taking shorter times than jury trials. *Supra*, note 59, "Civil Trial Cases," p. 13. The same study showed that the median time for jury trials nationally was three days, and for bench trials, one day.

2. Trial Judgment Amounts and Attorneys' Fees

Judgment amounts for cases that went to trial may reflect either a judgment rendered by the jury or judge, or the results of post-trial actions by the parties. About 15% of the trials showed a judgment amount of zero. Bench trials were significantly less likely to result in substantial judgments than were jury trials. Nearly two-thirds (65%) of the bench trials with a judgment amount greater than zero had a judgment amount of less than \$20,000. Seventy percent of the jury trials with a judgment amount greater than zero had a judgment amount of \$20,000 or more. This finding is undoubtedly related to the differences in the types of cases tried before juries and the bench.⁶²

The analysis also considered the amounts of fees for plaintiffs' and defendants' attorneys from trials. About 40% of the plaintiffs' attorneys had cases with less than \$10,000 in attorneys' fees. All but three of these were bench trials. Fewer defendants' attorneys (29%) had less than \$10,000 in attorneys' fees for trials; all but one were bench trials. Sixty percent of the plaintiffs' attorneys and 71% of the defendants' attorneys had trials for which they showed \$10,000 or more in attorneys' fees.

3. Plaintiffs' Fee Arrangements by Type of Trial

The study provided information about how plaintiffs' fee arrangements were related to the types of cases and types of trials (nearly all defendants' attorneys were paid hourly so there was no need to analyze the data for defendants). Thirty-five plaintiffs' attorneys who sent in forms about trials had charged contingency fees and 23 had charged hourly rates. The type of fee arrangement was closely related to the type of trial. Most (77%) of the plaintiffs' attorneys who charged contingency fees went to jury trial; most who charged hourly fees (83%) went to bench trial. The four attorneys who charged an hourly fee for a jury trial had two debt, one property damage and one other civil claim - in other words, types of cases not usually associated with torts.⁶³ Of the eight plaintiffs' attorneys who charged contingency fees and chose bench trials, two were employment cases, two were real estate cases, two were personal injury other or product liability and one each were personal injury auto and property

⁶² This finding also is consistent with national findings that median awards in bench trials were substantially lower in bench trials than in jury trials. *Id.*, "Civil Trial Cases," p. 1, and "Contract Trials and Verdicts," p. 1.

⁶³ The remainder of the plaintiff bench trials, a total of 19, were hourly fees. They included seven other civil, four real estate, three property damage, two each employment and debt, and one personal injury other. Many of these are probably not tort cases.

damage.⁶⁴ Again, many of the contingent-fee bench trials could have been associated with non-tort claims.

4. Trial Judgments Compared to Other Dispositions

A major reason for studying settlement amounts is to test the hypothesis that trial verdicts affect settlement amounts. One set of experts suggests that “trials are important primarily because they influence the terms of settlement of the mass of cases that are not tried; trials cast a major part of the legal shadow within which private bargaining takes place.”⁶⁵ The apparent lack of significant differences in the amounts obtained after jury trials as compared to other means of disposition suggests that settlements may mirror jury results better than most practitioners would expect.

To compare jury, bench and other types of dispositions, the analysis looked only at the 2,793 cases for which the study had information about the judgment amounts, and compared judgment amounts awarded after trial with judgment amounts reached through other means.⁶⁶ In this analysis, 16% of all cases resulted in a zero judgment (no amount of money). Sixteen percent of the “other” judgments fell into this category, including 14% of jury decisions and 11% of bench trial verdicts. Bench verdicts appeared to be in the lower ranges of judgment amounts, with 9% of all bench trial verdicts at \$1 to \$999, compared to only 6% of other judgments and none of the jury trial verdicts. Nearly one-third (30%) of the bench trial verdicts fell into the \$1,000 to \$4,999 range, as compared to 16% of other judgments and 11% of the jury trial verdicts. At the high end, 11% of the jury trial verdicts were \$500,000 or more, compared to 3% of the “other” judgments, and none of the bench trial verdicts. The middle ranges of judgment amounts (\$5,000 to \$49,999) were very evenly distributed among all three types of verdicts.

Although the monetary amounts may appear to be slightly higher for jury trials than for settlements,⁶⁷ parties have many reasons for settling a case rather than taking it to trial. Strength of the evidence is one factor often cited by attorneys as important in decisions about whether to go to trial or settle, along

⁶⁴ The remainder of the plaintiff contingent fee trials went to a jury. The 27 contingent fee jury trials were personal injury auto (14), personal injury other/product liability (5), malpractice (3), other civil (2), employment (2), and property damage (1).

⁶⁵ UCLA LAW REVIEW, *supra* note 37, p. 4 (citation omitted).

⁶⁶ In this analysis, only those cases in which the trial verdict was the final event were counted as trials. If the case went to trial but ended with a post-trial settlement or other event, the case was categorized as “other judgment.” This analysis included the eighty trials for which final judgment amount was known.

⁶⁷ The database included too few trials to allow conclusions that were entirely statistically valid. The analysis did suggest that the presence or absence of trial was probably not the most important factor in determining the size of the judgment in the case.

with Rule 82 attorneys' fees and the vigor with which each party holds to its position.⁶⁸ Despite some differences, judgment amounts in tort verdict cases and settlement amounts in this database resembled each other strongly. The similarities supported a hypothesis that factors other than the value of the case were important in parties' decisions about whether to go to trial. In many cases, parties would probably not obtain a better judgment by going to trial than by settling.

The slightly higher amounts awarded after trial may suggest that as the stakes increased, the value of going to trial increased. However, we did not have an adequate database or comparison data to study whether the increased jury verdict awards offset the increased time and costs required to actually try a case. Also, a settlement is a guaranteed award, free from the risks of trial and post-judgment actions, making it more attractive in many situations.⁶⁹

⁶⁸ See in general, *Alaska's English Rule: Attorney's Fee Shifting in Civil Cases*, Alaska Judicial Council, 1995, Chapter 7, pp. 99-123 for a discussion of factors attorneys consider in deciding whether to try a case or settle it. See also *UCLA LAW REVIEW*, *supra* note 37, p. 4, "[T]hey [tried cases] seem to be selected because of unusual, rather than common, features such as high stakes, extreme uncertainty about the outcome, and reputational stakes of the parties" (citation omitted).

⁶⁹ Some experts cite additional reasons for preferring settlement, including scarcity of judges, and a preference for party control of the evidence. *Id.*, *UCLA LAW REVIEW*, note 37, p. 3.

Chapter III

Conclusions and Recommendations

The report analyzed characteristics of selected types of civil cases, for those cases reported to the Council from June 1, 1999 through December 1, 2000 and for a selection of cases reviewed using court case files.

A. Findings

1. New follow up methods used by the Council to encourage attorneys to return forms may have contributed to the higher percentage of forms being returned as required by the legislation. However, forms still are filed for fewer than half of the required cases, even with a follow-up letter from the Council (p. 7).
2. Types of cases in the database included personal injury (43%), malpractice (3%), property damage (7%), debt (17%), other civil and business disputes (16%), and smaller numbers of other types of cases (p. 10).
3. About 60% of the cases with judgment amounts of \$1 or more were torts and 40% were non-torts (p. 16).
4. The majority of cases came from Anchorage (62%), then Fairbanks (14%) and smaller percentages from other communities. These percentages were relatively close in most communities to the percentages of comparable types of cases filed in the state courts (p. 10).
5. Time to disposition varied by the types of cases and amounts of judgments, with larger cases and tort cases typically requiring more than 361 days to disposition. Debt and delinquent taxes cases were handled within the time standards adopted by the supreme court in February 2000 (75% of cases disposed of in 365 days or less) (p. 12-13).
6. In 58% of the court case files reviewed, the parties did not appear in court at all, although judges may have spent significant off-bench time on the case. In 5% of the cases, parties appeared in court on six or more different days (p. 13).
7. Most cases (66%) ended with a settlement. Eighteen percent were dismissed and 16% ended with a default, dispositive motion or other judgment (p. 12).

8. Attorneys used alternative dispute resolution methods, particularly mediation and settlement conferences more frequently in larger cases, and in tort cases, than in smaller and non-tort cases. Arbitration was used very infrequently (p. 14).
9. Defendants' attorneys were more likely to have used alternative dispute resolution than were plaintiffs' attorneys except for the largest cases. Defendants' attorneys were more likely to have used early neutral evaluation and settlement conferences; plaintiffs' attorneys were more likely to report having used mediation (p. 15).
10. For 20% of the cases, the judgment amount was zero, or the attorney did not provide information about the judgment amount. Seventy-five cases of 2,951 cases had judgment amounts of \$500,000 or more. Fifty-six percent of the cases involved amounts less than \$20,000; 75% involved amounts less than \$50,000 (pp. 14 -15).
11. Forty-four percent of the non-tort cases had small judgment amounts as compared to 13% of the tort cases. At the upper end, 4% of the tort cases had judgments of \$500,000 or more as compared to 2% of the non-tort cases (p. 16).
12. Personal injury auto (78%) and personal injury premises (76%) cases usually involved liability insurance. In 43% of personal injury "other" and product liability cases, and 40% of malpractice cases, insurance covered the judgment. Less than one-quarter of other types of cases were insured (pp. 16 - 17).
13. In the entire database of 2,951 cases, including 83 trials, punitive damages were awarded in only eight cases. One award was statutorily required; the others followed trials. Punitive damages were requested in 17% of cases (p. 17).
14. Typical hourly fees for plaintiffs' attorneys ranged from \$126 to \$150, with a mean fee of \$158. For defendants' attorneys, the typical fees fell in the same range, but with a mean fee of \$145/hour (pp.21 - 22).
15. About 50% of plaintiffs' attorneys charged contingency fees, usually 30% to 33% of the judgment amount (p. 19).
16. Costs exceeded \$2,499 in only 20% of the cases for which information was available (p. 23).

17. A stated purpose of the legislation, to reduce the amount of litigation going to trial, did not appear to have occurred. Data from court system reports show that trial rates are about the same or higher after the passage of the legislation in 1997 as in the three years before the legislation. Trial rates were 1.9% in 1996 and 3.4% in 2000 (p. 24).
18. Trial rates in Alaska appear to be similar to the national average of 2.9% (p. 24).
19. Tort cases went to jury trials much more frequently than did other types of civil cases. Overall, in this database however, about equal numbers of civil cases were tried before a judge and before a jury (p. 25).
20. Bench trials tended to have smaller judgment amounts than jury trials, which may be linked to the differences in the types of cases that parties take to bench trials rather than to jury trials (p. 26).

B. Recommendations

1. The Legislature should review this report carefully to assess whether the information provided in the report suggests changes to the tort reform (or other) legislation that led to the reporting requirement, and whether the report fulfills the Legislature's objectives in enacting AS 09.68.130.

This report is the result of a legislative requirement imposed by AS 09.68.130. The legislature should review the information in the report carefully to consider whether changes to the "tort reform" legislation adopted with the reporting requirement are needed. This policy review is appropriate for the legislature rather than the Council. The legislature also should consider whether the Council's report meets legislative expectations in enacting the reporting requirement.

2. The Legislature should eliminate the automatic reporting of civil case information and substitute a requirement that information must be provided in response to a specific request by the Judicial Council.

To provide a more targeted and less burdensome method of compiling information about the compromise or other resolution of civil cases, the Judicial Council recommends that the legislature eliminate the requirement for continual submission of data about civil cases by attorneys and litigants and substitute a requirement for periodic data collection and evaluation by the Judicial Council.

General language for a revised statute is included in Appendix H. The proposed statute would require that the Council periodically select cases for study, then contact attorneys to submit data. It would not require attorneys or litigants to submit data unless the Council specifically requested information on a specific case. The new statute would describe the general types of information that the Council would collect, the time frame in which attorneys would be required to submit the requested information to the Council, and other general procedures. Information collected from attorneys would include (but not be limited to) characteristics of the case and the parties, case processing information about the court civil justice process, information about the relief sought by each party, information about the settlement or judgment, attorneys' fees and costs, and information about insurance coverage and contribution. The revised statute would emphasize the confidentiality of all information provided to the Council and the fact that it would be used only for statistical research.

This revised process for accumulating information about civil case resolutions would permit the legislature to request information about only the types of cases for which it wanted detailed data. For example, in the Council's last report, it recommended that several types of cases should be excluded from the data collection, including administrative appeals, forfeitures, and forcible entry and detainer (FED) cases. After the present analysis, the Council found that tax foreclosures, delinquent tax cases and quiet title actions that do not involve payment of money also did not seem relevant to the legislative purpose for this statute. The proposed revisions would significantly reduce the burden on attorneys and parties because the attorneys and parties would no longer be required to file a case resolution form for every civil case that qualified. They would only be required to provide the information when the Judicial Council requested it, and only for those cases included in the Council's request.

A second benefit of the revision would be that the Council could request some information not available under the present legislation which would lead to a better understanding of civil case resolutions. For example, the current legislation does not require information about subrogation in cases that involve insurance companies. Data on subrogation would give a more accurate and comprehensive picture of how the parties to litigation fare (as distinct from the attorneys and insurance companies). Information about structured settlements also would improve knowledge about civil cases. The Council would not need to collect information that neither the legislature nor the Council believes would lead to a clearer understanding of civil case processes.

3. In the absence of elimination of the automatic reporting requirement discussed above, the Council, Court System and Legislature should make changes to current procedures, rules and legislation to make the reporting of civil case information more useful and less burdensome.

a) The Council should modify the form that attorneys are required to use to submit information.

The revised form should be similar to the one included in Appendix F. The revised form improves the appearance and ease of use of the form and reduces the types of data to be collected.

b) The Legislature should exclude additional routine types of cases or, alternatively, limit reporting to cases alleging tortious conduct. (Amendment is not necessary if recommendation 2 is adopted.)

Types of cases such as delinquent sales and other local taxes, tax foreclosures, and quiet title actions probably should be excluded from the reporting requirement. Alternatively, the legislature could require submission of civil case information only for cases involving allegations of tortious conduct.

c) Court rules should be amended to be internally and externally consistent.

If the automatic reporting requirement is not eliminated as proposed above, court rules should be amended as detailed in Appendix G so that they are consistent with each other and with the reporting statute.

d) Submission of data in appellate cases should be clarified.

Although court rules require that attorneys and parties file case resolution forms for closed appealed cases in addition to closed trial cases, none have been filed with the Judicial Council. The Council recommends that the legislature either drop this requirement, or if it believes that the information would be helpful, that the court and Council take steps to educate court clerks, staff and Bar members about the requirement.

4. The court should use data from this report and from other sources to ensure cases are handled within the court's time standards.

The Judicial Council's findings suggest that many of the court's cases require a longer time to disposition than envisioned by the standards adopted by the court in February 2000. The Council recommends that the court use the data provided by this study and other data generated from the court's case management system to track progress toward handling cases within the time standards.

5. The Legislature and Court System should encourage the use of alternative dispute resolution.

Given the information from this study that suggests that a significant number of parties use alternative methods of dispute resolution, particularly for larger and more complex cases, the Council recommends that the legislature and court consider the implications of encouraging this trend. The Council also recommends that the discussion about ways to do this include thorough discussion of the public policy ends served by increased use of ADR and the countervailing reasons to structure ADR use carefully. Reasons to use ADR include conservation of scarce court resources and solutions that are more suitable to the parties involved. Reasons to restrict use of ADR or structure its use carefully include the desire for public awareness of the ways in which disputes are settled, and the need to discourage the establishment of separate and unequal justice systems for parties with different levels of resources.

The two major types of ADR widely used in Alaska are settlement conferences for mid-range cases, and mediation for mid-range and larger cases. Early neutral evaluation appears to be useful for defendants in personal injury auto cases, and the court and legislature may want to examine reasons why these parties use it more than parties in other types of cases, to see whether it can be adapted to suit other types of cases. The court and legislature also may wish to examine the reasons why parties choose settlement conferences and mediation in particular types of cases to see whether these mechanisms can be effectively used in other settings.

Appendix A

Alaska Statute 09.68.130

(C) a stop payment order issued without cause;

(3) "written demand" means a written notice to the issuer of a check personally delivered or sent by first class mail to the address shown on the dishonored check, advising the issuer that the check has been dishonored and explaining the civil penalties set out in this section. (§ 1 ch 113 SLA 1984)

Revisor's notes. — Formerly AS 09.65.115. Renumbered in 1994.

Sec. 09.68.120. Definition of death. An individual is considered dead if, in the opinion of a physician licensed or exempt from licensing under AS 08.64 or a registered nurse authorized to pronounce death under AS 08.68.395, based on acceptable medical standards, or in the opinion of a mobile intensive care paramedic, physician assistant, or emergency medical technician authorized to pronounce death based on the medical standards in AS 18.08.089, the individual has sustained irreversible cessation of circulatory and respiratory functions, or irreversible cessation of all functions of the entire brain, including the brain stem. Death may be pronounced in this circumstance before artificial means of maintaining respiratory and cardiac function are terminated. (§ 1 ch 8 SLA 1974; am § 1 ch 42 SLA 1984; am § 2 ch 6 SLA 1991; am § 1 ch 53 SLA 1995)

Revisor's notes. — Formerly AS 09.65.120. Renumbered in 1994.

Effect of amendments. — The 1991 amendment, effective August 27, 1991, inserted "or a registered nurse authorized to pronounce death under AS 08.68.395" in the first sentence.

The 1995 amendment, effective August 25, 1995, inserted ", or in the opinion of a mobile intensive care paramedic, physician assistant, or emergency medical technician authorized to pronounce death based on the medical standards in AS 18.08.089," near the middle of the section.

Sec. 09.68.130. Collection of settlement information. (a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other resolution of all civil litigation. The information shall be collected on a form developed by the council for that purpose and must include

- (1) the case name and file number;
- (2) a general description of the claims being settled;
- (3) if the case is resolved by way of settlement,
 - (A) the gross dollar amount of the settlement;
 - (B) to whom the settlement was paid;
 - (C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before disbursement to the claimant;
 - (D) the net amount actually disbursed to the claimant;
 - (E) the total costs and attorney fees paid by or owed by all parties; and
 - (F) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid;
- (4) if the case is resolved by dismissal, summary judgment, trial, or otherwise,
 - (A) the gross dollar amount of the judgment;
 - (B) the amount of attorney fees awarded and to which party;
 - (C) the amount of costs awarded and to which party;
 - (D) the net amount, after deduction of (B) and (C) of this paragraph, for which the prevailing party has judgment;
 - (E) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant;
 - (F) the total costs and attorney fees paid by defending parties; and

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

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

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

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under AS 47.12;
- (4) domestic violence protective orders under AS 18.66.100 — 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040;
- (7) forcible entry and detainer cases;
- (8) administrative appeals;
- (9) motor vehicle impound or forfeiture actions under municipal ordinance.

(d) A party to a civil case, except a civil case described in (c) of this section, or, if the party is represented by an attorney, the party's attorney shall submit the information described in (a) of this section to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council. (§ 32 ch 26 SLA 1997; am §§ 1, 2 ch 14 SLA 1999)

Cross references. — For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

For provisions relating to the effect of subsections (c) and (d) on Civil Rule 41, Alaska Rules of Civil Procedure, and Appellate Rule 511, Alaska Rules of Appellate Procedure, see § 3, ch. 14, SLA 1999 in the 1999 Temporary and Special Acts.

Effect of amendments. — The 1999 amendment, effective May 7, 1999, inserted "AS" near the end of

paragraph (c)(3), added paragraphs (c)(7) to (c)(9), and added subsection (d).

Effective dates. — Section 32, ch. 26, SLA 1997, which enacted this section, took effect on August 7, 1997.

Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

Section 4, ch. 14, SLA 1999 provides that the 1999 amendment of subsection (c) and the addition of subsection (d), apply "to a compromise or other resolution of civil litigation that occurs on or after May 7, 1999."

Chapter 70. General Provisions.

Section

10. Applicability of title
20. Short title

Sec. 09.70.010. Applicability of title. This title governs all proceedings in actions brought after January 1, 1963, and all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event, the laws in effect before January 1, 1963, apply. (§ 31.03 ch 101 SLA 1962)

NOTES TO DECISIONS

Quoted in State, Dep't of Revenue ex rel. Gerke v. Gerke, 942 P.2d 423 (Alaska 1997).

Cited in Turkington v. City of Kachemak, 380 P.2d 593 (Alaska 1963).

Appendix B

**1999 Legislation - House Bill 9
1997 Legislation - Legislative Intent**

HOUSE BILL NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PORTER, Kertula, Croft, Berkowitz, Cowdery, Smalley, Green, Bunde,
Therriault, Murkowski

Introduced: 1/19/99
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

5 * Section I. AS 09.68.130(c) is amended to read:

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

8 (1) divorce and dissolution;
9 (2) adoption, custody, support, visitation, and emancipation of children;
10 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
11 cases under AS 47.12;

12 (4) domestic violence protective orders under AS 18.66.100 -
13 18.66.180;

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

HB0009a

-1-

HB 9

New Text Underlined ~~{DELETED TEXT BRACKETED}~~

- 1 (6) small claims under AS 22.15.040;
- 2 (7) forcible entry and detainer cases;
- 3 (8) administrative appeals;
- 4 (9) motor vehicle impound or forfeiture actions under municipal
- 5 ordinance.
- 6 * Sec. 2. AS 09.68.130 is amended by adding a new subsection to read:
 - 7 (d) A party to a civil case, except a civil case described in (c) of this section,
 - 8 or, if the party is represented by an attorney, the party's attorney shall submit the
 - 9 information described in (a) of this section to the Alaska Judicial Council. The
 - 10 information must be submitted within 30 days after the case is finally resolved as to
 - 11 that party and on a form specified by the Alaska Judicial Council.
- 12 * Sec. 3. AS 09.68.130(c), as amended in sec. 1 of this Act, and AS 09.68.130(d), added
- 13 by sec. 2 of this Act, have the effect of amending Rule 41(a)(3), Alaska Rules of Civil
- 14 Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure, by limiting those civil
- 15 actions subject to AS 09.68.130(a) and by specifying the persons required to provide the
- 16 information.
- 17 * Sec. 4. APPLICABILITY. This Act applies to a compromise or other resolution of civil
- 18 litigation that occurs on or after the effective date of this Act.
- 19 * Sec. 5. This Act takes effect immediately under AS 01 10.070(c).

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

3 (3) encourage individual savings and economic growth by fostering an
4 environment likely to control the increase of liability insurance rates to individuals and
5 businesses resulting in a savings to the state, municipalities, and private businesses that are
6 self-insured;

7 (4) encourage the traditionally recognized Alaska values of self-reliance and
8 independence by underscoring the need for personal responsibility in making choices and
9 personal accountability for the consequences of those choices;

10 (5) alleviate the high cost of malpractice insurance premiums that discourage
11 physicians, architects, engineers, attorneys, and other professionals from rendering needed
12 services to the public;

13 (6) ensure that hospitals that comply with the disclosure requirements set out
14 in this Act are not liable for the negligence of emergency room physicians who are acting as
15 independent contractors; to this extent, this Act is intended to overrule Jackson v. Powers, 743
16 P.2d 1376 (Alaska 1987);

17 (7) ensure that one of several tortfeasors is not held responsible for the
18 negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction
19 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

20 (8) enact a statute of repose that meets the tests set out in Turner Construction
21 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

22 (9) ensure that in actions involving the fault of more than one person, the fault
23 of each claimant, defendant, third-party defendant, person who has been released from
24 liability, or other person responsible for the damages and available as a litigant be determined
25 and awards be allocated in accordance with the fault of each, thereby modifying Benner v.
26 Wichman, 874 P.2d 949 (Alaska 1994);

27 (10) reduce the amount of litigation proceeding to trial by modifying the
28 allocation of attorney fees and court costs based on the offer of judgment and the final court
29 award, thereby providing a financial incentive to both parties to settle the dispute; and

30 (11) ensure that this Act does not apply to or in any way have an effect on
31 existing litigation or a civil cause of action that accrues before the effective date of this Act;

Appendix C

**1999 Letter to Bar Members
Describing Changes**



alaska judicial council

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CHAIRMAN EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

May 25, 1999

Dear Member of the Alaska Bar Association:

In 1997 the Legislature directed the Alaska Judicial Council to collect and evaluate information relating to the compromise or other resolution of most civil litigation. See AS 9.68.130. I have attached a revised "Information About the Resolution of Civil Cases" form that incorporates changes which the Legislature made to this statute this year. Chapter 14, SLA 1999. The recent legislation:

1. added three types of cases to the list of case types excluded from the reporting requirement (see attached form for the cases for which the form need not be filed);
2. added an affirmative duty for attorneys and pro se parties to file the form in all applicable cases within 30 days after the case is finally resolved; and
3. specified that the reporting requirement applies to all cases resolved after the act's effective date of May 7, 1999 (not just to those cases accruing on or after August 7, 1997).

The civil case information received by the Judicial Council is confidential by law. The Council will report the information in a manner that protects the identity of particular cases or parties.

We hope to allow submission of the civil case information on our Internet site (www.ajc.state.ak.us) by August. The form can be downloaded from the site now. Please feel free to call me or Susanne Di Pietro with questions or comments about the civil case data reporting form.

Very truly yours,

A handwritten signature in black ink that reads "William T. Cotton".

William T. Cotton
Executive Director

Enclosure: Civil Case Data Form

Appendix D

Alaska Court Jury Verdicts 1985 - 1995

*(Appendix C, Report of the Governor's
Advisory Task Force on Civil Justice
Reform, Office of the Governor, 1996)*



alaska judicial council

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MEMORANDUM

TO: Governor's Task Force on Civil Justice Reform

FROM: Susanne Di Pietro^{SDD} and Teri Carns

DATE: December 3, 1996

RE: Analysis of Case File Data: Alaska Tort Jury Verdicts, 1985-1995

The Task Force asked the Judicial Council to gather data on jury verdicts in tort cases from five state court locations for the previous decade. Because of the Task Force's accelerated schedule and limited research budget, the Council concentrated on the subjects most relevant to the Task Force's work. The study was not intended to be comprehensive, although it should give a reasonably accurate snapshot of jury awards in tort trials in Alaska in the past ten years. This memo reports the data and gives a general analysis of the results.¹ Task Force members interested in additional analysis may contact Judicial Council staff.

I. Methodology

The Judicial Council asked the Alaska Court System's Office of Technical Operations to identify all cases that had gone to jury trial within the past ten years at each of five court locations. Technical Operations gave the Council two different lists of civil cases with jury

¹ Available upon request from the Judicial Council are copies of the frequencies and cross-tabulations upon which the following analysis is based.

verdicts.² After reconciling the lists as much as possible, the Council's researcher looked at each case that the court system had identified as containing a jury verdict.³ After discarding non-tort cases and cases that were still open, the Council was left with a data base consisting of 233 closed, tort jury verdict cases: 157 from Anchorage,⁴ 57 from Fairbanks, 6 from Bethel and 13 from Juneau.⁵ Because the Task Force was particularly interested in large jury verdicts, Council staff also informally polled a number of experienced litigation attorneys on large, tort jury verdicts that they could remember in the past ten years.⁶

Council staff designed a data base using Microsoft Access software to record information about the cases. The Council's researcher took the data from three sources: the complaint, the jury verdict, and the final judgment form. In addition, the researcher recorded information about post-trial motions, whether the case was appealed, and the outcome of the appeal. Council staff then transferred the data base containing the 233 cases into SPSS for Windows (a statistical analysis software program). All analyses were performed with SPSS.

II. Limitations of this Study

As discussed above, this study was not intended to be a comprehensive analysis of tort litigation in Alaska. First, the data base probably does not contain all tort jury verdict cases within the past decade, because the court system's lists of jury verdict cases probably were not complete. Some cases in some communities did not appear on the list. Also, because of the way the court system archives old cases, time and money did not permit the Council's researcher to

² The trials came from superior court twelve-person and six-person jury panels, and from district court six-person jury panels. About 87% of the cases were superior court matters and 13% were district court.

³ The Council's researcher, who lives in Anchorage, traveled to Fairbanks to code cases from that location. The Attorney General's office arranged for an attorney and a paralegal, respectively, to code the cases from Bethel and Juneau. The Nome clerk of court reported the two cases from that location.

⁴ The 157 Anchorage cases came from a pool of 424 cases identified by the court as potentially containing a civil jury verdict. The Council's researcher examined and discarded 157 other Anchorage jury verdicts that were not tort cases or did not qualify for another reason.

⁵ In addition, the Council researched jury verdicts in Nome in the last ten years. The court's records showed four civil trials, two of which did not qualify for the study (one was still on appeal and one was a judge-tried case). Time constraints prevented including the remaining two Nome cases in the data base; however, we discuss them in this memo where relevant.

⁶ Based on the attorneys' responses, staff found one case (from Bethel) that was missing from the court system's master lists. Other cases also may be missing from the data base.

review all of the older Anchorage cases. On balance, however, Judicial Council staff believe that the data base offers a reasonably accurate assessment of tort jury trial cases in the five locations.

III. Findings

This section discusses the Council's findings about the 233 tort jury verdict cases. The Council recorded information from the case files about a number of substantive issues, including what types of tort cases went to trial, who the parties were, which party prevailed, and what types and amounts of damages were awarded. The Council also recorded information about a number of procedural issues, including how often judges awarded costs and attorney's fees, how long cases took to resolve, how often cases were appealed, and how often appellate decisions changed the jury's verdict.

A. Case Types

The study grouped cases into twelve substantive categories. Over a third (37%) of the tort cases that went to jury trial in the last decade were automobile accident cases. The second most common type of case was premises liability (17%). The third most common was malpractice (13%).⁷ Other types of cases, in descending order of frequency, included employment (7%, or 17 cases), general injury (7%, or 17 cases), general property damage (7%, or 16 cases), intentional torts (5%, or 12 cases) and product liability (3%, or 7 cases). The Council also found a handful of insurance bad faith cases (about 1%), and two common carrier cases (less than 1%).

B. Parties

Most cases were brought by an individual plaintiff or a family. In only six per cent of cases was a plaintiff an organization (organizations included businesses and state and municipal governments). In contrast, defendants often were organizations. In 63% of the cases, the plaintiff named at least one organization as a defendant. Individuals also appeared as defendants in many cases. In 58% of the cases, the plaintiff named at least one individual (excluding professionals) as a defendant. Thirty percent of all individual defendants were adult males, and fourteen per cent were adult females. Plaintiffs named more than one defendant in slightly fewer than half of all cases (44%).

⁷ Most of the malpractice cases were medical malpractice. Of the thirty-one malpractice cases in the data base, twenty-six (84%) were medical malpractice.

C. Liability/Outcomes

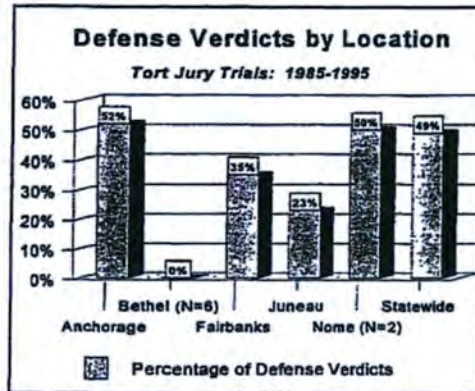


Chart 1
Alaska Judicial Council Jury Verdict Study 1996

Overall, plaintiffs and defendants were about equally likely to prevail at trial. Juries returned plaintiff verdicts in just over half (51%) of all tort trials statewide. In an additional four per cent of the cases (N=10), both the plaintiff and the defendant received awards. Further analysis revealed that plaintiffs' chances of prevailing varied by court location and type of case.

Chart 1 graphically depicts the differences in defense verdicts by location. Bethel was the most plaintiff-friendly forum, with all six jury verdicts

going against defendants.⁸ Next came Juneau, where juries returned plaintiff verdicts in 77% of the cases examined. In Fairbanks, 56% of verdicts went to plaintiffs. In Anchorage juries returned verdicts for plaintiffs 45% of the time.⁹ In the two Nome cases, one was a defense verdict and one was for the plaintiff.

Analyzed by case type, plaintiffs were most likely to prevail in automobile accident trials (66% of the time) and general property (56% of the time). Defendants were most likely to prevail in medical malpractice cases (81% of the time) and premises liability (59% of the time). Outcomes in insurance bad faith, employment and general injury cases appeared to have split about evenly between plaintiffs and defendants. In sum, only 118 of our total of 233 cases involved jury verdicts for plaintiffs.

⁸ Readers should be very careful about drawing conclusions from the Bethel data, because interview information suggested that defendants prevailed in other Bethel jury cases that were not included in this study.

⁹ In about three percent of the cases, juries awarded some to both parties.

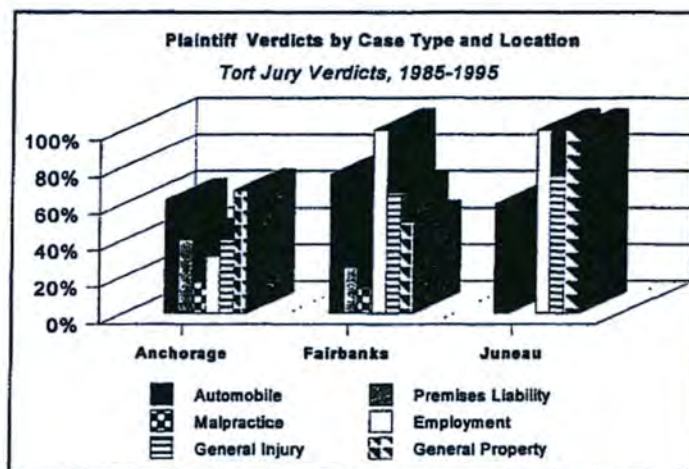


Chart 2
Alaska Judicial Council Jury Verdict Study 1996

Chart 2 depicts the percentages of verdicts juries returned for plaintiffs, broken down by court location and type of case.¹⁰ Consistent with the statewide trends discussed above, plaintiffs in automobile cases prevailed more often in Fairbanks than in Anchorage. However, Juneau plaintiffs bringing automobile accident cases prevailed slightly less often (60% of the time) than did Fairbanks plaintiffs (76% of the time).

D. Allocation of Fault

Juries did not often allocate fault to plaintiffs, and where they did allocate fault, they did not tend to view plaintiffs as contributing substantially to their own injuries. Juries allocated fault in 12% of the cases; in only six of those cases (14%) did they assign half or more of the fault to the plaintiff.

¹⁰ Bethel and Nome had too few cases to be included in this chart. This chart does not include cases in which the jury awarded some amount to both parties.

E. Damages

The study distinguished between economic, non-economic and punitive damages, and between amounts awarded by the jury and amounts set out in the final judgment. This section describes the types and amounts of damages awarded.



Chart 3
Alaska Judicial Council Jury Verdict Study 1996

Of the 117 cases in which juries awarded damages, the majority (61%) contained both economic and non-economic awards. About a third (32%) of the cases contained only economic damage awards. Only two cases (2%) contained a non-economic damage award without any other kind of damage award.¹²

1. Types of Damages. The study examined fifteen different types of damages including economic, non-economic and punitive.¹¹ Economic damages included lost wages, medical bills and property damage. Non-economic damages included pain and suffering, emotional distress, loss of consortium and loss of enjoyment. Damages also were divided by whether they were for past or future losses.



Chart 4
Alaska Judicial Council Jury Verdict Study 1996

¹¹ This section examines the 358 separate damage awards found in 118 cases. Note that more than one type of damage could have been awarded in a single case.

¹² Six percent of the cases (N=7) contained an economic damage award and a punitive damage award, but no non-economic damage award.



Chart 5
 Alaska Judicial Council Jury Verdict Study 1996

The study also counted up the total number of damage awards from all of the cases in which juries awarded damages. Of the 358 damage awards recorded, economic damages were more common than non-economic damages. Chart 4 shows that well over half (60%) of all damage awards were to compensate for economic losses, while 35% were for non-economic losses and 5% were punitive damage awards.

Examining both economic and non-economic damages, the study measured how often juries made awards for losses in the future, as opposed to losses already suffered. Future damages included future lost wages, future medical expenses, future pain and suffering, and future loss of enjoyment. The data showed that juries did not often make awards for future damages. For example, of the 358 damage awards recorded, only twenty were for future medical expenses (about 6% of all damage awards), twenty-three were for future pain and suffering (about 6% of all damage awards) and one was for future loss of enjoyment (0.3% of all damage awards).

Within the category of economic damages, the study examined awards made for six specific types of losses (see Chart 5). The most commonly awarded economic damages included past wages and past medical expenses. Chart 5 shows the details of the economic damage awards.

The study also examined awards made for eight specific categories of non-economic losses (not including punitive damages). Keeping in mind that non-economic damage awards constituted only about a third of all damage awards, the most commonly awarded non-economic damage was for past pain and suffering. Chart 6 shows the details of the non-economic damage awards.

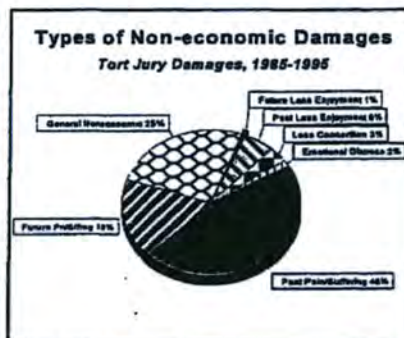


Chart 6
 Alaska Judicial Council Jury Verdict Study 1996

Chart 6 shows the details of the non-economic damage awards.

Further analysis revealed that juries seldom made awards for certain kinds of non-economic losses. Jury awards for loss of consortium constituted only about 3% of all non-economic damages (1% of all damage awards). Awards for past loss of enjoyment constituted about 6% of the non-economic damage awards (about 2% of all damage awards). Awards for emotional distress constituted about 2% of non-economic damage awards (less than 1% of all damage awards).

2. Amounts of Damage Awards. Many jury verdicts were relatively small. In fact, over half (58%) of all superior court jury verdicts that contained a damage award were less than \$50,000 (the jurisdictional amount for superior court). About a third of the superior court verdicts were less than \$10,000. Overall, about 61% of all jury verdicts awarded damages under \$20,000.

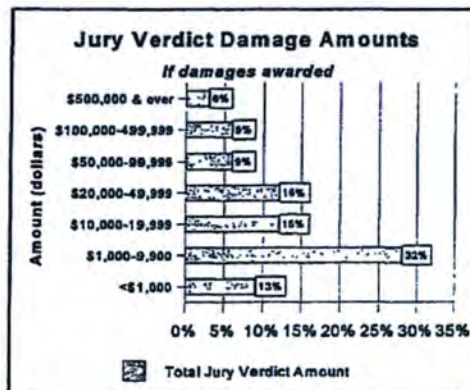


Chart 6
Alaska Judicial Council Jury Verdict Study 1996

A relatively small percentage of damage awards were large. Six percent of all damage awards exceeded \$500,000, and an additional nine percent fell between \$100,000 and \$500,000. Chart 6 summarizes the overall amounts of damage awards for all cases in which damages were awarded.¹³

Some damage amounts varied by location and case type. For example, jury awards in Fairbanks automobile accident cases were somewhat smaller than those in Anchorage auto cases.¹⁴

3. Punitive Damages. Plaintiffs requested punitive damages 27% of the time; however, juries awarded them in only about 6% of the cases (17 punitive damage awards were made in 15 cases).¹⁵ Table 1 on the next page shows that while a few punitive damage awards were

¹³ The chart does not show whether plaintiffs or defendants received the awards.

¹⁴ One explanation for the discrepancy is that a higher proportion of Fairbanks automobile cases were filed in district rather than superior court.

¹⁵ In one case, the jury made small awards to both the plaintiff and the defendant. In the other case, the jury gave the plaintiff one punitive damage award on each of two separate claims.

very large, about half were under \$60,000. Four of the cases in which juries made punitive awards involved intentional torts (for example, tortious interference with business contracts). Juries also awarded punitive damages in two employment cases, two non-auto personal injury cases, one property damage case, one insurance bad faith claim and one automobile accident involving a drunken driver. The chart does not show whether the awards were paid, as that information is not available from court records.

Punitive Damage Awards: Anchorage, Bethel, Fairbanks, Juneau, Nome 1985-1995				
Case Type	Jury Compensatory Award (does not include fault allocation)	Jury Punitive Award	Appeal?	Appeal Outcome
Intentional Tort	\$3,025	\$250 and \$100 (one to each)	No	
Property	\$8,338	\$3,000	No	
Intentional Tort	\$4,387	\$5,000	No	
Insurance Bad Faith	\$1,001,087	\$10,000	Yes	Punitive damages reversed
Automobile	\$575	\$20,000	No	
Intentional Tort	\$87,934	\$20,000	No	
Intentional Tort	\$17,000	\$60,000	No	
Employment	\$112,273	\$132,000	Yes	Settled
General Injury	\$692,282	\$150,000	Yes	Settled
Personal Injury	\$738,765	\$150,000	Yes	Settled
Intentional Tort	Pl. won \$17,300 against def. 1. Def. 2 won \$23,500 against pl.	\$250,000	No	
Product Liability	\$3,004,500	\$500,000	No	
Employment/defamation	\$303,604	\$500,000	No	
Insurance Bad Faith (automobile)	\$18,008	\$1,200,000	Yes	Punitive damages reversed
Intentional Tort (business dispute)	\$9,473,770	\$25,300,000	Yes	Settled

Table 1
 Alaska Judicial Council Jury Verdict Study 1996

F. Costs and Fees

The study collected limited information about costs and attorney's fees. Because cases sometimes settled and were dismissed before judgment or before entry of costs and attorney's fees, some cases included in the study lacked cost and fee awards. Normally, judges award costs and attorney's fees to prevailing parties after trial based on guidelines set out in court rules and statutes.

1. *Costs.* The awarding of costs is governed by Alaska Rule of Civil Procedure 79. The party entitled to costs must request them within ten days or forfeit the right to recover them. Items allowed to the prevailing party as costs include the expense of taking depositions and producing exhibits, the expense of service, filing fees, fees for transcripts, computerized research, and other expenses necessarily incurred.

The Council found a cost award in about half (54%) of the cases studied. About 16% of all cost awards were \$1,000 or less. About 42% of cost awards fell between \$1,000 and \$5,000, and another 24% fell between \$10,000 and \$58,000. No cost awards exceeded \$58,000.

2. *Attorney's Fees.* The awarding of attorney's fees is governed by Alaska Rule of Civil Procedure 82 and Alaska Statute § 9.60.010. The statute authorizes the supreme court to determine what attorney's fees, if any, may be awarded to a prevailing party in a civil action. The court rule sets out a schedule for calculating fee awards based on whether the plaintiff or the defendant prevailed. The prevailing party is not entitled to be reimbursed for all its attorney's fees, except in extraordinary circumstances. Thus, the fee award amounts reported below probably represent only a fraction of the amounts spent by parties on their attorneys.¹⁶

The Judicial Council found an attorneys' fee award in about 64% of the cases in this study.¹⁷ The largest group of fee awards fell between \$15,000 and \$50,000 (about 29% of fee awards). About 23% of fee awards fell between \$4,000 and \$10,000. Nineteen percent of the fee awards were under \$4,000, and 11% fell between \$10,000 and \$15,000. A few fee awards were large: 17% fell between \$50,000 and \$166,000, and the largest award exceeded \$166,199.

¹⁶ For more information about attorney's fee awards in state and federal civil cases in Anchorage, see the Judicial Council's report: *ALASKA'S ENGLISH RULE: ATTORNEY'S FEE SHIFTING IN CIVIL CASES* (October, 1995) at 91-97.

¹⁷ Fee awards were made to both plaintiffs and defendants.

G. Offers of Judgment

Alaska Civil Rule 68 and Alaska Statute § 09.30.065 control offers of judgment. An unaccepted offer of judgment made pursuant to Rule 68 in effect changes the time and conditions under which a party can become the prevailing party for purposes of attorney's fee awards.

The Council found evidence of offers of judgment in 53 cases (32% of the cases studied); however, readers should be cautious when interpreting this finding. First, the 32% figure under reports the number of offers which appeared in the cases reviewed, because this study did not systematically search each file for offers of judgment. Second, the 32% figure under reports the frequency with which offers of judgment were made in jury trial cases, because it includes only those offers that were filed with the court.¹⁸ Of the offers of judgment found in the case files, the smallest was \$1,000 and the largest was \$575,000. About half (53%) of the offers were \$10,000 or less. Ten of the offers (19%) were \$100,000 or more.

H. Appeals

The Judicial Council found evidence of an appeal in only a quarter of all the cases (N=58), although six out of the fifteen cases involving punitive damage awards were appealed. Of the fifty-eight cases in which an appeal was filed, only twenty completed the entire appeal process; the remaining 67% were settled or otherwise dismissed before the supreme court rendered an opinion. Of the twenty supreme court rulings, only four (20%) changed the amount of the jury verdict. Sixteen of the appellate opinions caused no change in the jury verdict. Thus, with the exception of punitive damage cases, only a relatively small portion of cases are appealed, and only a very few jury verdicts are changed as the result of an appeal.

I. Length of Cases

The study examined three variables related to how long it took to resolve cases. The study measured the amount of time that elapsed from the day the case was filed until it was closed,¹⁹ time elapsed between case filing until trial, and time elapsed between trial and case closing.

¹⁸ Rule 68 does not require an offer of judgment to be filed in the court case file.

¹⁹ The court system administratively closes cases after all proceedings are finished; however, we do not know how much time typically elapses between the end of case activity and the official closing date.



Chart 7
 Alaska Judicial Council Jury Verdict Study 1996

Chart 7 gives the data on total time from filing until closing. The chart shows that although few cases were resolved within a year, many were resolved within two to four years. Thirty-eight percent of the cases were opened and closed within two years, and another 42% of the cases were resolved in two to four years. About 8% of the cases took longer than five years to resolve. Because all of these cases had a jury verdict, they do not represent the typical civil case in Alaska's courts.²⁰

Chart 8 gives the breakdown of the time that elapsed between filing the cases and the trial. About fourteen percent of all the cases went to trial within one year of filing, while another 21% went to trial between one year and eighteen months after filing. Most (85%) of the cases were tried within three years.

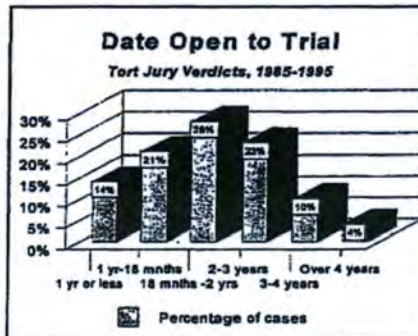


Chart 8
 Alaska Judicial Council Jury Verdict Study 1996

The data showed that many of the cases closed relatively soon after the trial was concluded. Over half (59%) of the cases were closed within four months after trial. Seventy percent were closed by six months after trial, and 83% were closed by a year after the trial. A small percentage of cases (17%) remained open more than a year after trial; these may have been awaiting appellate decisions.

J. Conclusion

This review of 233 jury verdicts in tort cases in Anchorage, Fairbanks, Bethel, Juneau and Nome over the past decade by and large showed that Alaska juries found for plaintiffs and

²⁰ About 4% of tort cases went to trial (including judge-tried cases) in a sample of 1993 Anchorage civil cases. ALASKA JUDICIAL COUNCIL, ALASKA'S ENGLISH RULE, *supra* note 15, at 86.

defendants about equally, although variations existed based on the type of case and the location of the jury. When they made awards, juries tended to give less than the amount requested in the complaint: the bulk of superior court awards were less than \$50,000. In both superior and district court verdicts, damages for economic losses were more common than those for non-economic losses, and awards for future losses of any kind were relatively rare. Juries awarded punitive damages in only 15 of the 233 cases studied, and many of those awards were less than \$60,000.

The study also suggested that parties did not often ask the appellate court to correct mistakes made at trial. Only about a quarter of the jury verdicts were appealed, although six of the fifteen punitive damage cases were appealed. Parties who did appeal seldom waited for the court to render an opinion before settling or otherwise resolving the case. Finally, the data showed that many of these cases were resolved within two to four years of filing.

Alaska Tort Jury Verdicts by Year¹

Trial Date	Total Number of Cases	Number of Cases With Plaintiff Award	Number of Cases With Verdict Over \$1 Million	Average Jury Award in Cases With Plaintiff Award	Average Jury Award Excluding Awards Over \$1 Million in Cases With Plaintiff Award
1988	21	10		\$215,763	\$215,763
1989	26	11		\$61,590	\$61,590
1990	32	12	2	\$272,875	\$68,797
1991	23	14	1	\$2,590,278	\$114,625
1992	22	10	1	\$367,264	\$52,066
1993	33	24	2	\$252,030	\$78,183
1994	39	13		\$186,100	\$186,000
1995	28	14		\$66,738	\$66,738
1996 ²	9	6	1	\$1,177,136	\$32,019
Totals	233	114	7	\$576,642	\$97,309

Alaska Judicial Council 1996

¹ Figures do not reflect any reductions by trial or appellate courts.

² Partial year figures.

Appendix E

1999 Civil Case Data Form

Beginning Aug. 1999!
 Fill out and submit
 this form on the
 Internet at
 www.ajc.state.ak.us

Information About the Resolution of Civil Cases

Send to Judicial Council:
 Not Court

Complete Both Sides
 Confidential

Attorneys/parties must submit the information contained in this form upon the resolution (whether by dismissal, settlement, final judgment, etc.) of most civil cases in Alaska state courts. See AS 09.68.130; Civil Rule 41(a)(3); Appellate Rule 511(e). Complete all the information on both sides of this page. The only excluded civil case types are:

1. divorce and dissolution;
2. adoption, custody, support, visitation, and emancipation of children;
3. children-in-need-of-aid cases under 47.10 or delinquent minors cases under 47.12;
4. domestic violence protective orders under AS 18.66.100-18.66.180;
5. estate, guardianship, and trust cases filed under AS 13;
6. small claims under AS 22.15.040;
7. forcible entry and detainer (FED) cases;
8. administrative appeals; and
9. motor vehicle impound/forfeiture actions under municipal ordinance.

These last three exceptions (7-9) were added in 1999.

The information collected in this form is confidential and will be used only to compile statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

Trial Court Case Number

Case Name

_____ - _____ - _____ C I _____

v. _____

<p>Case Type (check all applicable)</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> Medical Malpractice</td> <td><input type="checkbox"/> Property Damage - Auto</td> </tr> <tr> <td><input type="checkbox"/> Legal Malpractice</td> <td><input type="checkbox"/> Property Damage - Other</td> </tr> <tr> <td><input type="checkbox"/> Other Malpractice</td> <td><input type="checkbox"/> Employment</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury - Auto</td> <td><input type="checkbox"/> Debt</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury - Premises</td> <td><input type="checkbox"/> Other Business Dispute</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury - Product</td> <td><input type="checkbox"/> Real Estate</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury - Other</td> <td><input type="checkbox"/> Other Civil</td> </tr> </table>	<input type="checkbox"/> Medical Malpractice	<input type="checkbox"/> Property Damage - Auto	<input type="checkbox"/> Legal Malpractice	<input type="checkbox"/> Property Damage - Other	<input type="checkbox"/> Other Malpractice	<input type="checkbox"/> Employment	<input type="checkbox"/> Personal Injury - Auto	<input type="checkbox"/> Debt	<input type="checkbox"/> Personal Injury - Premises	<input type="checkbox"/> Other Business Dispute	<input type="checkbox"/> Personal Injury - Product	<input type="checkbox"/> Real Estate	<input type="checkbox"/> Personal Injury - Other	<input type="checkbox"/> Other Civil	<p>Date Filed: _____/_____/_____</p> <p>Date Disposed: _____/_____/_____</p>	<p>Relief Sought (check all applicable)</p> <table style="width: 100%;"> <tr><td><input type="checkbox"/> Compensatory: Actual</td></tr> <tr><td><input type="checkbox"/> Compensatory: Non-Economic</td></tr> <tr><td><input type="checkbox"/> Punitive</td></tr> <tr><td><input type="checkbox"/> Costs/Attorney Fees</td></tr> <tr><td><input type="checkbox"/> Injunctive Relief</td></tr> </table>	<input type="checkbox"/> Compensatory: Actual	<input type="checkbox"/> Compensatory: Non-Economic	<input type="checkbox"/> Punitive	<input type="checkbox"/> Costs/Attorney Fees	<input type="checkbox"/> Injunctive Relief
<input type="checkbox"/> Medical Malpractice	<input type="checkbox"/> Property Damage - Auto																				
<input type="checkbox"/> Legal Malpractice	<input type="checkbox"/> Property Damage - Other																				
<input type="checkbox"/> Other Malpractice	<input type="checkbox"/> Employment																				
<input type="checkbox"/> Personal Injury - Auto	<input type="checkbox"/> Debt																				
<input type="checkbox"/> Personal Injury - Premises	<input type="checkbox"/> Other Business Dispute																				
<input type="checkbox"/> Personal Injury - Product	<input type="checkbox"/> Real Estate																				
<input type="checkbox"/> Personal Injury - Other	<input type="checkbox"/> Other Civil																				
<input type="checkbox"/> Compensatory: Actual																					
<input type="checkbox"/> Compensatory: Non-Economic																					
<input type="checkbox"/> Punitive																					
<input type="checkbox"/> Costs/Attorney Fees																					
<input type="checkbox"/> Injunctive Relief																					
<p>Total Judgment/Settlement \$ _____</p>		<p>% of Judgment Covered by Liability Insurance _____ %</p>																			
<p>Disposition: (pick one)</p> <table style="width: 100%;"> <tr><td><input type="checkbox"/> Dismissed</td></tr> <tr><td><input type="checkbox"/> Settlement</td></tr> <tr><td><input type="checkbox"/> Judgment</td></tr> </table>	<input type="checkbox"/> Dismissed	<input type="checkbox"/> Settlement	<input type="checkbox"/> Judgment	<p>Disposition After? (check all applicable)</p> <table style="width: 100%;"> <tr><td><input type="checkbox"/> Bench Trial</td></tr> <tr><td><input type="checkbox"/> Jury Trial</td></tr> <tr><td><input type="checkbox"/> Appeal Filed</td></tr> </table> <p style="text-align: right;">Appeal # _____</p>	<input type="checkbox"/> Bench Trial	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Appeal Filed	<p>Non-Economic Award \$ _____</p> <p>Punitive Award \$ _____</p> <p>Declaratory Relief Award? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>													
<input type="checkbox"/> Dismissed																					
<input type="checkbox"/> Settlement																					
<input type="checkbox"/> Judgment																					
<input type="checkbox"/> Bench Trial																					
<input type="checkbox"/> Jury Trial																					
<input type="checkbox"/> Appeal Filed																					

Send the completed form to:
 Alaska Judicial Council
 1029 West Third Avenue
 Suite 201
 Anchorage, AK 99501

This form may be filled in and submitted on the Council's Internet home page at <http://www.ajc.state.ak.us> beginning in Aug. 1999. Call the Council at (907) 279-2526 for copies of the form. E-mail bill@ajc.state.ak.us with questions.

Each party, including pro se parties, must complete this form. Attorneys submitting the form for more than one party should attach an additional page 2 (this page) with the information about each of the parties' fees and costs.

The Party's Own Fees and Costs					Attorney Fees/Costs for (payable to) this Party by Another Party; or Against this Party to Another Party			
Party Name/Type (complete for each party filing this form)	Fee Type	Percent of Judgment if contingent; hourly rate if hourly ¹	Total (of the party's own) Attorney Fees	Total (of the party's own) Costs	Gross Judgment/Settlement (for or against this party) including Attorney Fees and Costs	Attorney Fees Awards	Costs Awards	Total money to Client after all Fees/Costs ² Deducted (if any)
First Name _____ Last _____ <input type="radio"/> Plaintiff/Petitioner <input type="radio"/> Defendant/Respondent <input type="radio"/> Other (specify below)	<input type="radio"/> Contingent <input type="radio"/> Hourly <input type="radio"/> Flat Fee <input type="radio"/> State/Local <input type="radio"/> In-house <input type="radio"/> Pro Se <input type="radio"/> Other	_____ % of Judgment Or \$ _____ /hr. if hourly	\$ _____	\$ _____	\$ _____	Not Separable? <input type="radio"/> ³ For \$ _____ Against \$ _____	Not Separable? <input type="radio"/> ³ For \$ _____ Against \$ _____	\$ _____

Did you use Alternative Dispute Resolution?

Mediation
 Arbitration
 Early Neutral Evaluation
 Settlement Conference

Did your case settle as a result of ADR?

Yes No

1 Round all money amounts to the nearest dollar.
 2 "Costs" as used on this form is limited to litigation costs (excluding attorney fees) and does not include such things as medical expenses.
 3 If attorney fees/costs are not separable from the gross judgment (usually the case for settlements), check this box and go to the next item.

Notes

Other Parties	Their Attorney

Signature (of attorney, or party if no attorney) _____

Printed Name (of attorney, or party if no attorney) _____

Date Form Submitted / /

Telephone Number

Appendix F
Revised Civil Case Data Form

You may fill out and submit this form on the Internet at www.ajc.state.ak.us or you may call the Council for a copy - (907) 279-2526

Information About the Resolution of Civil Cases

Send to Judicial Council:
1029 West Third Avenue
Suite 201
Anchorage, AK 99501

Please Complete Both Sides

Confidential

E-mail bill@ajc.state.ak.us with questions

Attorneys/parties must submit the information contained in this form upon the resolution (whether by dismissal, settlement, final judgment, etc.) of many civil cases in Alaska state courts.¹ See AS 09.68.130; Civil Rule 41(a)(3); Appellate Rule 511(e).

- Each party, including pro se parties, must complete this form.
- If you are the plaintiff, do not submit this form until the case is completely finished for all parties.
- If you are the defendant or other party and you have been dismissed from the case, submit this form within the required time limits
- Complete all the information on both sides of this page.

Thank you for taking the time and effort to complete this form. The Judicial Council has published two reports based on the civil case data collected from these forms. You may download the reports from our web site, www.ajc.state.ak.us or call at 279-2526 for a copy.

The information collected in this form is confidential and will be used only to compile statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

Trial Court Case Number: _____ - _____ - _____ **CI**

Case Name: _____ v. _____

<p style="text-align: center;">Case Type (check all applicable)</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> Medical Malpractice</td> <td><input type="checkbox"/> Property Damage - Auto</td> </tr> <tr> <td><input type="checkbox"/> Legal Malpractice</td> <td><input type="checkbox"/> Property Damage - Other</td> </tr> <tr> <td><input type="checkbox"/> Other Malpractice</td> <td><input type="checkbox"/> Employment</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury - Auto</td> <td><input type="checkbox"/> Debt</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury - Premises</td> <td><input type="checkbox"/> Injunctive Relief</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury - Product</td> <td><input type="checkbox"/> Real Estate</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury - Other</td> <td><input type="checkbox"/> Other Contract</td> </tr> <tr> <td></td> <td><input type="checkbox"/> Other Civil</td> </tr> </table>	<input type="checkbox"/> Medical Malpractice	<input type="checkbox"/> Property Damage - Auto	<input type="checkbox"/> Legal Malpractice	<input type="checkbox"/> Property Damage - Other	<input type="checkbox"/> Other Malpractice	<input type="checkbox"/> Employment	<input type="checkbox"/> Personal Injury - Auto	<input type="checkbox"/> Debt	<input type="checkbox"/> Personal Injury - Premises	<input type="checkbox"/> Injunctive Relief	<input type="checkbox"/> Personal Injury - Product	<input type="checkbox"/> Real Estate	<input type="checkbox"/> Personal Injury - Other	<input type="checkbox"/> Other Contract		<input type="checkbox"/> Other Civil	<p style="text-align: center;">Relief Sought (check all applicable)</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> Compensatory: Actual</td> </tr> <tr> <td><input type="checkbox"/> Compensatory: Non-Economic</td> </tr> <tr> <td><input type="checkbox"/> Punitive</td> </tr> <tr> <td><input type="checkbox"/> Costs/Attorney Fees</td> </tr> <tr> <td><input type="checkbox"/> Injunctive Relief</td> </tr> </table>	<input type="checkbox"/> Compensatory: Actual	<input type="checkbox"/> Compensatory: Non-Economic	<input type="checkbox"/> Punitive	<input type="checkbox"/> Costs/Attorney Fees	<input type="checkbox"/> Injunctive Relief	<p>Date Filed: ____/____/____</p> <p>Date Disposed: ____/____/____</p> <p>Total Judgment/Settlement: \$ _____</p> <p>% of Judgment Covered by Liability Insurance: _____%</p>
<input type="checkbox"/> Medical Malpractice	<input type="checkbox"/> Property Damage - Auto																						
<input type="checkbox"/> Legal Malpractice	<input type="checkbox"/> Property Damage - Other																						
<input type="checkbox"/> Other Malpractice	<input type="checkbox"/> Employment																						
<input type="checkbox"/> Personal Injury - Auto	<input type="checkbox"/> Debt																						
<input type="checkbox"/> Personal Injury - Premises	<input type="checkbox"/> Injunctive Relief																						
<input type="checkbox"/> Personal Injury - Product	<input type="checkbox"/> Real Estate																						
<input type="checkbox"/> Personal Injury - Other	<input type="checkbox"/> Other Contract																						
	<input type="checkbox"/> Other Civil																						
<input type="checkbox"/> Compensatory: Actual																							
<input type="checkbox"/> Compensatory: Non-Economic																							
<input type="checkbox"/> Punitive																							
<input type="checkbox"/> Costs/Attorney Fees																							
<input type="checkbox"/> Injunctive Relief																							

<p>Disposition (pick one):</p> <input type="checkbox"/> Dismissed <input type="checkbox"/> Settlement <input type="checkbox"/> Judgment <input type="checkbox"/> Summary Judgment <input type="checkbox"/> Default Judgment	<p>Disposition After? (check all applicable)</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> Bench Trial</td> <td rowspan="4" style="vertical-align: top;"> <p>Result of Appeal</p> <input type="checkbox"/> Dismissed <input type="checkbox"/> Affirmed <input type="checkbox"/> Remanded </td> </tr> <tr> <td><input type="checkbox"/> Jury Trial</td> </tr> <tr> <td><input type="checkbox"/> Appeal Filed</td> </tr> <tr> <td>Appeal # _____</td> </tr> </table>	<input type="checkbox"/> Bench Trial	<p>Result of Appeal</p> <input type="checkbox"/> Dismissed <input type="checkbox"/> Affirmed <input type="checkbox"/> Remanded	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Appeal Filed	Appeal # _____	<p>Non-Economic Award \$ _____</p> <p>Punitive Award \$ _____</p> <p>Declaratory Relief Award? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<input type="checkbox"/> Bench Trial	<p>Result of Appeal</p> <input type="checkbox"/> Dismissed <input type="checkbox"/> Affirmed <input type="checkbox"/> Remanded						
<input type="checkbox"/> Jury Trial							
<input type="checkbox"/> Appeal Filed							
Appeal # _____							

<p>Did you use Alternative Dispute Resolution?</p> <input type="checkbox"/> Mediation <input type="checkbox"/> Arbitration <input type="checkbox"/> Early Neutral Evaluation <input type="checkbox"/> Settlement Conference	<p>How much did you spend on ADR separately from your other attorney fees, costs, etc.</p> <p style="text-align: right;">\$ _____</p>
<p>Did your case settle as a result of ADR? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

¹ The only excluded civil case types are: divorce and dissolution; adoption, custody, support, visitation, and emancipation of children; children-in-need-of-aid cases under 47.10 or delinquent minors cases under 47.12; domestic violence protective orders under AS 18.66.100-18.66.180; estate, guardianship, and trust cases filed under AS 13; small claims under AS 22.15.040; forcible entry and delinquent (FED) cases, administrative appeals; motor vehicle impound/forfeiture actions under municipal ordinance; taxes; quiet title, and debt.

Your client's name:

Number of plaintiffs/defendants you represent on this form _____

Is your client the:

- Plaintiff/petitioner
- Defendant/respondent
- Other (specify below)

Who prevailed in this case?

- Plaintiff
- Defendant
- Neither
- Both, in part
- Other: _____ (specify)

Is this a structured settlement?
 Yes No

Your client's fees and costs (round all money amounts to the nearest dollar):

Fee Type

- Contingent = _____ % of judgment
- Hourly = \$ _____ per hour
- Flat Fee
- State/Local
- In-house
- Pro Se
- Waive Fee
- Other

Total attorney fees (your client's own) \$ _____

Total costs (your client's own) \$ _____

Amount (subrogated) your client must pay to others \$ _____

If your client prevailed in whole or part, what total amount of money did the client receive, less fees, costs, and subrogated amounts? \$ _____

Other Parties	Their Attorneys Name(s)

Notes:

Signature (of attorney, or party if no attorney)

Printed Name (of attorney, or party if no attorney)

_____/_____/_____
Date Form Submitted

Telephone Number

Appendix G

Recommended Court Rules Revisions

AS 09.68.130 requires parties to civil litigation to submit information to the Judicial Council upon resolution of the litigation. The 1997 statutory enactment did not describe a procedure by which the information was to be submitted. Its enabling legislation, however (1997 SLA ch. 26, secs. 41 and 46) did purport to amend Civil Rule 41 and Appellate Rule 511 by adding new sections to those rules (CR 41(a)(3) and AR 511(e)). The new sections required parties involved in voluntarily dismissed actions to submit the required information to the Council, and to certify in the notice, stipulation, or agreement of dismissal, or motion to dismiss, as applicable, that the information had been submitted to the Council.

When the supreme court adopted the new rules (Order no. 1283, eff. 9/2/1997) it did not adopt them verbatim from the legislation. Instead it rewrote the new sections, removed parts of them, and modified existing rules. Thus the requirement that parties certify that they had submitted the information to the Council was removed from new CR 41(a)(3) and was instead placed in existing CR 41(a)(1), and the parallel certification requirement for appellate cases was removed from new AR 511(e), which was created by the legislation, and inserted into new AR 511(c), which was created by court order. The requirements that parties actually submit the information to the Council remained in CR 41(a)(3) and AR 511(e).

The legislation and the rules were silent regarding submission of information to the council for cases resolved by involuntary dismissal, summary judgment, after trial, or otherwise, although AS 09.68.130 applied equally to all civil litigation, however resolved.

Whereas the 1997 legislation and court rules required parties to submit information to the Council before the case could be closed, in 1999 the legislature amended the statute by, among other changes, adding a new subsection (d), which required parties to submit information to the council within 30 days after their case closed.

The 1999 legislation also contained a provision purporting to amend the court rules. In response to the legislation the court amended Civil Rule 41(a)(3) and Appellate Rule 511(e) to track the language regarding the 30 day requirement and the Judicial Council form. However, the court left unchanged the provisions in Civil Rule 41(a)(1) and Appellate Rule 511(c) requiring parties to certify when filing the notice of dismissal that they have already submitted the information to the Judicial Council. This conflict is causing confusion among attorneys who are required to submit information to the Council.

Some attorneys have arrived at a compromise solution, which is to certify to the court on their dismissal notice or stipulation that they will submit the required information to the Council within 30 days of the dismissal. Attorneys signing such certifications have a response rate equal to that of attorneys who sign the certification specified in the court rule. Logically, it would make sense to change Civil Rule 41(a)(1) to require each party to certify that he or she "will timely submit" the information to the Council, rather than that he or she "has submitted" it, and to change Appellate Rule 511(c) to require certification that the information "will be timely submitted," rather than that it "has been submitted." No change is required to Civil Rule 41(a)(3) or Appellate Rule 511(e). These rule changes would allow the courts to continue to motivate parties to submit the required information by requiring certifications, and it would meet the letter (and presumably the intent) of the 1999 legislation.

A related issue involves cases which are resolved by involuntary dismissal, summary judgment, after trial, or otherwise. Parties to these cases are far less likely to submit the information to the Council than are parties whose cases have settled. This could be for lack of a court rule or other court reminder or incentive to the parties. An addition to orders or judgments resulting in final disposition of cases (except for those case types exempted by the statute) could help motivate parties to these cases to submit the information. The supreme court might direct that all dispositive orders or judgments contain a directive that "each party for whom this case is finally resolved by this Order or, if the party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days of the date of this Order and on a form specified by the Alaska Judicial Council." (If the court wanted to add this language to judgments, changes to the civil rules specifying the form of judgments would be needed).

In addition to the confusion caused by the conflict in the rules, the timing scheme is causing an additional area of concern, relating to the type of information parties are required to submit. The statute requires parties to submit information such as "the net amount [of a settlement] actually disbursed to the claimant," and "the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before distribution to the claimant." The wording of the statute seems to contemplate that any settlement transaction will have been completed before the form is filed with the Council. Logically, the 30 day filing period makes more sense than the pre-dismissal certification (although 30 days may well be too little time to expect amounts agreed to in settlements to actually be finally disbursed). However, according to Council staff, the certification requirement does seem to motivate litigants to submit the information to the Council.

For cases resolved after trial, as well, the 30 day submission requirement may be unrealistic. The legislature has asked, among other information, for "the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant," and "the total costs and attorney fees paid by defending parties." Few judgments will have been fully executed within 30 days of their entry. A common complaint of attorneys is that they are expected to report such information, when "we haven't received any money yet." However, it would seem that resolution of this issue lies with the legislature rather than the court system.

The text of Civil Rule 41(a)(1) and (3), and Appellate Rule 511(c) and (e) follows, with suggested deletions in brackets and suggested insertions underlined.

Civil Rule 41. Dismissal of Actions.

(a) Voluntary Dismissal -- Effect Thereof.

(1) *By Plaintiff -- By Stipulation.* Subject to the provisions of Rule 23(c), of Rule 66 and of any statute of the state, an action may be dismissed by the plaintiff without an order of the court: [a] by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or [b] by filing a stipulation of dismissal signed by all parties who have appeared in the action. A notice of dismissal must include a certification signed by or on behalf of the plaintiff that the plaintiff [HAS SUBMITTED] will timely submit the information required under AS 09.68.130 and (a) (3) of this rule to the Alaska Judicial

Council or that the case is exempt from this requirement. A stipulation of dismissal must include a certification signed by or on behalf of all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, or of any other state, or in any court of the United States, an action based on or including the same claim.

* * *

(3) *Information about the Resolution of Civil Cases.* If an action is voluntarily dismissed under paragraph (a) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

- (A) divorce and dissolution;
- (B) adoption, custody, support, visitation, and emancipation of children;
- (C) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (D) domestic violence protective orders under AS 18.66.100 - 18.66.180;
- (E) estate, guardianship, and trust cases filed under AS 13;
- (F) small claims under AS 22.15.040.
- (G) forcible entry and detainer cases;
- (H) administrative appeals; and
- (I) motor vehicle impound or forfeiture actions under municipal ordinance.

Appellate Rule 511. Dismissal of Causes.

(c) *Certification.* An agreement or motion for dismissal filed under (a) or (b) of this rule must include a certification that the settlement information required under AS 09.68.130 and (e) of this rule [HAS BEEN SUBMITTED] will be timely submitted to the Alaska Judicial Council or that the case is exempt from this requirement.

* * *

(e) *Information about the Resolution of Civil Cases.* If a proceeding is dismissed under paragraph (a) or (b) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the proceeding is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;

- (4) domestic violence protective orders under AS 18.66.100 -- 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040;
- (7) forcible entry and detainer cases;
- (8) administrative appeals; and
- (9) motor vehicle impound or forfeiture actions under municipal ordinance.

Appendix H
Recommended Statutory Change

A BILL

FOR AN ACT ENTITLED

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

***Section 1.** AS 09.68.130 is repealed and reenacted to provide:

(a) The Alaska Judicial Council shall periodically collect and evaluate information relating to the compromise or other resolution of civil litigation. The information collected shall include, but need not be limited to:

(1) general case information such as the characteristics of the case and the parties;

(2) case processing information about the court civil justice process;

(3) information about the relief sought by each party;

(4) information about the settlement or judgment, including attorneys fees and costs awarded to or paid by each party to the case;

(5) information about any insurance coverage and contribution.

(b) A party to a civil case or, if the party is represented by an attorney, the party's attorney shall submit the civil case information required by (a) of this section to the Alaska Judicial Council if requested to do so by the Council. The information must be submitted within 30 days after receipt of a written request from the Council requesting the information, and must be on a form specified by the Alaska Judicial Council.

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

***Section 2.** The court rules amendments made by ch. 26 §§ 41 & 46 SLA 1997 and ch. 14 § 3 SLA 1999 are repealed.

***Section 3.** This Act takes effect immediately under AS 01.10.070 (c).