

**ALASKA LEGISLATURE**

**2409**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2001 - 2002**

## RELEASE AND SETTLEMENT AGREEMENT

1. Settlement Compensation. William Leroy Herold, M.D., agrees that, in consideration of the State of Alaska's agreement to pay to Dr. Herold Eighty Thousand and 00/100ths Dollars (\$80,000.00), hereafter referred to as the "settlement amount," Dr. Herold agrees to release all claims that he has or could have asserted against the State of Alaska, the Department of Corrections, Commissioner Margaret Pugh, Margot Knuth, Melbourne Henry, Allen Cooper, or their agencies, officers, employees, agents, representatives, or insurers (collectively, the "Released Parties"), in Case No. 3AN-00-10938 CI in the Superior Court for the State of Alaska, Third Judicial District, arising out of Dr. Herold's employment with the State of Alaska, Department of Corrections, and the termination of that employment ("the Employment"). Payment of the settlement amount is contingent upon an appropriation for that purpose by the Alaska State Legislature.

2. Taxability of Payment. Dr. Herold acknowledges that the Released Parties and their attorneys make no representations to him regarding the tax consequences or appropriate tax treatment of this settlement payment. However, the parties believe that the settlement amount is appropriately characterized, for purposes of withholding, as payment for lost wages. Accordingly, the State of Alaska will report the settlement amount on a form W-2 and withhold appropriate amounts, including income and employment taxes.

3. Claims Released. Subject to payment of the settlement amount, Dr. Herold releases, acquits, and forever discharges the Released Parties from all causes of

action, claims, and demands for damages, costs, losses of services, expenses, attorney fees, and compensation, known or unknown, that he now has, or may later have, on account of, or arising out of, any matter concerning the Employment including – but not limited to – claims for constructive discharge, wrongful discharge, breach of contract, misrepresentation, breach of the implied covenant of good faith and fair dealing, violation of AS 39.90.100 *et seq.*, intentional infliction of emotional distress, negligent infliction of emotional distress, deprivation of due process, and constitutional violations under 42 U.S.C. § 1983.

4. Unknown Losses. Dr. Herold acknowledges that he may later discover injuries, losses, or damages that he does not know about now, and that injuries, losses, or damages that he knows about now may later prove to be greater than he now believes them to be. Dr. Herold discharges the Released Parties from all liability for all injuries, losses, and damages – both those he knows about now and those that he may discover later – arising from the Employment. Dr. Herold assumes all risk that his damages may prove to be greater than he now knows or anticipates.

5. No Admission of Liability. Dr. Herold acknowledges that this settlement is the compromise of a disputed claim. Dr. Herold acknowledges that the State's payment of the settlement amount does not constitute an admission of liability by the Released Parties, and that the Released Parties expressly deny that they are liable to him.

6. Insurance Claims. Dr. Herold releases the Released Parties from all claims that he may have against them or their insurers under any insurance agreements that may apply because of his claims concerning the Employment.

7. Further Suits or Claims. Dr. Herold agrees that he will not individually, or in concert with others, through further judicial, contractual, or administrative proceedings of any kind, make or cause to be made, acquiesce in, or assist in the bringing of any future action against any of the Released Parties for damages arising out of the Employment, including the facts and issues described in the complaint in Case No. 3AN-00-10938 CI. Dr. Herold agrees to indemnify, defend, and hold harmless the Released Parties from any such actions that any individual or entity might bring on his behalf.

8. Assignment and Liens. Dr. Herold declares that he has not assigned to any other individual or entity any interest in any of his claims arising out of the Employment. Dr. Herold agrees to satisfy all liens that have been or may be asserted against the settlement amount, and to defend, indemnify, and hold harmless the Released Parties from all actions relating to liens on the settlement amount.

9. Employment References. If contacted by prospective employers (other than agencies or representatives of the State of Alaska) for references concerning Dr. Herold, unless Dr. Herold specifically authorizes in writing release of other information, the Released Parties will provide, in accordance with AS 39.25.080, only the following information: the

title of the position that Dr. Herold held, the fact that he was in the exempt service, the dates of his appointment and separation, and the compensation authorized for his position.

10. Dismissing Suit. Dr. Herold agrees to execute, through his attorney, a stipulation for dismissal with prejudice of Case No. 3AN-00-10938 CI, with each party to bear its own costs and attorney fees.

11. Opportunity to Review. Dr. Herold acknowledges that he has had sufficient time and opportunity to consult with his attorney about this Release and Settlement Agreement. Dr. Herold acknowledges that this agreement was not secured under duress or in haste instigated by any of the Released Parties. Dr. Herold acknowledges that he has had the opportunity to review the Alaska Supreme Court's decisions in the cases of *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978), and *Young v. State*, 455 P.2d 889 (Alaska 1969), and waives the protection of those decisions.

12. Entire Agreement. Dr. Herold acknowledges that no promise or agreement not expressed in this Release and Settlement Agreement has been made by or to him and that this Release and Settlement Agreement contains the entire agreement between the parties to the agreement.

13. Binding Agreement. Dr. Herold acknowledges that this Release and Settlement Agreement will be binding upon Dr. Herold and his heirs, executors, administrators, legal representatives, successors, and assigns.

14. Interpretation. This Release and Settlement Agreement will be interpreted under, and governed by, the laws of the State of Alaska.

CAUTION: THIS IS A COMPLETE AND FINAL RELEASE. READ IT CAREFULLY BEFORE SIGNING.

Dated: June 2, 2002

William Leroy Herold M.D.  
William Leroy Herold, M.D.

STATE OF ALASKA            )  
  )    ss.  
THIRD JUDICIAL DISTRICT    )

On this 2 day of June, 2002, William Leroy Herold, M.D., whom I know to be the individual described in, and who executed this Release and Settlement Agreement, personally appeared before me and acknowledged that he signed the Release and Settlement Agreement as his free and voluntary act.

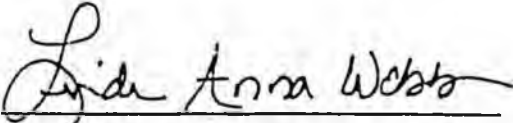
IN WITNESS WHEREOF, I have placed my signature and affixed my official seal.

Lida A. Woods  
Notary Public in and for Alaska  
My commission expires: June 8, 2004

ATTORNEY'S REPRESENTATION

I am the attorney representing William Leroy Herold, M.D., in Case No. 3AN-00-10938 CI. I have carefully and fully explained the terms, provisions, and effects of this Release and Settlement Agreement to Dr. Herold. Dr. Herold has represented to me that he understands the terms of the Release and Settlement Agreement, as well as their significance.

DATED: January 2, 2002

  
Linda Anna Webb

**Section 11**

**Judgments and Claims**

**Department of Law**

**Terri Hale v State PERS**

Department of Law

JUDGMENTS/CLAIMS/SETTLEMENTS FOR PAYMENT

(Please Type)

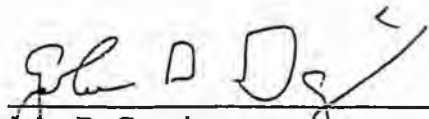
\*\*This form will be used for the purpose of standardizing the submission of claims to the Legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. If any of the information changes, please immediately advise the Director, Administrative Services Division, P.O. Box 110300, Juneau, AK 99811, or call (907) 465-3673.

PART ONE

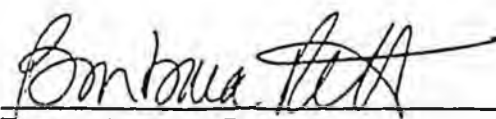
1. Case Name: Terri Hale v. Guy Bell, administrator of the Public Employees' Retirement System (PERS),.
2. Case Number: Appeal to the Public Employees' Retirement Board (PERB) - no case number DOL file no.# 663-01-0171
3. Judge/Justices: n/a
4. Date Judgment entered: Settlement agreement executed October 11, 2001. Agreement included a provision dismissing appeal to the PERB and agreeing not to assert Hale's claim in any other forum.
5. Did the date of the cause of action accrue on or after August 7, 1997? No.
6. Amount to be paid: \$185,000 - TO BE PAID OUT OF THE PERS FUND, NOT THE GENERAL FUND
7. Interest Rate: NO INTEREST IS TO BE PAID ON THIS AMOUNT
8. Requested hourly rate and total compensation of attorneys to be paid: n/a
9. Court approved/ordered hourly rate and total compensation of attorneys to be paid: n/a
10. Payable to: Dennis Bailey, Esq., ITF Terri Hale  
Dillon & Findley, P.C.  
350 N. Franklin Street  
Juneau, AK 99801  
EIN: 92-0141611
12. Send check to: X above address Departmental contact: \_\_\_\_\_

Departmental attorney contact:

Departmental Approval:

  
\_\_\_\_\_  
John B. Gaguine  
Assistant Attorney General

465-3600  
\_\_\_\_\_  
Telephone Number

  
\_\_\_\_\_  
Deputy Attorney General

10/30/01  
\_\_\_\_\_  
Date

Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

**Case Name:** Terri Hale v. Guy Bell, administrator of the Public Employees' Retirement System (PERS)

**Case No.:** No number - appeal to the Public Employees' Retirement Board (DCL # 663-01-0171)

**1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.**

Terri Hale was a nurse at Bartlett Regional Hospital in Juneau. About ten years ago she allegedly suffered an exposure to a chemical that allegedly caused her to be occupationally disabled under the PERS. Her application for PERS occupational disability benefits was denied by the PERS administrator, and appealed to the PERS board, which hears appeals from decisions of the administrator. Because the case was very close, the administrator and Ms. Hale decided to settle the case. The administrator agreed to pay Ms. Hale a sum representing the cost of past and future medical benefits that the PERS would be liable for if Ms. Hale pursued her appeal and won. Ms. Hale agreed to waive entitlement to all past and future monetary benefits that she would be entitled to if she prevailed on appeal.

**2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.**

None. Many denials of applications for occupational disability benefits under the PERS are appealed to the PERS Board, and an increasing number of these are being settled.

3. Did the State prevail on any issues? If so, describe.

The case was settled before any issues were litigated..

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

N/A. This matter was settled and each side bore its own costs and fees, and even if it had gone to hearing, parties before the PERS Board bear their own costs and fees.

5. What was the source of the State's liability in this case?

If the PERS had been found liable in this case (it was not, as the case settled), the source of the PERS's liability would have been the alleged toxic exposure at Bartlett Regional Hospital.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

The "involved agency" here was the City and Borough of Juneau, so the PERS does not know what preventative actions have been taken. It appears that this incident was a one-time accident unlikely to reoccur.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

See response to #6 above.

8. Any recommendations concerning cases of this type in the future?

No..

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations.

No.

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

None. Many denials of applications for occupational disability benefits under the PERS are appealed to the PERS Board, and an increasing number of these are being settled.

3. Did the State prevail on any issues? If so, describe.

The case was settled before any issues were litigated..

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

N/A. This matter was settled and each side bore its own costs and fees, and even if it had gone to hearing, parties before the PERS Board bear their own costs and fees.

5. What was the source of the State's liability in this case?

If the PERS had been found liable in this case (it was not, as the case settled), the source of the PERS's liability would have been the alleged toxic exposure at Bartlett Regional Hospital.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

The "involved agency" here was the City and Borough of Juneau, so the PERS does not know what preventative actions have been taken. It appears that this incident was a one-time accident unlikely to reoccur.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

See response to #6 above.

8. Any recommendations concerning cases of this type in the future?

No..

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations.

No.



SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is made and entered into between Terri Hale (Hale) and Guy Bell (Bell), the administrator of the Public Employees' Retirement System (PERS), in order to settle their dispute over Hale's application for occupational disability benefits under the PERS, which dispute is currently pending before the Public Employees' Retirement Board (PERB). The parties hereby agree as follows:

1. By the execution of this Agreement, Hale dismisses with prejudice her appeal to the PERB over the denial of her application for PERS occupational disability benefits arising from her employment with the City and Borough of Juneau. Hale further agrees that she will not challenge in any other forum, judicial or non-judicial, Bell's decision not to award her PERS occupational disability benefits arising from that employment.

2. Bell agrees to pay Hale the sum of One Hundred and Eighty-Five Thousand dollars (\$185,000) in full consideration for the execution of this Agreement, compliance with its terms, and the dismissal of Hale's above-referenced appeal with prejudice. Payment of this amount shall be made within thirty (30) days of approval by the legislature and by the governor of an appropriation to pay this settlement, or by June 30, 2002, whichever is earlier. Bell shall assure that a request for the \$185,000 required by this Agreement is included in the request to be made by the governor to the Twenty-Second Alaska State Legislature (Second Session) for the

payment of judgments and settlements that require legislative appropriation. There will be no interest accruing upon the \$185,000.

3. Hale releases and forever discharges Bell, the PERS, and all present and former officers, employees, and agents of the PERS, of and from all liability, actions, causes of action, lawsuits, administrative proceedings, controversies, claims, damages, workers' compensation claims, grievances, and demands of every kind or nature, mature or to be mature in the future, including without limitation those for personal injury, property damage, economic or consequential damages, mental or emotional pain and suffering, whether known or unknown, arising out of the facts or circumstances of her claim for occupational disability benefits under the PERS.

4. The parties each acknowledge, represent, and warrant that they have had the advice of counsel and have fully considered the effect of this Agreement and further agree as follows:

a. This Agreement has been made knowingly and voluntarily without any actual or threatened economic, physical, mental, psychological, or emotional coercion, duress, or undue influence on the part of anyone; and

b. By this Agreement, the parties intend the release to be forever, for all liabilities relating to Hale's claim for PERS occupational disability benefits, and any litigation pertaining thereto regardless of whether or not liabilities are subsequently discovered or are different in degree or kind than have been or are now alleged, known, or anticipated.

5. The consideration identified in this Agreement is offered in compromise of and to resolve disputed claims. Hale agrees that this Agreement constitutes a complete settlement of the issues between the parties but is not an admission, by implication or otherwise, by Bell, of any liability to, or any wrong inflicted upon, Hale. No additional consideration beyond that specifically referred to in this Agreement is involved in this settlement, and no additional payment of money, for whatever reason, is required or contemplated. The parties are separately and independently responsible for their own costs and attorney's fees.

6. If there are, now or later, any liens that run on or against this Agreement, or any part of the proceeds payable under this Agreement, Hale agrees to release and hold harmless Bell and the PERS to the extent the proceeds payable under this Agreement are taken or transferred in satisfaction of a lien, and to indemnify Bell and the PERS for any fees or costs involved in defending against such a lien.





**Section 11**

**Judgments and Claims**

**Department of Law**

**Ulmer v AK Restaurant & Beverage Assoc.**

Department of Law  
JUDGMENTS/CLAIMS/SETTLEMENTS FOR PAYMENT  
(Please Type)

This form will be used for the purpose of standardizing the submission of claims to the Legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. If any of the information changes, please immediately advise the Director, Administrative Services Division, P.O. Box 110300, Juneau, AK 99811, or call (907) 465-3673.

PART ONE

1. Case Name: *Ulmer v. Alaska Restaurant & Beverage Ass'n et al.*
2. Case Number: S-9676
3. Judge/Justices: Alaska Supreme Court
4. Date Judgment entered: Opinion and attorney's fee award issued November 9, 2001
5. Did the date of the cause of action accrue on or after August 7, 1997? Yes
6. Amount to be paid: \$1,595.67
7. Interest Rate: 9% Effective Date: 11/9/2001
8. Requested hourly rate and total compensation of attorneys to be paid: No request was made. Supreme court included fee order with opinion, and \$1,500 is a standard award for the prevailing party to a supreme court appeal.
9. Court approved/ordered hourly rate and total compensation of attorneys to be paid: \$1,500 total; no hourly breakdown given. Lump sum award, without an hourly breakdown or consideration of hours spent, is standard supreme court practice.
10. Payable to: Thomas Amodio, Foster Pepper Rubini & Reeves, 1007 W. 3rd Avenue, Suite 100, Anchorage, AK 99501; ITF Alaska Restaurant and Beverage Ass'n, Alaska Cabaret, Hotel, Restaurant and Retailers Ass'n, and Alaska Wine and Spirit Wholesalers Ass'n

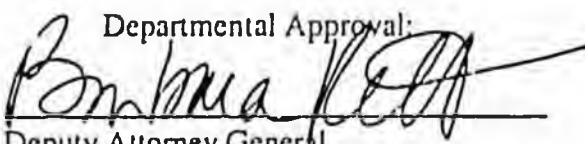
11. EIN: 920163530

12. Send check to:  above address

Departmental contact: \_\_\_\_\_

Departmental attorney contact:

John B. Gaguine  
Assistant Attorney General

Departmental Approval:  
  
Deputy Attorney General

465-3600

Telephone Number

Revised 08/25/99

1/25/02

Date

Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Ulmer v. Alaska Restaurant & Beverage Association, et al.

Case No.: S-9676 (Alaska Supreme Court)

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.

In 1999, Lieutenant Governor Fran Ulmer, with the assistance of the Department of Law, prepared a summary of a proposed initiative that would have increased the state's liquor taxes. The summary was prepared for the petitions on which the initiative sponsors had to gather the requisite number of signatures. Three sales and entertainment associations challenged the summary, and the superior court found the summary to be inaccurate and incomplete. The state appealed the ruling, but, while the appeal was pending, the one-year period for the gathering of signatures ended without the sponsors submitting their petitions. The Alaska Supreme Court therefore dismissed the appeal as moot. It rejected several arguments by the state that the matter was not moot, or that, if it was moot, the court should nevertheless decide the appeal to give Lt. Governor Ulmer and future lieutenant governors guidance in the preparation of initiative petition summaries. Apparently because the state was arguing that the case was not moot, and the appellees were arguing that it was, the supreme court treated the appellees as the prevailing parties and awarded them \$1,500 in attorney's fees. Costs were also awarded in the amount of \$95.67, for copying.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.

The state pursued this appeal, notwithstanding its possible mootness, because it believed it important to receive guidance from the supreme court with regard to the proper composition of initiative petition summaries, as the lieutenant governor and the Department of Law are frequently called upon to draft such summaries.

3. Did the State prevail on any issues? If so, describe.

At the superior court level the state prevailed on the major issue in the case, whether a tax increase was a proper subject for the initiative. The associations did not appeal this aspect of the superior court's ruling.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

Yes. Before the superior court, the associations sought costs and fees, claiming that they were the prevailing parties. The state successfully argued that since it had prevailed on the issue of use of the initiative for a tax increase, while the associations had prevailed on the wording issue, neither party had prevailed, and each should bear their own costs and fees. The associations filed a notice of appeal from this ruling, but later dropped their appeal.

Before the supreme court the associations filed a cost bill claiming costs that were not appropriate. We convinced them to withdraw their request for these costs, and ultimately only \$95.67 in costs (for outside copying costs) were awarded.

5. What was the source of the State's liability in this case?

The state's failure to prevail on the mootness issue before the supreme court, leading to an award of costs and attorney's fees against the state.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

In light of this opinion, we will be more hesitant in the future to pursue an appeal of this nature when it appears that it is likely to be moot.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

Under these circumstances, no corrective action needs taking.

8. Any recommendations concerning cases of this type in the future?

No recommendations given the unique aspects of this case.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations.

No recommendations given the unique aspects of this case.

Attorney completing form:

\_\_\_\_\_  
John B. Gaguine  
Assistant Attorney General

465-2127

\_\_\_\_\_  
Phone Number

Date: 1/10/02

**Section 11**

**Judgments and Claims**

**Department of Law**

**Richard Brandon v Corrections**



Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

**Case Name:** Richard Brandon v. Corrections Corporation of America, Michael Samberg, and Margaret Pugh

**Case No.:** S-9228 (Supreme Court)

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State. Richard Brandon is an Alaska inmate who was incarcerated for approximately 3 years (1995-98) at the Central Arizona Detention Center ("CADC"), a private prison in Arizona that contracts to house Alaska inmates. Brandon brought a civil lawsuit against CADC's parent corporation, its warden, and DOC Commissioner Pugh. The superior court required him to pay a partial filing fee pursuant to AS 09.19.010, and dismissed his case when he failed to pay the fee by a certain date. Brandon appealed to the Alaska Supreme Court, alleging that the inmate filing fee statute, AS 09.19.010, was unconstitutional. The supreme court rejected virtually all of his claims and upheld the constitutionality of the statute. The supreme court found that only one of his claims had merit, *i.e.* his argument that the trial court's order telling him to pay a partial filing fee was ambiguous as to the deadline for doing so and that the trial court thus erred in dismissing his case without giving him a clear deadline to pay the fee. Based on this, the supreme court remanded the case to the superior court so Brandon could pay the filing fee and move forward with the case. The supreme court exercised its discretion under Appellate Rule 508 and awarded Brandon \$87 for costs incurred in appealing.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case. The issues in this case involve the constitutionality of AS 09.19.010. The supreme court held that the statute did not violate inmates' right of access to the courts or treat them differently from other groups for purposes of access to the courts.

3. Did the State prevail on any issues? If so, describe. The State prevailed on all issues at the supreme court level in Brandon except for the issue about the superior court's order telling Brandon to pay the filing fee being unclear as to the deadline for doing so.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful. Brandon

claimed a total of \$586 in costs, arguing that he should be compensated \$410 dollars for his time spent on the case, on the theory that he was acting as a paralegal. The state opposed citing case law that says that pro se litigants are not entitled to attorney's fees, and argued that they can't get around that case law by claiming fees as paralegals. The supreme court agreed and rejected Brandon's request for paralegal costs, and also struck his request for a few other costs items not allowed under the appellate rules, awarding him \$87 out of his requested \$586.

5. What was the source of the State's liability in this case? There was no underlying monetary award. The source of the State's liability was based on the Alaska Rules of Appellate Procedure, which allow prevailing parties in appeals to be awarded their costs, and case law which defines "prevailing party" quite broadly to sometimes in the discretion of the court include litigants like Brandon who lose all their main claims but achieve relief on some ancillary issue.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future? No action is necessary.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was. See response to no. 6.

8. Any recommendations concerning cases of this type in the future? No.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations. No.

Attorney completing form:  
Jonathan W Terrell  
Assistant Attorney General  
Title

Date:  
January 12, 2002  
269-6379  
Phone Number

In the Supreme Court of the State of Alaska

Richard Brandon, )  
 )  
 Appellant(s), )  
 )  
 v. )  
 )  
 Corrections Corporation of America, )  
 )  
 Appellee(s). )  
 \_\_\_\_\_ )

Supreme Court No. S-09228

Order  
Awarding Costs

Date of Order: 9/4/01

Trial Court Case # 3AN-98-07897CI

On consideration of the cost bill, filed on 8/25/01, and the opposition, filed on 9/4/01,

IT IS ORDERED:

1. APPELLEE shall pay APPELLANT \$87.00 for the following costs:

\$31.00 filing fee (appellant did not pay the full filing fee of \$100 but paid a reduced amount on 3/19/99); \$36.60 for copying costs and \$19.40 for postage.

2. The following costs are disallowed: typing supplies and paralegal fees. Appellant was awarded only "allowable costs, if any incurred." Typing supplies and paralegal fees are not costs allowable under Appellate Rule 508(d).

Clerk of the Appellate Courts

*Marilyn May*  
\_\_\_\_\_  
Marilyn May

Distribution:

Timothy W Terrell  
OSPA  
310 K Street #307  
Anchorage AK 99501

Richard Brandon  
Spring Creek Correctional Center  
P.O. Box 5001  
Seward AK 99664-5001

**From:** Mick Hawley  
**To:** Eric Johnson; Kathryn Daughhete  
**Date:** Tue, Jan 9, 2001 9:10 AM  
**Subject:** Re: Judgments and Claims - Round 1

In State v. Planned Parenthood, 3AN 97-9041, S-8580 (the parental consent case), Judge Tan ordered the state to pay \$148,672.70 in attorneys fees. The award is stayed pending appeal. The court should issue a decision soon. If we lose the appeal, it is reasonable to anticipate that the fees will be comparable to the fees on appeal in the Partial birth abortion case, but larger because there was oral argument in this case.

>>> Kathryn Daughhete 01/04 4:21 PM >>>

If you could give me the figures, I will include it in a heads up to OMB. Thanks.

>>> Eric Johnson 01/04 3:50 PM >>>

It is likely that we'll receive a decision from the supreme court in the next few months in the Planned Parenthood (parental consent to abortion) case. The decision probably will be adverse to the state, and it will probably have the effect of dissolving the current stay of the trial court's attorneys' fee award. The supreme court also will probably award additional appellate attorneys' fees to the plaintiffs. Do we need to do something now, or just wait till the case is decided?

>>> Kathryn Daughhete 01/04 11:44 AM >>>

This message is for all attorney, paraprofessional and legal secretary staff.

All too soon it's time to complete the forms for any judgments and claims in preparation for the upcoming supplemental bill in the legislature. The Office of Management and Budget has given us a Feb 8. deadline (30 days after the first day of session in accordance with statute). Over the course of the session I will be asking for additional submissions as they occur. For this first round, I would like to have everything that's floating around out there in order to have as accurate an assessment of the funding need, and minimize the late additions to the funding list.

I would like electronic copies of all submissions, therefore please send them to me as you complete them, via e mail attachment. Thanks! Attached is the current version of the form.

As a second and related matter, I have received the updated interest rate from the court system applicable to judgments entered or settlement agreements finalized in calendar year 2001. The new rate is 9%. This rate does not apply if the cause of action accrued before August 7, 1997 or if the award or agreement directs a different rate of interest or specifies that no interest accrues.

Thanks in advance for your help!

Kathryn Daughhete  
Director, Administrative Services  
State of Alaska  
Department of Law  
465-3673  
Fax 465-5419  
[kathryn\\_daughhete@law.state.ak.us](mailto:kathryn_daughhete@law.state.ak.us)

**Section 11**

**Judgments and Claims**

**Department of Law**

**Melissa Witteveen v DMV**



Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Melissa Witteveen v. Dept. of Administration, Division of Motor Vehicles

Case No.: 3AN-99-3483 Civil (Superior Court)

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State. This case involves an administrative appeal from a decision of the Division of Motor Vehicles ("DMV") revoking the driver's license of Melissa Witteveen for possession or consumption of alcohol, pursuant to AS 28.15.183-.184, commonly known as the "use it and lose it" law. Witteveen was one of a number of minors who were cited pursuant to these statutes. The supreme court struck the statute down as unconstitutional in Dept. of Public Safety v. Niedermeyer, 14 P.3d 264 (Alaska 2000). Following the supreme court's decision, the State stipulated to reversal of Witteveen's administrative revocation and the court ordered accordingly. Witteveen's attorney then requested attorney's fees and costs, the State partially opposed, and the superior court entered an order awarding her partial attorney's fees.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case. The issues in this case involve the constitutionality of AS 28.15.183-.184, which allow DMV to administratively revoke the driver's license of a minor who possesses or consumes alcohol or drugs, even if that possession or consumption does not take place while the minor is driving a car. A primary issue was whether the statutes were "punitive," thus requiring the procedural due process protections that attach to a criminal proceeding, or "remedial," allowing DMV to apply the lesser procedural due process requirements that attach to an administrative action. Cited minors usually argued that the statutes were clearly punitive, because there was no connection to the minor's fitness to drive. DMV argued that they were remedial, because available evidence demonstrates that minors who consume alcohol or drugs are twice as likely as adults who do so to subsequently get behind the wheel of a car and drive under the influence, and so the statutes are rationally related to the legitimate remedial goal of keeping potentially unsafe drivers off the road. The supreme court found in Niedermeyer that the statutes were punitive, and that minors were thus entitled to the due process requirements associated with criminal proceedings, i.e. the right to jury trial and counsel.

3. Did the State prevail on any issues? If so, describe. DMV prevailed on two issues at the supreme court level in Niedermeyer, i.e. the issues of whether the statutes violated

substantive due process and the prohibition on cruel and unusual punishment. It did not prevail on any substantive issues in Witteveen's particular case since they were not litigated and the case was contingent on the decision in Niedermeyer.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful. The primary way that the State sought to reduce potential costs to the State was by agreeing to stay briefing in minor in possession cases pending a decision by the supreme court as to the constitutionality of AS 28.15.183-.184. If the minors' attorneys had been uniformly given the opportunity to litigate and file full briefing in the numerous minor in possession administrative appeals at the superior court level, when they ultimately prevailed they would have been entitled to greater fees. In Witteveen's case, the State challenged the requested attorney's fees because she requested too high a percentage of actual fees. The court awarded Witteveen about 30% of her actual attorney's fees.

5. What was the source of the State's liability in this case? There was no underlying monetary award. The source of the State's liability was limited strictly to the Alaska Rules of Appellate Procedure, which allow prevailing parties in administrative appeals to be awarded part of their attorney's fees and costs.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future? Liability in this case arose from DMV's enforcement of a presumptively valid statute, later struck down as unconstitutional. The only action necessary to take is to enforce current law as construed by the appellate courts.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was. DMV has not taken any corrective action other than that described in 6 above.

8. Any recommendations concerning cases of this type in the future? These types of challenges to statutes can occur at any time. It would have been helpful in defending the statutes to have more evidence in the legislative record explicitly addressing and supporting the underlying rationale of the statutes, perhaps a formal committee report, statement of legislative intent, or legislative commentary.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations. The legislature amended the minor in possession statutes last session in response to the Niedermeyer decision, so no further change is needed.

Attorney completing form:

Anthony W. Terrell

Assistant Attorney General

Title

Date:

January 18, 2002

219-6379

Phone Number

RECEIVED

MAY 14 2001

Department of Law  
Office of Attorney General  
3rd Judicial District  
Anchorage, Alaska

Thomas V. Wang  
Bankston, Gronning, O'Hara,  
Sedor, Mills, Givens & Heaphey, P.C.  
550 W. 7<sup>th</sup> Ave., Ste. 1800  
Anchorage, AK 99501  
907-276-1711  
907-279-5358 (Facsimile)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF )  
MELISSA K. WITTEVEEN, )  
 )  
Appellant. )

Case No. 3AN-99-3483 CI

ORDER APPROVING MOTION FOR ATTORNEY'S FEES

The Court, in its discretion, pursuant to Appellate Rule 508, hereby orders that the appellee, State of Alaska, pay attorney's fees to appellant in the amount of \$ 500<sup>00</sup>. The Court bases its determination upon the relative complexity of the case, the relatively small amount of fees incurred, and the fact that appellant's rights were deprived pursuant to an unconstitutional statute.

DATED this 11<sup>th</sup> day of May, 2001.

*Patricia H. Mitchell*  
SUPERIOR COURT JUDGE

APR 27 2001  
APR 27 2001

copy of the above was mailed to each of the following at their addresses of record:

*T. Wang*  
*AG - Redyce*  
Secretary/Deputy Clerk

Bankston, Gronning, O'Hara, Sedor, Mills, Givens & Heaphey, P.C.

Attorney at Law  
550 W. 7<sup>th</sup> Ave., Suite 1800  
Anchorage, Alaska 99501  
Tel. (907) 276-1711 - Fax (907) 279-5358  
www.bankston.io

Section 11

Judgments and Claims

Department of Law

Brandon Garrett v DMV





Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Brandon Garrett v. Dept. of Administration, Division of Motor Vehicles

Case No.: 3AN-97-3984 Civil (Superior Court)

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State. This case involves an administrative appeal from a decision of the Division of Motor Vehicles ("DMV") revoking the driver's license of Brandon Garrett for possession or consumption of alcohol, pursuant to AS 28.15.183-.184, commonly known as the "use it and lose it" law. Garrett was one of a number of minors who were cited pursuant to these statutes. The supreme court struck the statute down as unconstitutional in Dept. of Public Safety v. Niedermeyer, 14 P.3d 264 (Alaska 2000). Following the supreme court's decision, the State stipulated to reversal of Garrett's administrative revocation and the court ordered accordingly. Garrett's attorney then requested attorney's fees and costs, the State partially opposed, and the superior court entered an order awarding him partial attorney's fees and full costs.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case. The issues in this case involve the constitutionality of AS 28.15.183-.184, which allow DMV to administratively revoke the driver's license of a minor who possesses or consumes alcohol or drugs, even if that possession or consumption does not take place while the minor is driving a car. A primary issue was whether the statutes were "punitive," thus requiring the procedural due process protections that attach to a criminal proceeding, or "remedial," allowing DMV to apply the lesser procedural due process requirements that attach to an administrative action. Cited minors usually argued that the statutes were clearly punitive, because there was no connection to the minor's fitness to drive. DMV argued that they were remedial, because available evidence demonstrates that minors who consume alcohol or drugs are twice as likely as adults who do so to subsequently get behind the wheel of a car and drive under the influence, and so the statutes are rationally related to the legitimate remedial goal of keeping potentially unsafe drivers off the road. The supreme court found in Niedermeyer that the statutes were punitive, and that minors were thus entitled to the due process requirements associated with criminal proceedings, i.e. the right to jury trial and counsel.

3. Did the State prevail on any issues? If so, describe. DMV prevailed on two issues at the supreme court level in Niedermeyer, i.e. the issues of whether the statutes violated

substantive due process and the prohibition on cruel and unusual punishment. It did not prevail on any substantive issues in Garrett's particular case since they were not litigated and the case was contingent on the decision in Niedermeyer.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful. The primary way that the State sought to reduce potential costs to the State was by agreeing to stay briefing in minor in possession cases pending a decision by the supreme court as to the constitutionality of AS 28.15.183-.184. If the minors' attorneys had been uniformly given the opportunity to litigate and file full briefing in the numerous minor in possession administrative appeals at the superior court level, when they ultimately prevailed they would have been entitled to greater fees. In Garrett's case, the State challenged the requested attorney's fees because the requested too high a percentage of actual fees. The court awarded Garrett about 30% of his actual attorney's fees. The State did not oppose Garrettel's cost bill, as it was reasonable and involved items that are all clearly allowed as costs pursuant to applicable court rules, statutes, and precedent.

5. What was the source of the State's liability in this case? There was no underlying monetary award. The source of the State's liability was limited strictly to the Alaska Rules of Appellate Procedure, which allow prevailing parties in administrative appeals to be awarded part of their attorney's fees and costs.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future? Liability in this case arose from DMV's enforcement of a presumptively valid statute, later struck down as unconstitutional. The only action necessary to take is to enforce current law as construed by the appellate courts.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was. DMV has not taken any corrective action other than that described in 6 above.

8. Any recommendations concerning cases of this type in the future? These types of challenges to statutes can occur at any time. It would have been helpful in defending the statutes to have more evidence in the legislative record explicitly addressing and supporting the underlying rationale of the statutes, perhaps a formal committee report, statement of legislative intent, or legislative commentary.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations. The legislature amended the minor in possession statutes last session in response to the Niedermeyer decision, so no further change is needed.

Attorney completing form:

Timothy W Terrell

Assistant Attorney General  
Title

Date:

January 18, 2002

269-6379  
Phone Number

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE


BRANDON GARRETT, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 STATE OF ALASKA, )  
 DEPARTMENT OF MOTOR VEHICLES )  
 )  
 Appellee, )  
 ) 3AN-97-3984 CI

ORDER GRANTING APPELLANT'S  
MOTION AND MEMORANDUM FOR ATTORNEY'S FEES AND COSTS

Appellant, pursuant to Appellate Rule 508(d) and 508(e) has filed a motion and memorandum for attorney's fees and costs in the above-captioned action and the Court having been fully advised thereto;

HEREBY GRANTS the Appellant's motion for attorney's fees and costs. Appellant is hereby awarded \$ 436<sup>50</sup> in attorney's fees and \$100.00 in costs.

DATED this 7 day of MAY, 2001.

  
\_\_\_\_\_  
Honorable Superior Court Judge  
SANDERS

PURSUANT TO APP. RULE 508, THE COURT HAS CONSISTENTLY AWARDED 30% OF THE FEES INCURRED IN THESE CASES.

I certify that on 5/8/01  
a copy of the above was mailed to each of the following at their addresses of record:

K. Sims  
Secretary/Deputy Clerk  
CAUDLE/TERRER (AG'S)

Larry L. Caudle, Esq., Attorney at Law  
2525 Blueberry Rd., Suite 201, Anchorage, AK 99503  
(907) 276-8106 FAX (907) 277-2399

APR 27 2001

**Section 11**

**Judgments and Claims**

**Department of Law**

**Nicholas Digel v DMV**



Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Nicholas Digel v. Dept. of Administration, Division of Motor Vehicles

Case No.: 3AN-01-5855 Civil (Superior Court)

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State. This case involves an administrative appeal from a decision of the Division of Motor Vehicles ("DMV") revoking the driver's license of Nicholas Digel for possession or consumption of alcohol, pursuant to AS 28.15.183-.184, commonly known as the "use it and lose it" law. Digel was one of a number of minors who were cited pursuant to these statutes. The supreme court struck the statute down as unconstitutional in Dept. of Public Safety v. Niedermeyer, 14 P.3d 264 (Alaska 2000). Following the supreme court's decision, the State stipulated to reversal of Digel's administrative revocation and the court ordered accordingly. Digel's attorney then requested attorney's fees and costs, the State partially opposed, and the superior court entered an order awarding him partial attorney's fees and full costs.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case. The issues in this case involve the constitutionality of AS 28.15.183-.184, which allow DMV to administratively revoke the driver's license of a minor who possesses or consumes alcohol or drugs, even if that possession or consumption does not take place while the minor is driving a car. A primary issue was whether the statutes were "punitive," thus requiring the procedural due process protections that attach to a criminal proceeding, or "remedial," allowing DMV to apply the lesser procedural due process requirements that attach to an administrative action. Cited minors usually argued that the statutes were clearly punitive, because there was no connection to the minor's fitness to drive. DMV argued that they were remedial, because available evidence demonstrates that minors who consume alcohol or drugs are twice as likely as adults who do so to subsequently get behind the wheel of a car and drive under the influence, and so the statutes are rationally related to the legitimate remedial goal of keeping potentially unsafe drivers off the road. The supreme court found in Niedermeyer that the statutes were punitive, and that minors were thus entitled to the due process requirements associated with criminal proceedings, i.e. the right to jury trial and counsel.

3. Did the State prevail on any issues? If so, describe. DMV prevailed on two issues at the supreme court level in Niedermeyer, i.e. the issues of whether the statutes violated

substantive due process and the prohibition on cruel and unusual punishment. It did not prevail on any substantive issues in Digel's particular case since they were not litigated and the case was contingent on the decision in Niedermeyer.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful. The primary way that the State sought to reduce potential costs to the State was by agreeing to stay briefing in minor in possession cases pending a decision by the supreme court as to the constitutionality of AS 28.15.183-.184. If the minors' attorneys had been uniformly given the opportunity to litigate and file full briefing in the numerous minor in possession administrative appeals at the superior court level, when they ultimately prevailed they would have been entitled to greater fees. In Digel's case, the State challenged the requested attorney's fees because the requested too high a percentage of actual fees. The court awarded Digel about 30% of his actual attorney's fees. The State did not oppose Digel's cost bill, as it was reasonable and involved items that are all clearly allowed as costs pursuant to applicable court rules, statutes, and precedent.

5. What was the source of the State's liability in this case? There was no underlying monetary award. The source of the State's liability was limited strictly to the Alaska Rules of Appellate Procedure, which allow prevailing parties in administrative appeals to be awarded part of their attorney's fees and costs.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future? Liability in this case arose from DMV's enforcement of a presumptively valid statute, later struck down as unconstitutional. The only action necessary to take is to enforce current law as construed by the appellate courts.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was. DMV has not taken any corrective action other than that described in 6 above.

8. Any recommendations concerning cases of this type in the future? These types of challenges to statutes can occur at any time. It would have been helpful in defending the statutes to have more evidence in the legislative record explicitly addressing and supporting the underlying rationale of the statutes, perhaps a formal committee report, statement of legislative intent, or legislative commentary.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations. The legislature amended the minor in possession statutes last session in response to the Niedermeyer decision, so no further change is needed.

Attorney completing form:

Timothy W. Terrell

Assistant Attorney General  
Title

Date:

January 18, 2007

269-6379  
Phone Number

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

NICHOLAS DIGEL,	)	
	)	
Appellant,	)	Case No. 3AN-01-5855 CI
	)	(Superior Court Appeal Case)
vs.	)	
	)	Administrative Agency No. Unknown
STATE OF ALASKA, DIVISION OF	)	
MOTOR VEHICLES,	)	
	)	
Appellee.	)	

ORDER ON REQUEST FOR ATTORNEY FEES

The Court having considered Appellant's request for attorney fees and any opposition or response thereto,

IT IS HEREBY ORDERED that appellant's request is granted.

Appellee, State of Alaska, Division of Motor Vehicles, shall pay to Appellant, Nicholas Digel attorney's fees in the amount of ~~\$426.00~~ <sup>\$126.00</sup>.

Dated this 7 day of May, 2001 at Anchorage, Alaska.

✓ AND COSTS OF \$103.01.

E. B. L.  
Superior Court Judge  
J. SANDERS

FTZGERALD  
TORRELL (AGIS)

Copy of the above was provided to each of the following at their addresses of record:  
J. C. SIMS  
Secretary/Deputy Clerk

INGALDSON  
MAASSEN, P.C.  
Lawyers  
813 W 3rd Avenue  
Anchorage, Alaska  
99501-2001  
(907) 258-6750  
Fax: (907) 258-8751

UNDER THE RULE, A PREVAILING PARTY NORMALLY RECOVERS PARTIAL FEES. IN THESE CASES THE COURT HAS CONSISTENTLY AWARDED 30% OF THE APPELLANT'S ACTUAL FEES.

**Section 11**

**Judgments and Claims**

**Department of Law**

**Donald Ryall v DMV**



Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Donald Ryall v. Dept. of Administration, Division of Motor Vehicles

Case No.: 3PA-99-1117 Civil (Superior Court)

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State. This case involves an administrative appeal from a decision of the Division of Motor Vehicles ("DMV") revoking the driver's license of Donald Ryall for refusing to submit to a breath test to determine intoxication. Ryall's neighbor called the state troopers after a confrontational encounter with Ryall. A state trooper responded and investigated, making a warrantless entry into Ryall's home. His investigation led him to believe Ryall had driven while intoxicated so he asked Ryall to submit to a breath test. Ryall refused, thus resulting in his license being administratively revoked pursuant to AS 28.15.165-.166. Review of the matter led counsel to the conclusion that the administrative record was thin and poorly developed with regard to several key facts necessary to argue an "exigent circumstances" exception to the warrant requirement justifying the officer's entry into the home, and counsel declined to go forward with the matter to avoid the case going to the appellate courts and risking adverse precedent that would harm the State's position in other cases. Ryall's attorney then requested full attorney's fees and costs, the State opposed, and the superior court entered an order awarding him partial attorney's fees.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case. No substantial effort was incurred in bringing or defending the case.

3. Did the State prevail on any issues? If so, describe. The State did not prevail on any substantive issues.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful. Ryall sought full attorney's fees. Under Alaska Rule of Appellate Procedure 508, prevailing parties are normally only entitled to partial awards of attorney's fees, unless they can show their opponent's position was frivolous or vexatious. The State had initially indicated that it thought Ryall's position was without merit, but later declined to prosecute the matter, and Ryall argued this was indicative of bad faith. The State argued that it had sound prudential reasons for its litigation

actions in the case, and that Ryall was not entitled to anywhere near full fees. The State did not oppose Ryall's costs bill. The superior court agreed that Ryall was not entitled to full fees, and awarded him only roughly \$1200 of the approximately \$6800 in fees that he sought.

5. What was the source of the State's liability in this case? There was no underlying monetary award. The source of the State's liability was limited strictly to the Alaska Rules of Appellate Procedure, which allow prevailing parties in administrative appeals to be awarded part of their attorney's fees and costs.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future? No action was necessary. This case simply involves a scenario that frequently confronts law enforcement officers, *i.e.* whether the factors are present to justify a warrantless home entry. Courts evaluate warrantless entries using a multi-factor test and their evaluation of such entries tends to be fact-specific, so law enforcement officers can rarely be completely sure that they are completely correct when they do so, and occasionally their decision will be deemed wrong after the fact. This case is not indicative of any egregious behavior on the part of the trooper involved or of any lack of training.

DMV could have developed a better record as to some of the factual issues regarding the exigent circumstances exception to the warrant requirement, but the failure to do so in this case was not the result of any systemic problem with the way DMV license revocation hearings are conducted.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was. The undersigned is unaware whether any action was taken.

8. Any recommendations concerning cases of this type in the future? No.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations. No.

Attorney completing form:

Date:

Timothy W. Terrell  
Assistant Attorney General  
Title

January 18, 2002  
269-6379  
Phone Number

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
 THIRD JUDICIAL DISTRICT AT PALMER

DONALD A. RYALL, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 STATE OF ALASKA, DEPT. )  
 OF ADMINISTRATION, DIV. )  
 OF MOTOR VEHICLES, )  
 )  
 Appellee. )

FILED IN THE TRIAL COURTS  
 STATE OF ALASKA, THIRD DISTRICT  
 AT PALMER

OCT 5 : 2001

Clerk of the Trial Courts

By ..... Deputy

Case No. 3PA-99-1117 Civil

ORDER DENYING MOTION FOR FULL ATTORNEY'S FEES AND  
 AWARDING PARTIAL ATTORNEY'S FEES AND FULL COSTS

Appellant Ryall has filed a motion seeking full attorney's fees under Ak. R. App. P. 508(e). Ryall asserts that appellee Division of Motor Vehicles' ("DMV") handling of this case shows that its underlying position was frivolous and that it unreasonably delayed resolution of this case for purposes of vexatious harassment, and thus argues that he is entitled to full attorney's fees instead of only partial fees which is the presumptive norm under the rule. Alternatively he argues that the circumstances of this case merit a substantial partial fees award, in the range of 86% of his actual fees. DMV opposes.

CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
 310 K STREET, SUITE 501  
 ANCHORAGE, ALASKA 99501  
 (907) 269-6379

FEB 20 2001

Having considered Ryall's motion and DMV's opposition, the court denies Ryall's request for full fees. The court finds no basis to conclude either that DMV unreasonably delayed resolution of this case for purposes of vexatious harassment or that any legal position it took (implicitly or explicitly) was frivolous such as to justify an award of full fees. The court also does not find that the circumstances of this case justify a partial fee award in the 86% range. Accordingly, the court hereby awards Ryall attorneys fees in the amount of 20 % percent of his incurred fees, i.e. 46.66 hours multiplied by his counsel's hourly rate of \$125/hour, for a total attorney's fees award of

\$ 1,166.50. The court has redacted 8 hours of the total 54.66 hours as time the state should pay 100 percentage for a total time associated with Ryall's 13 month late motion for late filing of appeal. This time is not explicitly divided out in Luffberry's Exhibit A, but can be gleaned from the various entries. That motion was substantial. Ryall has also requested costs of \$95.64. DMV does not oppose the request. These fees were not "reasonably necessary" by Ryall and are not paid in time.

and accordingly the court awards Ryall \$95.64 in costs.

Dated this 31 day of October, 2001 at Palmer, Alaska.

Transmitted 11.1.01  
 a copy of this document was sent to:  
 CSED  
 Attorney(s) of Record  
 Plaintiff  
 Defendant  
 Other  
 at the address(es) of record.  
 Rec'd Jnl 11.1.01 NW  
 Date Deputy Clerk

Beverly W. Cutler  
 BEVERLY W. CUTLER  
 Superior Court Judge

A 70% award is more appropriate for the extreme delay in filing the motion. The court did not intend to mirror the delay of the plaintiff but evidently did by not granting the motion and "slipped between the cracks."

CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
 310 K STREET, SUITE 501  
 ANCHORAGE, ALASKA 99501  
 (907) 269-6379

**Section 11**

**Judgments and Claims**

**Department of Law**

**Brown v DMV**



Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Thomas Brown v. Dept. of Administration, Division of Motor Vehicles

Case No.: S-8716 (Supreme Court)

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State. This case involves an administrative appeal from a decision of the Division of Motor Vehicles ("DMV") revoking the driver's license of Thomas Brown for driving while intoxicated. Brown requested an administrative review hearing to challenge the DMV's decision to revoke his license. Brown's hearing was held telephonically. Brown appealed to superior court, arguing that holding his hearing telephonically violated his right to due process, because the hearing officer cannot properly evaluate witness credibility without seeing them testify. The superior court disagreed, and Brown appealed to the Alaska Supreme Court. In a companion case, *Whitesides v. Dept of Public Safety*, 20 P.3d 1130 (Alaska 2001), the supreme court held that due process requires that DMV hearing officers take witness testimony in-person at least when the witness's credibility is at issue. Based on *Whitesides*, the supreme court also reversed Brown's revocation.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case. See the response to no. 1.

3. Did the State prevail on any issues? If so, describe. The State did not prevail on any substantive issues at the supreme court level.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful. The State did not oppose Brown's requests for costs, which were reasonable. Brown did not ask for attorney's fees so there was nothing to oppose.

5. What was the source of the State's liability in this case? There was no underlying monetary award. The source of the State's liability was limited strictly to the Alaska Rules of Appellate Procedure, which allow prevailing parties in appeals to be awarded part of their attorney's fees and costs.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future? No action was necessary, other than restructuring agency hearing processes to comply with the court's decision.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was. See above.

8. Any recommendations concerning cases of this type in the future? No.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations. No.

Attorney completing form:

Timothy W. Terrell  
Assistant Attorney General  
Title

Date:

January 18, 2002  
269-6379  
Phone Number

In the Supreme Court of the State of Alaska

RECEIVED

DEPARTMENT OF LAW

MAY - 9 2001

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
ANCHORAGE, ALASKA

Supreme Court No. S-08716

Thomas A. Brown, )  
 )  
 Appellant(s), )  
 )  
 v. )  
 )  
 State of Alaska, DMV, )  
 )  
 Appellee(s). )

Order

Awarding Costs

Date of Order: 5/8/01

Trial Court Case # 3AN-97-06824 CI

On consideration of the cost bill, filed on 4/23/01,

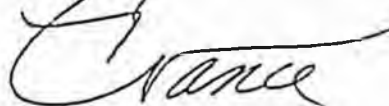
IT IS ORDERED:

The appellee shall pay appellant \$414.43 for costs.

Cost bond in the amount of \$750.00 is returned to Brent R. Cole, Check No. 134857.

Entered under Appellate Rule 508(d).

Clerk of the Appellate Courts



Carol L. Vance, Deputy Clerk

Distribution:

Brent R. Cole  
Marston & Cole P C  
745 West Fourth Avenue #502  
Anchorage AK 99501

Timothy W Terrell  
OSPA  
310 K Street #407  
Anchorage AK 99501

**Section 11**

**Judgments and Claims**

**Department of Law**

**Peter Knight v DMV**

Department of Law  
JUDGMENTS/CLAIMS/SETTLEMENTS FOR PAYMENT

(Please Type)

\*\*This form will be used for the purpose of standardizing the submission of claims to the Legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. If any of the information changes, please immediately advise the Director, Administrative Services Division, P.O. Box 110300, Juneau, Alaska 99811, or call (907) 465-3673.

PART ONE

1. Case Name: Peter T. Knight v. Division of Motor Vehicles
2. Case Number: 3AN-99-3397 Civil (Superior Court)
3. Judge/Justices: Peter A. Michalski
4. Date Judgment entered: January 7, 2002
5. Did the date of the cause of action accrue on or after August 7, 1997? Yes
6. Amount to be paid: \$873.20 (\$500 in attorney's fees and \$373.20 in costs)
7. Interest Rate: 4.25% Effective Date: January 7, 2002
8. Requested hourly rate and total compensation of attorneys to be paid: \$3,000, \$190/hour
9. Court approved/ordered hourly rate and total compensation of attorneys to be paid: \$500, appears to have approved hourly rate and simply awarded partial fees per Rule 508
10. Payable to: Kasmar and Slone, P.C. in trust for Peter T. Knight
11. EIN: 92-0150468 or SSN:
12. Send check to: \_\_\_\_\_ above address Departmental contact: \_x\_

Departmental attorney contact:

Timothy W. Terrell

Name

269-6379

Telephone Number

Departmental Approval:

[Signature]

Deputy Attorney General

2-23-02

Date

Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: Peter T. Knight v. Division of Motor Vehicles

Case No.: 3AN-99-3397 Civil (Superior Court)

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State. Peter Knight's driver's license was administratively revoked by the Division of Motor Vehicles ("DMV") because he drove while intoxicated. Knight requested an administrative review hearing before a DMV hearing officer to challenge the revocation, and a telephonic hearing was held resulting in the affirmance of the revocation. Knight then appealed to superior court, and argued that his right to due process was violated by conducting his hearing telephonically. The case was stayed pending a decision in two companion supreme court cases addressing the issue of the constitutionality of telephonic DMV hearings. In *Whitesides v. Dept. of Public Safety*, 20 P.3d 1130 (Alaska 2001) and *Brown v. Dept. of Administration*, 20 P.3d 586 (Alaska 2001) the supreme court held that DMV hearing officers are required to take a witness's testimony in-person when the witness's credibility is at issue. Based on *Whitesides* and *Brown*, the superior court remanded Knight's case for an in-person hearing. Knight's attorney then moved for attorney's fees and costs, and the superior court awarded him partial fees and costs.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case. No substantial effort was required in bringing or defending this case, because it was stayed pending a resolution of the same issues presented in two supreme court cases.

3. Did the State prevail on any issues? If so, describe. No. Knight raised two issues, one about the constitutionality of holding his hearing telephonically, the other about whether he was denied his right to make a phone call as guaranteed by AS 12.25.150(b). The court did not decide the second issue because it was unnecessary given its resolution of the first issue.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful. Costs to the State were minimized in two ways. First, the case was stayed pending a decision in the *Whitesides* and *Brown* cases, thus avoiding having opposing counsel spend unnecessary attorney

time briefing those issues. Second, the State challenged Knight's request for \$3,000 in attorney's fees, noting that his degree of success was fairly negligible and did not warrant that amount of fees. The superior court appeared to agree as it only awarded him \$500 in attorney's fees..

5. What was the source of the State's liability in this case? There was no underlying monetary award. The source of the State's liability was based on the Alaska Rules of Appellate Procedure, which allow prevailing parties in appeals to be awarded their costs, and case law which defines "prevailing party" quite broadly.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future? No action is necessary.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was. See response to no. 6.

8. Any recommendations concerning cases of this type in the future? No.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations. No.

Attorney completing form:

Timothy W Terrell

Assistant Attorney General  
Title

Date:

January 22, 2002

269-6379  
Phone Number

TWT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

PETER T. KNIGHT, )  
)  
Appellant, )  
)  
vs. )  
)  
STATE OF ALASKA, DEPT. OF )  
ADMINISTRATION, DIV. OF )  
MOTOR VEHICLES, )  
)  
Appellee. )

Case No. 3AN-99-3397 Civil

ORDER GRANTING MOTION FOR FEES AND COSTS AND FINAL JUDGMENT

Having considered appellant Knight's motion for costs and attorney's fees, and appellee Division of Motor Vehicles' opposition, the court hereby grants Knight attorney's fees in the amount of \$500<sup>00</sup> and costs in the amount of 373<sup>20</sup>, for a total judgment of \$873<sup>20</sup>. Interest shall accrue on the judgment until satisfied at a rate of 4 1/4%.

LET EXECUTION ISSUE.

Dated this 7<sup>th</sup> day of Jan., 2002 at Anchorage, Alaska.

Peter A. Michalski  
PETER A. MICHALSKI  
Superior Court Judge

1-8-02 a copy of the above was mailed to each of the following at their addresses of record (last names if not an agency)

CSED  W3  PD  DA

F. Stone  
0224 - Terrell  
L. Koenig, Agency  
[Signature]  
Deputy Clerk

STATE OF ALASKA  
DEPARTMENT OF LAW  
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
310 K STREET, SUITE 407  
ANCHORAGE, ALASKA 99501  
(907) 269-6379

**Section 11**

**Judgments and Claims**

**Department of Law**

**Quinhagak v U.S.**

Department of Law

JUDGMENTS/CLAIMS/SETTLEMENTS FOR PAYMENT

(Please Type)

\*\*This form will be used for the purpose of standardizing the submission of claims to the Legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. If any of the information changes, please immediately advise the Director, Administrative Services Division, P.O. Box 110300, Juneau, AK 99811, or call (907) 465-3673.

PART ONE

1. Case Name: *Quinhagak v. United States*
2. Case Number: A93-0023-CV (HPH): U.S. District Court  
No. 93-35496: Court of Appeals for the Ninth Circuit
3. Judge/Justices: Judge Holland: U.S. District Court  
Judges Pregerson, Canby & Boochever: Ninth Circuit
4. Date Judgment entered:  
  
First fees/expenses component: September 30, 1996  
Second fees/expenses component: October 24, 2000
5. Did the date of the cause of action accrue on or after August 7, 1997? No
6. Amount to be paid: \$82,525.07  
  
\$35,388.16 for the 9/30/96 judgment  
\$47,136.91 for the 10/24/00 judgment
7. Interest Rate: Effective Date:  
  
5.9% for \$35,388.16, effective 9/30/96  
6.241% for \$47,136.91, effective 10/24/00  
(See 28 U.S.C. § 1961(a))
8. Requested hourly rate and total compensation of attorneys to be paid: The judgments listed above are for attorney's fees and costs; hourly rates are \$125 - \$200 per hour; total requested for the fees and costs under these judgments was approximately \$448,000, to be allocated between the state and the United States.

9. Court approved/ordered hourly rate and total compensation of attorneys to be paid:  
The court awarded \$82,525.07 as the amount of these judgments to be allocated to the  
state, at hourly rates of \$125-200.

10. Payable to: Alaska Legal Services Corporation  
Controller, Alaska Legal Services Corporation  
1016 West 6th Ave., Suite 200  
Anchorage, AK 99501-1963

11. EIN: 92-003-4754 or SSN:

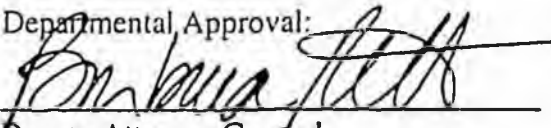
12. Send check to: x above address Departmental contact:

Departmental attorney contact:

Joanne Grace  
Name

269-5237  
Telephone Number

Departmental Approval:

  
Deputy Attorney General

1/25/02  
Date

Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST  
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: *Quinhagak v. United States*  
Case No.: A93-0023-CV (HRH): U.S. District Court  
No. 93-35496: Court of Appeals for the Ninth Circuit

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State.

The plaintiffs (the villages of Quinhagak and Goodnews Bay, the AVCP, and individual Yup'ik Natives) sought declaratory and injunctive relief allowing the harvest of rainbow trout from the Kanektok and Goodnews Rivers for subsistence. The plaintiffs claimed that navigable rivers are "public lands" for purposes of ANILCA, that the state has no subsistence jurisdiction over the waters, and that the federal government has the authority to regulate non-public lands and waters owned by the state when necessary to provide for subsistence uses. The plaintiffs succeeded in getting a preliminary injunction against the state, and ultimately a final judgment reflecting that the new federal subsistence regulations grant the relief they sought.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case.

State fisheries management authority on navigable waters  
Subsistence rights of rural residents

3. Did the State prevail on any issues? If so, describe.

The state prevailed on the plaintiffs' claim that the federal agencies have fisheries management authority over all waters in the state by virtue of the navigational servitude. The Ninth Circuit held that the authority of the federal agencies extends to navigable waters in only about half of Alaska.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful.

We vigorously litigated the request for attorney's fees. The state has appealed one component of the district court's attorney's fee award (approximately \$70,000 at issue) to the Ninth Circuit, so that part of the award is *not* included in this request.

5. What was the source of the State's liability in this case?

Section 807 of the Alaska National Interest Lands Conservation Act grants attorney's challenge.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future?

No action is necessary.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was.

This question is not applicable to this case.

8. Any recommendations concerning cases of this type in the future?

No.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations.

No.

Attorney completing form:

Date: January 24, 2002

Joanne Grace  
Assistant Attorney General

269-5237  
Phone Number

**End of Section 11**  
**Judgments and Claims**

**Department of Law**

**Change Record Detail With Description**

Department of Law

Scenario: LAW FY2002 Supplemental - Governor's (2483)  
 Component: Office of the Attorney General (2162)  
 BRU: Administration and Support (280)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 12(a) Legal Secretary Reclassification</b>													
	Suppl	131.1	131.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1002 Fed Rcpts	1.7												
1007 I/A Rcpts	129.4												
<p>The Department of Law implemented a reclassification of its legal support positions in the final pay period of FY 2001. The study was undertaken for a number of reasons: primarily because recruitment of legal secretaries was becoming increasingly difficult and retention was increasingly problematic - 46% of legal secretary positions turned over in FY 2000; additionally the class specifications for these positions had last been reviewed in 1969, finally, the State had undertaken a study of the Secretary I&amp;II positions in 1998 and collapsed them into the upper range of 11 - while Legal Secretary I's remained at range 10 (this latter set of circumstances resulted in a union grievance against the state). The Legal Secretary study commenced in February of 2000 and was completed in the late spring of FY 2001 and approved by the Division of Personnel in June. The reclassification called for higher salary ranges for nearly all positions involved in the study. Nearly all Department of Law components are affected by the implementation of this study.</p>													
<b>Totals</b>		<b>131.1</b>	<b>131.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Change Record Detail With Description

Department of Law

Scenario: LAW FY2002 Supplemental - Governor's (2483)

Component: Governmental Affairs Section (2207)

BRU: Civil Division (35)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 12 (b) Bank of America</b>													
	ReAprop	-214.4	0.0	0.0	-214.4	0.0	0.0	0.0	0.0	0.0	0	0	0
1004 Gen Fund		-214.4											
Repeal for reappropriation funds available from Sec 41 Ch 61 SLA 01 P 93 L 28 SB 29 Bank of America (\$214.4); for FY 02 Legal Secretary Reclassification.													
<b>Totals</b>		<b>-214.4</b>	<b>0.0</b>	<b>0.0</b>	<b>-214.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Change Record Detail With Description**

**Department of Law**

Scenario: LAW FY2002 Supplemental - Governor's (2483)

Component: Office of the Attorney General (2162)

BRU: Administration and Support (280)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 12(b) Legal Secretary Reclassification</b>													
	ReAprop	214.4	214.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1004 Gen Fund	214.4												
<p>The Department of Law implemented a reclassification of its legal support positions in the final pay period of FY 2001. The study was undertaken for a number of reasons: primarily because recruitment of legal secretaries was becoming increasingly difficult and retention was increasingly problematic - 46% of legal secretary positions turned over in FY 2000; additionally, the class specifications for these positions had last been reviewed in 1969, finally, the State had undertaken a study of the Secretary I&amp;II positions in 1998 and collapsed them into the upper range of 11 - while Legal Secretary I's remained at range 10 (this latter set of circumstances resulted in a union grievance against the state). The Legal Secretary study commenced in February of 2000 and was completed in the late spring of FY 2001 and approved by the Division of Personnel in June. The reclassification called for higher salary ranges for nearly all positions involved in the study. Nearly all Department of Law components are affected by the implementation of this study.</p>													
<b>Totals</b>		<b>214.4</b>	<b>214.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Change Record Detail With Description**

**Department of Military and Veterans Affairs**

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Army Guard Facilities Maintenance (415)

BRU: Alaska National Guard (130)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 13 Army Guard Telecommunications - Program Activity Increase</b>													
	Suppl	350.0	0.0	0.0	350.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1002 Fed Rcpts	350.0												
<p>In FY01 the federally-funded budget for telecommunications was \$347.2, while actual expenditures were \$697.2. The increase of \$350.0 was attributable to the Distance Learning project and the upgrading of the various lines and connections. Federal funding for telecommunications has been increased and this state supplemental request aligns the state budget with the federal budget for telecommunications.</p> <p>The same amount has been requested as an FY03 increment to continue this level of funding and telecommunications services.</p>													
<b>Totals</b>		<b>350.0</b>	<b>0.0</b>	<b>0.0</b>	<b>350.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Change Record Detail With Description**

**Department of Natural Resources**

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Geological Development (1031)

BRU: Minerals, Land, and Water Development (330)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 14(1) Federal Grant Awards for Geological Projects</b>													
	Suppl	493.4	0.0	0.0	476.1	13.3	4.0	0.0	0.0	0.0	0	0	0
1002 Fed Rcpts	493.4												

## Change Record Detail With Description

### Department of Natural Resources

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Geological Development (1031)

BRU: Minerals, Land, and Water Development (330)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP

The following requests are for increased FY02 federal receipts authorization to accommodate funding changes that have occurred in six federally-funded DGGGS grants since the beginning of state FY02.

Mineral Access Corridor Map File Conversion (USGS) - \$32.9

\$17.1 Contractual

\$11.8 Supplies

\$ 4.0 Equipment

In the mid 1990's DGGGS developed a comprehensive set of maps showing surficial and engineering geology within existing and potential access corridors connecting state lands across Alaska. The maps are of strategic usefulness in planning and scoping proposed transportation projects or evaluating land access to remote sites. These maps were developed digitally with software that has been superseded so that they are no longer accessible for printing. We have been successful in securing federal funds to convert these digital map files to a format compatible with current software. The federal receipts authorization requested will allow DGGGS to complete the conversion process and ensure that this map set remains available to the public and public agencies.

Airborne Geophysics (BLM) - \$58.0

\$58.0 Contractual

In September of FY02 DGGGS secured a cooperative agreement with the US Bureau of Land Management to administer an airborne geophysical survey of the prospective platinum mineral deposit tracts on the south side of the Alaska Range west of Paxson. Federal receipts authorization for the original scope of this work is included in the state FY02 budget. Subsequently, BLM has asked that the survey be enlarged and has made funds available to meet the additional costs that would result. This request is for FY02 federal receipts authorization to accept those additional funds so that the survey contract can be established this spring. This would result in the survey data being available in the winter of 2002.

Quaternary Faults (USGS) - \$27.5

\$26.0 Contractual

\$ 1.5 Supplies

This is a request to accept federal receipt funds to augment an existing US Geological Survey funded program to build a database of geologically young faults that are, or have a potential of becoming, active. Because the US Geological Survey was unable to supply all of the project data that they stipulated at the outset of this grant, DGGGS will have to generate that information in order to successfully complete the project's objectives. The federal receipts authorization requested here would enable DGGGS to accept and expend the funds required to generate the required data and complete this project.

Alaska Volcano Hazard Assessment & Monitoring (USGS) - \$175.0

## Change Record Detail With Description

### Department of Natural Resources

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Geological Development (1031)

BRU: Minerals, Land, and Water Development (330)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<p>Alaska Volcano Hazard Assessment &amp; Monitoring (USGS) - \$175.0                      \$175.0 Contractual                      DGGGS is one of three agencies (DGGGS-UAF-USGS) that provide staff and scientific expertise for the Alaska Volcano Observatory (AVO). DGGGS participation is funded primarily from federal receipts grants received each year. This year, the federal 2002 (FFY02) appropriation for the Alaska Volcano Observatory included funds for an expanded mission in the western Aleutians. The western Aleutian's work results in new task responsibilities for DGGGS to accomplish in state FY02. The federal receipts authorization requested for this project would allow DGGGS to implement the helicopter and other logistical contacts that will support AVO's summer mission in the Aleutian Islands.</p>													
<p>Airborne Geo Survey/Salcha River Pogo Statemap ( USGS) - \$100.0                      \$100.0 Contractual                      DGGGS competes for federal funds to pool with state general fund dollars to support the ground truth geological mapping of potential mineral tracts surveyed by the state CIP-funded airborne geophysical survey program. We budget federal receipts authorization to cover the historical average amount that we have been able to obtain through the Federal Statemap competitive process. This year Congress appropriated additional funds to the nationwide Statemap program, and DGGGS was able to secure above average funding. The federal receipts authorization that we are requesting for this project will allow us to begin field mapping in June 2002 (FY02) and complete an additional 125 square miles of geologic ground truth geologic mapping in the Salcha River - Pogo airborne geophysical tract.</p>													
<p>Coalbed Methane Drilling (BLM) - \$100.0                      \$100.0 Contractual                      For several years DGGGS has been pursuing federal funds to support test drilling for coalbed methane resources in rural Alaska. We have recently negotiated an agreement with the US Bureau of Land management that provides start-up funds for this endeavor. This cooperative agreement establishes a vehicle for the rational development of a rural coalbed methane test drilling program with federal funds. This request for federal receipts authorization would allow DGGGS to implement the pre-season scientific and logistical contracts that are necessary to conduct field operations in the summer of 2002 (FY03).</p>													
<b>Totals</b>		<b>493.4</b>	<b>0.0</b>	<b>0.0</b>	<b>476.1</b>	<b>13.3</b>	<b>4.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Change Record Detail With Description**

**Department of Natural Resources**

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Parks Management (452)

BRU: Parks and Recreation Management (138)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 14(2) Fuel Cost Increases</b>													
	Suppl	20.2	0.0	0.0	20.2	0.0	0.0	0.0	0.0	0.0	0	0	0
1004 Gen Fund	20.2												
<p>Alaska's state parks cover more than 3 million acres of some of the best and most accessible outdoor recreation real estate in Alaska. This accessibility results in over 4 million park visits a year. Providing maintenance, fee collection, public safety, visitor contact, and resource protection in the 121 units of the park system requires park staff to be in the field on a daily basis. Parks cannot be managed from a desk. Field management requires trucks, ATVs, snowmobiles, and boats, all of which require gasoline. Park Rangers, maintenance workers, ranger assistants, and volunteers must be able to travel within and to park units to do their job. Limiting the ability to travel limits the ability to meet the division's goals. In addition, the disperse nature of park operations necessitates numerous field offices and ranger stations, all of which require fuel for heating. The higher cost of fuel has resulted in this request for additional funding.</p> <p>This request is based on a comparison of actual fuel costs incurred in FY00, and estimates of fuel costs for FY02/FY03. In FY00, Parks expended \$100,756.00 for fuel. During FY01, fuel costs rose to the highest levels in years. The FY02/FY03 fuel cost estimate is \$120,907.00, an increase of \$20,151.</p>													
<b>Totals</b>		<b>20.2</b>	<b>0.0</b>	<b>0.0</b>	<b>20.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Change Record Detail With Description**

Department of Natural Resources

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Parks Management (452)

BRU: Parks and Recreation Management (138)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 14(3) Increased Costs for Radio Circuits</b>													
	Suppl	40.7	0.0	0.0	40.7	0.0	0.0	0.0	0.0	0.0	0	0	0
1004 Gen Fund		40.7											
<p>Radio circuit charges from DOA/ITG to Parks Management have risen from \$49.8 in FY01 to \$90.5 in FY02 and FY03. Use of radio circuits by parks staff has not risen. Parks relies heavily on radio communication through base stations, mobile units and repeaters. The division is currently inquiring into uses of other technology to possibly lower future costs, however at this time, there is no viable alternative. Without radios, coordination between rangers and staff is limited at best, and public safety emergencies would be greatly impacted.</p> <p>An FY03 increment in the same amount has been requested for this as well.</p>													
<b>Totals</b>		<b>40.7</b>	<b>0.0</b>	<b>0.0</b>	<b>40.7</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Change Record Detail With Description**

**Department of Natural Resources**

Scenario: FY2002 Supplemental - Governor's (2454)  
 Component: Recorder's Office/Uniform Commercial Code (802)  
 BRU: Information/Data Management (326)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 14(4) Title Company Contracts to Build Title Plants</b>													
	Suppl	300.0	0.0	0.0	300.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1108 Stat Desig	300.0												
<p>The Recorder's Office has had inquiries from two new title companies in Anchorage looking to build title plants with a 25-year duplication of records. Title insurance laws require them to have a title plant with at least the last 25 years of records duplicated. The records can be duplicated for the title companies by a digital conversion from the master record. The title companies will pay for the cost of obtaining the records.</p> <p>Because this process involves original archive records, the state has to be the contracting party. The Recorder's Office will contract to have the digitizing of the original records done, and the contract cost will be reimbursed to the state by these title companies.</p>													
Totals		300.0	0.0	0.0	300.0	0.0	0.0	0.0	0.0	0.0	0	0	0

**Change Record Detail With Description**

**Department of Natural Resources**

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Recorder's Office/Uniform Commercial Code (802)

BRU: Information/Data Management (326)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 14(4) Assume recording functions from Courts System</b>													
	Suppl	65.0	25.0	0.0	20.0	0.0	20.0	0.0	0.0	0.0	0	0	0
1156 Rcpt Svcs		65.0											

## Change Record Detail With Description

### Department of Natural Resources

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Recorder's Office/Uniform Commercial Code (802)

BRU: Information/Data Management (326)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP

The Alaska Court System, which has long provided intake recording functions in magistrate offices in Valdez, Glennallen and Seward, has requested DNR to look at taking over those recording functions as they are finding it increasingly difficult to perform their core judicial functions and also do recording as a courtesy for DNR. Anchorage based banking institutions and title companies (which account for 75 per cent of the recordings in those three areas) generally support a transition from the Court System to DNR for these recording districts. DNR plans to have public meetings in those communities later in the spring to discuss options for handling the recordings and research from those areas in the future.

Because the indexing and processing of documents for these three districts occurs in other DNR offices, there is frequently a lag time in getting the information indexed into the public record. Additionally, DNR is usually not able to meet its legislatively mandated missions and measures for these three districts. The performance measures require all documents to be input daily and verified at least weekly in all recording districts. Since the the court offices can not always forward documents to DNR in a timely manner, the component is consistently out of compliance with the missions and measures as it relates to these three districts.

Under AS 44.37.020, DNR has the obligation to administer and maintain the state's entire recording system. AS 44.37.025(c) has given DNR the ability to use judicial employees, with the concurrence of the administrative director of courts, to perform recording functions in areas where DNR does not have a recording office. Judicial employees have been used for this function in other areas, which later became DNR recording offices. Judicial employees have also been used in the past in various magistrate offices that housed recording records for research purposes. Over the past few years, the Court System has discontinued these research facilities and had all of those magistrate offices forward the books and research materials to DNR's archive unit in Anchorage. Seward, Valdez and Glennallen are the only three court offices still performing any recording functions. However, the administrative director of courts has now requested DNR to seriously look into other arrangements for handling recording in those three areas because the court system needs its employees to concentrate on its primary judicial responsibilities, and also needs the additional space which is currently housing land records and equipment.

The Court System's gratuitous operation of these three locations over the years has been deeply appreciated by DNR. As a courtesy to DNR, the Court System has continued to handle recording functions in those locations with its own budget and resources even though DNR is the agency primarily responsible for administering recording operations in the state. This supplemental request assumes DNR will provide recording and research functions for those districts through existing recording offices in Palmer and Kenai. This approach provides continuation of full recording services at the least expense to the state. Only eleven of the state's thirty-four recording districts have DNR recording offices within those districts. Twenty of the state's thirty-four recording districts do not have recording offices located within those districts. These include such communities such as Barrow, Kotzebue, Dillingham, Skagway, Petersburg, Wrangell, Haines, Talkeetna, Nenana, and many smaller locations, where full recording services are provided by DNR recording offices in other locations. The remaining three districts are those where the Alaska Court System has been providing partial recording functions as a courtesy to DNR.

Bringing full operation of all of the recording districts under a single agency has many potential benefits for the public, including faster

**Change Record Detail With Description**

**Department of Natural Resources**

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Recorder's Office/Uniform Commercial Code (802)

BRU: Information/Data Management (326)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<p>Bringing full operation of all of the recording districts under a single agency has many potential benefits for the public, including faster processing time, no delayed recordings, faster indexing into the public record, internet access, more consistent processing among offices, ability to add new technologies, etc. With DNR maintaining all of the recording offices directly, recording would be the primary function in all offices, not a secondary function. More importantly, it will allow DNR to provide the same level of service for all customers statewide. Currently customers in Seward, Valdez and Glennallen do not have direct access to the recording database in those offices. Further, recordings are sometimes delayed due to the court employees having to give priority attention to judicial responsibilities rather than recording functions.</p> <p>This requested funding will allow the component to centrally locate the books and records for these three districts and provide the additional funding for staffing and resources in DNR recording locations to assume the primary recording functions for these three districts within this fiscal year.</p> <p>Specific spending detail:                      Personal Services \$25.0, for costs in conjunction with the transition, including records inventory, recruitment, training and salaries.                      Contractual Services \$20.0, for moving expenses, packaging, insurance and shipping, and office setup.                      Equipment \$20.0, for PC purchase and installation (one for each community) to provide community access to index records.</p> <p>The more rapidly DNR assumes primary responsibility for these functions, the faster the Alaska Court System will be able to return to its primary judicial responsibilities without the added pressures of recording land records.</p>													
Totals		65.0	25.0	0.0	20.0	0.0	20.0	0.0	0.0	0.0	0	0	0

**Change Record Detail With Description**

**Department of Natural Resources**

Scenario: FY2002 Supplemental - Governor's (2454)

Component: Recorder's Office/Uniform Commercial Code (802)

BRU: Information/Data Management (326)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Contractual	Supplies	Equipment	Land/ Buildings	Grants Claims	Misc.	Positions		
											PFT	PPT	NP
<b>Sec 14(4) Operational Expenses for Increased Workload and Implementation of Classification Study</b>													
	Suppl	170.0	157.0	0.0	13.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1156 Rcpt Svcs	170.0												