ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10076 SENATE JUDICIARY

1-LS0360\G.6
Cook/
5/7/99

AMENDMENT

OFFERED IN THE SENATE BY SENATOR TAYLOR

TO: SB 110

1 Page 2, lines 12 and 13:
2 Delete "and the state acquired the facility under Public Law 85-508 (Alaska Statehood
3 Act)"
4 Insert "[AND THE STATE ACQUIRED THE FACILITY UNDER PUBLIC LAW 85-
5 508 (ALASKA STATEHOOD ACT)]"

L

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 110 (JUD)

Revision Date/Time (Note if correction)

Dept. Affected: Environmental Conservation

Title: An Act relating to liability involving certain property aquired by a governmental entity.

BRU: Spill Prevention and Response

Component: Fiscal impact is to the "Response Fund"

Sponsor: Senator Wilken

Requester: Judiciary Committee

Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (See analysis)						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1052 Response Fund	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++
TOTAL	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++

Estimate of any current year (FY99) cost: 0.0

POSITIONS						
Full-time						
Part-time						
Temporary						

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

This bill leaves the state open to very large and immeasurable fiscal liability. The amendments would impose significant and unquantifiable fiscal burdens on the State (and on the public) with respect to cleanup costs and damages. These fiscal burdens would result in the draw-down of the State's Oil and Hazardous Substance Release Prevention and Response Fund (AS 46.08.005). As the Response Fund is depleted, the Oil Conservation Surcharge in AS 43.55.201 imposed on the producers of crude oil would be triggered. With diminished recovery to the Fund and additional cleanup costs, the Fund would likely remain out of balance and as a consequence the Conservation Surcharge would remain in place. See the attached explanation.

Prepared by: Larry Dietrick
Phone: 465-5250
Division: Spill Prevention and Response
Date/Time: 4/30/99 1:17 PM
Approved by: Commissioner Michele Brown
Date: 4/30/99
Agency: Department of Environmental Conservation

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CSSB 110 (JUD) – Attachment to Fiscal Note
Department of Environmental Conservation
April 30, 1999

The exact impact of these changes to the liability scheme of AS 46.03.822 is difficult to precisely quantify since many of the terms in the Committee Substitute are not defined. Given the substantial sums of money at stake in cleanup costs and damages in major marine oil spills or the release of hazardous substances, litigation will be the likely way the ambiguities created by section 2 and new subsection (m) of the amendments are resolved.

Section 2 and subsection (m) of CSSB 110 (JUD) make fundamental and far-reaching changes to the state's strict liability scheme by amending the definition of what constitutes a "release" of oil or hazardous substances. Section 2 excludes from the definition of release "an act of nature occurring after the release of a hazardous substance into the environment." An act of nature is not defined but would presumably include such things as rain, wind, currents, and the natural flow of surface and groundwater. The result is to limit the liability of a spiller under AS 46.03.822 to the initial entry of the oil or hazardous substance into the environment. Under the new definition, the law would have the illogical consequence of insulating the initial spiller from liability for cleanup costs or damages for the spread or migration of the hazardous substance after it enters the environment.

For example, if this bill was enacted before the Exxon Valdez oil spill, once the Exxon spill was affected by tides, currents and winds, the spread of the spill could be defined as an "act of nature" for which Exxon would no longer be liable under AS 46.03.822. If such an exception was in place, Exxon could have used the "act of nature" clause as a defense against paying for the State, local government's or private party's cleanup costs <u>and damages</u> for the portion of the spill that spread out of the immediate vicinity, through Prince William Sound and into Cook Inlet, Kodiak and the Shelikof Straits.

Other, examples of the potential fiscal impacts of this bill include:

1. A Department of Defense tank farm located near the perimeter of the federal facility has released benzene, petroleum, and solvents via leaking valves and spills over the last 20 to 30 years. The benzene, petroleum and solvents soaked into the ground until reaching groundwater. Groundwater flow, an act of nature, carried these hazardous substances downgradient and impacted drinking water wells at a church and business immediately outside the facility. Due to the high levels of benzene and petroleum substances in these wells, DoD is providing bottled drinking water to the church and business, and will continue to do so until the groundwater is safe to use again. Under this new state law, the federal government will no longer be liable under AS 46.03.822 for State or private cleanup costs or damages to public or private parties as a result of the contamination of the drinking water wells.

2. A home heating oil tank failed and the rain caused the oil to run into the neighbor's yard. Under this bill, because the spread of this release was due to an act of nature, the spiller (the owner of the home heating oil tank) is not responsible to clean up the neighbor's yard or to pay for the damages to the neighboring party. This situation is not likely to be a high enough priority to warrant a state response and the neighbor has no recourse under AS 46.03.822 to have his property cleaned up.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 110 (JUD)

Revision Date/Time (Note if correction)
Title: An Act relating to liability involving certain property aquired by a governmental entity.
Sponsor: Senator Wilken
Requester: Judiciary Committee

Dept. Affected: Environmental Conservation
BRU: Spill Prevention and Response
Component: Fiscal impact is to the "Response Fund"
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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Travel						
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Grants & Claims						
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TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (See analysis)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1052 Response Fund	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++
TOTAL	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++	50,000.0++

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill leaves the state open to very large and immeasurable fiscal liability. The amendments would impose significant and unquantifiable fiscal burdens on the State (and on the public) with respect to cleanup costs and damages. These fiscal burdens would result in the draw-down of the State's Oil and Hazardous Substance Release Prevention and Response Fund (AS 46.08.005). As the Response Fund is depleted, the Oil Conservation Surcharge in AS 43.55.201 imposed on the producers of crude oil would be triggered. With diminished recovery to the Fund and additional cleanup costs, the Fund would likely remain out of balance and as a consequence the Conservation Surcharge would remain in place. See the attached explanation.

Prepared by: Larry Dietrick — Phone: 465-5250
Division: Spill Prevention and Response — Date/Time: 4/30/99 1:17 PM
Approved by: Commissioner Michele Brown — Date: 4/30/99
Agency: Department of Environmental Conservation

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4/23/99

amend
move 4/23/99

CS FOR SENATE BILL NO. 110( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR WILKEN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to liability involving certain property acquired by a governmental**
2 **entity; and providing for an effective date."**

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

4 * **Section 1.** AS 46.03.822 is amended by adding a new subsection to read:
5 (l) A unit of state or local government that acquired ownership or control of
6 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
7 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
8 authority by purchase or condemnation, or circumstances in which the governmental
9 unit involuntarily acquired title by virtue of its function as a sovereign is not liable as
10 an owner or operator under this section unless the governmental unit has caused or
11 contributed to the release or threatened release of a hazardous substance at or from the
12 facility or vessel, in which case, the governmental unit is subject to liability under this
13 section in the same manner and to the same extent, both procedurally and
14 substantively, as any nongovernmental entity. For purposes of this subsection, "caused

CORRECTION

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

Rev. 6/98

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

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 110 (JUD)

Revision Date/Time (Note if correction)
Title An Act rel...g to liability involving certain property aquired by a governmental entity.
Sponsor Senator Wilken
Requester Judiciary Committee

Dept. Affected Environmental Conservation
BRU Spill Prevention and Response
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Prepared by Larry Dietrick
Division Spill Prevention and Response
Approved by Commissioner Michele Brown
Agency Department of Environmental Conservation

Phone 465-5250
Date/Time 4/30/99 1:17 PM
Date 4/30/99

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4/23/99

amend
wrong 4/23/99

CS FOR SENATE BILL NO. 110( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): **SENATOR WILKEN**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to liability involving certain property acquired by a governmental**
2 **entity; and providing for an effective date."**

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

4 * **Section 1.** AS 46.03.822 is amended by adding a new subsection to read:
5 (l) A unit of state or local government that acquired ownership or control of
6 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
7 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
8 authority by purchase or condemnation, or circumstances in which the governmental
9 unit involuntarily acquired title by virtue of its function as a sovereign is not liable as
10 an owner or operator under this section unless the governmental unit has caused or
11 contributed to the release or threatened release of a hazardous substance at or from the
12 facility or vessel, in which case, the governmental unit is subject to liability under this
13 section in the same manner and to the same extent, both procedurally and
14 substantively, as any nongovernmental entity. For purposes of this subsection, "caused

1 or contributed to the release or threatened release of a hazardous substance"
2 (1) does not include the failure to prevent the passive leaching at or
3 from a facility or vessel of a hazardous substance in the air, land, or water that had
4 first been released to the environment by a person other than the governmental unit
5 that acquired the facility or vessel;
6 (2) does not include the exercise or failure to exercise regulatory or
7 enforcement authority;
8 (3) after the ownership or control of the facility or vessel has been
9 acquired by the governmental unit, includes
10 (A) the spilling, leaking, pumping, pouring, emptying, injecting,
11 escaping, or dumping of a hazardous substance from barrels, tanks, containers,
12 or other closed receptacles; or
13 (B) the abandonment or discarding of barrels, tanks, containers,
14 or other closed receptacles containing a hazardous substance.
15 * **Sec. 2.** APPLICABILITY. AS 46.03.822(l), as added in sec. 1 of this Act, applies to a
16 vessel or facility acquired by a governmental entity on or after the effective date of this Act.
17 For purposes of this section, when foreclosure by a municipality is involved, the property is
18 acquired on the date it is deeded to the municipality under AS 29.45.450.
19 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

VIRGIL NORTON & ASSOCIATES
P. O. BOX 141796
Anchorage, AK 99514-1796
Telephone: (907) 776-5481 or (907) 258-0722
Fax: (907) 278-6291

Senator Robin Taylor
Attn: Senate Judiciary Committee
Re: SB110 – Liability For Clean-up of Contaminated Property under A.S. 46.03.822

I testified via teleconference on April 12, 1999 concerning SB110, sponsored by Senator Gary Wilken at the request of the Fairbanks North Star Borough. This correspondence is to explain in greater detail my concerns with SB110, as currently drafted, and to request several clarifications of the language in A.S. 46.03.822 as the statute currently exist without revision. Also, while I support the sponsor's intent in SB110, wish to suggest several revisions that would better serve the private sector/general public by clarifying and strengthening the original intent of the strict liability statute as it effects the innocent landowner defense.

The intent of SB110, as defined by the sponsor, is to relieve a local government entity from liability in a taking of property that is known to be or has the potential to be contaminated.

A.S.46:03:822, Alaska's strict liability statute, requires an owner of property to take responsibility to prevent the spread or migration of contamination and to clean up the property. If the person acquired the property without knowing of the contamination the statute currently exempts this person from liability if they act responsibly (see (2) (A) and (B) of the innocent landowner defense) by discovering and beginning clean-up operations. This person is then allowed to seek cost recovery from the person responsible for the release. This is, essentially, the innocent landowner defense.

The cost recovery effort should always be directed against the person who first released the contamination into the environment. However, this is not how the Department of Environmental Conservation currently operates. The D.E.C. does not have a standard operating procedure for identifying a responsible party, other than the current owner, and in many occasions' evens obstructs efforts to recover cost from a responsible party.

I propose the following amendment, which would add a new subsection to A.S. 46.03.822 that would read as follows:

> (I) For purposes of determining liability in an action to recover damages or costs under A.S. 46.03.822, a release shall be deemed to have occurred when a hazardous substance is first introduced into the environment. A party, other than the party responsibility for the initial release, who has acted responsibly upon discovering contamination in accordance with (2), (A), & (B) of this section may not be held liable for the spread or migration of the hazardous substance except by an act of intentional misconduct or gross negligence.

Keep

Ref. back to 2(A)

I also propose the following amendment to the definition of release in A.S. 46.03.826, which would read as follows:

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding
(A) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and
(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel;

Keep

(C) An act of nature occurring after the release of a hazardous substance into the environment.

The above revision to the definition of release in A.S. 46.03.826 would mirror the current definition of release in A.S. 46.09.900, which deals with Hazardous Substance Release Control. This would clearly place liability upon the guilty party responsible for the release. Lastly, I would suggest the following revision (which would be even better than the revision I previously proposed in this correspondence) and possibly serve the intent of SB110.

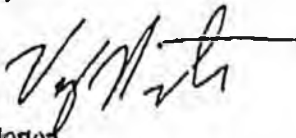
*Sec. 4. Adding a new subsection to read amends A.S. 46.03.822:

(l) Notwithstanding other provisions of this section and notwithstanding the definition of "release" in A.S. 46.03.826, for purposes of this section, a release is considered to have occurred when a hazardous substance is first introduced into the environment, and a person is not liable for the spread or migration of the hazardous substance after its initial release if

(1) The person was not responsible for the initial release;

(2) The person has satisfied the requirements of (2), (A), & (B) by acting responsibly after discovery of the release and

(3) Has not caused or increased the spread or migration though intentional misconduct or gross negligence.



(4) The person is a governmental entity that acquired the facility.

(A) By escheat, **bankruptcy, foreclosure, tax delinquency, or abandonment;**

(B) [Or] through an [ANOTHER] involuntary transfer or acquisition; [,] or

(C) Through the exercise of eminent domain authority by purchase or condemnation;

(3) The person is a corporation organized under 43 U>S.C. 1601 – 1629e (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) The person acquired the facility by inheritance or bequest; or

(5) The person is a state governmental entity and the state acquired the facility under Public Law 85-508 (Alaska Statehood Act)

Thank you for your consideration in this matter. I know that your time during this period of legislator is valuable. Please understand that this issue effects every property owner in the state of Alaska, both local government and the private sector.

Sincerely,

Virgil Norton

1-LS0360\N
Cook✓
4/28/99

CS FOR SENATE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR WILKEN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to liability for the release of hazardous substances; and**
2 **providing for an effective date."**

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

4 * **Section 1.** AS 46.03.822 is amended by adding new subsections to read:
5 (l) A unit of state or local government that acquired ownership or control of
6 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
7 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
8 authority by purchase or condemnation, or circumstances in which the governmental
9 unit involuntarily acquired title by virtue of its function as a sovereign is not liable as
10 an owner or operator under this section unless the governmental unit has caused or
11 contributed to the release or threatened release of a hazardous substance at or from the
12 facility or vessel, in which case, the governmental unit is subject to liability under this
13 section in the same manner and to the same extent, both procedurally and
14 substantively, as any nongovernmental entity. For purposes of this subsection, "caused

1 or contributed to the release or threatened release of a hazardous substance"
2 (1) does not include the failure to prevent the passive leaching at or
3 from a facility or vessel of a hazardous substance in the air, land, or water that had
4 first been released to the environment by a person other than the governmental unit
5 that acquired the facility or vessel;
6 (2) does not include the exercise or failure to exercise regulatory or
7 enforcement authority;
8 (3) after the ownership or control of the facility or vessel has been
9 acquired by the governmental unit, includes
10 (A) the spilling, leaking, pumping, pouring, emptying, injecting,
11 escaping, or dumping of a hazardous substance from barrels, tanks, containers,
12 or other closed receptacles; or
13 (B) the abandonment or discarding of barrels, tanks, containers,
14 or other closed receptacles containing a hazardous substance.
15 (m) For purposes of determining liability in an action to recover damages or
16 costs under this section, a release shall be considered to have occurred when a
17 hazardous substance is first introduced into the environment. A party, other than the
18 party responsible for the initial release, who has acted responsibly upon discovering
19 contamination in accordance with (b)(2) of this section may not be held liable for the
20 spread or migration of the hazardous substance except by an act of intentional
21 misconduct or gross negligence.
22 * **Sec. 2.** AS 46.03.826(9) is amended to read:
23 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
24 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
25 environment, including the abandonment or discarding of barrels, containers, and other
26 closed receptacles containing any hazardous substance, but excluding
27 (A) any release that results in exposure to persons solely within
28 a workplace, with respect to a claim that those persons may assert against the
29 persons' employer; [AND]
30 (B) emissions from the engine exhaust of a motor vehicle,
31 rolling stock, aircraft, or vessel; **and**

1 **(C) an act of nature occurring after the release of a**
2 **hazardous substance into the environment;**
3 * **Sec. 3.** APPLICABILITY. AS 46.03.822(l), as added in sec. 1 of this Act, applies to a
4 vessel or facility acquired by a governmental entity on or after the effective date of this Act.
5 For purposes of this section, when foreclosure by a municipality is involved, the property is
6 acquired on the date it is deeded to the municipality under AS 29.45.450.
7 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM April 26, 1999

SUBJECT: Liability for the release of hazardous substances (CSSB 110(JUD))

TO: Senator Robin Taylor
Chair, Senate Judiciary Committee
Attn: Sue Mossgrove

FROM: Tamara Brandt Cook
Director TBC

Here is the draft committee substitute you requested. The added amendments, being broader in application than the original language added to AS 46.03.822 as subsection (l), do not seem to fit very well with that subsection. It may be that the new material (in sec. 1 of this draft a' 'm) and (n)) make much of subsection (l) unnecessary. The requested change in the definition of "release" is found in bill sec. 2.

It appears to me as though these changes to the state law may not comply with requirements of CERCLA (42 U.S.C. 9601 et seq.). For example, the "innocent landowner exception" to property owner liability under CERCLA is available only to defendants who meet all the federal tests, one of which is fulfillment of a duty to make appropriate inquiry at the time of acquisition into the previous ownership and use of property. (Westwood Pharmaceuticals, Inc. v. National Fuel Gas Distribution Corp., (CA2 NY 1992) 963 F.d. 85) I cannot see how (m) and (n) include that requirement of inquiry. Likewise, the newly added exclusion to the definition of "release" in sec. 2 is not found in the definition of "release" used in CERCLA (42 U.S.C. 9601 (22)) (contrast also the new (C) with the more limited definition of "Act of God" found in 42 U.S.C. 9601(1)).

If these amendments to state law go beyond the "innocent landowner exception" to liability under CERCLA, then a property owner, even if not liable under state law, will be liable under federal law. (United States v. A & F Materials Co., (SD Ill 1984) 578 F.Supp 1249)

I have two questions about the material added as new subsection (n). Should the reference on page 2, line 23 to "section" be "subsection"? Should the references to "facility" also include references to "vessel"? I also don't understand the interaction between each of the new subsections (m) and (n). Note that (n) exonerates a person from liability for any one of the seven listed reasons.

TBC:lmb
99-059.lmb

Please review L

Enclosure

1-LS0360\M
Cook ✓
4/26/99
TAYLOR
4/26
+ MEMO

CS FOR SENATE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR WILKEN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to liability for the release of hazardous substances; and**
2 **providing for an effective date."**

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

4 * **Section 1.** AS 46.03.822 is amended by adding new subsections to read:
5 (l) A unit of state or local government that acquired ownership or control of
6 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
7 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
8 authority by purchase or condemnation, or circumstances in which the governmental
9 unit involuntarily acquired title by virtue of its function as a sovereign is not liable as
10 an owner or operator under this section unless the governmental unit has caused or
11 contributed to the release or threatened release of a hazardous substance at or from the
12 facility or vessel, in which case, the governmental unit is subject to liability under this
13 section in the same manner and to the same extent, both procedurally and
14 substantively, as any nongovernmental entity. For purposes of this subsection, "caused

1 or contributed to the release or threatened release of a hazardous substance"

2 (1) does not include the failure to prevent the passive leaching at or

3 from a facility or vessel of a hazardous substance in the air, land, or water that had

4 first been released to the environment by a person other than the governmental unit

5 that acquired the facility or vessel;

6 (2) does not include the exercise or failure to exercise regulatory or

7 enforcement authority;

8 (3) after the ownership or control of the facility or vessel has been

9 acquired by the governmental unit, includes

10 (A) the spilling, leaking, pumping, pouring, emptying, injecting,

11 escaping, or dumping of a hazardous substance from barrels, tanks, containers,

12 or other closed receptacles; or

13 (B) the abandonment or discarding of barrels, tanks, containers,

14 or other closed receptacles containing a hazardous substance.

15 (m) For purposes of determining liability in an action to recover damages or

16 costs under this section, a release shall be considered to have occurred when a

17 hazardous substance is first introduced into the environment. A party, other than the

18 party responsible for the initial release, who has acted responsibly upon discovering

19 contamination in accordance with (b)(2) of this section may not be held liable for the

20 spread or migration of the hazardous substance except by an act of intentional

21 misconduct or gross negligence.

22 (n) Notwithstanding other provisions of this section and notwithstanding the

23 definition of "release" in AS 46.03.826, for purposes of this section, a release is

24 considered to have occurred when a hazardous substance is first introduced into the

25 environment, and a person is not liable for the spread or migration of the hazardous

26 substance after its initial release if the person

27 (1) was not respon ble for the initial release;

28 (2) has satisfied the requirements of (b)(2) by acting responsibly after

29 discovery of the release;

30 (3) has not caused or increased the spread or migration through

31 intentional misconduct or gross negligence;

1 (4) is a governmental entity that acquired the facility
2 (A) by escheat, bankruptcy, foreclosure, tax delinquency, or
3 abandonment;
4 (B) through an involuntary transfer or acquisition; or
5 (C) through the exercise of eminent domain authority by
6 purchase or condemnation;
7 (5) is a corporation organized under 43 U.S.C. 1601 - 1629e (Alaska
8 Native Claims Settlement Act) that acquired the facility under those sections;
9 (6) acquired the facility by inheritance or bequest; or
10 (7) is a state governmental entity and the state acquired the facility
11 under Public Law 85-508 (Alaska Statehood Act).
12 * **Sec. 2.** AS 46.03.826(9) is amended to read:
13 (9) "release" means any spilling, leaking, pumping pouring, emitting,
14 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
15 environment, including the abandonment or discarding of barrels, containers, and other
16 closed receptacles containing any hazardous substance, but excluding
17 (A) any release that results in exposure to persons solely within
18 a workplace, with respect to a claim that those persons may assert against the
19 persons' employer; [AND]
20 (B) emissions from the engine exhaust of a motor vehicle,
21 rolling stock, aircraft, or vessel; **and**
22 **(C) an act of nature occurring after the release of a**
23 **hazardous substance into the environment;**
24 * **Sec. 3.** APPLICABILITY. AS 46.03.822(l), as added in sec. 1 of this Act, applies to a
25 vessel or facility acquired by a governmental entity on or after the effective date of this Act.
26 For purposes of this section, when foreclosure by a municipality is involved, the property is
27 acquired on the date it is deeded to the municipality under AS 29.45.450.
28 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

GARY WILKEN
SENATOR
Districts 29 & 30
West Fairbanks

Senate Standing Committees
Member: Finance
Member: Health, Education, & Social Services (HESS)
Member: Legislative Budget & Audit
Member: State Affairs

During Session:
State Capitol Building
Juneau, Alaska 99801-1182
Tel: (907) 451-5501 (in Fbks area)
Tel: (907) 465-3709 (outside Fbks)
Fax: (907) 465-4714
Website: www.garywilken.com
E-Mail: Senator_Gary_Wilken@legis.state.ak.us

Interim:
1851 Fox Ave.
Fairbanks, Alaska 99701
Tel: (907) 451-5501
Fax: (907) 451-0438

SB 110

An Act relating to liability involving certain property acquired by a governmental entity; and providing for an effective date.

Sponsor Statement

This bill will assist municipalities in performing their statutory duty to enforce liens for delinquent real property taxes. Tax foreclosure is a mandatory process leading to the taking of a tax deed that places the title to a tax delinquent property in the municipality's name. Each year municipalities publish a foreclosure list for the previous year's delinquent taxes and present a petition to the superior court for judgement. The final step in the process is the sale of the delinquent property if the delinquent taxpayer doesn't repurchase it from the municipality prior to sale. Municipalities are concerned that they may be held liable for pre-existing contamination of foreclosed land with significant environmental remediation costs.

Some properties with delinquent taxes are contaminated. Contaminated land is subject to both state and federal law, both of which establish strict liability (liability without regard to fault). The federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) exempts by definition state and local governments who acquire property through "bankruptcy, foreclosure, tax delinquency, abandonment, or similar means." However, the state law which addresses liability for damage caused by the release of hazardous substances, AS 46.03.822, does not precisely mirror the federal law. SB 110 will amend AS 46.03.822(c)(2) to read "a governmental entity that acquired the facility by escheat, <u>bankruptcy, foreclosure, tax delinquency, or abandonment</u>" so that federal and state laws are similar in this respect. The municipality may therefore have title to the contaminated property without involuntary exposure to cleanup.

217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907)586-1325, Fax (907)-463-5480

April 9, 1999

Senator Gary Wilken
State Capitol, Room 510
Juneau, Alaska 99801

Re: SB 110

Dear Senator Wilken:

The Alaska Municipal League supports passage of SB 110, "An act relating to liability involving certain property acquired by a governmental entity; and providing for an effective date."

This bill expands the technical definition of land acquired by a governmental entity to include land acquired by **"bankruptcy, foreclosure, tax delinquency, and abandonment"**. It is consistent with Alaska Municipal League Policy Statement "Utilities and Environment" Section D.2. "Liability for Releases of Hazardous Substances".

While this is in large part a housekeeping bill to expand a definition to similar circumstances, it will be of significant protection to municipalities and taxpayers. Thank you for the opportunity to comment.

Sincerely,

Kevin Ritchie
Executive Director

Letter of Support

Fairbanks North Star Borough

809 Pioneer Road P.O. Box 71267 Fairbanks, Alaska 99707-1267 907/459-1000

February 24, 1999

Senator Gary Wilken
State Capitol
Juneau, Alaska 99801

Dear Senator Wilken:

The Fairbanks North Star Borough appreciates your consideration of legislation amending AS 46.03.822 to extend liability protection to the Borough in its tax foreclosure process. Without this legislation we are concerned that we may be held liable for pre-existing contamination on foreclosed land with significant environmental remediation costs.

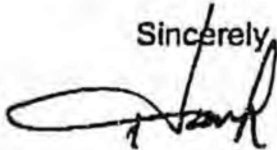
Payment of taxes is the obligation of every property owner, regardless of the condition of their property. If one group of property owners avoids the payment of taxes because of the condition of their property, and no action is taken to collect the taxes due, that "shortfall" is placed on the shoulders of the other taxpayers.

In the Fairbanks North Star Borough, there are fourteen properties with delinquent taxes that may be contaminated, with a total assessed value of almost $1.5 million dollars. Their taxes, penalties and interest due total $503,688.67. Up until this past year, three of these properties contained active, ongoing commercial businesses. Avoidance of their property taxes appeared to give them an unfair competitive edge over their competitors. The borough has been concerned about taking these properties through tax foreclosure because of the risk of liability for any existing contamination. With the additional protection that this bill will provide, the borough will be able to complete the foreclosure process.

Passage of this legislation will allow us to enforce our tax collection obligations uniformly throughout the borough.

Thank you for your support.

Sincerely,



Hank Hove, Mayor

SB 114

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/22/99 FURTHER: Finance

Date of 5-Day Notice: 3/25/99
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 5/14/99

Judiciary Committee considered SENATE BILL NO. 114

"An Act relating to impersonating a public servant."

and recommends:

[✓] be **replaced** with _____ CS SB 114 (Jud)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[✓] new title
House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR# _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
		[signature]	X		
[signature: Rick Halford]	✓				
CHAIR: [signature]	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM May 11, 1999

SUBJECT: Impersonating a Public Servant (Work Order No. 1-LS0690\I)

TO: Senator Robin Taylor
Attn: Sue

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed is the final CS(JUD) you requested. I have two concerns with the CS.

1. "Is" Page 1, line 15. The CS(JUD) substitutes "is" for "was" in the affirmative defense. The affirmative defense is concerned with the status of the operator of the propelled vehicle that resembles a police car at the time of the offense not at the present time. "Was" is the correct tense here. The use of "is" allows a person to operate a look-alike police car without being a member of a community patrol and still avail themselves of the affirmative defense provided that the person joins a community patrol by the time the person goes to trial.

2. "Member of an organized community patrol within a community or municipality" Page 1, line 15 through page 2, line 1. What is organized ? What is an organized community patrol? What is a community? These questions immediately came to mind when drafting the CS. I do not know what these terms mean as they are not defined in statute and therefore do not provide the specificity usually desired in criminal statutes. Potentially, anyone would be able to qualify for this affirmative defense (and would be able to alter or customize their vehicle to look like a police or emergency vehicle) by merely claiming to be a member of a community and to have organized. For example, I could decide, on my own, to create a community council for downtown Juneau, and I could decide, again on my own, to have an organized community patrol. I would then be able to customize my vehicle to look like a police car and I would be able to avail myself of this affirmative defense.

Community councils are not created under state law. No provision for municipal recognition of community councils is made in AS 29, although, I understand that a number of municipalities have organized or recognized community councils by charter or ordinance and the legislature has referred to community councils organized in this manner.[1] To avoid the

---

[1] In this regard, AS 33.30.025 references community councils established by municipal charter or ordinance with regard to location of correctional facilities, and (continued...)

offense being created from being subsumed by the defense, you might want to limit the availability of the affirmative defense to community patrols organized by or in cooperation with a municipality or by a community council established by municipal charter or ordinance.

GPL:pl
99-075.plm

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[1](...continued)
AS 35.30.010 references community councils established by municipal charter or ordinance in regard to allow local review of public projects.

#2

adopted 8/10/99

AMENDMENT

OFFERED IN THE SENATE

TO: SB 114 BY SENATOR ELLIS

1. Page 1, line 10, following vehicle:
2. Insert "owned or used by a federal, state, or municipal fire, law enforcement, or
3. emergency services agency or public or private ambulance service."

4. Page 1, following line 10:
5. Insert a new bill section to read:
6. "*Sec. 2. AS 11.56.830 is amended by adding a new subsection to read:
7. (c) In a prosecution under (a)(2) of this section, it is an affirmative defense
8. that the person operating the propelled vehicle is a member of an organized community
9. patrol, within a community or municipality, and the propelled vehicle did not have

10. (1) lights or sirens that may only be used by a police or emergency vehicle;
11. (2) the words "police," "fire," or "emergency" affixed to or displayed on the vehicle."

1-LS0690\K
Luckhaupt
5/12/99

CS FOR SENATE BILL NO. 114(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to public officials and to impersonating a public servant."**

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

3 * **Section 1.** AS 11.56.830(a) is amended to read:

4 (a) A person commits the crime of impersonating a public servant if the person

5 **(1)** pretends to be a public servant and does any act in that capacity**;**

6 **or**

7 **(2) operates a propelled vehicle, not owned or used by a federal,**

8 **state, or municipal fire, law enforcement, or emergency services agency or public**

9 **or private ambulance service, that has been altered or customized to appear to**

10 **be a police or emergency vehicle owned or used by a federal, state, or municipal**

11 **fire, law enforcement, or emergency services agency or public or private**

12 **ambulance service**.

13 * **Sec. 2.** AS 11.56.830 is amended by adding a new subsection to read:

14 (e) In a prosecution under (a)(2) of this section, it is an affirmative defense

15 that the person operating the propelled vehicle was a member of a community patrol

New Text Underlined [DELETED TEXT BRACKETED]

1 organized by or in cooperation with a municipality or a community council established
2 by municipal charter or ordinance, and the propelled vehicle did not have
3 (1) lights or sirens that may only be used by a police or emergency
4 vehicle;
5 (2) the words "police," "fire," or "emergency" affixed to or displayed
6 on the vehicle.
7 * **Sec. 3.** AS 11.56.850(a) is amended to read:
8 (a) A public servant commits the crime of official misconduct if
9 **(1)** [,] with intent to obtain a benefit or to injure or deprive another
10 person of a benefit, the public servant
11 **(A)** [(1)] performs an act relating to the public servant's office
12 but constituting an unauthorized exercise of the public servant's official
13 functions, knowing that that act is unauthorized; or
14 **(B)** [(2)] knowingly refrains from performing a duty **that**
15 [WHICH] is imposed upon the public servant by law or is clearly inherent in
16 the nature of the public servant's office**; or**
17 **(2) the public servant uses the public servant's title, uniform, badge,**
18 **or other identifying accoutrements of office or public funds, facilities, equipment,**
19 **services, or another government asset or resource for partisan political purposes**.
20 * **Sec. 4.** AS 11.56.850 is amended by adding new subsections to read:
21 (c) Paragraph (a)(2) of this section does not apply to
22 (1) a public servant who has been elected to a partisan public office
23 who uses the public servant's title relating to that partisan public office for partisan
24 political purposes;
25 (2) the use of the governor's residence or the use of communications
26 equipment in the governor's residence in the manner permitted under
27 AS 39.52.120(b)(6).
28 (d) In this section, "partisan political purposes" has the meaning given in
29 AS 39.52.120.
30 * **Sec. 5.** AS 39.52.120(b) is amended to read:
31 (b) A public officer may not

1 (1) seek other employment or contracts through the use or attempted
2 use of official position;
3 (2) accept, receive, or solicit compensation for the performance of
4 official duties or responsibilities from a person other than the state;
5 (3) use state time, property, equipment, or other facilities to benefit
6 personal or financial interests;
7 (4) take or withhold official action in order to affect a matter in which
8 the public officer has a personal or financial interest; or
9 (5) attempt to benefit a personal or financial interest through coercion
10 of a subordinate or require another public officer to perform services for the private
11 benefit of the public officer at any time;
12 (6) use or authorize the use of state **titles, uniforms, badges, or other**
13 **identifying accouterments of office or state** funds, facilities, equipment, services, or
14 another government asset or resource for partisan political purposes; this paragraph
15 does not prohibit use of the governor's residence for meetings to discuss political
16 strategy and does not prohibit use of the communications equipment in the governor's
17 residence so long as there is no special charge to the state for the use; in this
18 paragraph, "for partisan political purposes"
19 (A) means having the intent to differentially benefit or harm a
20 (i) candidate or potential candidate for elective office;
21 or
22 (ii) political party or group;
23 (B) but does not include having the intent to benefit the public
24 interest at large through the normal performance of official duties.
25 * **Sec. 6.** AS 39.52 is amended by adding a new section to read:
26 **Sec. 39.52.455. Private cause of action.** A person damaged or injured by the
27 act of a public officer in violation of this chapter may maintain a private cause of
28 action against the officer.

(3) "makes a false entry" means to change or create a public record, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means, so that the record so changed or created states or implies a fact that the maker knows is not true, or states or implies an opinion that the maker does not hold.

(c) Tampering with public records in the second degree is a class A misdemeanor. (§ 6 ch 166 SLA 1978; am § 2 ch 51 SLA 1985)

Effect of amendments. — The 1985 amendment added "in the second degree" at the end of the catchline; in subsection (a) inserted "in the second degree" and deleted "knowingly" following "person" in the introductory language, inserted "knowingly" in paragraphs (1) and (2), added paragraph (3), and made related stylistic and punctuation changes; designated former subsection (b) as present subsection (c) and in subsection (c) inserted "in the second degree"; and added subsection (b).

Opinions of attorney general. — When an official of a land title company seeking to file a warranty deed in Alaska, in the presence of the recorder altered a California notary clause to change the name and title of the person that the California notary public swore had appeared before her, the alteration may well have violated this section. December 22, 1987, Op. Att'y Gen.

NOTES TO DECISIONS

For case construing former AS 11.30.240 — 11.30.260, relating to mishandling of public records, see Larson v. State, 564 P.2d 365 (Alaska 1977).

Sec. 11.56.830. Impersonating a public servant. (a) A person commits the crime of impersonating a public servant if the person pretends to be a public servant and does any act in that capacity.

(b) It is not a defense to a prosecution under this section that

(1) the office the defendant pretended to hold did not in fact exist; or

(2) the defendant was in fact a public servant different than the one the defendant pretended to be.

(c) This section does not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) Impersonating a public servant is a class B misdemeanor. (§ 6 ch 166 SLA 1978)

Cross references. — For criminal impersonation, see AS 11.46.570.

NOTES TO DECISIONS

For case construing former statute concerning impersonating a peace officer, see Larson v. State, 564 P.2d 365 (Alaska 1977).

Sec. 11.56.835. Failure to register as a sex offender or child kidnapper in the first degree. [Effective January 1, 1999.] (a) A person commits the crime of failure to register as a sex offender or child kidnapper in the first degree if the person violates AS 11.56.840

(1) and the person has been previously convicted of a crime under this section or AS 11.56.840 or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section or AS 11.56.840; or

(2) with intent to escape detection or identification and, by escaping detection or identification, to facilitate the person's commission of a sex offense or child kidnapping.

(b) In a prosecution under (a)(2) of this section, the fact that the defendant, for a period of at least one year, failed to register as a sex offender or child kidnapper, failed to file the annual or quarterly written verification or changed the sex offender's or child kidnapper's address and did not file the required notice of change of address, is prima facie evidence that the defendant intended to escape detection or identification and, by escaping

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions. (§ 1 ch 87 SLA 1986)

NOTES TO DECISIONS

Significance of personal or financial interest. — Substantial evidence supported the hearing officer's findings that Department of Corrections' official had neither a personal nor a financial interest in the awarding of a contract concerning the housing of minimum security prisoners to a bidder for whom she had served as vice-president of operations. Kila, Inc. v. State, 876 P.2d 1102 (Alaska 1994).

Cited in Gates v. City of Tenakee Springs, 822 P.2d 455 (Alaska 1991).

Sec. 39.52.120. Misuse of official position. (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) **[See delayed amendment note.]** A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state·

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

(5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time;

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of the communications equipment in the governor's residence so long as there is no special charge to the state for the use; in this paragraph, "for partisan political purposes"

(A) means having the intent to differentially benefit or harm a

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

(d) **[Effective January 1, 1999.]** In this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor, inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning. (§ 1 ch 87 SLA 1986; am § 5 ch 121 SLA 1992; am §§ 81, 82 ch 74 SLA 1998)

Delayed amendment of subsection (b). — Prior to January 1, 1999, subsection (b) reads as follows: "A public officer may not

"(1) seek other employment or contracts through the use or attempted use of official position;

"(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

"(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

"(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

"(5) attempt to benefit a personal or financial interest through coercion of a subordinate."

Cross references. — For prohibition against nepotism, see AS 39.90.020.

Effect of amendments. — The 1992 amendment, effective September 20, 1992, added subsection (c).

The 1998 amendment, effective January 1, 1999, in subsection (b) added "or require another public officer to perform services for the private benefit of the public officer at any time;" at th end of paragraph (5) and added paragraph (6); and added subsection (d).

NOTES TO DECISIONS

Cited in Gates v. City of Tenakee Springs, 822 P.2d 455 (Alaska 1991).

Sec. 39.52.130. Improper gifts. (a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) **[See delayed amendment note.]** Notice of the receipt by a public officer of a gift with a value in excess of $150, including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt

(1) if the public officer may take or withhold official action that affects the giver; or

(2) if the gift is connected to the public officer's governmental status.

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the attorney general concerning whether acceptance of a particular gift is prohibited.

(d) The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure.

(e) **[Effective January 1, 1999.]** A public officer who, on behalf of the state, accepts a gift from another government or from an official of another government shall, within 60 days after its receipt, notify the Office of the Governor in writing. The Office of the Governor shall determine the appropriate disposition of the gift. In this subsection, "another government" means a foreign government or the government of the United States, another state, a municipality, or another jurisdiction.

(f) **[Effective January 1, 1999.]** A public officer who knows or reasonably ought to know that a family member has received a gift because of the family member's connection with the public office held by the public officer shall report the receipt of the gift by the family member to the public officer's designated supervisor if the gift would have to be reported under this section if it had been received by the public officer or if receipt of the gift by a public officer would be prohibited under this section. (§ 1 ch 87 SLA 1986; am §§ 83, 84 ch 74 SLA 1998)

Delayed amendment of subsection (b). — Prior to January 1, 1999, subsection (b) reads as follows: "Notice of the receipt by a public officer of a gift with a value in excess of $50, including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt if the public officer may take or withhold official action that affects the giver."

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (b) substituted "$150" for "$50," added the paragraph (1) designation, paragraph (2) and subsections (e) and (f).

Sec. 39.52.140. Improper use or disclosure of information. (a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.

1-LS0690\G
Luckhaupt
4/23/99

adopted 5/10/99

CS FOR SENATE BILL NO. 114(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to public officials and to impersonating a public servant."**

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

3 * **Section 1.** AS 11.56.830(a) is amended to read:

4 (a) A person commits the crime of impersonating a public servant if the person

5 <u>(1)</u> pretends to be a public servant and does any act in that capacity<u>;</u>

6 <u>or</u>

7 <u>**(2) operates a propelled vehicle, not owned or used by a federal,**</u>

8 <u>**state, or municipal fire, law enforcement, or emergency services agency or public**</u>

9 <u>**or private ambulance service, that has been altered or customized to appear to**</u>

10 <u>**be a police or emergency vehicle owned or used by a federal, state, or municipal**</u>

11 <u>**fire, law enforcement, or emergency services agency or public or private**</u>

12 <u>**ambulance service**</u>.

13 * **Sec. 2.** AS 11.56.830 is amended by adding a new subsection to read:

14 (e) In a prosecution under (a)(2) of this section, it is an affirmative defense

15 that the person operating the propelled vehicle was a member of a community patrol

1 organized by or in cooperation with a municipality, and the propelled vehicle did not
2 have
3 (1) lights or sirens that may only be used by a police or emergency
4 vehicle;
5 (2) the words "police," "fire," or "emergency" affixed to or displayed
6 on the vehicle.
7 * **Sec. 3.** AS 39.52.120(b) is amended to read:
8 (b) A public officer may not
9 (1) seek other employment or contracts through the use or attempted
10 use of official position;
11 (2) accept, receive, or solicit compensation for the performance of
12 official duties or responsibilities from a person other than the state;
13 (3) use state time, property, equipment, or other facilities to benefit
14 personal or financial interests;
15 (4) take or withhold official action in order to affect a matter in which
16 the public officer has a personal or financial interest; or
17 (5) attempt to benefit a personal or financial interest through coercion
18 of a subordinate or require another public officer to perform services for the private
19 benefit of the public officer at any time;
20 (6) use or authorize the use of state **titles, uniforms, badges, or other**
21 **identifying accouterments of office or state** funds, facilities, equipment, services, or
22 another government asset or resource for partisan political purposes; this paragraph
23 does not prohibit use of the governor's residence for meetings to discuss political
24 strategy and does not prohibit use of the communications equipment in the governor's
25 residence so long as there is no special charge to the state for the use; in this
26 paragraph, "for partisan political purposes"
27 (A) means having the intent to differentially benefit or harm a
28 (i) candidate or potential candidate for elective office;
29 or
30 (ii) political party or group;
31 (B) but does not include having the intent to benefit the public

1 interest at large through the normal performance of official duties.

2 * **Sec. 4.** AS 39.52 is amended by adding a new section to read:

3 **Sec. 39.52.455. Private cause of action.** A person damaged or injured by the

4 act of a public officer in violation of this chapter may maintain a private cause of

5 action against the officer.

1-LS0690\G.4
Luckhaupt ✓
5/7/99
adopted 5/10/99

A M E N D M E N T #1

OFFERED IN THE SENATE BY SENATOR TAYLOR

TO: CSSB 114(JUD), Draft Version "G"

1 Page 2, following line 6:
2 Insert new bill sections to read:
3 "* Sec. 3. AS 11.56.850(a) is amended to read:
4 (a) A public servant commits the crime of official misconduct if
5 (1) [,] with intent to obtain a benefit or to injure or deprive another
6 person of a benefit, the public servant
7 (A) [(1)] performs an act relating to the public servant's office
8 but constituting an unauthorized exercise of the public servant's official
9 functions, knowing that that act is unauthorized; or
10 (B) [(2)] knowingly refrains from performing a duty **that**
11 [WHICH] is imposed upon the public servant by law or is clearly inherent in
12 the nature of the public servant's office**; or**
13 **(2) the public servant uses the public servant's title, uniform,**
14 **badge, or other identifying accoutrements of office or public funds, facilities,**
15 **equipment, services, or another government asset or resource for partisan**
16 **political purposes**.
17 * Sec. 4. AS 11.56.850 is amended by adding new subsections to read:
18 (c) Paragraph (a)(2) of this section does not apply to
19 (1) a public servant who has been elected to a partisan public office
20 who uses the public servant's title relating to that partisan public office for partisan
21 political purposes;
22 (2) the use of the governor's residence or the use of communications
23 equipment in the governor's residence in the manner permitted under
24 AS 39.52.120(b)(6).
25 (d) In this section, "partisan political purposes" has the meaning given in

L

1 AS 39.52.120."

2 Renumber the following bill sections accordingly.

#2

adopted 5/11/99

AMENDMENT

OFFERED IN THE SENATE

TO: SB 114 BY SENATOR ELLIS

1. Page 1, line 10, following vehicle:

2. Insert "**owned or used by a federal, state, or municipal fire, law enforcement, or**

3. **emergency services agency or public or private ambulance service**."

4. Page 1, following line 10:

5. Insert a new bill section to read:

6. "*Sec. 2. AS 11.56.830 is amended by adding a new subsection to read:

7. (e) In a prosecution under (a)(2) of this section, it is an affirmative defense

8. that the person operating the propelled vehicle is a member of an organized community

9. patrol, within a community or municipality, and the propelled vehicle did not have

10. (1) lights or sirens that may only be used by a police or emergency vehicle;

11. (2) the words "police," "fire," or "emergency" affixed to or displayed on the vehicle."

1-LS0690\D
Luckhaupt
4/13/99

adopted

CS FOR SENATE BILL NO. 114(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to impersonating a public servant."

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

3 * Section 1. AS 11.56.830(a) is amended to read:

4 (a) A person commits the crime of impersonating a public servant if the person

5 (1) pretends to be a public servant and does any act in that capacity;

6 or

7 (2) operates a propelled vehicle, not owned or used by a federal,

8 state, or municipal fire, law enforcement, or emergency services agency or public

9 or private ambulance service, that has been altered or customized to appear to

10 be a police or emergency vehicle owned or used by a federal, state, or municipal

11 fire, law enforcement, or emergency services agency or public or private

12 ambulance service.

13 * Sec. 2. AS 11.56.830 is amended by adding a new subsection to read:

14 (c) In a prosecution under (a)(2) of this section, it is an affirmative defense

15 that the person operating the propelled vehicle was a member of a community patrol

1 organized by or in cooperation with a municipality, and the propelled vehicle did not
2 have
3 (1) lights or sirens that may only be used by a police or emergency
4 vehicle;
5 (2) the words "police," "fire," or "emergency" affixed to or displayed
6 on the vehicle.

New Text Underlined [DELETED TEXT BRACKETED]

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 23, 1999

SUBJECT: Political Activities by Public Servants (Work Order No. 21-LS0690\G1 and \G2)

TO: Senator Robin Taylor

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed please find the amendments you requested. The State currently restricts classified employees of state government from engaging in the active management of a political party above the precinct level. See AS 39.25.160. The Executive Branch Ethics Act prohibits employees in the executive branch from using or authorizing the use of state property or assets for partisan political purposes. See AS 39.52.120(b)(6). Please be advised that I believe that significant issues exist with regard to whether amendments G.1 and G.2 impermissibly burden the free speech and association rights of public servants under the United States Constitution and the Constitution of the State of Alaska. It is not clear to me from my cursory review that there is a sufficient governmental interest that would allow the state to prohibit (and provide criminal sanctions for) a public servant from identifying themselves and their position when endorsing a political candidate or cause.

GPL:lmb
99-058.lmb

Enclosure

PSEA takes a new tact with wayword legislators.

Corrections leads the way in driving the point home.

Joe Ryan made a decision not to stand by public safety. Joe Ryan made a bad choice, both for himself and the public at large. Based on Joe's record, PSEA decided to put the lion's share of its PAC war chest into his opponent's campaign.

In years past PSEA divided its PAC money among many candidates. This made a lot of candidates grateful, but we found that being grateful sometimes wasn't enough for some when it came to votes on public safety issues. So, PSEA decided to take a new approach. This election year PSEA decided to choose one legislator who, through his/her votes, had not supported public safety, and make sure their constituency knew it.

Choosing Sharon Cissna was not an easy choice. Yes, she was a supporter of public safety, and yes, she was runnning against an opponent who had let public safety down. But could she win? Sharon was running against an incumbent who was well ahead (12 to 15%) in every poll. Could the support of law enforcement and the PSEA/ PAC fund make up the difference? It was felt that PSEA's support could swing an election anywhere from 10 to 12 percentage points. After careful consideration, it was decided the difference was not such that PSEA support could not make up. Thus the campaign was on. Joe Ryan saw the Law Enforcement Officers of PSEA come out in full force. Alaska Law Enforcement Officers stood together and they were standing behind Sharon Cissna.

As for the campaign, whether tracking down a suspect or exposing Joe Ryan's record, PSEA's Law Enforcement Officers gave no quarter. PSEA got the word out via t.v., radio, newspaper, flyers, postcards, word of mouth, and even door tags. Corrections led the way with Corrections members participating in the planning (Sergeant Damron from Hiland) to walking the streets delivering door tags (Region 4 Board member Dana Churchel). Although Corrections can be proud of their leadership role in the campaign it was not a one-pony show.

The Municipal Chapter sent up Jerry Nankervis from the Juneau Police Department to star in our TV ad. Sergeant Bill Copadis came from the Airport Safety Officers chapter to work with Corrections Sergeant Mike Addington on Sharon's radio ad. Fairbanks Airport Safety Officer Craig Persson (PSEA legislative liaison) was, as always, right there with the advice expertise, and knowledge needed to keep things on track.

> ***The goal for Election 2000 is to raise an additional $90,000. Then pick three legislators who did not understand the need to support public safety, and to ensure they are no longer in a position to endanger the public.***

Once Joe Ryan realized the "Blitzkrieg" was coming his way, he not only paid the PSEA office a personal visit, but also asked his friends in the legislature to call us off. The fact is Joe lost his battle to "call us off" by his actions as "Representative Ryan," by the time it was "Candidate Ryan" it was simply too late. When the ballots were counted on election night, "Legislator Ryan" became "private citizen Ryan."

The goal for Election 2000 is to raise an additional $90,000. Then pick three legislators who did not understand the need to support public safety, and to ensure they are no longer in a position to endanger the public . Thanks to members generous support, we are well on our way to raising the PAC funds.

In reality, its not so much that PSEA will choose the 3 legislators, as it is they will choose themselves. Legislators capable of putting special interests (such as private prison profiteers) above the public's safety, will definately make our short list. If selected, not all will be lost for these individuals ... Joe Ryan could certainly use the company.

Sharon Says Thanks

In political campaigns it does not matter how far behind you are or for how long you stay behind. The only thing that matters is where you finish the race. PSEA was standing side by side with Sharon Cissna at her election night campaign headquarters across from election central. The first returns had Sharon trailing, but just like in the actual campaign, she came from behind. Finally with seven of eight precincts reporting, she had pulled dead even. It seemed an eternity as we all waited for the last precinct to come in. When the last precinct finally reported, the explosion in the campaign suite left no doubt who would be going to Juneau. After the hugs, Representative Cissna stated "you guys (PSEA) made the difference." And we know Sharon will make a positive difference for her district. Good luck Sharon.

Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

50 Front Street
Suite 203
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor

SPONSOR STATEMENT

SB 114

"An Act relating to impersonating a public servant."

Senate Bill 114 has been introduced to resolve a problem brought forth by the Juneau Police Department. Recently an individual purchased a used police vehicle from the Ketchikan Police Department. The vehicle had been stripped of its police identification, light bar, and antennas by KPD prior to selling the vehicle.

A Juneau police officer saw the vehicle parked near JPD with a clean-cut gentleman standing nearby. The JPD officer presumed the man to be a visiting police officer. When the Juneau officer approached the man and asked if he could help, the officer was told by the man that he was wondering if there was any law prohibiting him from driving his vehicle with the adornments that he had applied to it. These adornments included a 7 pointed star on each door with the word "COPRICE" running through the star and on the lip of the trunk just like on a police vehicle, and radio antennas.

The vehicle in the attached photo clearly looks like a police vehicle. The Juneau officer was within 6 feet of the vehicle before he could tell it was not a police vehicle. Following this incident, the Juneau Police Department had complaints from the public about this vehicle. The owner of the vehicle also has a concealed carry permit and is presumed to carry a weapon. The fact that the vehicle deceives the public can in itself create problems. Currently there is no law prohibiting this type of activity.

Senate Bill 114 will amend the existing law regarding impersonating a public servant to include operation of a motor vehicle that has been disguised as a police or emergency vehicle unless it is a police, fire, ambulance, or other emergency vehicle. Violation would be a class B misdemeanor.

adopted 4-12-99

21-LS0690\A.1
Luckhaupt✓
3/30/99

AMENDMENT

OFFERED IN THE SENATE BY SENATOR ELLIS

TO: SB 114

1 Page 1, line 10, following "vehicle":

2 Insert "**owned or used by a federal, state, or municipal fire, law enforcement, or**
3 **emergency services agency or public or private ambulance service**"

4 Page 1, following line 10:

5 Insert a new bill section to read:

6 "* **Sec. 2.** AS 11.56.830 is amended by adding a new subsection to read:

7 (e) In a prosecution under (a)(2) of this section, it is an affirmative defense
8 that the person operating the propelled vehicle was a member of a community patrol
9 organized by or in cooperation with a municipality, and the propelled vehicle did not
10 have

11 (1) lights or sirens that may only be used by a police or emergency
12 vehicle;

13 (2) the words "police," "fire," or "emergency" affixed to or displayed
14 on the vehicle."

L

SB

123

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 123

Revision Date

Title: Public Interest Litigants

Sponsor: Senate Finance Committee

Requester: Senate Judiciary Committee

Dept. Affected: Alaska Court System

BRU: Alaska Court System

Component: Trial Courts

Component Serial No. 769

Expenditures/Revenues *(Thousands of Dollars)*

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE *(Thousands of Dollars)*

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

Estimate of any current year (FY99) cost: *None*

POSITIONS

Full-time						
Part-time						
Temporary						

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

No fiscal impact anticipated.

Prepared by: Doug Wooliver, Administrative Attorney — Phone: 264-8265

Agency: Alaska Court System — Date/Time: 4/6/99 3:26 PM

Approved by: Stephanie J. Cole, Administrative Director — Date 4/6/99

Agency: Alaska Court System

(Rev 1/99)

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/26/99 FURTHER: Finance

Date of 5-Day Notice: 04-01-99
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: ____________

Judiciary Committee considered SENATE BILL NO. 123

"An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

and recommends:

[ ] be **replaced** with ______ CS ______________ (______)

[ ] adopt **previous** ______ CS ______________ (______)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ______________ Committee

[ ] further referral to the ______________ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR# ______

SIGNING DO PASS	*DP*
Dave Donley	✓
Rick Halford	✓
CHAIR:	

OTHER RECOMMENDATIONS	*NR*	*DNP*	*AM*
CHAIR: Robin Taylor	✓		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
AK. Court	4/6	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

(i) The final judgment or decree has been entered and the time for filing an appeal has expired, or

(ii) If an appeal has been taken, the final judgment or decree upon remand has been entered or the mandate has issued affirming the judgment or decree.

This subparagraph (2) shall not apply to an attorney who files and serves a notice of continued representation.

(e) **Stipulations.** Stipulations between parties or their attorneys will be recognized only when made in open court, or when made in writing and filed with the clerk.

(f) **Time for Argument.** Unless otherwise specially ordered no longer than one quarter hour shall be allowed each party for argument upon any motion, or on any hearing other than a final hearing on the merits. The time for opening statements and arguments at the trial of an action shall be determined in accordance with Civil Rule 46(h).

(g) **Disbarment and Discipline.** Whenever it appears to the court that any member of the bar has been disbarred or suspended from practice or convicted of a felony, that member shall not be permitted to practice before the court until the member is thereafter reinstated according to existing statutes and rules.

(Adopted by SCO 5 October 9, 1959; amended by SCO 98 effective September 16, 1968; by SCO 258 effective November 15, 1976; by SCO 355 effective April 1, 1979; by SCO 390 effective November 7, 1979; by SCO 604 effective September 14, 1984; by SCO 612 effective January 1, 1985; by SCO 696 effective September 15, 1986; by SCO 876 effective July 15, 1988; and by SCO 1153 effective July 15, 1994)

Annotations

Cases

Trial court did not abuse discretion but acted appropriately and with high regard to propriety and to the public image of the legal profession in granting motion of counsel for his voluntary disqualification where a conflict of interest was not yet actually indicated but it could not be determined that such a conflict might not develop by testimony to be offered during the trial. **Gregoire v. National Bank of Alaska**, Op. No. 336, 413 P2d 27 (Alaska 1966).

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

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

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

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

Rule 82. Attorney's Fees.

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

(b) **Amount of Award.**

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

Judgment and, if awarded, Prejudgment Interest		Contested With Trial	Contested Without Trial	Non-Contested
First	$ 25,000	20%	18%	10%
Next	$ 75,000	10%	8%	3%
Next	$400,000	10%	6%	2%
Over	$500,000	10%	2%	1%

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

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

(A) the complexity of the litigation;

(B) the length of trial;

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

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

(E) the attorneys' efforts to minimize fees;

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

(G) vexatious or bad faith conduct;

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

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

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

(K) other equitable factors deemed relevant.

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

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

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

(d) **Determination of Award.** Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

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

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

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

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

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

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

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

NOTE to SCO 1118am: By adopting these amendments to Civil Rule 82, the court intends no change in existing Alaska law regarding the award of attorney's fees for or against a public interest litigant, see, e.g., **Anchorage Daily News v. Anchorage School Dist.**, 803 P.2d 402, 404 (Alaska 1990); **City of Anchorage v. McCabe**, 568 P.2d 986, 993-94 (Alaska 1977); **Gilbert v. State**, 526 P.2d 1131, 1136 (Alaska 1974), or in the law that an award of full attorney's fees is manifestly unreasonable in the absence of bad faith or vexatious conduct by the non-prevailing party. See, e.g., **Malvo v. J.C. Penney Co.**, 512 P.2d 575, 588 (Alaska 1973); **Demoski v. New**, 737 P.2d 780, 788 (Alaska 1987).

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

RABINOWITZ, Justice dissenting.

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

[1]In this regard I note that the Alaska Judicial Council is scheduled to conduct an in depth empirical study of the

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

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

Annotations

Cases

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

I. In General

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

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

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

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

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

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

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

Under this rule, an award of prejudgment interest is to be included in the amount of the "money judgment." **Elmore Helicopters, Inc. v. Digicon Alaska, Inc.**, Op. No. 999, 519 P2d 1057 (Alaska 1974).

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

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

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

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

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

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

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

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

Where defendant is dismissed under Civil Rule 41(a)(1)[a] before service of any pleading or motion by defendant but would have required trial court to consider merits of controversy, there is no joinder of issue, no prevailing party, and an award of attorney's fees is precluded. **State v. Alaska International Air, Inc.**, Op. No. 1409, 562 P2d 1064 (Alaska 1977).

One and one-half page memorandum devoid of authorities was not statement required by Civil Rule 77(b)(2), so that motion to dismiss was frivolous and issue was not joined, precluding award of attorney's fees. **State v. Alaska International Air, Inc.**, Op. No. 1409, 562 P2d 1064 (Alaska 1977).

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

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

When a public corporation's active representation in litigation is by in-house counsel rather than retained counsel,

... of attorney's fees pursuant ... Anchorage Area Borough ... 573 P2d 862 (Alaska 1978).

An oral explanation on the re... adequate to justify decision denying ... Op. No. 1652, 580 P2d 3...

Civil Rule 82 applies only to "... of attorney's fees incurred in the co... Alaska State Housing v. Riley Pl... P2d 1244 (Alaska 1978).

Attorney's fees could not be ... school teacher whose dismissal fr... by the superior court where the ... guaranteed right to contest his di... v. Kenai Peninsula Borough Sc... P2d 1168 (Alaska 1978).

Civil Rule 82 had no applicati... by defendant retailer in suit based ... seller and manufacturer, but ... based on indemnification obligatio... v. Pioneer Brokerage & Sales, ... (Alaska 1979).

Plaintiffs were jointly and se... attorney's fees although they file... cases were consolidated for trial ... Op. No. 1823, 594 P2d 30 (Alas...

Civil Rule 82 does not gove... from administrative agency decisi... v. Bob Harris Flying Service, ... (Alaska 1979).

A client's absence of obligat... rendered does not preclude an aw... Slope Native Assoc. v. Paul, ... (Alaska 1980).

Where prevailing party's att... by considerations of profession... their services at the rate of $3... customary rate of $75.00 per hou... in valuing those services usin... Slope Native Assoc. v. Paul, ... (Alaska 1980).

In determining the amounts ... public interest litigation, the sam... as at the trial level, and it is ther... attorney's fees on appeal to a suc... Thomas v. Bailey, Op. No. 20...

It was not unreasonable for ... plaintiffs exercising their righ... statute, were public interest liti... ment of attorney's fees would ... Op. No. 2135, 614 P2d 795 (A...

Where the defendants in ... contested gubernatorial electio... winners, it was proper to aw... state as a coprevailing party sin... the irregularities of state electi... election. Thomas v. Croft, ... (Alaska 1980).

Under this rule, trial court ... co-defendant to pay all of the ... party, especially where the ...

award of attorney's fees pursuant to Rule 82 is proper. Greater Anchorage Area Borough v. Sisters, Etc., Op. No. 1550, 573 P2d 862 (Alaska 1978).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The decision in Crisp v. Kenai Peninsula Borough School District, 587 P2d 1168 (Alaska 1978) does not apply to appeals of administrative decisions if the consequences thereof are for less significant than in the Crisp case, and courts may continue to assess reasonable attorney's fees against the losing party in such cases. Sjong v. State, Op. No. 2269, 622 P2d 967 (Alaska 1981).

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

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

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

Award of costs and fees in child custody action may not include costs or fees incurred in any other action, such as a child in need of aid proceeding, no matter how closely related the issues might be. Cooper v. State, Op. No. 2453, 638 P2d 174 (Alaska 1981).

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

Award of attorney's fees under this rule to prevailing party in state action arising out of the admiralty jurisdiction of the United States was proper. Williams v. Eckert, Op. No. 2489, 643 P2d 991 (Alaska 1982).

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

Where it was unclear what the parties intended in a judgment on offer and acceptance which provided that attorney's fees be provided under the terms of "an Alaska Civil Rule 82 endorsement" contained in an insurance policy of defendant, remittal was appropriate to determine whether there was a meeting of the minds of the parties on the issue of attorney fees. Salmine v. Kngin, Op. No. 2501, 645 P2d 148 (Alaska 1982).

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

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

Trial court's award of twenty percent of prevailing party's costs and fees in case where no recovery was had was not abuse of discretion. **Alvey v. Pioneer Oilfield Services**, Op. No. 2532, 648 P2d 599 (Alaska 1982).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where party successfully enjoined nonjudicial foreclosure of deed of trust, award of $5000 in attorney fees, based upon the party's potential liability of $57,000, the amount by which he was alleged to be in default, was not manifestly unreasonable. **Tolstrup v. Miller**, Op. No. 3129, 726 P2d 1304 (Alaska 1986).

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

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

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

Award to plaintiff of $700 in interim attorney's fees for its cost in litigating defendant's successful motion to have defendant's own admissions withdrawn was proper. **City of**

Kenai v. Ferguson, Op. No. 3155, 732 P2d 184 (Alaska 1987).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Superior court did not err in allowing the prevailing party to file a supplemental memorandum five months after the party's initial motion for attorney fees was made, where the supplemental memorandum itemized fees requested for work done after the initial motion was filed in opposing the losing party's motion for relief from judgment. **Kenai Peninsula Borough v. English Bay Village**, Op. No. 3517, 781 P2d 6 (Alaska 1989).

Trial court erred in taking past settlement negotiations into account in making an award of attorney fees under this rule. **Doyle v. Peabody**, Op. No. 3519, 781 P2d 957 (Alaska 1989).

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

In suit by insured against insurer for violating insurance agreement, trial court erred in permitting jury to award the insured attorney fees beyond those authorized by this rule. **Alaska Pacific Assurance Co. v. Collins**, Op. No. 3614, 794 P2d 936 (Alaska 1990).

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

The argument that trial courts should never be permitted to award fees in excess of those established under the "noncontested" or "without trial" schedules of Civil Rule 82 following acceptance of an offer of judgment under Civil Rule 68 was rejected. **Van Dort v. Culliton**, Op. No. 3630, 797 P2d 642 (Alaska 1990).

In arbitration proceeding by borough against brokerage firm in which the brokerage firm sued certain borough officials for contribution, assertion by brokerage firm that law firm had a conflict of interest in representing both the borough in the arbitration proceeding and the individual defendants in the contribution case, and should therefore be barred on public policy grounds from receiving an award of attorney fees, was

Amendment to this rule effective July 15, 1993, should ve been applied to case where summary judgment was tered on June 7, 1993, defendants were declared prevailing rties on August 16, 1993; and attorney's fees were award on wember 1, 1993. Nielson v. Benton, Op. No. 4258, 903 P2d 49 (Alaska 1995).

The rule of Cameron v. Hughes, 825 P2d 882 (Alaska 92), that legal costs reasonably and necessarily incurred in llecting a judgment for past-due child support should be ated as "costs of the action" and awarded to the collecting rty, applies only to post-judgment fees incurred after a pport obligation has been reduced to a unitary, fixed-sum lgment and only in child support cases. It does not apply in action to reduce a spousal support obligation to judgment. iltz v. Saltz, Op. No. 4272, 903 P2d 1070 (Alaska 1995).

While this rule does not generally apply to divorce cases, does apply to post-judgment enforcement and modification otions. Saltz v. Saltz, Op. No. 4272, 903 P2d 1070 (Alaska 95).

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

Prevailing Party

Even though there has not been a final determination on e merits in the case, where the complaint has been dismissed r failure to comply with an order to produce corporate cords, the defendant is the "prevailing party," and as such is titled to attorney fees as costs. Hart v. Wolff, Op. No. 724, 9 P2d 114 (Alaska 1971).

A party may be the "prevailing party" within this rule if he successful with regard to the main issues in the action. ooper v. Carlson, Op. No. 907, 511 P2d 1305 (Alaska 73).

The prevailing party in each case should not automatically awarded the full amount of attorney fees incurred. Malvo J.C. Penney Co., Inc., Op. No. 901, 512 P2d 575 (Alaska 73).

The purpose of this rule is to partially compensate the evailing party for the costs and fees incurred where such mpensation is justified, not to penalize a party for litigating goodfaith claim. Malvo v. J. C. Penney Co., Inc., Op. No. 01, 512 P2d 575 (Alaska 1973).

The purpose of this rule is to compensate partially a revailing party for costs which he has incurred in litigation. ity of Valdez v. Valdez Development Company, Op. No. 51, 523 P2d 177 (Alaska 1974).

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

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

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

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

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

Attorney's fees are to be awarded to plaintiff who prevails in public interest case, although they would not be assessed against him if he did not prevail. Anchorage v. McCabe, Op. No. 1490, 568 P2d 986 (Alaska 1977).

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

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

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

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

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

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

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

Where disposition of issues presented on appeal clearly established husband as the prevailing party, award of attorney's fees to wife, who initiated action seeking modification of terms of property settlement incorporated into divorce decree, was properly vacated and remanded to afford husband

rejected. **Integrated Res. Equity v. Fairbanks Boro.**, Op. No. 3633, 799 P2d 255 (Alaska 1990).

Where nationwide class action law suit was not first submitted to Alaska attorney general as required by Alaska statute, the action was deemed frivolous as to Alaska claimants; accordingly, the defendant, as prevailing party vis-a-vis the Alaska claimants, was entitled to recover for its attorney fees spent in Alaska. **Deadwyler v. Volkswagen of America, Inc.**, 748 F. Supp. 1146 (W.D.N.C. 1990).

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

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

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

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

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

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

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

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

Argument that this rule violates due process clauses of state and federal constitutions because risk of incurring large attorney fee award deters many plaintiffs from bringing suit was rejected. **Van Huff v. Sohio Alaska Petroleum Co.**, Op. No. 3857, 835 P2d 1181 (Alaska 1992).

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

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

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

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

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

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

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

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

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

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

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

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

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

an opportunity to seek award of attorney's fees. **Stone v. Stone**, Op. No. 2522, 647 P2d 582 (Alaska 1982).

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

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

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

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

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

If a condemnee asserts counterclaims that are basically common law actions, such as negligence, the condemnor can be awarded costs and attorney's fees if it is the prevailing party on those issues. **Stewart v. State, Dept. of Transportation**, Op. No. 2895, 693 P2d 827 (Alaska 1984).

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

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

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

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

In contested marriage and partnership dissolution proceeding, trial court did not abuse its discretion in awarding the prevailing party actual attorney's fees of $21,932 due to vexatious conduct by the losing party. **Horton v. Hansen**, Op. No. 3072, 722 P2d 211 (Alaska 1986).

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

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

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

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

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

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

Defendant, who faced a potential liability of $275,000 but was required to pay only $1,937 less 40 percent, was the prevailing party. **Hutchins v. Schwartz**, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

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

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

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

As long as defense costs are reasonable, a successful defendant may recover whatever portion the trial court in its sound discretion sees fit to award; attorney's fees which

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prevailing defendants may recover are not limited as a matter of law by the amount of damages the unsuccessful plaintiff sought. **Stevens By Park View Corp. v. Richardson**, Op. No. 3313, 755 P2d 389 (Alaska 1988).

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Review

A. Standard

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

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

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

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

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

The award of $1,300 as attorney's fees rather than $4,465, requested on the basis of hourly charges of $30 and $40 per hour and $350 per day for trial, is not an abuse of discretion. **Connelly v. Peede**, Op. No. 577, 459 P2d 362 (Alaska 1969).

The supreme court will interfere with the trial court's exercise of discretion in awarding attorney's fees as costs only where such discretion has been abused. An abuse of discretion is established where it appears that the trial court's determination is manifestly unreasonable. **Palfy v. Rice**, Op. No. 634, 473 P2d 606 (Alaska 1970).

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

Where an affidavit which is filed by the defendant denies several factual allegations of the plaintiff and a memorandum filed by the defendant raises four defenses, such documents are tantamount to an answer and the plaintiff's right to dismiss suit is terminated. Thus, although the plaintiff files a voluntary dismissal of the suit, the trial court has the authority to award to defendant attorney fees. **Miller v. Wilke**, Op. No. 788, 496 P2d 176 (Alaska 1972).

Where a subcontractor is the prevailing party in an action by a contractor against a subcontractor for recovery of progress payments, an award of $10,000 as attorney's fees to the subcontractor is not an abuse of discretion in view of the potentially large liability of the subcontractor. **Owen Jones & Sons, Inc. v. C.R. Lewis Co., Inc.**, Op. No. 795, 497 P2d 312 (Alaska 1972).

A trial court does not necessarily abuse its discretion by refusing to award attorney's fees to a property owner who successfully defends a suit for specific performance of a contract to sell property. **Hollaus v. Arend**, Op. No. 896, 511 P2d 1074 (Alaska 1973).

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

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

In an action against the state to recover additional compensation arising out of a contract, an award to the state of attorney fees of $22,633.91 is not an abuse of discretion, where the case was pending for over four years, the case involved potential liability of over $500,000 and culminated in a five-day trial, as against the contention that the state should receive costs no greater than the equivalent to the hourly salary of the highest paid assistant attorney general who worked on the case, multiplied by the number of hours allowed by the trial court. **Morrison-Knudson Co., Inc., v. State**, Op. No. 1012, 519 P2d 834 (Alaska 1974).

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

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

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

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

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

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

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

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

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

Determination of which party is the prevailing party is in the trial judge's discretion and is reviewable only for abuse. **Continental Ins. Co. v. U. S. Fid. & Guar. Co.**, Op. No. 1298, 552 P2d 1122 (Alaska 1976).

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

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

It was not abuse of discretion to award additional attorney's fees as compensation for efforts to force opposing party to answer interrogatories and appear at depositions. **Fairbanks Builders, Inc. v. Sandstrom Plumbing & Heating, Inc.**, Op. No. 1324, 555 P2d 964 (Alaska 1976).

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

Trial court's discretion under this rule will be interfered with only when abuse is established by a "manifestly unrea-

sonable" award. **Haskins v. Shelden**, Op. No. 1357, 558 P2d 487 (Alaska 1976).

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

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

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

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

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

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

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

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

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

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

Prevailing plaintiff in action brought pursuant to the Uniform Reciprocal Enforcement of Support Act was entitled to attorney's fees under this rule, the fees to be based on the amount and value of the legal services rendered rather than upon the amount of the judgment. **Bailey v. Haas**, Op. No. 2593, 655 P2d 764 (Alaska 1982).

Although plaintiff's suit raised an issue of important public interest, attorney's fees were properly awarded to the prevailing defendant because the one-half million dollars involved would have prompted the suit regardless of the public interest. **Gold Bondholders, Etc. v. Atchison, Topeka and Santa Fe Ry. Co.**, Op. No. 2608, 658 P2d 776 (Alaska 1983).

Award of over one-half of the attorneys' fees actually incurred was not per se unreasonable. **Gold Bondholders, Etc. v. Atchison, Topeka and Santa Fe Ry. Co.**, Op. No. 2608, 658 P2d 776 (Alaska 1983).

Trial court did not err in awarding attorneys' fees to the prevailing party for time spent on issues on which it did not prevail. **Gold Bondholders, Etc. v. Atchison, Topeka and Santa Fe Ry. Co.**, Op. No. 2608, 658 P2d 776 (Alaska 1983).

Where the money judgment was not an accurate criterion for determining award of attorney's fees, trial court did not err in determining that only 250 of the 611.5 hours claimed by the State were necessary to develop and try the State's case and in further determining that the State's award should be based on 20 percent of those hours at the average private billing rate of $75.00 per hour. **AMFAC Hotels v. State Dept. of Transportation**, Op. No. 2620, 659 P2d 1189 (Alaska 1983).

Where no recovery was had, an award of $6,000.00 in attorney's fees from a total of $9,818.50 incurred was not an abuse of discretion. **Brunet v. Dresser Olympic**, Op. No. 2641, 660 P2d 846 (Alaska 1983).

Where prevailing party's attorney spent over a year in preparation, the prevailing party's potential liability was in excess of $50,000, numerous depositions were taken, and the trial lasted three days, award of $6,000 in attorney's fees and $1,641.74 in costs was not manifestly unreasonable. **Blackford v. Taggart**, Op. No. 2749, 672 P2d 888 (Alaska 1983).

Pretrial offers not in compliance with Civil Rule 68 should not be considered in determining questions of costs and attorney fees; accordingly, trial court erred when it used past settlement negotiations, which did not result in an offer of judgment in compliance with Civil Rule 68, to justify a reduction in the amount of attorney's fees that it would have awarded. **Myers v. Snow White Cleaners & L. Supply**, Op. No. 3419, 770 P2d 750 (Alaska 1989).

In a multiparty lawsuit, trial court's order requiring the plaintiff to pay 20 percent of a defendant's actual attorney fees and costs was a reasonable allocation between defendant's actual attorney fees and costs necessarily incurred in prevailing against the plaintiff's direct claim, as opposed to fees spent defending against the cross-claims of other defendants. **Myers v. Snow White Cleaners & L. Supply**, Op. No. 3419, 770 P2d 750 (Alaska 1989).

Each request for attorney fees or costs to a prevailing party in a multiparty lawsuit should be considered objectively on its own merits. The trial court is not required to compare the attorney fees awarded to each of the prevailing parties so as to provide for a particular net award of fees, although the trial court cannot apply radically different standards of awarding partial compensation to the parties without findings or an explanation supporting such disparate treatment. **Myers v. Snow White Cleaners & L. Supply**, Op. No. 3419, 770 P2d 750 (Alaska 1989).

The trial court impermissibly considered defendant's pretrial settlement posture, which the court characterized as unwarranted and unreasonable, when it made its attorney's fee award determination under this rule. **Day v. Moore**, Op. No. 3422, 771 P2d 436 (Alaska 1989).

Because the husband in a divorce action engaged in unwarranted delay and had imposed unnecessary costs in the

course of the action, it was not an abuse of discretion to award the wife attorney fees and 25 percent of her costs. **Hartland v. Hartland**, Op. No. 3459, 777 P2d 636 (Alaska 1989).

The argument that trial courts should never be permitted to award fees in excess of those established under the "noncontested" or "without trial" schedules of Civil Rule 82 following acceptance of any offer of judgment under Civil Rule 68 was rejected. **Van Dort v. Culliton**, Op. No. 3630, 797 P2d 642 (Alaska 1990).

Where an offer of judgment specifies only a lump sum figure without any provision for attorney's fees, attorney's fees may be awarded by the trial in accordance with standard Civil Rule 82 principles; where extraordinary circumstances would otherwise justify deviation from the Civil Rule schedule, such deviation is appropriate following acceptance of the offer of judgment under Civil Rule 68. **Van Dort v. Culliton**, Op. No. 3630, 797 P2d 642 (Alaska 1990).

It is for the trial judge to determine whether too much time was spent by attorneys for the prevailing party or whether too many attorneys were employed. **Integrated Res. Equity v. Fairbanks Boro.**, Op. No. 3633, 799 P2d 295 (Alaska 1990).

Whether an error in ruling on a motion for attorney's fees before the opposing party has an opportunity to respond is prejudicial or harmless depends on whether, as a matter of law, the party denied the opportunity to respond could not have prevailed on the issue of attorney's fees. **Bowman v. Blair**, Op. No. 4169, 889 P2d 1069 (Alaska 1995).

An award of attorneys' fees under this rule will be reversed only for an abuse of discretion. **Mt. Juneau Enterprises, Inc. v. Juneau Empire**, Op. No. 4180, 891 P2d 829 (Alaska 1995).

Attorney's fees awards are reviewed for an abuse of discretion. **Sweet v. Sisters of Providence in Washington**, Op. No. 4200, 893 P2d 1252 (Alaska 1995).

An award of attorney's fees will be overturned only upon a showing of abuse of discretion or a showing that the award is manifestly unreasonable. **Feichtinger v. Conant**, Op. No. 4189, 893 P2d 1266 (Alaska 1995).

B. Abuse of Discretion and Error

In a factually complex case requiring extensive preparation, in which counsel has been engaged in preparation for over three and one-half years, in which the potential liability of the prevailing party is considerable, in which numerous depositions are taken, and in which trial takes three weeks, and in respect to which the prevailing party is obliged to commence and litigate a separate action in federal court in order to discover certain records, the award of $3,700 attorney's fees as costs to the prevailing party is unreasonably low and an abuse of discretion. **Palfy v. Rice**, Op. No. 634, 473 P2d 606 (Alaska 1970).

Where a defendant receives a judgment of over seventeen thousand dollars on a counterclaim and suffers an offset of under one hundred dollars, the trial court's finding that neither party prevailed is manifestly unreasonable. **DeWitt v. Liberty Leasing Co. of Alaska**, Op. No. 818, 499 P2d 599 (Alaska 1972).

It is an abuse of discretion to award attorney's fees to the state against a potential candidate for the state legislature who in good faith challenges the constitutionality of the residency requirements. **Gilbert v. State**, Op. No. 1085, 526 P2d 1131 (Alaska 1974).

It is an abuse of discretion to award attorney fees against a losing party who has in good faith brought a genuine public issue before the court. **Gilbert v. State**, Op. No. 1085, 526 P2d 1131 (Alaska 1974).

Where radically different standards of partial compensation are applied in awarding attorney's fees to the parties the award will be considered an abuse of discretion unless there are findings or an explanation by the trial court supporting such disparate treatment. **Irving v. Bullock**, Op. No. 1261, 549 P2d 1184 (Alaska 1976).

Award of full attorney's fees was an abuse of discretion. **Continental Ins. Co. v. U.S. Fid. & Guar. Co.**, Op. No. 1293, 552 P2d 1122 (Alaska 1976).

It was abuse of discretion to award extra sum for defense of counterclaim where defense did not prevail. **Fairbanks Builders, Inc. v. Sandstrom Plumbing and Heating, Inc.**, Op. No. 1324, 555 P2d 964 (Alaska 1976).

Award to plaintiff of $15,337 in attorney fees, which represented 80 percent of actual attorney fees, was not abuse of discretion where defendants insisted on litigating weak and incredible defense that bordered on bad faith and where defendants' intransigence required plaintiff to expend considerable effort on motions and trial practice. **Crook v. Mortenson-Neal**, 727 P2d 297 (Alaska 1986).

Superior court's denial of prevailing party's motion for attorney's fees on the basis that the party had no obligation to pay his attorney for legal services rendered was error. **Gregory v. Sauser**, Op. No. 1560, 574 P2d 445 (Alaska 1978).

Statement by superior court that "under the circumstances, justice will best be served if each party bears [its] own costs and attorney's fees" was not a sufficient explanation of its failure to award attorney's fees to the prevailing party. **Cunan v. Hastreiter**, Op. No. 1632, 579 P2d 524 (Alaska 1978).

In the absence of a bad faith defense or vexatious conduct by the losing party, it is manifestly unreasonable to award full attorney's fees to the prevailing party. **Davis v. Hallett**, Op. No. 1772, 587 P2d 1170 (Alaska 1978).

An enhanced award of attorney's fees for a successful public interest litigant computed by applying a multiple of the reasonable fee was not deemed appropriate in this case where the successful litigant was a nonprofit corporation represented by in-house counsel, where the prospect of such fees was not a factor used by the corporation in determining which cases to accept, and where counsel's major argument was not relied on in the court's opinion. **Thomas v. Bailey**, Op. No. 2094, 611 P2d 536 (Alaska 1980).

In a suit brought by shareholders against a corporation and its president it was error for the court to award full attorney's fees against the president since to do so saddles the unsuccessful party with the expenses, and does not impose the costs on the class that has benefitted from the litigation. **Moses v. McGarvey**, Op. No. 2139, 614 P2d 1363 (Alaska 1980).

Where two attorneys hired by shareholders to file suit against a corporation were subsequently prevented by the court from representing the shareholders due to a conflict of interest, it was error for the trial court to award any attorney fees for their services. **Moses v. McGarvey**, Op. No. 2139, 614 P2d 1363 (Alaska 1980).

Assessment of attorney's fees against plaintiffs in a class action suit concerning the constitutionality of applying a local sales tax to long-distance phone calls was error because it

ld deter other legitimate suits protecting citizens' rights nst abusive taxation. **Douglas v. Glacier State Telephone**, Op. No. 2144, 615 P2d 580 (Alaska 1980).

Superior court abused its discretion in awarding attorney's , to the state as the prevailing party on a motion made suant to AS 45.52.210(f) to set aside an investigative nand. **Matanuska Maid, Inc. v. State**, Op. No. 2223, 620 I 182 (Alaska 1980).

Where there was no evidence that the losing party's claim s frivolous, vexatious, or devoid of good faith, an award of orney's fees which was over 90 percent of the amount uested by the prevailing party was excessive. **State v. iversity of Alaska**, Op. No. 2303, 624 P2d 807 (Alaska 81).

Trial court did not abuse its discretion in permitting a quest for attorney's fees thirteen days after judgment. **State University of Alaska**, Op. No. 2303, 624 P2d 807 (Alaska 981).

Court abused its discretion in a divorce action by awarding osts and attorney's fees on the prevailing party concept rather han on the economic situations and earning powers of the arties. **Cooke v. Cooke**, Op. No. 2275, 625 P2d 291 (Alaska 1981).

Assertion by losing party that work done by prevailing party's attorneys was duplicative and excessive was unsupported by evidence. **Alaska State Federation of Labor v. State**, Op. No. 3014, 713 P2d 1208 (Alaska 1986).

Failure of court, which made an award of attorney fees at variance with the schedule in the Civil Rules, to state its specific reasons for the amount awarded, required reversal. **Hayes v. Xerox Corp.**, Op. No. 3045, 718 P2d 929 (Alaska 1986).

Where both parties to a divorce had adequate incomes and where the wife was more favorably situated than the husband in terms of assets awarded by the court, the court abused its discretion in awarding attorney's fees to the wife. **Rhodes v. Rhodes**, Op. No. 3339, 754 P2d 1333 (Alaska 1988).

Attorney's fees award of more than half the actual fee was not an abuse of discretion. **Stevens By Park View Corp. v. Richardson**, Op. No. 3313, 755 P2d 389 (Alaska 1988).

Where prevailing party submitted 653.7 hours of attorney time spent on the case, opposing party's contention that $25,000 award for attorney's fees was excessive because 230.6 hours of the time submitted should have been excluded was rejected; assuming that 423.1 hours should have been billed, the award still represented only $60 per hour to attorneys who billed at the rate of $90 to $125 per hour. **O.K. Lumber v. Providence Washington Ins.**, Op. No. 3367, 759 P2d 523 (Alaska 1988).

A trial court may not use past settlement negotiations as a reason to justify a reduction or increase in the amount that it would otherwise have awarded; accordingly, where trial court considered, among other things, the fact that party made ridiculously low settlement offers, reversal of the attorney fee award was required. **Van Dort v. Culliton**, Op. No. 3630, 797 P2d 642 (Alaska 1990).

Trial court's award of attorney fees predicated on the amount awarded at arbitration was error. **Integrated Res. Equity v. Fairbanks Boro.**, Op. No. 3633, 799 P2d 295 (Alaska 1990).

Award of $30,000 in attorney's fees to prevailing bank in an action arising out of a mortgage foreclosure did not violate equal protection despite losing party's contention that, had he prevailed, his recovery for attorney's fees would have been limited to $6,000 under this rule. **Barber v. National Bank of Alaska**, Op. No. 3721, 815 P2d 857 (Alaska 1991).

Where attorney's fee award was based upon the total amount of the judgment for plaintiff, trial court erred in ordering the two defendants, who were jointly liable for the judgment amount, to each pay the attorney's fees award. **Frontier Companies v. Jack White Co.**, Op. No. 3759, 818 P2d 645 (Alaska 1991).

Claimed actual attorney fees of $200,000 in wrongful discharge case appeared clearly excessive, requiring remand for new attorney fee award based upon reasonable expenditures. **Zeilinger v. Sohio Alaska Petroleum Co.**, Op. No. 3794, 823 P2d 653 (Alaska 1992).

Where Borough successfully sued to enjoin property owners from violating zoning regulations, trial court did not abuse its discretion in awarding Borough seventy-four percent of its legal expenses. **LeDoux v. Kodiak Island Borough**, Op. No. 3822, 827 P2d 1211 (Alaska 1992).

Where defendant prevailed in wrongful death action, trial court erred in imposing liability for costs and fees against decedent's estate, since action was brought on behalf of surviving statutory beneficiaries, not on behalf of estate. **In re Soldotna Air Crash Litigation**, Op. No. 3859, 835 P2d 1215 (Alaska 1992).

Trial court did not abuse its discretion in refusing to impose costs and fees upon nonprevailing plaintiffs in wrongful death action since, although captions in several of the complaints listed plaintiffs as individuals, in substance plaintiffs brought suit as decendents' personal representatives. **In re Soldotna Air Crash Litigation**, Op. No. 3859, 835 P2d 1215 (Alaska 1992).

It did not constitute bad faith or vexatious conduct for municipality to challenge constitutionality of its own ordinance, thus award of full attorney fees to prevailing opposing party without explanation was error. **Municipality of Anchorage v. Police Dept.**, Op. No. 3893, 839 P2d 1080 (Alaska 1992).

When two parties who are aligned together are awarded differing percentages of attorney's fees, it constitutes an abuse of discretion unless fully explained. **Municipality of Anchorage v. Police Dept.**, Op. No. 3893, 839 P2d 1080 (Alaska 1992).

Attorney fee award of $531,563, which constituted eighty percent of total fees, was abuse of discretion, absent serious allegations of bad faith or vexatious conduct. **Exxon Corp. v. Burglin**, 42 F.3d 948 (5th Cir. 1995).

Superior court's use of the factor of "measure of success" in awarding attorney's fees in an administrative appeal did not on its face constitute an abuse of discretion. **North Slope Borough v. Barraza**, Op. No. 4285, 906 P2d 1377 (Alaska 1995).

IV. Fee Schedule

If the trial court departs from the schedule of fees fixed by this rule, the reasons of such non-adherence should appear in the record. **Patrick v. Sedwick**, Op. No. 338, 413 P2d 169 (Alaska 1966).

Although trial before court was concluded in one day an award of attorney's fees according to the schedule in this rule based on average contested cases was no abuse of discretion where extensive preparatory work and study was required over a two-year period to process the matter to a judgment. **Kenai Power Corp. v. Strandberg**, Op. No. 350, 415 P2d 659 (Alaska 1966).

On appeal from an award of about $32,000 in attorney's fees as part of the costs to the prevailing party calculated in adherence to the schedule provided under **Civil Rule 82(a)(1)**, the supreme court did not interfere with the discretion of the trial judge where no abuse of such discretion appeared from the record. **McDonough v. Lee**, Op. No. 378, 420 P2d 459 (Alaska 1966).

A $2,500 fee to counsel of the plaintiff who recovers a $6,000 judgment is justified, even though in excess of the usual fee schedule, where counsel is forced to litigate all matters of liability and damage against stiff opposition, where matters of fact and law presented are complicated and difficult, where the jury might have found substantially in excess of the verdict, where counsel has been engaged in preparation for 2½ years, where many attempts for adjustment and settlement are made, where several pretrial hearings were attended and where the trial lasted 4½ days. **Froelicher v. Hadley**, Op. No. 486, 442 P2d 51 (Alaska 1968).

For there to be an abuse of discretion in setting attorney's fees in excess of fee schedule contained in this rule, it is necessary to show that a judge's action is manifestly unreasonable. **Froelicher v. Hadley**, Op. No. 486, 442 P2d 51 (Alaska 1968).

When trial court departs from the fee schedule of this rule, the reasons for nonadherence should appear in the record. **Haskins v. Shelden**, Op. No. 1357, 558 P2d 487 (Alaska 1976).

Reasons for departure from fee schedule of this rule should be set forth. **Alaska Airlines, Inc. v. Sweat**, Op. No. 1464, 568 P2d 916 (Alaska 1977).

Where the only money judgment was awarded on a counterclaim, and not on the main issue, the court correctly ruled that attorney's fees were to be awarded in a reasonable amount rather than according to the schedule in Civil Rule 81. **Alaska State Bank v. Gen. Ins. Co.**, Op. No. 1564, 579 P2d 1362 (Alaska 1978).

It was unnecessary for the court to state its reasons for initial non-adherence to the fee schedule contained in Civil Rule 82(a) when, on remand, it decided to comply with that schedule. **Alaska Airlines, Inc. v. Sweat**, Op. No. 1722, 584 P2d 544 (Alaska 1978).

Where no reasons appear in record to justify departure from schedule in Civil Rule 82(a), judgment as to that part must be vacated. **Farnsworth v. Steiner**, Op. No. 1955, 601 P2d 266 (Alaska 1979).

The policy favoring arbitration dictated that appellees be awarded attorney's fees exceeding the schedule of this rule to adequately compensate them for the cost involved in defending an appeal by the other party following arbitration, where that party had specifically agreed to regard the arbitrator's decisions as binding. **Board of Education v. Ewig**, Op. No. 2048, 609 P2d 10 (Alaska 1980).

Although it may be manifestly unreasonable for a court to automatically award the full amount of attorney's fees incurred, adherence by a court to the schedule of attorney's fees set out in this rule is not manifestly unreasonable. **Municipality of Anchorage v. Sisters of Providence in Washington, Inc.**, Op. No. 2343, 628 P2d 22 (Alaska 1981).

A deviation from the schedule of attorney's fees contained in this rule is justified when adherence to the schedule would produce fees which are disproportionately large in view of the time counsel devoted in the case. **Alyeska Pipeline Service Co. v. Anderson**, Op. No. 2364, 629 P2d 512 (Alaska 1981).

Courtroom time for numerous motions and the accumulation of documentation justified an award of attorney's fees in excess of the amount established by this rule. **Safeco Ins. Co. v. Honeywell**, Op. No. 2460, 639 P2d 996 (Alaska 1982).

Where actual attorney's fees were $15,486.33, award of $8,000 in attorney's fees to prevailing party was not manifestly unreasonable, even though that party received a money judgment of only $5,000. **Joseph v. Jones**, Op. No. 2464, 639 P2d 1014 (Alaska 1982).

Award to plaintiff of attorney's fees in excess of amount authorized by the schedule contained in this rule and which totaled 68 percent of his actual attorney's fees was not manifestly unreasonable in light of fact that his legitimate claim became the battleground for disputes between the codefendants. **Joseph v. Jones**, Op. No. 2464, 639 P2d 1014 (Alaska 1982).

Where prevailing party won a decree of specific performance rather than a money judgment, resort to the schedule of attorney's fees set forth in this rule was inappropriate, but award was nevertheless reasonable and would not be disturbed on appeal. **Dillingham Commercial Co. v. Spears**, Op. No. 2468, 641 P2d 1 (Alaska 1982).

Trial court must state its reasons when it makes an award of attorney's fees that varies from the schedule in this rule. **Mullen v. Christiansen**, Op. No. 2482, 642 P2d 1345 (Alaska 1982).

A prevailing pro se attorney is entitled to receive fees under this rule. **Burrell v. Hanger**, Op. No. 2557, 650 P2d 386 (Alaska 1982).

Where award of attorney's fees to pro se attorney was based upon the fee schedule of this rule and not upon the number of hours the attorney worked on the case, it was not necessary for the court to segregate the hours expended in the attorney role from the hours expended in the client role. **Burrell v. Hanger**, Op. No. 2557, 650 P2d 386 (Alaska 1982).

Where contract action was brought in good faith but going to trial on issue of contract reformation after summary judgment on breach of contract issue was frivolous, award to prevailing party of 53 percent of actual attorney's fees was not manifestly unreasonable. **Alaska Northern Development, Inc. v. Alyeska Pipeline Service Co.**, Op. No. 2689, 666 P2d 33 (Alaska 1983).

In the context of a post-judgment motion for attorney's fees, award of $27,433 pursuant to the fee schedule of this rule on a judgment of $356,117 was not abuse of discretion. **Gratrix v. Pine Tree, Inc.**, Op. No. 2790, 677 P2d 1264 (Alaska 1984).

Where prevailing party had pursued his personal injury claim through two extensive and complicated trials and one appeal, trial court's adherence to this rule's schedule in awarding $384,264 in attorney's fees was not manifestly unreasonable. **Dura Corp. v. Harned**, Op. No. 2952, 703 P2d 396 (Alaska 1985).

Trial court erred in awarding attorney's fees without explaining why it deviated from the schedule of fees set forth in this rule. **Stefano v. Coppock**, Op. No. 2968, 705 P2d 443 (Alaska 1985).

Where contribution award was made in favor of an aircraft manufacturer against the employer of a pilot killed in a plane crash, trial court did not err in disregarding the fee schedule of this rule and awarding reasonable attorney fees instead. **Ehredt v. DeHavilland Aircraft Co.**, Op. No. 2974, 705 P2d 913 (Alaska 1985).

In light of the complex nature of the case and in deference to the trial judge's observations of the performance of counsel, trial court's award of attorney's fees in the amount of $172,414.89 to the prevailing party pursuant to the schedule of this rule was affirmed, despite prevailing party's refusal to disclose what its actual fees were and how many hours its counsel spent on the case. **Fairbanks North Star Borough v. Tundra Tours**, Op. No. 3052, 719 P2d 1020 (Alaska 1986).

Where there is no money judgment, the fee schedule of this rule does not apply, therefore the court need not explain why it is departing from the schedule. **Wickwire v. Arctic Circle Air Services**, Op. No. 3084, 722 P2d 930 (Alaska 1986).

In a case where the fee schedule of this rule does apply, the trial court need not set forth its reasons for deviating from the schedule if the reasons are obvious. **Wickwire v. Arctic Circle Air Services**, Op. No. 3084, 722 P2d 930 (Alaska 1986).

Trial court has broad discretion to award attorney's fees in amounts greater than would be allowed under the schedule of this rule so long as the court specifies in the record its reasons for the departing from the schedule. **Taylor Const. Services, Inc. v. URS Co.**, Op. No. 3364, 758 P2d 99 (Alaska 1988).

Where the city prevailed in an action against it for which there was potentially a significant amount of money at stake in regard to punitive damages, partial award of $3500 in attorney fees for over $5000 in actual attorney time spent on the case was not unreasonable even though the compensatory damages at stake were quite small. **Murphy v. City of Wrangell**, Op. No. 3393, 763 P2d 229 (Alaska 1988).

Award of $305,358 in attorney fees pursuant to the schedule of this rule was affirmed notwithstanding the absence of an affidavit setting forth the number of hours expended for legal services. **Korean Air Lines, Co., Ltd. v. State**, Op. No. 3492, 779 P2d 333 (Alaska 1989).

Award of just over fifty percent of the prevailing party's actual attorney fees was not an abuse of discretion. **Kenai Peninsula Bor. v. English Bay Village**, Op. No. 3517, 781 P2d 6 (Alaska 1989).

In suit by insured against insurer for violating insurance agreement, trial court erred in permitting jury to award the insured attorney fees beyond those authorized by this rule. **Alaska Pacific Assurance Co. v. Collins**, Op. No. 3614, 794 P2d 936 (Alaska 1990).

Attorney fee awards made pursuant to the schedule of this rule are presumptively correct; the prevailing party bears no burden to justify such awards, thus time itemization of counsel's services is not required. **Babinec v. Yabuki**, Op. No. 3644, 799 P2d 1325 (Alaska 1990).

Trial court could have awarded a larger attorney fee, but adhering to this rule's schedule was not an abuse of discretion; nevertheless, the award was vacated because part of the money judgment on which the scheduled fee was based had been vacated. **Hancock v. Northcutt**, Op. No. 3658, 808 P2d 251 (Alaska 1991).

Attorney fees of $165 to $175 per hour were not unreasonable. **Bozarth v. Atlantic Richfield Oil Co.**, Op. No. 3843, 833 P2d 2 (Alaska 1992).

In action for wrongful job termination, attorney fee award of $117,251 to prevailing defendant, which was 30 percent of defendant's actual fee, was not excessive. **Van Huff v. Sohio Alaska Petroleum Co.**, Op. No. 3857, 835 P2d 1181 (Alaska 1992).

An award of full attorney's fees must generally be explained. **Municipality of Anchorage v. Police Dept.**, Op. No. 3893, 839 P2d 1080 (Alaska 1992).

While deviation from the schedule of fees must be explained, if fee schedule does not apply, trial court need not set forth its reasons for award. **Municipality of Anchorage v. Police Dept.**, Op. No. 3893, 839 P2d 1080 (Alaska 1992).

In case involving sale of fishing vessel, trial court properly calculated attorney fees pursuant to terms of sales agreement, which specifically provided for reasonable attorney fees, rather than pursuant to this rule. **Gudenau v. Bierria**, Op. No. 4045, 868 P2d 907 (Alaska 1994).

Trail court did not abuse its discretion in not varying from the presumptive Rule 82 formula despite claims that an enhanced award was warranted by the complexity of the facts and issues, the extremely high monetary stakes involved and the underlying need to indicate the public policy announced in AS 45.45.900. **Aetna Casualty & Surety Co. v. Marion Equipment Co.**, Op. No. 4205 894 P2d 664 (Alaska 1995).

Where a party appeals an administrative decision, but receives no money judgment, the guidelines in Civil Rule 82(b)(2) may be applied by analogy to Appellate Rule 508(e) to determine a reasonable award of attorney's fees. **Carr-Gottstein Properties**, Op. No. 4230, 899 P2d 136 (Alaska 1995).

Where superior court did not state its reasons for deviating from the Rule 82 schedule, the attorney's fees award was vacated and the case remanded. **Saltz v. Saltz**, Op. No. 4272, 903 P2d 1070 (Alaska 1995).

Rule 83. Fees: Witnesses—Physicians—Interpreters and Translators.

The payment of fees and mileage for witnesses, and for physicians and interpreters and translators, shall be governed by the rules for the administration of the courts.

(Adopted by SCO 5 October 9, 1959)

Annotations

Cases

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

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s against a party

who requests a hearing primarily for delay in a support proceeding listed in AS 25.25.301.

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

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

Rule 82. Attorney's Fees.

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

(b) **Amount of Award.**

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

Judgment and, if awarded, Prejudgment Interest		Contested With Trial	Contested Without Trial	Non-Contested
First	$ 25,000	20%	18%	10%
Next	$ 75,000	10%	8%	3%
Next	$400,000	10%	6%	2%
Over	$500,000	10%	2%	1%

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

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

(A) the complexity of the litigation;

(B) the length of trial;

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

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

(E) the attorneys' efforts to minimize fees;

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

(G) vexatious or bad faith conduct;

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

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

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

(K) other equitable factors deemed relevant.

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

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

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

(d) **Determination of Award.** Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

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

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

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

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

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

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

(Adopted by SCO 5 October 9, 1959; amended by SCO 497 effective January 18, 1982; by SCO 712 effective September 15, 1986; by SCO 921 effective January 15, 1989; by SCO 1006 effective January 15, 1990; by SCO 1066 effective July 15, 1991; repealed and reenacted by SCO 1118am effective July 15, 1993; amended by SCO 1195 effective July 15, 1995; by SCO 1200 effective July 15, 1995; by SCO 1241 effective July 15, 1996; by SCO 1281 effective August 7, 1997; and by SCO 1340 effective January 15, 1998)

Note to SCO 1118am: By adopting these amendments to Civil Rule 82, the court intends no change in existing Alaska law regarding the award of attorney's fees for or against a public interest litigant, see, e.g., **Anchorage Daily News v. Anchorage School Dist.**, 803 P.2d 402, 404 (Alaska 1990); **City of Anchorage v. McCabe**, 568 P.2d 986, 993-94 (Alaska 1977); **Gilbert v. State**, 526 P.2d 1131, 1136 (Alaska 1974), or in the law that an award of full attorney's fees is manifestly unreasonable in the absence of bad faith or vexatious conduct by the non-prevailing party. See, e.g., **Malvo v. J.C. Penney Co.**, 512 P.2d 575, 588 (Alaska 1973); **Demoski v. New**, 737 P.2d 780, 788 (Alaska 1987).

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

RABINOWITZ, Justice dissenting.

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

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

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

Note to SCO 1281: In 1997 the legislature amended AS 09.30.065 concerning offers of judgment. According to ch. 26, § 52, SLA 1997, the amendment to AS 09.30.065 has the effect of amending Civil Rules 68 and 82 by requiring the offeree to pay costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by eliminating provisions relating to interest, and by changing provisions relating to attorney fee awards. According to § 55 of the session law, the amendment to AS 09.30.065 applies "to all causes of action accruing on or after the effective date of this Act." However,

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the amendments to Civil Rule 68 adopted by paragraph 5 of this order are applicable to all cases filed on or after August 7, 1997. See paragraph 17 of this order.

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

Alaska State Legislature

Please enter into the record my testimony to the SENATE Judiciary (committee name) committee on SB 123 bill/subject, dated 4/9/99.

I would like to thank you for considering and hearing this issue.

I strongly support SB 123. It is time all litigants were treated equally. It is time to stop the ability of already well funded enviromental wacko groups to file suites; and win on one or two minor point or agree to settle, and the get full reimbursement for All their Attorney fees.

This is wrong.

Please pass this bill.

thank you

Signed: Richard L. Coose Testifier Phone: 247-9266

C.A.R.E. - Concerned Alaskans for Resources and Environment
Representing (Optional)

PO Box 9266 Ketchikan AK 99901
Address

Fax transmitted from Ketchikan Legislative Information Office
Phone: 225-9675 Fax: 225-8546

APRIL 9, 1999

I have recently learned of SB123 and have some concerns about how this bill might affect the ability of citizens to interact with libraries in particular and other governmental agencies in general.

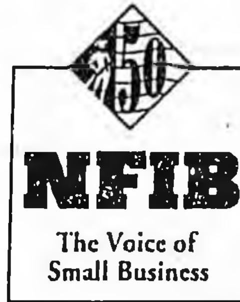
As written, the bill is directed to state agencies; however, I understand it will also have an impact on local governmental agencies. As you may know, when library users disagree with something the staff added to the collection, they may file a request to reconsider that decision. At that point, at least in the public library in Fairbanks, the professional staff members examine the item to see if they think it is covered by the criteria established by the Library Commission. If the user disagrees with their decision, he or she may then appeal it to the Commission. If the Commission upholds the staff, the user must then take the issue to court.

In most cases, including this example from the library, a person who disagrees with the decision of the governmental agency must solicit help with a lawsuit, since few of us have the expertise to file or can afford to pay for litigation. However, if state law prohibits attorneys from recovering expenses, most of them won't be willing or even able to represent citizens who want to pursue their complaints, particularly when the issue involves constitutional issues. In libraries, these complaints cover the spectrum of belief and have included titles ranging from Playboy to the Bible.

When you consider this bill, please remember the impact it may have on those without the economic means to protect their constitutional rights. Surely our state's best interest lie in promoting, not restricting, these rights.

Thank you for your interest, and please let me know if you have any questions.

June Pinnell-Stephens
907-479-5826



NFIB Alaska

NFIB/Alaska 1999 Ballot Results

The Alaska Chapter of the National Federation of Independent Business is comprised of 3000 small and independent business owners. The typical NFIB/Alaska member employs five workers and rings up gross sales of about $181,000 per year. In total, the organization's members employ more than 43,000 workers.

The legislative agenda of NFIB is determined by ballot. A majority vote of the members in response to the poll sets the policy and position on legislative issues. Ballots for the last 5 years are used to establish the full legislative agenda. Following are the ballot results for 1999.

Tort Reform
Frivolous Lawsuits

Should the Alaska Legislature enact legislation to allow attorneys as well as their clients to be assessed damages for knowingly or recklessly filing false claims?

96% YES 2% NO 2% Undecided

Tort Reform
Collection of Settlement Information

Do you support the mandatory reporting of out of court settlement information such as attorneys fees and dollar amounts paid to claimants?

72% YES 22% NO 6% Undecided

Biennial State Budget

Do you favor a State Constitutional amendment to create a two-year budget cycle?

52% YES 36% NO 12% Undecided

National Federation of Independent Business
217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128

Small Business Works FOR ALASKA
...and NFIB works for small business.

Department of Environmental Conservation Fees

The Alaska Department of Environmental Conservation (ADEC) currently has the authority to assess fees for permits, inspections, certifications and training for a broad range of regulatory programs. Should these fees be limited to "actual direct costs," which do not include travel, overhead and administrative support costs?

81% YES 13% NO 6% Undecided

Should DEC establish reasonable fixed fees for certain department services to cover actual direct costs?

83% YES 9% NO 8% Undecided

If requested by the applicant, should DEC have the ability to negotiate a fee based on a maximum number of hours that may include associated travel costs?

69% YES 21% NO 10% Undecided

Unemployment Insurance

Students under 18 are not eligible to collect unemployment benefits. Should full time students under the age of 18 and their employers be exempt from paying unemployment tax?

93% YES 6% NO 1% Undecided

Distributed by Thyes Shaub
NFIB/Alaska Lobbyist

ALASKA MINERS ASSOCIATION, INC.

3305 Arctic #202, Anchorage, Alaska 99503 FAX: (907) 563-9225 Telephone: (907) 563-9229

April 7, 1999

Honorable Dave Donley
Alaska State Senate
Capitol Building
Juneau, AK 99801

RE: SB-123, Regarding Public Interest Litigants and Rule 82

Dear Senator Donley,

The Alaska Miners Association wishes to go on record in strong support of Senate Bill 123 which deals with public interest litigants and attorney fees and amends Rule 82 of the Alaska Rules of Civil Procedure.

For many years so-called public interest groups have blocked and harassed businesses and legitimate development projects under the guise of protecting the public interest. The current procedures for awarding attorney fees actually encourage such actions and suits, regardless of the merit of the case. The public interest litigant has everything to gain and nothing to lose by taking the action. Under the current procedures for awarding fees, these litigants will often be paid their fees even if they prevail on only a very marginal part of their case. Furthermore, if these groups lose the case, they do not currently face the possibility of being required to pay their opponents fees.

It is long past time for Rule 82 to be changed and we urge that SB-123 be passed and become law at the earliest possible time.

Sincerely,

Steven C. Borell, P.E.
Executive Director

KETCHIKAN GATEWAY BOROUGH

Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901

Scott A. Brandt-Erichsen
Borough Attorney
(907) 228-6635
Fax: (907) 247-6625

April 6, 1999

RECEIVED
APR 07 1999
Senate Finance
Committee

Senator Sean Parnell
Senate Finance Committee
State Capitol Room 504
Juneau, Alaska 99801-1182

Re: Senate Bill 123

Dear Senator Parnell:

At its meeting of Monday, April 5th, 1999, the Ketchikan Gateway Borough Assembly requested that I send a letter indicating that the Ketchikan Gateway Borough Assembly supports Senate Bill 123.

The public interest litigant doctrine protects unsuccessful public interest litigants from attorney fee awards against them, and provides for recovery of costs by successful public interest litigants. The purpose of a public interest litigant concept is to avoid discouraging litigation that is truly in the public interest through the threat of awards against the plaintiff and the expense of representation.

In the Assembly's discussion of Senate Bill 123, concerns were expressed about abuse of the "public interest litigant" status by some entities to recover more than their actual expenses. For example, if a non-profit entity which commonly engages in "public interest" type litigation has staff counsel, they may actually pay their counsel $30.00 per hour, but bill their counsel's time for attorney's fees purposes at $150 per hour. If they recover reasonable actual attorney's fees as a prevailing public interest litigant, the windfall is the difference between the billed rate and the compensation paid. This windfall may then be used to fund other additional litigation or other projects of the entity. Apart from the potential windfall effect, the current application of the public interest litigant principle, as a practical matter, acts to encourage litigation against the government.

A normal litigant with a vested financial interest can only recover partial fees even if successful, and must pay the opposing party's Rule 82 fees if unsuccessful. The potential full recovery of costs without a risk of responsibility for the costs the litigation imposed on the opposite side (normally a governmental entity) creates an imbalance. It has a tendency to encourage "recreational litigation" by those with the time and inclination. For just the filing fee and often minor expenses, a "sport litigant" can delay governmental action and cause the expenditure of significant public resources in defending against the litigation without a risk of bearing those costs in the event that the plaintiff is unsuccessful. At the same time, the public interest plaintiff may be paid handsomely for their time if they are successful even in part.

The changes proposed by Senate Bill 123 would retain the protection of the public interest litigant from awards of attorney's fees and costs against them, so long as the claim has a reasonable basis. It would not allow protection for spurious claims. It would also level the playing field somewhat on successful claims by taking away the windfall aspect of successful public interest litigation. Additionally, by relating costs to specific claims, a public interest litigant could not simply put forth dozens of causes of action in the hopes of being paid for all time spent on the matter if it prevails on only one of its claims.

For these reasons, the Ketchikan Gateway Borough Assembly supports Senate Bill 123.

Separately, as an attorney who has worked on public interest litigation cases, I personally endorse Senate Bill 123. On one occasion, while representing the Municipality of Anchorage, I found myself in a situation where my client was being sued by individuals on both sides of an issue, both of which were found to be public interest litigants. In this situation, it was obvious that the Municipality of Anchorage would win one and would lose one. Due to the public interest litigant nature of the claims, the municipality could not recover from the unsuccessful litigant and would be required to pay the costs of the successful litigant. As the case progressed, there was little that could be done except to watch the bills mount.

Provisions such as those in Senate Bill 123 would significantly improve this situation. No longer would attorney's fees for the public interest litigant be a potential blank check,

and therefore there would be less of an incentive for "sport litigation."

If I can be of further assistance in connection with this legislation, please contact me at your convenience.

Sincerely,

KETCHIKAN GATEWAY BOROUGH

Scott A. Brandt-Erichsen
Borough Attorney

ss/1/SB.123

cc: Honorable Mayor and Assembly
Borough Manager
Borough Clerk
Representative Bill Williams

ALASKA STATE CHAMBER OF COMMERCE

Position 99 - 25

Public Interest Litigants

WHEREAS, Alaska court doctrine recognizes a party status know as "public interest litigant";

WHEREAS, the four-part test to qualify as a "public interest litigant" established by the Alaska Supreme Court in *Anchorage Daily News v. Anchorage School District*, 803 P.2d 402, 404 (Alaska 1990), requires that:

(1) the case pursued by the party must be designed to effectuate strong public policies;
(2) if the party prevails, numerous people will receive benefits from the litigation;
(3) the challenge must be one that only a private party could have been expected to initiate; and
(4) the purported public interest litigant would not have sufficient economic incentive to file suit;

WHEREAS, some groups routinely challenge state resource development decisions and are granted "public interest litigant" status by the courts;

WHEREAS, these groups are often special interest groups posing as public trusts as well as public interests litigants;

WHEREAS, these challenges typically allege as many as 15 to 20 specific deficiencies in the state's administrative finding;

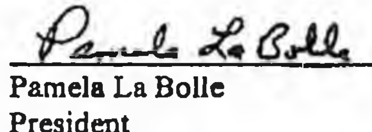
WHEREAS, when groups challenging resource development decisions prevail, they generally prevail on only one or two issues;

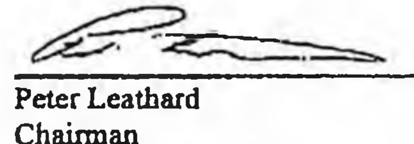
WHEREAS, even though the groups only prevail on one or two issues, they are typically awarded full costs and attorneys fees;

NOW, THEREFORE BE IT RESOLVED, that the Alaska State Chamber supports legislation to amend state law to direct the Alaska courts to apportion the same percentage of costs and fees paid to a public interest litigant as the percentage of issues raised on which the litigant prevailed.

ADOPTED

March 2, 1999

BY 
Pamela La Bolle
President

BY 
Peter Leathard
Chairman

SB

162

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 162

Revision Date/Time (Note if correction):
Title: "... relating to the rule against perpetuities, non-vested property interests, and powers of appointment ..."
Sponsor: Senate Judiciary Committee by Request
Requester: Senate Judiciary Committee

Dept. Affected: Law
BRU: Civil Division
Component: Commercial
Component Serial No. 2211

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: ______

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 162 permits certain situations where the Rule Against Perpetuities will be superceded, thereby permitting nonvested property interests and certain powers of appointment to be perpetual and never terminating unless otherwise provided for in the governing instrument creating the interest or power of appointment. Under current law, these interests are generally invalid unless, when created, they are to vest or become exercisable within 21 years after the death of an individual then alive or within 90 years of creation.

Passage of SB 162 would have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
Division: Attorney General's Office
Phone: 465-5370
Date/Time: 4/27/99, 8:46 AM

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 4/27/99

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(Rev 10/98) 99fnform xls/OMB

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 4/22/99

FURTHER:

Date of 5-Day Notice:______________
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 5/13

Judiciary Committee considered SENATE BILL NO. 162

"An Act relating to the rule against perpetuities, nonvested property interests, and powers of appointment; and providing for an effective date."

and recommends:

[X] be **replaced** with ______ CS SB 162(H) (JUD)

[ ] adopt **previous** ______ CS ______________ (______)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by __________________ Committee

[ ] further referral to the __________________ Committee

Senate Bill:
[✓] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR#______

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
		[signature] Ellis	X		
		[signature] Donley	✓		
CHAIR: [signature] Robin L. Taylor	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
LAW	4/21	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

Alaska State Legislature

Chairman,
Judiciary Committee

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

50 Front Street
Suite 203
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor

SPONSOR STATEMENT

SB 162

An Act relating to the rule against perpetuities, nonvested property interests, and powers of appointment; and providing for an effective date.

This legislation corrects a technical problem created by the Alaska Trust Act. The Alaska Trust Act effectively repealed the rule against perpetuities. As a practical matter, this old common rule prevented the continuation of trusts for longer than 90 to 110 years. The Alaska Trust Act changed the common law rule to allow a trust to continue in perpetuity if the income of principle of the trust could be distributed in the discretion of the trustee to a person who was living when the trust was created.

The problem with the Alaska Trust Act is that it does not allow a person to create a perpetual charitable lead trust. A typical perpetual charitable lead would pay all income to a charity for a term of 20 years (not to a person who was living when the trust was created) and then would continue in perpetuity for the benefit of the descendants of the person creating the trust. Since the passage of the Alaska Trust Act, many persons have contacted trust companies and attorneys in Alaska and have expressed a desire to create perpetual charitable lead trusts. This new legislation would completely repeal the rule against perpetuities and would permit the creation of perpetual charitable lead trusts.