ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672
10291 HOUSE JUDICIARY

arrest. The 78 cases combined with the 81 that Mr. Udland had charged in 1997 would make it approximately 160 cases a year. He noted that figure doesn't include some of the smaller municipalities. Mr. Smith stated, "I was somewhat surprised by the number in Anchorage, but it creates a situation where last year I think the legislature passed a law regarding shooting at a building and making it a felony. I think it's no less important that if you're driving down the roadway at 90 miles an hour and the police have backed off long ago on the search and you are ultimately caught that there is a price you should be paying for that." He said he would answer any questions the committee may have.

Number 1096

CHAIR GREEN referred to the legislation and asked Mr. Smith if he could give a rough estimate of how many out of the 78 cases would be class A misdemeanors or class C felonies.

MR. SMITH said he hasn't had an opportunity to review the reports and he doesn't know if he could do that with any accuracy. He referred to when they originally discussed the bill and said they did not want to charge felonies against a person who is driving within the speed limit and just doesn't recognize the state of Alaska or local police's authority to stop them. He said they didn't think it should necessarily be a felony if they were obeying the speed limit. Mr. Smith stated that the legislation would trip a number of these people into a felony because all they have to do is violate another law or ordinance, including running a red light or stop sign.

Number 1160

REPRESENTATIVE ETHAN BERKOWITZ said it seems to him that if someone is speeding down the road and they're endangering other individuals, they would be liable to assaulted conduct which is already felonious.

MR. SMITH said he would defer to the Department of Law to respond. He said, "If they were doing 80 or 90 miles an hour through the middle of town, potentially I guess that's possible, Representative Berkowitz. I think with the process of screening by district attorneys if the offense, back to your ever popular turn signal violation, might well not be charged as a felony when it in fact gets to cooler heads the next morning and the screening process."

Number 1216

REPRESENTATIVE PORTER indicated that he believes that most of the assault-type violations would require specific intent and that is the problem that you have in a vehicle situation. Unless there is serious physical injury or death, it's extremely difficult (indisc.). He said he can't recall ever having a successful prosecution for what used to be (indisc.).

ANNE CARPENETI, Assistant Attorney General, Legal Services Section - Juneau, Criminal Division, Department of Law, came before the committee. She referred to Representative Berkowitz's previous comment and said assault in the third degree has a provision that says, "recklessly place another person in fear of immanent serious physical injury by means of a dangerous instrument." She stated, "It's not something that we ... prefer to charge under a section like addressed to the particular conduct a little bit more clearly, but I suppose you could logically apply that."

REPRESENTATIVE BERKOWITZ said, "Two points here. First is look at the crime that inspired this bill. And I understand that the B misdemeanor is just not enough because it really has no effective value, but the crime where casualties resulted would have led to, at the very least, manslaughter charges in addition to the misdemeanor charges for violating traffic ordinances and disregarding the police officer."

REPRESENTATIVE PORTER said the previous iteration of the bill had a higher level of a class B felony for this conduct that might result in serious physical injury or death, but it was noted that is another crime specific. That wasn't the intent to have redundance.

REPRESENTATIVE BERKOWITZ said, "I don't think we use the assault statutes nearly enough and we tend to draw our statutes so narrowly, which is what this does, that we have a tendency away from using the assault statute the way it should be used which is to put the facts in front of a jury and let make a determination whether assaulted conduct has occurred."

Number 1394

MS. CARPENETI said, "That would just address one incident that this bill I think is addressing and that is if a person is put in fear of eminent serious physical injury, I don't know if somebody is speeding down the street and you have to jump away whether we would be able to prove beyond a reasonable doubt to a jury of 12 people that that is fear of eminent serious physical injury. You know if somebody just turned away, I don't know whether we would...

REPRESENTATIVE PORTER responded, "Thus, this specific offense, criminal offense of reckless driving indicates that the driving has created this hazardous situation without having to require the specific state of mind evidence from potential victims."

REPRESENTATIVE BERKOWITZ said if the recklessness inspires fear, he is worried at what level the fear is, whether it's a serious physical injury or just a mere irritation. That should be a question for a jury to determine. He indicated that he believes the legislation stacks the deck and takes the power away from the juries to make a determination as to whether a crime has occurred.

MS. CARPENETI said she thinks the bill addresses something else besides assault. It addresses conduct to where a person is asked to pull over by a police officer and knowingly refuses to do so and drives on and violates more laws not necessarily assaulting anybody, but creates the danger that might result in a crash.

REPRESENTATIVE BERKOWITZ said that his point is that the committee is focusing on the danger. He said he isn't minimizing the danger, he understands the problem of people fleeing. People who have been arrested are subject to several charges, including felony escape if they're under arrest for a felony charge. That group of people are outside the realm. He said, "We're saying that the traffic problem, itself is less serious than the failure to stop which could be felonious. I'm not sure that that's something we should do specifically do by statute or something that we should allow the district attorneys to charge, under current statutes, and try and convince a jury of 6 or 12 that the charge is correct."

MR. HORNADAY noted that Mr. Udland submitted a letter and gave a copy to the committee members.

Number 1696

REPRESENTATIVE NORMAN ROKEBERG questioned why the sponsor introduced the legislation.

MR. HORNADAY indicated the legislation is part of the Municipality of Anchorage's legislative program. He quoted from the summary that the municipality submitted making the crime of alluding a police a class C felony, "Currently the crime of alluding a police officer is a misdemeanor under the Alaska Criminal Code. The Municipality of Anchorage requests that the legislature amend the code to make this crime a class C felony for the following reasons:

The crime of alluding a police officer is inherently dangerous for pedestrians, other drivers and innocent bystanders; classification as a misdemeanor does little to detour a criminal from attempting to outrun a police officer; several other local government police departments, including the Anchorage Police Department, have adopted a no-chase policy due to the potentially dangerous outcome of police chases; and having adopted a 'no-chase' policy it is important to detour this behavior and more strictly punish offenders."

MR. HORNADAY continued to read, "In August of this year a passenger in a vehicle attempting to evade arrest was killed when the vehicle ran a red light and struck a building. This is only one of several recent incidents where causalities have resulted from this very serious crime. The Municipality of Anchorage supports legislation to increase the penalty for the crime of alluding a police officer and this will not only help detour this potentially dangerous behavior, but will more correctly align the severity of the punishment with the severity of the crime itself."

Number 1796

CHAIRMAN GREEN said Mr. Udland's testimony indicated that when we increased the consequences of joy-riding to be a serious crime, the number of car thefts decreased. It is Mr. Udland's opinion that by increasing the penalty for failure to stop, then that too will decrease. The Alaska State Troopers also feels the same way. He noted the public defender feels that it won't have an impact. Chairman Green noted there were 78 failures to stop or alluding troopers in 81 Anchorage police reports for 1997.

Number 1860

REPRESENTATIVE ERIC CROFT said almost any time a misdemeanor is increased to a felony, or define a felony, we're going to increase business for the public defender's office. He asked Ms. Brink if there were other problems with the way the bill is written.

MS. BRINK pointed out that her testimony was about how much more costly felony cases are than misdemeanor cases. She said, "I would like to point out one problem that I don't believe has been brought up yet. The numbers that we've received, about 150 combining the troopers and APD (Anchorage Police Department) is still lacking, I think, another group of folks. The municipal prosecutor told me that they prosecuted 66 of these cases as misdemeanors, but the way the statute is written there is also an alluding infraction that involves specifically failing to stop at the direction of a police officer. Those numbers aren't included here. So I feel pretty

comfortable that the 150 cases a year that we've gotten are fairly good numbers. I just think there is potential for the number to be even higher. And my concern with the effectiveness of this as a deterrent measure is simply that the clients that I've dealt with in an alluding case didn't make any plan or didn't have a premeditated course of action to allude ... the red light went on and they engaged in some bad judgement and very impulsive behavior without thinking clearly. So my concern was we will have great costs. I'm insecure about what kind of a benefit we're going to get derived from this because the people that I've seen involved in alluding or running away from police officers aren't really thinking about the consequences. It's a very impulsive short-sided adrenalin rush kind of situation where they make a bad judgement call. I hope I'm wrong if this does become a felony."

REPRESENTATIVE BERKOWITZ suggested that instead of going to an A misdemeanor and a C felony, have a B misdemeanor and an A misdemeanor, and then have a statutory aggravator in felony cases for some kind of failure to stop.

MS. BRINK said, "That would it would reduce that costs. I mean it's the fact of the different procedures involved in a felony case that increases our cost. Once again, who knows whether this will enter anybodies thought process, but you certainly would have a harsher hammer to use against somebody who engaged in this behavior if you had a graduated scheme like that."

Number 1981

REPRESENTATIVE PORTER said he would agree with Ms. Brink that a certain percentage of people make an initial reaction without contemplated thought. He said he believes the bill gets at people at either end of that scale. At one end, there will be the person who isn't going to stop because of some constitutional issue of theirs. Then at the other end of the scale, the person who makes that initial judgement and then continues with it, which does require conscious thought, that is the person for whom the felony is very appropriate. Unfortunately, in Anchorage, as in a couple of other communities, there has been a lot of publicity over the last couple of years on pursuit policies. He indicated that many people are aware that the largest community in the state has a policy that the Anchorage Police Department will not pursue in a hazardous situation unless it is very hazardous like shooting guns out of windows. He stated for those reasons, he believes it is appropriate legislation.

REPRESENTATIVE JAMES noted the Fairbanks Police Department also has the no-chase policy. She indicated she agrees with a bigger penalty as it might be a deterrent.

Number 2120

CHAIRMAN GREEN referred to the roughly 150 cases and asked Mr. Hornaday if he knows how many of those might be young drivers as opposed to more mature drivers. He asked how many are teenagers.

MR. SMITH said without reviewing the police reports, he couldn't answer.

Number 2136

REPRESENTATIVE BUNDE asked Representative Porter if there is a difference between failure to stop and alluding.

REPRESENTATIVE PORTER said he couldn't answer that question unless he reviewed the statutes and read the definitions.

REPRESENTATIVE ROKEBERG referred to the step up in the offenses and asked if the bill would preclude any infraction for an unintentional failure to stop.

MR. HORNADAY responded that he believes it requires a "knowingly" in the statute as defined in the criminal statutes.

REPRESENTATIVE ROKEBERG asked if that is currently the level or standard for the infraction.

MR. HORNADAY responded that he isn't sure what it currently is, but in the legislation it states it has to be knowingly which is generally required.

REPRESENTATIVE BERKOWITZ said, "I'm curious to know if [Department of] Corrections has any idea of what the additional cost of turning this into felonious (indisc.) would be bearing in mind that a lot of these people would be hopped up and be presumptive?"

Number 2235

BRUCE RICHARDS, Program Coordinator, Office of the Commissioner, Department of Corrections, came before the committee. He said, "We are currently in about the same boat as everybody else as far as numbers go. We've heard the number is near 150 cases per year. It's unclear to us how many of these people would be convicted as felons, which has a substantially higher penalty. In looking at the bill, it seems like a good many of them could be convicted as felons if they violate, under the law, ordinance or traffic regulation law while they're failing to stop. So I think that's pretty common. If they fail to stop, I would assume they're probably speeding, driving recklessly. So I think that you're going to have a significant number of felonies and we are trying to figure out, if we can, how many of those will be, but it's difficult and we're trying to get with everybody else on these numbers as well. I don't know the answer to Representative Berkowitz's question at this point."

REPRESENTATIVE CROFT said he would hope that most of the people that are stopped would be for a good reason - for a violation, and a lot of them would be felonies for that reason. He stated that he would like to see how many felonies will be added to the Department of Corrections.

REPRESENTATIVE PORTER referred to the cost of these kinds of pieces of legislation has gone on and on and said, generally, most of the offenses that have been put on the books have been used as tools. He referred to the fiscal note on the felony conspiracy statute and said it was outrageous. He stated that this is another one of those kinds of crimes that would be used as a tool. In an egregious situation, there would probably be a prosecution for a felony. He said he would guess that in at least 50 percent of the cases, if not more, that are currently on the books, thorough plea bargain, or just general discretion at the prosecutor's level, there would not be a felony crime, but it would get out that there are felony type consequences for (indisc.) failing to stop.

Number 2339

REPRESENTATIVE BUNDE observed that the part that can't be calculated is how many fewer people would fail to stop. He said we have to presume that consequences of our behavior does affect behavior, otherwise, a lot of laws could be removed.

REPRESENTATIVE JAMES said, "Well I think also if you're going think that you're going to decrease the number, that might not stop. You might also increase safety of the public."

Number 2371

REPRESENTATIVE BERKOWITZ said that before the bill is moved he would like to conceptual amendment to implement a stepped up scheme which is leave the low level B misdemeanor as failure in the second degree. Make failure in the first degree an A misdemeanor and create a statutory aggravator of failure to stop if there is felonious behavior such as an assault, manslaughter, theft of a vehicle, et cetera. He said, "The way an aggravator works is when someone who is sentenced for a felony, the prosecution and the defense make a ... statutory list of good things, bad things - aggravators and mitigators, and if we make this one of the aggravators, then prosecutors will be able to say, 'This is one of the bad things, this sentence should be enhanced consequently.' But what it also does is allow the Department of Corrections some flexibility here because I am concerned about the fiscal note - concerned about the fiscal note for corrections, for public defenders and probably for the prosecutors office as well. So that being the case, that's my amendment."

REPRESENTATIVE PORTER objected to the adoption of the conceptual amendment. He said, "I understand what the maker of the amendment is trying to respond to, and I don't disrespect that. I just think that, first of all, I'm not too sure if there isn't the language that would be close to what this would constitute as an aggravator already - felony list. So that might be a bit redundant in some cases, but like it or not sometimes life is more effected by sound bites than comprehensive knowledge. And the sound bite that says this is now a felony is one heck of a sound bite. It has an effect, believe me. (Indisc.) lowest felony that there is."

TAPE 98-29, SIDE B

Number 0010

REPRESENTATIVE ROKEBERG said he would like to know if there is an aggravator in existing state statute and/or in the municipal code.

REPRESENTATIVE BERKOWITZ responded, "Title 12 through 55."

MS. CARPENETI explained there are currently 29 aggravating factors in Title 12. She noted she didn't see one of them on the list of 29.

REPRESENTATIVE PORTER said his recollection of the 29 was there was something about adding an aggravator if the action presented a risk to 30 or more people.

MS. CARPENETI said she believes that is one.

REPRESENTATIVE PORTER stated that in a reckless driving situation that could very well be.

REPRESENTATIVE BERKOWITZ said you would still need to show three more people which he thinks will be one of the problems in charging assault of conduct for this behavior.

MS. CARPENETI stated that she would like to point out that the way the bill is written, you couldn't be charged or convicted if you didn't know knowingly fail to stop. It wouldn't be a question of not noticing the police officer and not stopping under those circumstances. You would have to be aware of the fact that they had asked you to pull over.

Number 0091

REPRESENTATIVE ROKEBERG asked that someone from the Department of Corrections address his next question. He said if they knew there was going to be ten people incarcerated under a class C felony, what would the annual fiscal note be for ten people.

MR. RICHARDS if you're currently under a class B misdemeanor, which is 90 days maximum, a class C felony can be up to five years. He indicated he doesn't know what the average sentence would be for these cases.

REPRESENTATIVE ROKEBERG asked what the annual amount would be for ten people for one year for a felony.

MR. RICHARD responded it would be approximately $360,000.

Number 0142

REPRESENTATIVE BERKOWITZ said, "It occurs to me ... that you're going to get probably felons who get traffic stopped who are worried about parole violations. I mean the idea of making it a felony for failure to stop is going to discourage -- cuts both ways because it could encourage people to flea as well because they'd be worried about picking up a second felony, in which case they would be presumptive which is four years at the very least - or two years."

Number 0167

REPRESENTATIVE CROFT said he thinks the bill is trying to accomplish good public policy goals. He stated he believes the amendment improves the bill.

REPRESENTATIVE ROKEBERG asked that Representative Berkowitz clarify more specifically about what would constitute the aggravation. He asked if a reckless driving activity would constitute aggravation.

REPRESENTATIVE BERKOWITZ responded, "Conceptually, I would hope that the conduct that would constitute a failure to stop at the direction of a peace officer, that's listed here, ... that language would be used in the aggravator. And I haven't reviewed it closely, but it would seem to me that that would be okay as an aggravator's description. It's basically knowingly fail to stop at the direction of a peace officer would be the aggravator."

CHAIRMAN GREEN asked if that would apply to a misdemeanor or would it be a felony to invoke the aggravator.

REPRESENTATIVE BERKOWITZ stated it would be in a felony situation.

CHAIRMAN GREEN indicated he was confused.

REPRESENTATIVE BERKOWITZ said if somebody has a previous felony and they now have stolen a car, they refuse to stop, this would be an aggravator on that felony charge.

Number 0241

REPRESENTATIVE ROKEBERG said he thinks one of the problems with a pursuit is it generates a reckless driving problem and hazard to the public. He asked if that would constitute the aggravator and noted he thinks it should. He asked Representative Berkowitz if that was his intention.

REPRESENTATIVE BERKOWITZ stated that if you are being trailed by a cop and you don't stop, and you eventually do end up in custody, the failure to stop would be an aggravator to the felony charge. If there was reckless driving and failure to stop, that person could be charged with reckless driving.

REPRESENTATIVE ROKEBERG asked, "Is that enough to get you into the C felony list?"

REPRESENTATIVE BERKOWITZ said, "No, but under the way it's written currently, yes, if you were driving recklessly and then were eventually stopped, that would constitute, as I understand it, a violation of a law which would make this a C felony."

REPRESENTATIVE ROKEBERG asked if reckless driving egregious enough to fit the aggravator.

REPRESENTATIVE BERKOWITZ stated that it could be.

REPRESENTATIVE ROKEBERG said, "If we're going to adopt that, I'd like to see that."

Number 0240

CHAIRMAN GREEN asked for a roll call vote on Representative Berkowitz's conceptual amendment. Representatives Porter, James, Bunde and Green voted against the amendment. Representatives Croft, Rokeberg and Berkowitz voted in favor of adopting the amendment. The amendment failed to be adopted by a vote of 4-3.

Number 0333

REPRESENTATIVE JAMES made a motion to move HB 405 out of committee with individual recommendations and with the appropriate forthcoming fiscal notes. There being no objection, HB 405 moved out of the House Judiciary Standing Committee.

HB 384

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 6, 2002 **FURTHER REFERRALS:**

Date of Committee Action: 2.22.02

The JUDICIARY Committee considered: **HB 384**

HOUSE BILL NO. 384 **DISCLOSE RESOLUTION OF CIVIL LITIGATION**

"An Act relating to submission of civil litigation information; and amending Rules 41(a) and 58, Alaska Rules of Civil Procedure, Rule 511(c) and (e), Alaska Rules of Appellate Procedure, and Rule 503(d), Alaska Rules of Evidence."

Recommends it be replaced with _____**CS**_____(_____) **[ ] Same Title [ ] New Title**
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent _____Committee

List of Abbrev. for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
ALL				✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	Berkowitz				✓
	Meyer			✓	
	Coghill			✓	
	Ogan			✓	
Kookesh, Absent	Kookesh			✓	
Chair:	Rokeberg	✓			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 384
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: All Departments
Title: Disclose Resolution of Civil Litigation
BRU
Component
Sponsor: House Judiciary
Requester: House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill will have no fiscal impact.

Prepared by: Heather Nobrega, Counsel
Phone 907-465-4990
Division: House Judiciary Committee
Date/Time 2/12/02 5:27 PM
Approved by: Representative Norman Rokeberg, Chairman
Date 2/12/2002
Agency: House Judiciary Committee

(Revised 9/2001 OMB)

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

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Heather M. Nobrega
Counsel to Committee

Sponsor Statement for HB 384

In 1997, responding to public interest in tort reform and work of the Governor's Advisory Task Force on Civil Justice, the legislature passed tort reform legislation. One part of the legislation responded to the Task Force's recommendation that the Alaska Judicial Council (AJC) report on closed civil cases, using data from forms completed by attorneys and parties in the cases. See *Alaska Civil Cases, June 1999 – December 2000, Alaska Judicial Council, May 2001, Page 1.*

In response to the legislation, AJC created a form called "Information About the Resolution of Civil Cases." Every attorney and/or party must fill out this form upon final disposition of a case. The Alaska Judicial Council is then charged with compiling the information from these forms, and issuing a report.

The latest report from the Alaska Judicial Council, issued May 2001, reported a dismal number of attorneys were actually filling out the forms (forms were filed for fewer than half of the required cases). In an attempt to boost reporting, and after working with members of the Alaska Bar Association, the Alaska Judicial Council, and the Court system, HB 384 has been introduced. HB 384 simplifies the data collection form by clarifying what information is needed to be reported, when the information is needed to be reported, and what cases are no longer are required to report. In addition, the bill also amends certain court rules in order to clarify an attorney's duties regarding reporting this information.

The committee urges your support of this bill.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
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Counsel to Committee

Sectional Analysis for HB 384

Section 1: Repeals and reenacts AS 09.68.130(a), which lists all the information that the Alaska Judicial Council (AJC) is required to collect.

Section 2: Adds delinquent tax, tax foreclosures, and quiet title cases to the list of cases that are excluded from this reporting requirement.

Section 3: Attaches to the attorney's duty to report a provision that a party may not form an agreement with another party that has the intent or effect of withholding information from the AJC. Clarifies that the attorney-client privilege cannot be used to withhold information from the AJC.

Section 4: Creates a new subsection to the collection of settlement information statute that clarifies when there is a duty to report after an appeal of the case.

Section 5: *Amends Rule 41(a) of the Alaska Rules of Civil Procedure, Dismissal of Actions.* Requires a party at the time of dismissal to certify that the information will be timely submitted within thirty days after the case has been fully resolved as to that party. It also makes it clearer that certification is required in cases involving stipulated dismissals. The rule also requires each party to provide a copy of the certification directly to the AJC.

Section 6: *Amends Rule 58 of the Alaska Rules of Civil Procedure, Entry of Judgment.* References two new subdivisions created in Section 7 of the bill.

Section 7: *Amends Rule 58 of the Alaska Rules of Civil Procedure, Entry of Judgment.*

Adds section (b), which requires a party to certify at the time of judgment that the party will timely comply with the civil case

reporting requirement. The rule also requires compliance within thirty days after the case is resolved as to a party. In addition, it clarifies that the reporting requirement is stayed pending appeal.

Adds section (c), which lists the cases exempted from this rule.

Section 8: *Amends Rule 511(c) of the Alaska Rules of Appellate Procedure, Dismissal of Causes, Certification.* Requires each party, as a condition of dismissal, to submit a copy of each party's certification to the trial court that the party will comply with the reporting requirement.

Section 9: *Amends Rule 511(e) of the Alaska Rules of Appellate Procedure, Dismissal of Causes, Information about the Resolution of Civil Cases.* Clarifies that the civil case data must be reported to the AJC within thirty days of resolution of the appeal absent remand to the trial court.

Section 10: *Amends rule 503(d) of the Alaska Rules of Evidence, Lawyer-Client Privilege, Exceptions.* Adds a subsection (6) clarifying that the attorney-client privilege does not preclude compliance with the civil case reporting requirement.

Section 11: Sections 1 – 4 only take effect if sections 5 – 10 receive a two-thirds majority vote of each house.

THE SEAL OF THE STATE OF ALASKA

alaska judicial council

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Supreme Court

JAN 2 2 2002

January 16, 2002

The Honorable Norman Rokeberg
Chairman, House Judiciary Committee
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Dear Chairman Rokeberg:

I am writing to support proposed legislation pertaining to the collection of civil case data by the Alaska Judicial Council. I have enclosed a copy of the proposed legislation in its current form. I understand that the legislation is currently under review and will likely be introduced in the House Judiciary Committee.

This legislation clarifies the duty of attorneys and *pro se* litigants to report civil case information to the Judicial Council and is intended to enhance their compliance with the requirement. The legislation will enable the Council to more accurately track the reporting of cases. Finally, the legislation eliminates three additional types of cases from the reporting requirement.

As you know, the legislature in 1997, passed tort reform legislation that included a requirement in AS 9.68.130 that attorneys provide information concerning the resolution of many types of civil cases to the Alaska Judicial Council. This requirement was intended to provide information necessary to an informed public discussion of tort reform. To implement the collection of this data, the legislature amended Alaska Civil Rule 41(a) and Alaska Appellate Rule 511 to require submission of civil case information when cases are dismissed pursuant to these rules.

The Judicial Council issued its first analysis of this civil case data in February, 2000. The Council's analysis was based on information collected from cases that were resolved between September, 1997, and May, 1999.

The Council's initial experience led the Council to recommend several changes that were adopted by the legislature in 1999. The 1999 legislation added administrative appeals, DWI forfeitures and forcible entry and detainer actions to the list of excluded case types in AS 9.68.130(b). The legislature probably did not

anticipate needing information about these cases. The cases typically involved relatively small amounts of money and the information did not help understand the dynamics of civil litigation. The 1999 legislation specified that forms needed to be filed within thirty days after a case was resolved. The legislation specified that the reporting requirement applies to all cases resolved after May 7, 1999 (not just to those cases accruing on or after August 7, 1997 as the original legislation provided).

The Judicial Council issued its second analysis in May, 2001. This analysis considered 2,951 civil cases closed between June, 1999, and December, 2000. The Council's more recent experience recommends support for the proposed legislation.

What follows is a discussion of the proposed legislation in its current state:

AS 9.68.130

The proposed legislation modifies AS 9.68.130 (through repeal and reenactment) to refine the reporting requirement and to secure the collection of information in a manner more suited to evaluation. For example, the statute clarifies that the requirement applies to all cases, not just "settled" cases as the prior statute read. The statute provides more specific direction to attorneys and *pro se* litigants regarding the type of information that must be reported. The statute tracks a revised form (copy attached) prepared by the Judicial Council that simplifies the reporting process and renders the civil case data more understandable. The statute includes particular instruction to in-house, government, and corporate counsel on how to report attorney hours and rate of compensation. The statute also exempts delinquent tax, tax foreclosure, and quiet title cases from the reporting requirement.

Alaska Civil Rule 41(a)

The proposed legislation provides for a number of revisions to the Alaska rules of court. Alaska Civil Rule 41(a) pertains to cases that are voluntarily dismissed, either by the plaintiff before service of the complaint or by stipulation between all parties who have appeared in the action. The rule currently requires that at the time of dismissal, a party must certify to the court that he or she has complied with the reporting requirement. However, at the time of dismissal, some information subject to the reporting requirement may not be available to the party. For example, the assessment of attorney's fees and costs may occur subsequent to dismissal. The proposed legislation amends the rule to require a party at the time of dismissal to certify that the information will be timely submitted within thirty days after the case has been fully resolved as to that party. The proposed amendment also makes it more clear that certification is required in cases involving stipulated dismissals. The proposed rule change also requires each party to provide a copy of the certification directly to the Judicial Council. This latter provision will help the Council to gather information and to track compliance with the reporting requirement.

Alaska Civil Rule 58.3

Alaska Civil Rule 58 pertains to the entry of judgment in civil cases. The proposed legislation adds Alaska Rule 58.3. The new rule requires a party to certify at the time of judgment that the party will timely comply with the civil case reporting requirement. The rule requires compliance within thirty days after the case is resolved as to a party. The rule clarifies that the reporting requirement is stayed pending appeal.

Alaska Appellate Rule 511

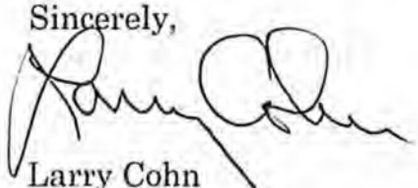
This rule includes the appellate counterpart of Civil Rule 41(a). The rule pertains to the voluntary dismissal of appellate cases. The proposed amendment to subsection (c) requires each party, as a condition of dismissal, to submit a copy of each party's certification to the trial court that the party will comply with the reporting requirement. The proposed amendment to subsection (e) clarifies that civil case data must be reported to the Judicial Council within thirty days of the resolution of the appeal absent remand to the trial court.

Alaska Rule of Evidence 503(d)

This rule concerns the attorney-client privilege. The proposed legislation adds subsection (6) to clarify that the attorney-client privilege does not preclude compliance with the civil case reporting requirement. Some attorneys have invoked the privilege in failing to provide certain data to the Council.

The proposed legislation will help the Council gather and evaluate the civil case data of interest to the legislature. Please do not hesitate to contact me if you would like to discuss this legislation. I welcome your suggestions as to how I might be of further assistance.

Sincerely,



Larry Cohn
Executive Director

cc: Speaker Brian Porter

alaska judicial council

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Facsimile Transmittal

To: HEATHER NOBREGA

Fax #: 465-2040 ***Date:*** 1/24/02

Time: 3:00 PM

From: LARRY COHN
AK JUDICIAL COUNCIL

Number of pages (including this cover sheet) 3

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Heather - This is the form we'd like to use. Please call if any questions.

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Information About the Resolution of Civil Cases

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

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

Please Complete Both Sides

Confidential

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

- Each party, including self-represented parties, must complete this form.
- If you are the plaintiff, do not submit this form until the case is completely finished for all parties.
- If you are the defendant or other party and you have been dismissed from the case, submit this form within 30 days after the case has been finally resolved as to that party, including issues as attorney's fees and costs.
- Complete **all** the information on both sides of this page.
- Submit this form even if judgment has not been collected.

Thank you for taking the time and effort to complete this form. The Judicial Council has published two reports based on the civil case data collected from these forms. You may download the reports from our web site, www.ajc.state.ak.us or call at 279-2526 for a copy.
The information collected in this form is confidential and will be used only to compile statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

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

Case Name: _____ **v.** _____

Case Type (check all applicable)

- ☐ Medical Malpractice
- ☐ Legal Malpractice
- ☐ Other Malpractice
- ☐ Personal Injury - Auto
- ☐ Personal Injury - Premises
- ☐ Personal Injury - Product
- ☐ Personal Injury - Other
- ☐ Property Damage - Auto
- ☐ Property Damage - Other
- ☐ Employment
- ☐ Debt
- ☐ Injunctive Relief
- ☐ Real Estate
- ☐ Other Contract
- ☐ Other Civil

Relief Sought (check all applicable)

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

Date Filed: ____/____/____

Date Disposed: ____/____/____

Total Judgment/ Settlement: $_____

% of Judgment Covered by Liability Insurance _____%

Disposition (pick one):

- ☐ Dismissed
- ☐ Settlement
- ☐ Judgment
- ☐ Summary Judgment
- ☐ Default Judgment

Disposition After? (check all applicable)

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

Result of Appeal

- ☐ Dismissed
- ☐ Affirmed
- ☐ Remanded

Non-Economic Award at Trial $ _____

Punitive Award at Trial $ _____

Declaratory Relief Award?

☐ Yes ☐ No

Did you use Alternative Dispute Resolution?

- ☐ Mediation
- ☐ Arbitration
- ☐ Early Neutral Evaluation
- ☐ Settlement Conference

How much did you spend on ADR separately from your other costs, etc.
$_____

Did your case settle as a result of ADR? ☐Yes ☐No

---

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

Client's name or own name if self represented:

_____

Number of plaintiffs/defendants you represent on this form _____

Is your client the:

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

_____

_____

Who prevailed in this case?

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

Is this a structured settlement?

☐ Yes ☐ No

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

Fee Type

- ☐ Contingent = _____% of judgment
- ☐ Hourly = $_____ per hour
- ☐ Flat Fee
- ☐ State/Local = $_____ per hour
- ☐ In-house = $_____ per hour
- ☐ Self represented
- ☐ All fees waived or Pro Bono
- ☐ Other (Please explain)_____

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

Total costs (your client's own)
$_____

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

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

Other Parties	Their Attorneys Name(s)

Notes:

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

_____ _____/_____/_____ _____
Printed Name (of attorney, or party if no attorney) **Date Form Submitted** **Telephone Number**

Alaska Civil Cases
June 1999 - December 2000

May 2001

alaska judicial council

Alaska Civil Cases
June 1999 - December 2000

May 2001

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Table of Contents

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

Introduction

In 1997, responding to public interest in tort reform and the work of the Governor's Advisory Task Force on Civil Justice,[1] the legislature passed tort reform legislation. One part of the legislation responded to the Task Force's recommendation that the Alaska Judicial Council report on closed civil cases, using data from forms completed by attorneys and parties in the cases.[2] The Council made a preliminary report in February 2000 on the limited data collected between September 1997 and May 31, 1999.[3] The present report summarizes the findings from the data reported to the Council from June 1, 1999 through December 1, 2000, and from data collected from court case files in various locations. Included with this report are recommendations for future data collection and changes to the legislation.

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

[2] *Id.*, pp. 52 -54.

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

Chapter I
Background of Report

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

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

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

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

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

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

[6] *Id.*, p. 7 and p. 105, Appendix C.

[7] *Id.*, p. 7.

Task Force recommendation into its 1997 legislation, requiring attorneys to provide information to the Judicial Council and asking the Council to prepare reports periodically.

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

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

A. Purpose of Legislation

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

> **Sec. 09.68.130 Collection of settlement information.** (a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other resolution of all civil litigation. The information shall be collected on a form developed by the council for that purpose and must include:
>
> (1) the case name and file number;
> (2) a general description of the claims being settled;
> (3) if the case is resolved by way of settlement,
>
> (A) the gross dollar amount of the settlement,

[8] Ch. 26, SLA 1997.

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

(B) to whom the settlement was paid;
(C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount.[10]

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

To carry out these provisions, legislators amended Alaska Civil Rule 41(a)[11] and Alaska Appellate Rule 511[12] to require the submission of the civil case data when cases were dismissed pursuant to these rules. The Alaska Supreme Court updated the court rules to reflect the additions. The Court also added language concerning the effective date of the legislation that limited the reporting requirement to cases accruing on or after the legislation's effective date of August 7, 1997.[13]

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[10] AS 09.68.130 is cited in full in Appendix A.

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

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

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

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

[13] Civil Rule 41(a)(3) provided:

> (3) Information about the Resolution of Civil Cases. If an action is voluntarily dismissed under paragraph (a) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information

B. 1999 Revisions to Legislation

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

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

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

b) The 1997 legislation imposed an affirmative obligation on attorneys and pro se litigants to submit the information in civil cases that were resolved with certain types of dismissals.[15] These specific types of dismissals constituted only a fraction of the types of cases in which the legislature

> described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted with 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

Appellate Rule 511(e) now provides:

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

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

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

was interested. The 1999 amendment resolved this problem, by imposing an express duty on attorneys and unrepresented litigants to complete and submit the Council's civil case data form for all civil litigation not specifically excluded.

2. Limit the time in which to submit forms.

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

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

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

C. Judicial Council Changes to Improve Data Collection

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

1. The Council redesigned the form, based on its experience during the previous years of data collection, and on suggestions made by attorneys and others. The form emphasized the types of cases excluded from the data collection, added space for information about other parties in the case, and reorganized some of the information requested for clarity and ease of completion of the form.

2. The Council developed and publicized a system for completing the forms using the Internet, to make the process more convenient for attorneys and parties. Of the 3,837 forms included in this report, attorneys sent in 1,043 using the Internet (37%).

3. The Council sent a letter to every member of the Bar,[16] describing the 1999 changes to the legislation, the changes to the forms, the reduced numbers and types of cases for which the forms needed to be filed, and including a copy of the new form.

4. The Council reviewed each form submitted by an attorney for completeness of the data. If attorneys had not filled out the form completely (the most common omissions included the type of attorney fee, rate charged, judgment amount and money to client), the Council sent a letter to the attorney submitting the form asking for more information. Of the 226 letters sent (some to one attorney asking for information about several cases), 69% of the attorneys responded with the information. In many cases, staff called for certain types of information; the response rate for phone calls was virtually 100%.

5. The Council added new fields to the form that asked respondents to list other parties in the case. The Council then sent a letter to the other parties in the case if they did not send in their forms. Of the 274 letters sent to attorneys or parties asking for their forms to complete the case information, 121 (44%) were returned.

6. During the review of closed court case files for this study, the Council sent letters to attorneys who were listed in the court case files, but from whom the Council had not received a form for that case. About 422 letters were sent to attorneys, again with some listing more than one case in which the attorney had participated. Forty-eight percent of the attorneys receiving those letters responded by completing the forms sent to them and returning the forms to the Judicial Council.

Effectiveness of Efforts to Improve Attorney Response Rates - A little fewer than half the attorneys[17] contacted by mail with a request to send in their forms actually completed and returned the forms. If an attorney already had sent in the form and the Council simply asked for completion of some of the information, response was better. Sixty-nine percent responded to a letter request, and close to 100% responded to a phone call. Sometimes, the attorneys noted that although the case had closed, final arrangements still needed completion. In others, despite a request for more complete information, attorneys did not always supply it. The Council cannot say with certainty that the improved form design, ease of filing over the Internet, or follow-up by mail and phone have improved response rates from attorneys. It does appear that follow-up measures increased responses.

[16] See Appendix C.

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

D. Structure of Database

Data compiled for this report came from 3,837 forms representing 2,951 court cases submitted by attorneys on paper and via the Internet,[18] and from a sample of 875 qualified civil cases closed between July 1, 1999 and May 31, 2000 in Anchorage, Fairbanks, Juneau, Bethel, Nome and Kotzebue.[19] The database included information about the types and characteristics of cases submitted; the amounts of judgments, attorneys' fees and costs; whether the parties submitting forms were defendants or plaintiffs, and the use of alternative dispute resolution and trials to dispose of cases.

1. Types of cases for which Attorneys Sent in Forms

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

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

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[18] Of 3,837 forms, 1,043 (37%) were sent over the Internet, and 2,794 (63%) were filed on paper forms with the Judicial Council. Forms for the 2,951 cases came from Anchorage (63%), Fairbanks (12%), Juneau, Kenai and Palmer (5% each), Bethel and Ketchikan (2% each), and smaller numbers from Nome, Kotzebue, Sitka, Barrow, Cordova, Petersburg, Dillingham, Glennallen, Homer, Kodiak, Naknek, Valdez, Seward, Tok and Healy.

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

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

2. Limitations of Court Case File Data Collection

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

The court case file analysis is limited by the fact that court case files often contained half a dozen forms, a notice of dismissal and little else; and by the fact that attorneys did not submit case information forms to the Judicial Council for many of the court case files reviewed. In order for the case to be closed, the court rule required attorneys to file a certification that they had, or would within 30 days, send the required information to the Judicial Council. For 268 of the 875 court cases (31%), the only information available came from the court case file because none of the attorneys in the case submitted a form.[22] For 607 of the 875 court cases reviewed, attorneys submitted a total of 950 forms. The great majority of cases had two or more attorneys[23] so the Council probably should have received at least 1,750 forms for these 875 cases. One hundred and seventy-two court case files, or 20%, had forms filed by all attorneys in the case.

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

---

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

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

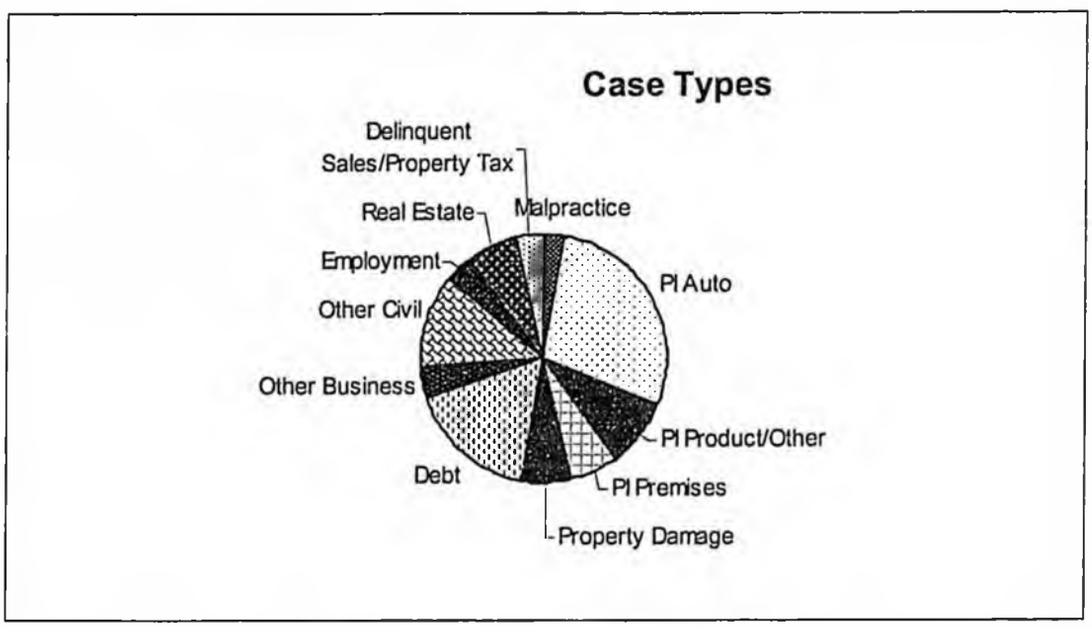
[23] Twenty-four plaintiffs and ten defendants who filed forms identified themselves as pro se litigants.

Chapter II
Civil Case Data

A. Characteristics of Cases

1. Types of Cases Included

This analysis included 2,951 civil cases received by the Council or closed between the dates of June 1, 1999 and December 1, 2000.[24] Types of cases in the database included debt (17%), other civil and other business disputes (16%), personal injuries (43% total: auto 28%, premises 6%, product and other 9%) and several smaller groups including malpractice (3%), property damage (7%), real estate (7%), delinquent taxes (3%) and employment (4%).



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

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

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

2. Location of Cases in State

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

3. Relief sought in complaint

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

4. Time to Disposition, Time in Court

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

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

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

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

them took 181 days or more. Nearly one-third (32%) of the cases with judgments between $1,000 and $4,999 took 361 days or more, as did 44% of the cases between $5,000 and $19,999. A majority of all cases with amounts of $20,000 or more took 361 days or more to complete.

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

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

5. How cases ended

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

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

The database included 64 bench trials and 63 jury trials. Even if the case went to trial, the final disposition came about from settlement or dismissal in some cases. Of the jury trials, 37% (N=23) ended with a settlement following the jury verdict, and 6% (N=4) were dismissed. Of the bench

trials, 19% (N=12) settled following the verdict and 8% (N=5) ended with dismissal. A separate section of this report discusses tried cases.

6. Use of Alternative Dispute Resolution

a) Type of ADR Used

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

b) Types of Cases Using ADR

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

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

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

c) Size of case related to ADR

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

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

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

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

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

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

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

B. Characteristics of Judgments

1. Amount of Judgment

Judgment (which includes settlements, default judgments, dispositive motions and trial verdicts) amounts ranged from zero, to 75 cases with judgment amounts of $500,000 or more. Thirty-two judgments exceeded one million dollars. Some of these came about through settlement, others after trials. For 20% of the forms (N=597), the judgment amount[30] was missing or shown as $0.00. The data supplied did not allow the analysis to distinguish accurately between cases with a settlement amount of $0.00 and those for which attorneys supplied no information. As a result, this section of the analysis looks only at cases with a settlement of $1 or more.

Of the forms that showed a dollar amount for judgment, 56% were less than $20,000, and 75% were less than $50,000.[31] The amounts suggest that judges and juries and parties actually resolved most cases for amounts well under the district court jurisdictional limits, even though many of the cases were resolved in the superior court.

a) Plaintiffs' Attorneys' Cases

The data were analyzed by the amount of the judgment, type of attorney, and the type of fee arrangement. Of the 984 forms filed by plaintiffs' attorneys who charged a contingent fee and whose client received some amount of money, about one-third (35%) received a total judgment (before the deduction of fees, costs, and any subrogated amounts[32]) of $50,000 or more. A majority of the clients

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

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

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

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

b) Defendants' Attorneys' Cases

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

2. Tort and Non-tort Judgments

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

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

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

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

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

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

$500,000 or more as compared to 2% of the non-tort cases. Just over half (56%) of the torts with a judgment amount resulted in judgments of $20,000 or more, but only 26% of the non-tort cases. The substantial majority of the cases in this database with judgments of $5,000 or more were tort cases.

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

3. Liability Insurance to Cover Judgment

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

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

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

Not all attorneys provided the information about insurance, and the form did not permit a firm distinction between those who meant that the case had zero liability insurance involved and those who did not provide the information. If only one party filed the form, it is possible that the party did not have the information. It is likely that more parties had liability insurance, particularly for some types of personal injury cases than these data show. However, there is no reason to think that the proportions shown here are incorrect. In other words, it appears likely that most personal injury auto cases had liability insurance, and most debt and business cases did not.[38]

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

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

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

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

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

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

malpractice, most cases lacked 100% liability insurance, a finding consistent with the California study.[42]

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

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

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

5. Amount of judgment paid to client

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

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

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

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

6. Prevailing Party

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

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

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

1. Types of Fee Arrangements by Types of Parties

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

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

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

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

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

2. Amount of Judgment by Type of Fee Arrangement

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

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

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

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

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

3. Amounts of attorneys' fees

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

a) Amount of Fees Charged

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

b) Rates Charged for Hourly Fees, Generally

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

c) Plaintiffs' Attorneys' Rates

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

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

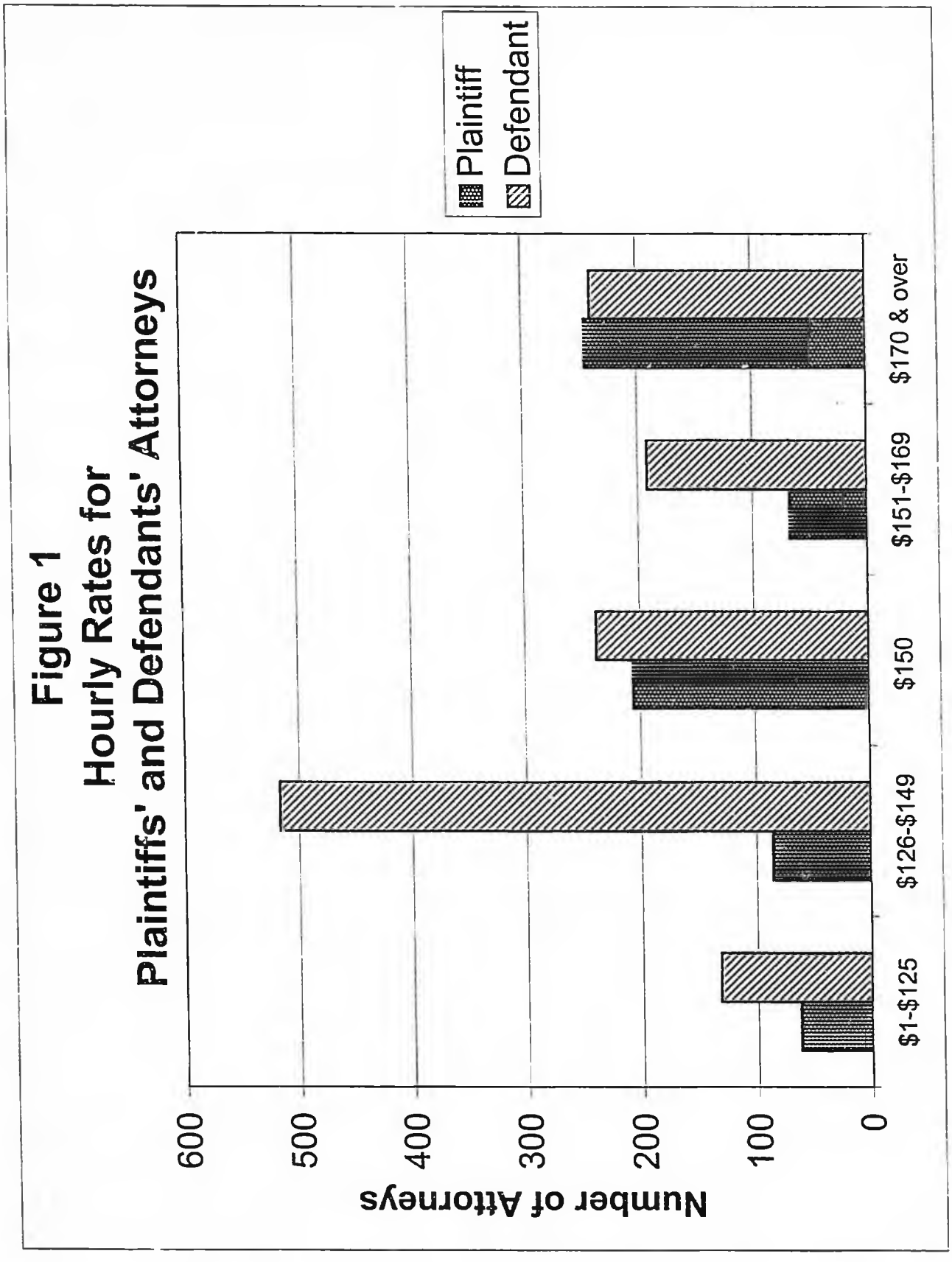
Figure 1
Hourly Rates for
Plaintiffs' and Defendants' Attorneys
Plaintiff
Defendant
Number of Attorneys
600
500
400
300
200
100
0
$1-$125
$126-$149
$150
$151-$169
$170 & over

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

i. Contingent Fee as a Percentage of the Judgment

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

ii. Types of Contingent Fee Cases

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

iii. Rates for Hourly Fees Charged by Plaintiffs' Attorneys

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

d) Defendants' attorneys

Most defendants' attorneys (91%) who provided information about the amount of the fees charged in the cases analyzed used an hourly fee as the basis for billing clients. The majority of those charging an hourly rate (60%) showed total fees of $5,000 or more. The mean (average) rate was

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

$145/hour, with the median at $145/hour and the mode at $150/hour. Eleven percent of the defendants' attorneys charged $125/hour or less, and 38% charged between $126 and $149. Only 19% charged $150, and 18% charged $170 or more.[51]

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

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

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

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

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

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

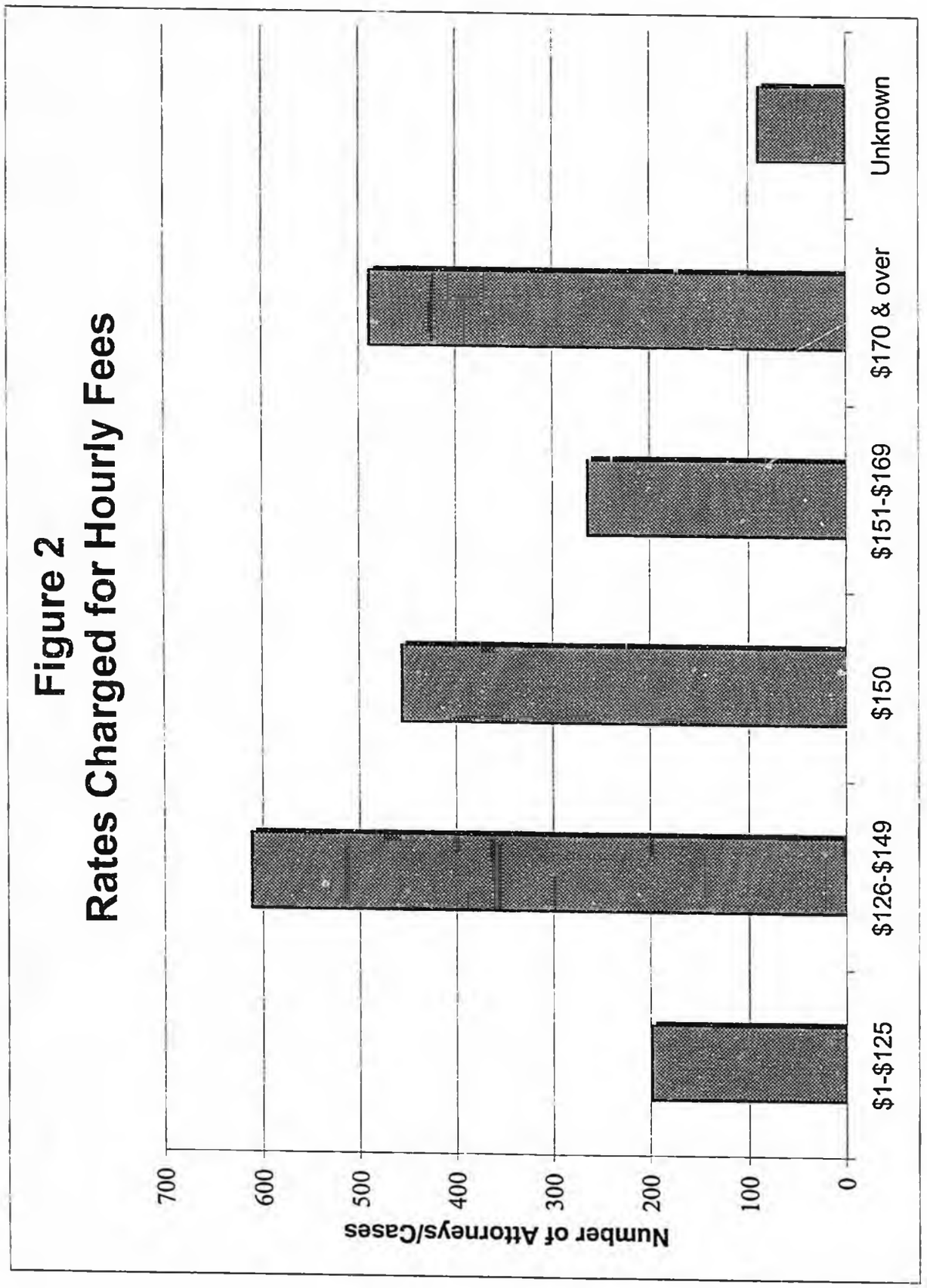
Figure 2
Rates Charged for Hourly Fees
Number of Attorneys/Cases
0
100
200
300
400
500
600
700
$1-$125
$126-$149
$150
$151-$169
$170 & over
Unknown

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

5. Costs

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

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

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

D. Trials

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

[52] *Supra*, note 8.

the superior court ranged from a low of 1.9% in 1996 to a high of 3.4% in 2000.[53] The table shows that for each of the four categories of trials, trials as a percentage of the overall caseload either were about the same or increased during the three years after the tort reform legislation passed compared to the three years before the tort reform legislation.

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

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

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

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

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

[55] *Supra*, note 37, p.2.

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

Table 1
Alaska Trials as a percent of civil caseload, 1994-2000*

Year	District Court Trials	% of Total Dist. Ct. Civil Cases	District Jury Trials	% of Total Dist. Ct. Civil Cases	Superior Court Trials	% of Total Sup. Ct. Civil Cases	Superior Jury Trials	% of Total Sup. Ct. Civil Cases	Ct. & Jury Trials as % of Total Sup. Ct. Civil Cases
1994	72	1.1%	10	0.2%	45	1.1%	40	1.0%	2.1%
1995	54	0.7%	7	0.1%	39	1.0%	43	1.0%	2.0%
1996	55	0.7%	6	0.1%	33	0.9%	36	1.0%	1.9%
1997	43	0.6%	11	0.1%	51	1.9%	38	1.4%	3.3%
1998	40	0.4%	15	0.2%	32	1.1%	35	1.2%	2.3%
1999	63	0.3%	10	0.1%	36	1.2%	61	2.0%	3.2%
2000	78	0.5%	21	0.1%	60	1.9%	47	1.5%	3.4%

*Data taken from Court System Annual Reports, 1994-2000

Alaska Judicial Council, 2001

1. Characteristics of Trial Cases

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

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

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

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

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

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

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

2. Trial Judgment Amounts and Attorneys' Fees

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

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

3. Plaintiffs' Fee Arrangements by Type of Trial

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

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

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

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

4. Trial Judgments Compared to Other Dispositions

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

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

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

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

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

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

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

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

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

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

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

Chapter III
Conclusions and Recommendations

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

A. Findings

1. New follow up methods used by the Council to encourage attorneys to return forms may have contributed to the higher percentage of forms being returned as required by the legislation. However, forms still are filed for fewer than half of the required cases, even with a follow-up letter from the Council (p. 7).

2. Types of cases in the database included personal injury (43%), malpractice (3%), property damage (7%), debt (17%), other civil and business disputes (16%), and smaller numbers of other types of cases (p. 10).

3. About 60% of the cases with judgment amounts of $1 or more were torts and 40% were non-torts (p. 16).

4. The majority of cases came from Anchorage (62%), then Fairbanks (14%) and smaller percentages from other communities. These percentages were relatively close in most communities to the percentages of comparable types of cases filed in the state courts (p. 10).

5. Time to disposition varied by the types of cases and amounts of judgments, with larger cases and tort cases typically requiring more than 361 days to disposition. Debt and delinquent taxes cases were handled within the time standards adopted by the supreme court in February 2000 (75% of cases disposed of in 365 days or less) (p. 12-13).

6. In 58% of the court case files reviewed, the parties did not appear in court at all, although judges may have spent significant off-bench time on the case. In 5% of the cases, parties appeared in court on six or more different days (p. 13).

7. Most cases (66%) ended with a settlement. Eighteen percent were dismissed and 16% ended with a default, dispositive motion or other judgment (p. 12).

8. Attorneys used alternative dispute resolution methods, particularly mediation and settlement conferences more frequently in larger cases, and in tort cases, than in smaller and non-tort cases. Arbitration was used very infrequently (p. 14).

9. Defendants' attorneys were more likely to have used alternative dispute resolution than were plaintiffs' attorneys except for the largest cases. Defendants' attorneys were more likely to have used early neutral evaluation and settlement conferences; plaintiffs' attorneys were more likely to report having used mediation (p. 15).

10. For 20% of the cases, the judgment amount was zero, or the attorney did not provide information about the judgment amount. Seventy-five cases of 2,951 cases had judgment amounts of $500,000 or more. Fifty-six percent of the cases involved amounts less than $20,000; 75% involved amounts less than $50,000 (pp. 14 -15).

11. Forty-four percent of the non-tort cases had small judgment amounts as compared to 13% of the tort cases. At the upper end, 4% of the tort cases had judgments of $500,000 or more as compared to 2% of the non-tort cases (p. 16).

12. Personal injury auto (78%) and personal injury premises (76%) cases usually involved liability insurance. In 43% of personal injury "other" and product liability cases, and 40% of malpractice cases, insurance covered the judgment. Less than one-quarter of other types of cases were insured (pp. 16 - 17).

13. In the entire database of 2,951 cases, including 83 trials, punitive damages were awarded in only eight cases. One award was statutorily required; the others followed trials. Punitive damages were requested in 17% of cases (p. 17).

14. Typical hourly fees for plaintiffs' attorneys ranged from $126 to $150, with a mean fee of $158. For defendants' attorneys, the typical fees fell in the same range, but with a mean fee of $145/hour (pp.21 - 22).

15. About 50% of plaintiffs' attorneys charged contingency fees, usually 30% to 33% of the judgment amount (p. 19).

16. Costs exceeded $2,499 in only 20% of the cases for which information was available (p. 23).

17. A stated purpose of the legislation, to reduce the amount of litigation going to trial, did not appear to have occurred. Data from court system reports show that trial rates are about the same or higher after the passage of the legislation in 1997 as in the three years before the legislation. Trial rates were 1.9% in 1996 and 3.4% in 2000 (p. 24).

18. Trial rates in Alaska appear to be similar to the national average of 2.9% (p. 24).

19. Tort cases went to jury trials much more frequently than did other types of civil cases. Overall, in this database however, about equal numbers of civil cases were tried before a judge and before a jury (p. 25).

20. Bench trials tended to have smaller judgment amounts than jury trials, which may be linked to the differences in the types of cases that parties take to bench trials rather than to jury trials (p. 26).

B. Recommendations

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

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

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

To provide a more targeted and less burdensome method of compiling information about the compromise or other resolution of civil cases, the Judicial Council

recommends that the legislature eliminate the requirement for continual submission of data about civil cases by attorneys and litigants and substitute a requirement for periodic data collection and evaluation by the Judicial Council.

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

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

A second benefit of the revision would be that the Council could request some information not available under the present legislation which would lead to a better understanding of civil case resolutions. For example, the current legislation does not require information about subrogation in cases that involve insurance companies. Data on subrogation would give a more accurate and comprehensive picture of how the parties to litigation fare (as distinct from the attorneys and insurance companies).

Information about structured settlements also would improve knowledge about civil cases. The Council would not need to collect information that neither the legislature nor the Council believes would lead to a clearer understanding of civil case processes.

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

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

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

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

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

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

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

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

Although court rules require that attorneys and parties file case resolution forms for closed appealed cases in addition to closed trial cases, none have been filed with the Judicial Council. The Council recommends that the legislature either drop this requirement, or if it believes that the

information would be helpful, that the court and Council take steps to educate court clerks, staff and Bar members about the requirement.

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

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

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

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

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

Appendix A

Alaska Statute 09.68.130

(C) a stop payment order issued without cause;

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

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

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

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

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

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

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

(1) the case name and file number;

(2) a general description of the claims being settled;

(3) if the case is resolved by way of settlement,

(A) the gross dollar amount of the settlement;

(B) to whom the settlement was paid;

(C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before disbursement to the claimant;

(D) the net amount actually disbursed to the claimant;

(E) the total costs and attorney fees paid by or owed by all parties; and

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

(4) if the case is resolved by dismissal, summary judgment, trial, or otherwise,

(A) the gross dollar amount of the judgment;

(B) the amount of attorney fees awarded and to which party;

(C) the amount of costs awarded and to which party;

(D) the net amount, after deduction of (B) and (C) of this paragraph, for which the prevailing party has judgment;

(E) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant;

(F) the total costs and attorney fees paid by defending parties; and

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

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

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

(1) divorce and dissolution;

(2) adoption, custody, support, visitation, and emancipation of children;

(3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under AS 47.12;

(4) domestic violence protective orders under AS 18.66.100 — 18.66.180;

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

(6) small claims under AS 22.15.040;

(7) forcible entry and detainer cases;

(8) administrative appeals;

(9) motor vehicle impound or forfeiture actions under municipal ordinance.

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

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

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

Effect of amendments. — The 1999 amendment, effective May 7, 1999, inserted "AS" near the end of paragraph (c)(3), added paragraphs (c)(7) to (c)(9), and added subsection (d).

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

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

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

Chapter 70. General Provisions.

Section

10. Applicability of title
20. Short title

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

NOTES TO DECISIONS

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

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

Appendix B

1999 Legislation - House Bill 9
1997 Legislation - Legislative Intent

(LIMITED RUN SHOWING ALL ADDITIONAL SPONSORSHIPS) 1-LS0065\A

HOUSE BILL NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

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

Introduced: 1/19/99
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

*** Section 1.** AS 09.68.130(c) is amended to read:

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

(1) divorce and dissolution;

(2) adoption, custody, support, visitation, and emancipation of children;

(3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under AS 47.12;

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

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

New Text Underlined [DELETED TEXT BRACKETED]

(6) small claims under AS 22.15.040;

(7) forcible entry and detainer cases;

(8) administrative appeals;

(9) motor vehicle impound or forfeiture actions under municipal ordinance.

*** Sec. 2.** AS 09.68.130 is amended by adding a new subsection to read:

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

*** Sec. 3.** AS 09.68.130(c), as amended in sec. 1 of this Act, and AS 09.68.130(d), added by sec. 2 of this Act, have the effect of amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure, by limiting those civil actions subject to AS 09.68.130(a) and by specifying the persons required to provide the information.

*** Sec. 4.** APPLICABILITY. This Act applies to a compromise or other resolution of civil litigation that occurs on or after the effective date of this Act.

*** Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58(RLS) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Amended: 4/16/97
Offered: 4/16/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

SENATORS Pearce, Sharp, Kelly, Miller

A BILL

FOR AN ACT ENTITLED

"An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 26, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rules 1 and 4, District Court Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

* **Section 1.** LEGISLATIVE INTENT. In enacting this bill, it is the intent of this legislature as a matter of public policy to

(1) encourage the efficiency of the civil justice system by discouraging frivolous litigation and by decreasing the amount, cost, and complexity of litigation without diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive, compensation for tortious injuries caused by others;

(2) provide for reasonable, but not excessive, punitive damage awards against

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

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

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

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

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

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

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

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

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

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

Appendix C

1999 Letter to Bar Members Describing Changes

alaska judicial council

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CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

May 25, 1999

Dear Member of the Alaska Bar Association:

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

1. added three types of cases to the list of case types excluded from the reporting requirement (see attached form for the cases for which the form need not be filed);

2. added an affirmative duty for attorneys and pro se parties to file the form in all applicable cases within 30 days after the case is finally resolved; and

3. specified that the reporting requirement applies to all cases resolved after the act's effective date of May 7, 1999 (not just to those cases accruing on or after August 7, 1997).

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

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

Very truly yours,

William T. Cotton
Executive Director

Enclosure: Civil Case Data Form

Appendix D

Alaska Court Jury Verdicts 1985 - 1995

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

alaska judicial council

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Chief Justice
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MEMORANDUM

TO: Governor's Task Force on Civil Justice Reform

FROM: Susanne Di Pietro SDD and Teri Carns

DATE: December 3, 1996

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

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

I. Methodology

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

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

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

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

II. Limitations of this Study

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

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

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

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

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

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

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

III. Findings

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

A. Case Types

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

B. Parties

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

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

C. Liability/Outcomes

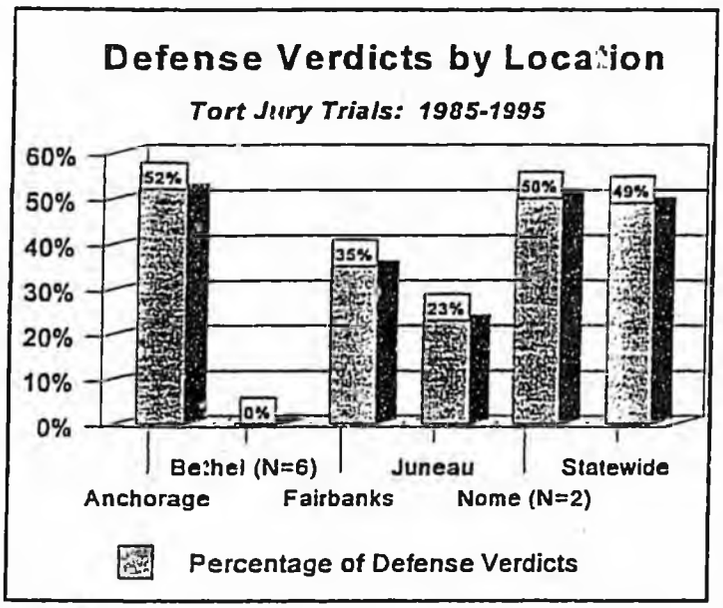

Chart 1
Alaska Judicial Council Jury Verdict Study 1996

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

Chart 1 graphically depicts the differences in defense verdicts by location. Bethel was the most plaintiff-friendly forum, with all six jury verdicts going against defendants.[8] Next came Juneau, where juries returned plaintiff verdicts in 77% of the cases examined. In Fairbanks, 56% of verdicts went to plaintiffs. In Anchorage juries returned verdicts for plaintiffs 45% of the time.[9] In the two Nome cases, one was a defense verdict and one was for the plaintiff.

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

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

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

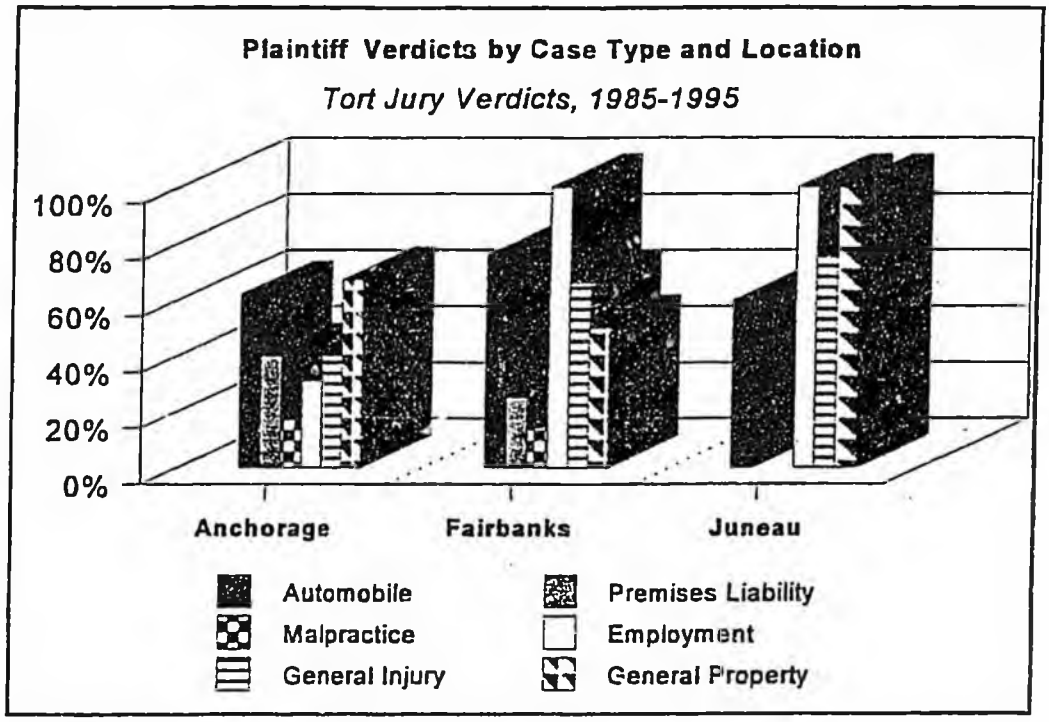

Chart 2
Alaska Judicial Council Jury Verdict Study 1996

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

D. Allocation of Fault

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

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

E. Damages

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

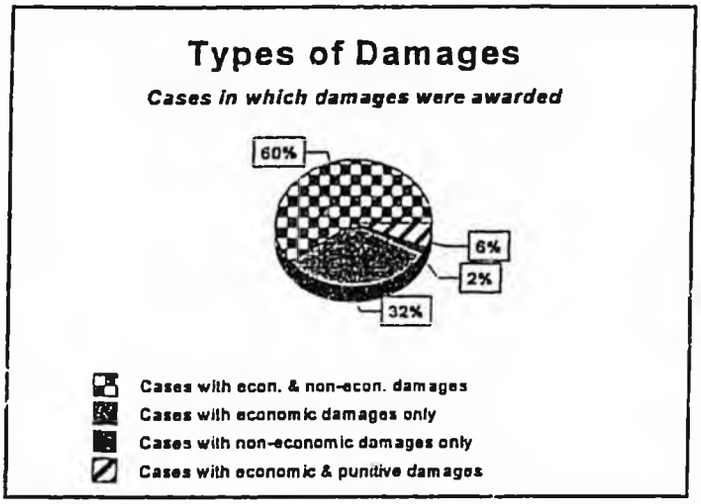

Chart 3
Alaska Judicial Council Jury Verdict Study 1996

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

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

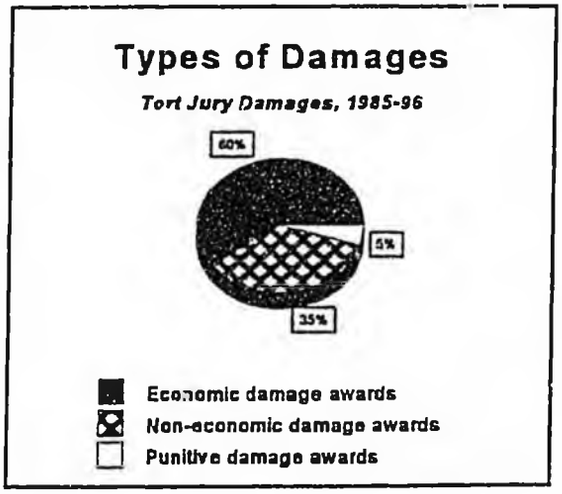

Chart 4
Alaska Judicial Council Jury Verdict Study 1996

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

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

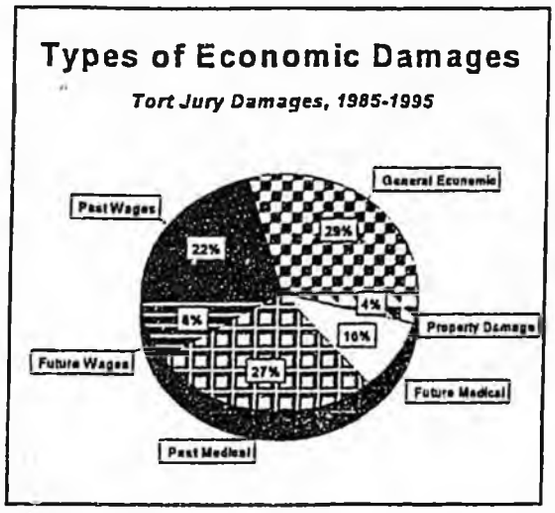

Chart 5
Alaska Judicial Council Jury Verdict Study 1996

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

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

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

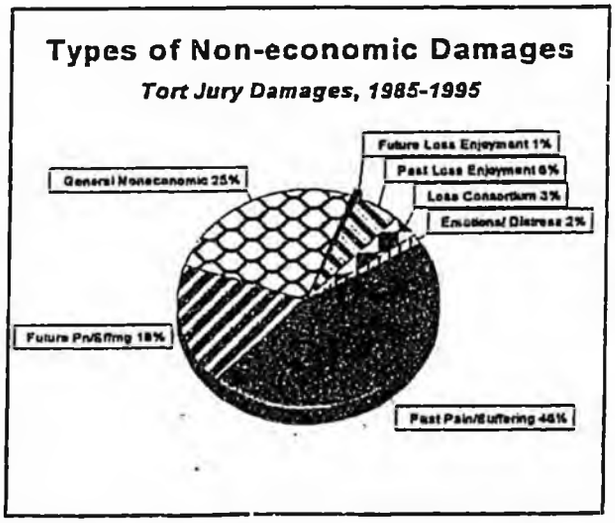

Chart 6
Alaska Judicial Council Jury Verdict Study 1996

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