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# Alaska Civil Case Data 2001-2010

November 2011

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**alaska judicial council**

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## Summary

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

## Background

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

## Past Reports

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

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

## Data Collection Since 2001

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

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

resolved during this time.

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

## **Division of Insurance**

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

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

## **Recommendation**

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

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

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

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

## Appendix A AS 09.68.130

### Sec. 09.68.130. Collection of settlement information.

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

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

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

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

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

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

## **Appendix B Proposed Legislation**

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

(5) information about any insurance coverage and contribution.

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

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

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

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