**05.10 DRIVING ON ROADWAYS WITH MARKED LANES**

Withdrawn 1986. See 1986 Introductory Use Note of Article 05.

# Comment

The violation of 13 Alaska Admin. Code § 02.085 has been held to be negligence per se. Rogers v. Dubiel, 373 P.2d 295, 296–97 (Alaska 1962); Ferrell v. Baxter, 484 P.2d 250, 265 (Alaska 1971). Instruction 03.04A should be used in cases where a party’s failure to keep the vehicle within a single lane on a roadway laned for traffic is at issue.

The Alaska Supreme Court has held that when a vehicle skids out of a lane of traffic and enters a portion of the roadway that it was not permitted to enter except with safety, the driver has violated the law, and if a collision results, the burden of proving an excuse or justification for the violation falls on the driver. Rogers v. Dubiel, 373 P.2d 295, 296–97 (Alaska 1962).

In a case where injuries result, not from the fact that the driver departed his lane of traffic when he could not safely do so, but because the automobile left the roadway entirely and overturned, the rule of Rogers v. Dubiel does not apply. Evans v. Buchner, 386 P.2d 836, 837 (Alaska 1963).

Evidence of antecedent negligence on the part of the state in the maintenance of the roadway may excuse a violation of 13 Alaska Admin. Code § 02.085, at least where the state had prior notice of a dangerously defective condition but failed to undertake appropriate reasonable measures to correct the condition and no showing is made that the party should have anticipated the problem. See State v. Phillips, 470 P.2d 266, 269–70 (Alaska 1970).