

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1565

Amending Alaska Rule of Civil
Procedure 68(b) and (c) to Clarify
Attorney's Fees Computation in Offers
of Judgment

IT IS ORDERED that subsections (b) and (c) of Alaska Rule of Civil Procedure 68 are amended to read as follows:

Rule 68. [Applicable to cases filed on or after August 7, 1997.] Offer of Judgment.

* * * *

(b) If the judgment finally rendered by the court is at least 5 percent less favorable to the offeree than the offer, or, if there are multiple defendants, at least 10 percent less favorable to the offeree than the offer, the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Civil Rules and shall pay reasonable actual attorney's fees incurred by the offeror from the date the offer was made as follows:

(1) if the offer was served no later than 60 days after ~~both parties made the disclosures~~ the date established in the pretrial order for initial disclosures required by Civil Rule 26, the offeree shall pay 75 percent of the offeror's reasonable actual attorney's fees;

(2) if the offer was served more than 60 days after ~~both parties made the disclosures~~ the date established in

the pretrial order for initial disclosures required by Civil Rule 26 but more than 90 days before the trial began, the offeree shall pay 50 percent of the offeror's reasonable actual attorney's fees;

(3) if the offer was served 90 days or less but more than 10 days before the trial began, the offeree shall pay 30 percent of the offeror's reasonable actual attorney's fees.

(c) If an offeror would be entitled to receives costs and reasonable actual attorney's fees under paragraph (b), that offeror shall be considered the prevailing party for purposes of an award of attorney's fees under Civil Rule 82. Notwithstanding paragraph (b), if the amount awarded an offeror for attorney's fees under Civil Rule 82 is greater than a party would receive under paragraph (b), the offeree shall pay to the offeror attorney's fees specified under Civil Rule 82 and is not required to pay reasonable actual attorney's fees under paragraph (b). A party who receives attorney's fees under this rule may not also receive attorney's fees under Civil Rule 82.

DATED: February 1, 2005

EFFECTIVE DATE: April 15, 2005

/s/
Chief Justice Bryner

/s/
Justice Matthews

/s/
Justice Estaugh

/s/
Justice Fabe

/s/
Justice Carpeneti