ALASKA BAR BRIEF

THE MONTHLY NEWSLETTER OF THE ALASKA BAR ASSOCIATION

VOL. 6 THIRD QUARTER 1977 NO. 3

KAUAI, HAWAII SITE OF ALASKA BAR'S FIRST MID-YEAR MEETING

The first mid-year meeting of the Alaska Bar will be held February 23 - 26, 1978, at the Kauai Surf Hotel, Kauai, Hawaii. The agenda, while featuring discussions, workshops and seminars on future trends in the practice of law, will allow ample time for golfing, tennis, swimming and sunning in the scenic setting of Hawaii's "garden isle". Members are urged to make plans now to attend.

Plans to hold a mid-year meeting of the Bar were approved by the members attending the 1977 Annual Convention in Ketchikan. The Association's 1978 business meeting will be held in June at the usual time for the Bar's annual convention. The business meeting will be in Fairbanks.

The Bar's Continuing Legal Education Committee is in charge of the selection of program topics and speakers for the mid-year meeting. Professional Travel, 1030 W. 4th Avenue, Anchorage, is in charge of reservations and travel arrangements. Details concerning the program and reservations will be announced in the near future.

BOARD OF GOVERNORS MOVE ON ADVERTISING

In response to Bates, the U.S. Supreme Court decision allowing lawyers to advertise fees, the Board of Governors will meet on September 17 to consider amendments to the Code of Professional Responsibility and establish guidelines for lawyer advertising in Alaska.

In the Bates decision, by a vote of 5-4, the U.S. Supreme Court decided that advertising by lawyers of the availability and the price of routine legal service is protected by the First Amendment. The Court said that, "It is entirely possible that advertising will serve to reduce, not advance, the cost of legal services to

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BULLETIN

BOARD RECOMMENDS INTERIM RULE ON LAWYER ADVERTISING

In a special meeting held September 9, 1977, the Board of Governors voted to recommend the amendment of the Code of Professional Responsibility to conform with the U. S. Supreme Court decision in Bates. The Board approved an interim amendment which will provide guidance for members while the questions raised by Bates are studied in greater detail. The proposed amendment follows the "regulatory" approach approved by the ABA House of Delegates in August.

The amendment must be adopted by the state Supreme Court before it will become effective.

WHAT'S HAPPENING TO THE PROFESSION OF LAW?

PROFESSIONAL TRENDS

A number of our problems in the legal profession are due to our inability or unwillingness to accept change when change is inevitable. We, in the profession, try to keep on in the old way. We behave like people on a train who are so comfortable and complacent in their car, and, therefore, will not change at the junction, only to find themselves carried where they do not want to go, or left behind on a siding.

The one thing in our lives which is constant and unchanging is that things are always changing. An inscription on the wall of the School of Engineering at Ohio State University reminds us that "No today is so modern that tomorrow will not call it yesterday." The changes around us are so rapid and so complete that we are experiencing the predictions of "Future Shock." Before the effects of one change are completely assimilated, the next change is already upon us.

Napoleon once declared that one must alter tactics every ten years if

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President's Page

By: Dick L. Madson

Shortly after assuming the office of President of the Alaska Bar Association, the United States Supreme Court announced its decision in Bates v. State Bar of Arizona. This caused me to tear up my first draft for the "President's Page" since it was no longer appropriate, and it also required me to answer many phone calls from various newspaper reporters. They all seemed very excited and the general feeling was that all the lawyers were going to be very upset with the removal of the ban on advertising for as they seemed to believe this was one of the most cherished traditions of the organized bar. My response to this decision was, I believe, shared by the great majority of practicing attorneys - indifference. Thus far, there has not been any great rush to the newspapers to place an ad and the chances of a price-war among lawyers for the uncontested divorces, etc., appears dim. If we lawyers are now ethically permitted to advertise prices for our "form book" services, what happens if we individually choose not to do so? No one doubts for a minute that the public has a right to legal services at the lowest possible price but if no advertising is forthcoming, does the public interest then require that we should do so? Will the end result be that choosing a lawyer will be similar to buying a used car or a new refrigerator?

Chief Justice Burger made an excellent observation in Bates when he said:

"Unfortunately, the legal profession in the past has approached solutions for the protection of the public with too much caution and as a result, too little progress has been made."

Perhaps it is time we took a serious look at ourselves, our concern for the public, and the future we can expect in this age of the consumer. I know, and I am sure most will agree, that lawyers in Alaska have individually spent many hours working for non-profit organizations. Yet, we fail to project any image to the general public except one of selfish devotion to ourselves. This attitude is being continually reflected in the proposed legislation seen in the last sessions. For example, next January we can expect to see a bill aimed at restricting attorney fees. This is certain to bring about a strong protest among the private bar and once again we may be faced with a "too little and too late" defense no matter how legitimate it may be. Our one lobbyist will be left to fight a lonely battle against those who say we care only about matters that concern ourselves. I believe the time to start making a change is now and the only way to improve our image and defeat unrealistic legislation directed toward our profession is to form a committee that is willing to work hard at public interest issues pending in the legislature. For example, if we start now we can have statistics available to show that while attorney fees are high, the overhead is also and the net income for the average practitioner is not as high as may be believed. This same committee could also assist legislative members in drafting proposed legislation, suggesting changes, etc., and in general offer to help in all matters of public interest. Naturally, this will involve time away from a busy practice but if enough members are willing to devote some time to this, this factor can be greatly reduced.

The days when state legislators were dominated by lawyers may very well be over. Good or bad, if ours is any example the new look is one varying from basic distrust to downright hostility. I sincerely hope that many of you will call or write offering your help. We cannot afford to wait and merely resist when we are backed into a corner time after time.

ANCHORAGE BAR ASSOCIATION PROGRAMS

September 19 -- Ken Jarvi, President Elect Alaska Bar Association, Re: Current and future activities of the Alaska Bar Association, policy matters under consideration, day-to-day operation of the Bar office and services rendered by the Association to its membership and to the public, etc.

September 26 - John Havelock, present and future status of law related and legal education at the University of Alaska.

October 3 -- Warren Matthews, Justice of the Alaska Supreme Court, Re: Insights into the Appellate process within the Alaska Supreme Court, from the viewpoint of a recent active private litigation practitioner.

ALASKA CODE REVISION COMMISSION

In June of 1976, the Legislature established the Alaska Code Revision Commission as a permanent Commission of the Legislature. The purpose of the Commission is to examine statutes and decisions to discover defects, review and consider proposed or suggested changes in the law and recommend changes to bring the law into harmony with current needs and conditions.

The members of the Commission are: Senator Pat Rodey, the appointee from the Senate; Representative Fred Brown, the appointee from the House of Representatives; Susan A. Burke, the appointee from the Supreme Court of Alaska; John Abbott, the appointee of the Governor of Alaska; Donna C. Willard, the appointee of the Alaska Bar Association and Arthur H. Peterson, an attorney employed by the executive branch of the state government who was appointed by the Governor.

Since the inception of the Commission, the members have been working on certain revisions and at this time are considering passage of Alaska's version of the Uniform Exemptions Act. A draft of this Act has been prepared and can be obtained upon request from the Legislative Affairs Agency, Pouch Y, State Capitol, Juneau, Alaska, 99811. The Commission solicits and appreciates any comments, suggestions, criticism, etc. which it may receive with respect to the proposed act and urges any interested person to make his or her feelings known to the Commission.

The Commission presently contemplates that the Act will be introduced during the next session of the Legislature.

ATTORNEYS BEWARE OF NEW LOBBYIST REGISTRATION ACT

By: Norman Gorsuch

In 1976, the 9th Legislature passed HB 522, a new lobbyist registration and reporting act, which was signed into law as chapter 167 SLA 1976. The law is found in AS 24.45.011 through 24.45.181. The Legislature significantly broadened the reporting and registration requirements for lobbyists to include lobbying of the executive branch of Government as well as the legislative branch. Under the provisions of this new statute, certain members of the Bar Association could be required to register and to report fees received and expenses incurred as lobbyists because the definition of lobbying is so broad that it does include some areas of the practice which have traditionally not been considered lobbying. The enforcement of the statute is lodged with the Alaska Public Offices Commission. The effective date of the new reporting requirements contained in the law was January 1, 1977.

Those attorneys who have spent time lobbying legislators and their staffs or appearing before legislative committees on behalf of clients for compensation and who have registered in the past to engage in such activity are still required to register and report under the new law. The principal difference between the old and new lobbyist registration laws is that the new law may require registration of attorneys who engage in contacts with State Board and Commission members or state executive branch officials of certain rank or appear in proceedings or hearings before State boards or commissions.

Individuals who appear as counsel or witness in a hearing conducted within the judicial branch of government are excluded from the requirements imposed by the new statute.

Persons who fail to register or to file properly completed and certified reports within the time frames required by the law are subject to civil penalties of not more than $10 a day for each day the delinquency continues. The Alaska Public Offices Commission is charged with making the initial delinquency assessments. The APOC decision is subject to a right of appeal to the Superior Court. In addition, a private individual who knowingly violates any provisions of the law, whether acting for himself, on behalf of an employer or in concert with other persons is upon conviction subject to a fine of not more than $1,000 or imprisonment for not more than 1 year,or both. In addition , employers of lobbyists are required within 15 days after employing, retaining or contracting for the employment or retention of the lobbyist to file a statement with the commission authorizing or verifying that employment, retention or contract for lobbying services.

The scope of this law is very broad. Because of testimony given by the State Bar Association and Local Associations, the commission recommended an anendment to the statutes to exempt from the registration and reporting requirements those individuals who appear as witness or counsel before administrative agencies in a public pro-

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NOTICES OF SUSPENSIONS & TRANSFERS TO INACTIVE STATUS

ARTHUR LYLE ROBSON was temporarily suspended from the practice of law in Alaska by order of the Alaska Supreme Court dated May 24, 1977. The order was entered pursuant to Alaska Bar Rule 23 which provides for the temporary suspension of members of the Alaska Bar upon conviction of serious crimes.

According to the Rule, such suspensions are to remain in effect until the criminal appeal is final. If the conviction is upheld on appeal, a hearing is held by the appropriate disciplinary hearing committee to determine the type of discipline to be imposed.

The Alaska Supreme Court has ordered an expedited hearing on the question of discipline in the Robson proceeding and this issue is now pending before the Board of Governors.

EDWARD W. TUCKER was transferred to inactive status in the Alaska Bar by order of the Alaska Supreme Court dated April 5, 1977. The transfer was based upon a finding that Mr. Tucker is incapacitated from continuing the practice of law because of a disability. Mr. Tucker will remain ineligible to practice law in Alaska until further order of the Court.

"CHILD-SNATCHINGS" TRIGGER CUSTODY LEGISLATION

During 1977, Alaska joined 17 other states which have adopted the Uniform Child Custody Jurisdiction Act. The Act was adopted by the Alaska Legislature as Chapter 61, SLA 1977.

The legislation is designed to provide a strong legal foundation for settling child custody disputes that cross state lines. In the past, the lack of statutory law in this area and the unsettled nature of the judicial law have resulted in child snatchings of a more or less violent nature which usually damage the welfare of the child. The Act is designed to avoid jurisdictional conflict and promote cooperation instead of competition between courts of different states.

Other states which have adopted this legislation include: California, Colorado, Delaware, Hawaii, Idaho, Indiana, Iowa, Maryland, Michigan, Minnesota, Montana, New York, North Dakota, Oregon, Pennsylvania, Wisconsin and Wyoming.

POSITION OPEN

Staff Attorney - Alaska Native Claims Appeal Board

Perform legal research and writing; provide staff counsel to administrative adjudicative board of U. S. Department of the Interior in fields of public land law, Indian law, and interpretation of the Alaska Native Claims Settlement Act.

Qualifications: Graduation from law school and admission to bar of any state.

Grade level: GS-11 to GS-13 depending on experience.

Apply to: Chairman, Alaska Native Claims Appeal Board
Box 2433
Anchorage, Alaska 99510

Offices located 4th floor,
Alaska Bank of Commerce
712 W. 4th Avenue
Anchorage, Alaska
Phone: 265-5356

SUPERVISING ATTORNEYS

Alaska Legal Services Corp. (ALSC) currently has positions available for Supervising attorneys in its Kotzebue and Nome offices.

Supervising Attorneys manage these two-to-three lawyer offices, conduct and supervise litigation and train junior attorneys and paralegals. Applicants should have at least two years experience, preferably in Legal Services. Salary is $22,000 + DOE.

ALSC provides civil legal assistance in the widest range of legal matters generally affecting poverty clients in rural and urban Alaska. The program consists of 12 offices ranging from Ketchikan to Barrow, with an overall staff of almost 100, including 40 attorneys.

Applicants for either of the above positions should forward resume, references, legal writing samples and earliest availability date immediately to James Grandjean, Executive Director, 524 West Sixth Avenue, Suite 204, Anchorage, Alaska 99501.

ALSC is an equal opportunity employer.

DISCRIMINATION AND THE LAW SUBJECT OF ABA ESSAY CONTEST

CHICAGO, Sept. 2--Discrimination and the law is the general subject for the American Bar Association's 1978 Ross Essay contest, Richard Allen, editor of the ABA Journal, announced today.

The contest, open only to ABA members including members of the Law Student Division, is administered and judged by the Journal's Board of Editors.

The winner will receive a $5,000 prize, Allen said.

The journal editor said contestants may choose particular aspects of the general subject such as discrimination based on race, sex, age or religion; so-called reverse discrimination in favor of a group; factual discrimination between rich and poor; or discrimination by failure to distinguish between unlike groups.

Deadline for entries is April 1, 1978, and may not exceed 5,000 words.

For further information and entry forms, contact: Ross Essay Competition, American Bar Association Journal, 77 S. Wacker Dr., Chicago, Ill. 60606.

THE NATIONAL INSTITUTE FOR TRIAL ADVOCACY

announces

the second annual intensive program in trial advocacy for the northwest region divided into two parts:

First Part	Second Part
Jan. 2-8, 1978	May 21-27, 1978

at the University of Oregon, School of Law, Eugene, Oregon, 97403.

The program is designed for lawyers with varying degrees of skill in trial practice. Participants proceed through exercises designed to increase proficiency in civil and criminal preparation and trial under the guidance of a teaching team that includes judges, attorneys and law teachers. Scholarships are available.

For detailed brochure and application forms, write:

Professor Barbara A. Caulfield
N.I.T.A. Regional Director
University of Oregon School of Law
Eugene, Oregon 97403

The National Institute for Trial Advocacy does not discriminate among candidates on the basis of race, color, religion, sex, age, handicap, or national origin. Members of minority groups and women are encouraged to apply.

ABA APPROVES LEGAL ASSISTANT EDUCATION PROGRAMS AT SIX EDUCATIONAL INSTITUTIONS

CHICAGO, Sept.5--Six educational institutions have won American Bar approval for their legal assistant education programs.

Endorsing a recommendation by the ABA's Standing Committee on Legal Assistants, the Associations's policy-making House of Delegates voted at its recent annual meeting to approve legal assistant education programs at:

Fayetteville Technical Institute, Paralegal Technology Program, Fayetteville, N.C.

Lakeshore Technical Institute, Legal Assistant Program, Cleveland, Wis.

Mallinckrodt College, Legal Assistant Program, Wilmette, Ill.

Northern Arizona University, Legal Assistant Program, Flagstaff, Ariz.

The University of Southern California, Program for Legal Paraprofessionals Los Angeles.

William Woods College, Paralegal Studies Program, Fulton, Mo.

To be considered for ABA approval, an institution must submit a self-evaluation report for review by the staff and consultant to the ABA committee. Committee representatives then make a one and one-half day visit to evaluate the program. The full committee reviews the evaluation report before making a recommendation to the House of Delegates.

The latest approvals brought to 31 the number of programs for paralegal training to have won ABA endorsement.

ZEIGLER RE-ELECTED TO AMERICAN JUDICATURE BOARD

CHICAGO, IL: Robert H. Ziegler, Sr. State Senator of Alaska, has been re-elected to the Board of Directors of the American Judicature Society.

The American Judicature Society is a national membership organization of civic leaders, lawyers and judges founded to spearhead judicial improvements and court modernization.

Mr. Ziegler is past president of the Alaska Bar Association and the Ketchikan Rotary Club. He is a member of the Board of Directors of the University of Alaska Foundation and active as a member of the Senate Judiciary Committee of the Alaska State Senate. Mr. Ziegler serves as chairman of the Judiciary Committee of the Western Conference of the Council of State Governments.

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superiority was to be maintained.

Two fundamental facts in the legal profession are easily and unfortunately apparent at a glance. It is said that the body of law is now doubling each five years; and, it is also true that for too many lawyers, the way the law is practiced has remained basically unchanged for the last two hundred years. Situated squarely between these two extremes, is the legal profession's basic problem.

With the growth in the law there has been a corresponding growth in the public's need for access to the legal process. Had Washington Irving's legendary folklore character, Rip Van Winkle, slept for 200 years instead of 20, he would have not only discovered, as he did, that his wife died and that everything changed in American politics, during that time, but in addition he would have discovered that the greatest change in the practice of law in the past two centuries, insofar as the independent practitioner of law is concerned, has been that the typewriter replaced the fine spencerian handwriting on legal documents, and more recently, the copy machine replaced carbon paper. For the lawyer in the smaller office, the practice of law is still a "cottage industry" in which the lawyer tailors services for individual clients.

Part of the problem with the "cottage industry" approach in the profession is that lawyers traditionally require lump-sum payments which are expected to be paid promtly. This is contrary to the way most moderate income people purchase their automobiles, refrigerators or color television sets. As a result, the fees charged by lawyers, however much deserved, are an economic disaster to the middle-class client. Unlike the medical practitioner's fees, which are usually spread out over a number of visits, since they deal in smaller components, or which are paid through Blue Cross or some other form of medical, surgical or hospital insurance, the lawyers' fees have an extremely high visibility in the eye of the public.

Nevertheless, the problem with fees is largely responsible for the invasion of the legal profession by outside groups and individuals who either want to regulate legal fees or to do away with the need for lawyers. As a result, there has been an attack on the bar's monopoly in the area of the unauthorized practice of law. In recent years, the focus in this area has concerned itself with the selling of "divorce-kits" by non-lawyers.

Although it has been generally accepted that the control of the unauthorized practice of law is basically a "state action" - it is now being distinguished on the basis that there is a difference between such regulation against the unauthorized practice of law designed to protect consumers from the incompetence of non-lawyers compared to action which is designed primarily to protect lawyers' incomes. Beyond that, the courts have ruled that the sale of "divorce kits" are not the unauthorized practice of law, and that they are protected under the First Amendment so long as there is no individual advice and counseling related to the sale of the "kit."

The bottom line in this area seems to be that the legal profession is being chided by the courts because it has not made legal services available to the general public at reasonable fees.

The controversy over fees is also at the root of governmental regulation. For example, there are fee limitations already existing in the areas of social security representation and matters which involve veterans. Various states are regulating the contingent fees allowed in workers' compensation cases. Some states are also setting limits on contingent fees to be received in personal injury cases. There is also a degree of quasi-regulation involved in probate fees as well.

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AMERICAN BAR ASSOCIATION ADOPTS GUIDELINES FOR LAWYER ADVERTISING: BACKS GRAND JURY AND MEDICAL MALPRACTICE LITIGATION REFORM

CHICAGO, Aug. 25 -- The American Bar Association's policy-making House of Delegates considered a number of highly controversial issues including lawyer advertising, grand jury reform and medical malpractice litigation reform at its recent meeting. Here is an unofficial summary of the House action:

-- Adopted a recommendation that the Association's Code of Professional Responsibility be amended to permit radio and print advertising of certain, prescribed facts about lawyers and their practice.

-- Approved a recommendation urging state and local bar associations to give their members an opportunity to promote, improve and expand lawyer referral services as an alternative to individual lawyer advertising.

-- Approved a 25-point grand jury reform proposal including a recommendation that a grand jury witness be

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The corollary to this thrust and another "remedy" being pursued is the total elimination of lawyer representation in some areas. This trend is being observed in appearances before government agencies, consumer agencies and ombudsman services.

Many lawyers regard the activities of the Department of Justice against the organized profession of law as an out-and-out attack on "lawyering" in America. There are lawyers who believe that the Department of Justice, at times, has taken the proclamation found in Shakespeare's Henry VI to heart, wherein Dick the butcher said, "The first thing we do, let's kill all the lawyers."

There seems to be little or no appreciation within the Department of Justice for the remedial activities being undertaken by bar associations, and there seems to be a disregard within the Department itself for the consumer, in its attempt to "protect" that same consumer. However, while it may not make lawyers feel any better, the Department is carrying on similar "wars" against other professional groups. Unfortunately, in the case of the legal profession, the efforts of of the Department might well completely emasculate not only bar associations but the legal profession as well, placing it completely under the dominance and supervision of government agencies. On the other hand, if the lawyers themselves are not controlled by these government agencies, then a number of their services may be performed by government agencies or other non-lawyer groups. For example, there are laws in existence which offer the services of government lawyers to bring certain lawsuits on behalf of the private citizen. The ultimate result could be the elimination of the lawyer as one of the remaining forces in America which can act as a check on governmental abuse.

By maintaining a stolid position against change, the legal profession has managed to back its way into the very controls it has tried to avoid. It has, as was said at the very beginning of this article, found itself carried where it did not want to go or left behind. Fortunately, more and more individuals in the legal profession are realizing that they must accommodate themselves to change - if they are not to be overcome by it. As a result, the organized bar has been looking into such areas as group legal services. Some of these services are provided through the efforts of bar associations and others are being handled directly by law firms. They serve labor unions, church groups, societies, etc. Because of the high volume of cases handled by such an office, the fees can be reduced.

This same high volume theory applies to the development of legal clinics recently being sponsored by bar associations and private law firms. The American Bar Association recently distributed grants to a number of bar associations to sell the clinic idea to the private bar. The most visible of these clinics is the ABA-funded model clinic in Philadelphia which has as its basic role:

> "To show the ordinary practioner how the use of modern approaches to law practice can cut the cost of providing legal services."

The clinic functions in five basic areas of the law: real estate sales and purchases, uncontested divorces, mortgage delinquency and foreclosure cases, small claims and a preventive law check-up, according to a recent article appearing in the ABA's Bar Leader. The clinic charges flat-rate fees and services are provided by a lawyer and a paralegal assisted by a combination receptionist-bookkeeper-secretary.

In the future, bar associations may establish "dispute-centers" in neighborhoods to eliminate the number of small cases being brought into court and these would be settled by other means than court action.

In addition, bar associations are supporting the simplification of laws in areas such as probate and small claims court, so that the consumer may handle some of his own simple legal matters without the services of a lawyer.

Law offices, as well, are turning to new office equipment and techniques for the performance of their services. Perhaps the most outstanding development in terms of office modernization has been the use of paralegals, who are able to perform many of the services in a law office at lower hourly rates with obvious benefits to the client.

While paralegals are permitted to do law-oriented work under the supervision of an attorney, they have developed into specialists in their own right, and often know more about a given area of the law than does the average practitioner, much like a court clerk who knows a particular area

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of the law intimately and often can counsel lawyers on how best to approach a given procedural problem. It is this high degree of competence that is causing some paralegals a problem because of their belief that they should be able to replace lawyers entirely under some circumstances. Understandably, this causes a negative reaction among lawyers, who have already felt the results of an "invasion" into their profession. Ultimately, however, paralegals will prove to be a boon to the lawyer as an individual and to the profession as a whole.

On the other hand, paralegals are having problems from new lawyers coming into the profession, at what many view as an alarming rate. For example, in California, which has 50,000 lawyers, it is estimated that this number will be increased by 10% with new lawyers graduating from law schools. These new lawyers provide the chief competition to paralegals for employment in law offices. Many established lawyers, given the choice of hiring a paralegal or a new, young lawyer, will choose the latter, ignoring the fact that the young lawyer may be gone in a few years while the paralegal probably would have remained.

While all of these innovations are taking place within the legal profession within the last few years, other changes are coming to the forefront. One of these fundamental changes within the legal profession is the matter of lawyer advertising. This probably is the most widely-debated issue among lawyers today.

A conflict over setting new standards for the regulation of lawyer publicity could be the beginning of a state court-federal court clash over control of the bar. There is also the threat that lawyer advertising could be a battleground in a court-legislature struggle for dominance over the bar. Legislative efforts are now under way in two states, with the most lawyers, to end the bar's power to ban advertising. Direct assaults on the lawyer ad ban are but part of the story of efforts to increase available public information about lawyers.

Some states, such as Michigan and Maine, prior to the Bates decision, have opened the door to lawyer advertising. In Maine, it would appear there is no prohibition of any kind, while in Michigan, the size and the form of the advertisement is regulated. The Bar Association of Greater Cleveland has taken the position, prior to Bates, that regulated advertising in the Yellow Pages of the Telephone Directory should be permitted, so long as the space and language treatment is equally applied to all lawyers. Guidelines for lawyer advertising will have to be established by the American Bar Association and most state supreme courts.

Closely related to the advertising issue is the issue of specialization. Important information about the practices of lawyers, the kinds of cases they prefer to accept or to handle exclusively will come about with the adoption of self-designation or certified specialist programs. More than one-third of all Florida lawyers, over 6,000 of them, now qualify for specialist listings through self-designation. Only four states have such programs in operation. New Mexico uses self-designation and California and Texas certify specialists in just three areas of law each. Specialization was approved in Washington but the program has not been fully implemented.

Just as specialization is closely related to the issue of advertising, it is equally related to the issue of mandatory continuing legal education. Minnesota, Iowa and Wisconsin have come up with mandatory continuing legal education programs and five other states have such programs in the planning stage.

The nagging question, which lurks near mandatory continuing legal education, is: If we get it, can testing be far behind? This is another way of asking, is there, in the future of the bar, a more formal re-certification program? Most observers believe not, on the ground that the administrative aspects and the grading of the examinations would be a logistical nightmare.

The issues discussed in this article are just a segment of the changes and forces at work which will affect the profession of law in the future. Without question, the profession must learn to adapt itself to change or find itself a totally regulated "business."

(Reprinted from the Cleveland Bar Journal, July-August 1977 issue.)

ANNOUNCING 1977-78 SEMINARS

PRESENTED BY

THE NATIONAL ASSOCIATION OF
LEGAL SECRETARIES (INTERNATIONAL)

Nov. 4-5, 1977	Sheraton Southwest Omaha, Nebraska
Nov. 11-12, 1977	Downtowner East Charlotte, N.C.
Feb. 24-25, 1978	Del Webb's Town House Phoenix, Arizona
Apr. 7-8, 1978	Davenport Hotel Spokane, Washington

Topics to be covered:

1. Financial planning and controlling for lawyers, including time contro procedures, timekeeping/fee and billing systems, law firm budgetin
2. Automation in law office, includin computer and data processing, word processing, text processing, line printing.
3. Use of Legal Assistants and Para-professionals
   --generally
   --in litigation, preparing cases for trial, preparing the trial notebook.
4. Law Office Systems
   --Docket control and information retrieval.

ALASKA BAR BRIEF

The Alaska Bar Brief is the quarterly newsletter of the Alaska Bar Asscciation, published in Anchorage. Subscription rates are $6 annually. Additional copies may be purchased at $1.

Correspondence, manuscripts and letters submitted for publication should be sent to the Alaska Bar Brief Box 279, Anchorage, Alaska 99510.

CALENDAR OF BAR ACTIVITIES

1977

BOARD OF GOVERNORS MEETINGS:

September 16-17 -- Sheffield House, Anchorage
October 13-15 -- Travelodge, Kodiak (One day joint meeting with ALSC Board of Trustees.)

CONTINUING LEGAL EDUCATION PROGRAMS:

Seminar--Dilemmas in Legal Ethics:

September 17 -- Fairbanks
September 24 -- Juneau-Douglas Community College - Juneau
October 1 - Court Bldg., Ketchikan
October 7 - Court Bldg., Anchorage

Seminar--Criminal Trial Proceedings:

October 1-2 -- Court Bldg., Anchorage
November 4-5 -- Fairbanks
November 11-12 -- Juneau
November 18-19 -- Ketchikan
December 2-3 -- Sitka

COMMITTEE MEETINGS:

October 8 -- State Continuing Legal Education Committee -- Bar office Anchorage
September 29 -- Criminal Law Committee Anchorage
October 20 -- Criminal Law Committee Anchorage

1978

AMERICAN BAR ANNUAL MEETINGS:

February 8-15 -- New Orleans
August 3-10 -- New York City

WESTERN STATE BAR MEETINGS:

February 16-19 -- Scottsdale, Arizona

ALASKA BAR ANNUAL MEETINGS:

February 23-26 -- Midyear Meeting, Kauai Surf Hotel, Kauai, Hawaii
June -- Business Meeting, Fairbanks

BOARD OF GOVERNORS MEETINGS:

February 20-23 -- Kauai Surf Hotel, Kauai, Hawaii
May 18-20 -- Anchorage

RECENT DECISIONS AFFECTING THE PRACTICE OF LAW

DISCIPLINE CASES:

ABA Code DR 9-102 (preserving identity of funds and property of a client) requires, for violation, no findings of fraudulent or willful conduct where the evidence shows that client funds are in fact comingled with the attorney's personal funds. Archer v. St. (Tex. Civ. App. 1977) 548 S.W. 2d 71.

Arizona advertising prohibition held unconstitutional under First Amendment as applied to fee advertising of routine legal services. Bates and O'Steen v. State Bar (1977) ___ U.S.___. (Rehearing sought by State Bar on July 22, 1977.)

First Amendment rights of attorneys to respond to questions from media and to seek out media to express views on delivery of inexpensive legal services upheld. Use of term "legal clinic" to describe petitioner's law practice not improper under circumstances. Jacoby v. St. Bar (1977) ___ Cal.3d 359.

Operation of disciplinary rule enjoined because overly broad in prohibiting certain information about attorneys' services to be disseminated in a consumer directory. Consumer's Union v. ABA (E.D. Va. 1976) 427 F. Supp. 506. (U.S. Supreme Court vacated judgment and remanded case to Dist. Ct. for Eastern Dist. of Va. on June 29, 1977.)

ABA Code DR 7-109(c) prohibiting the compensation of expert witnesses if contingent on the results or outcome of the case upheld. Provision does not affect a fundamental right nor create a suspect classification. Person v. Assoc. of Bar of City of N.Y. (2nd Cir. 1977) 554 F2d 534, rev'g 414 F. Supp. 144.

When attorney learns that client has committed a fraud on a tribunal, attorney cannot disclose fraud to tribunal if information is priviliged. Attorney must encourage client to permit lawyer to make disclosure and inform client that lawyer will withdraw if disclosure is not permitted. Attorney must withdraw if client does not consent to disclosure. In re A (1976) 276 Or. 225, 554 P2D 479.

Court will impose discipline where sexual offenses of attorney demonstrate unfitness to practice law. In this case, attorney's sexual activities were related to practice of law, involving clients and the use of law office for nude photography. Matter of Wood (Ind. 1976) 358 N.E. 2d 128.

UNAUTHORIZED PRACTICE CASES:

The issuance of opinions on the unauthorized practice of law by the Va. State Bar violates anti-trust statutes per se without regard to whether the opinion is correct. Surety Title v. Va. State Bar ___ F2d ___ (1977) (On appeal to U.S. Ct. of App., 4th Cir.)

LAWYER MALPRACTICE CASES:

Malpractice insurer not obligated to defend attorneys against SEC action seeking equitable remedies. Haines v. St. Paul Fire & Marine Ins. Co., 428 F. Supp. 435 (C. Md. 1977).

Disqualification from representing former client's opponent appropriate only if former client had expectations of confidentiality. Allegaert v. Perot, No. 75-3214 (S.D.N.Y. May 17, 1977.)

"Continuous Treatment" Doctrine only tolls statute on Malpractice claims during pendency of litigation or single transaction. Dominick v. Monaghan, N.Y.L.J. May 26, 1977, 10, col. 1. (N.Y. Sup. Ct., May 1977).

Action claiming jury would have found for plaintiffs had trial counsel not been negligent dismissed as too speculative. Woodruff v. Tomlin, 423 F. Supp. 1285 (W.D. Tenn. 1976.)

Purchaser may not sue seller's attorney for negligence in drafting contract. Chalpin v. Brennan, 559 P2d 588 (Ariz. Ct. App. 1976.)

Insurer's counsel breached no duty to claimant by failing to notify insurer of settlement. Parneil v. Smart, 66 Cal. App. 3d 833, 136 Cal. Reptr 246 (1977.)

Firm not entitled to fees for representing client while concurrently representing his opponent. Jeffry v. Pounds, 67 Cal. App. 3d6, 136 Cal. Rptr. 373 (1977).

Demand letter threatening criminal prosecution held "outrageous conduct" supporting action for intentional infliction of emotional distress. Kinnamon v. Staiman & Snyder, 66 Cal. App. 3d 893, 136 Cal. Rptr. 321 (1977). Rehearing denied 2d Civ. No. 49426 (Cal. Apr. 7, 1977.)

Real estate transaction with client held breach of fiduciary duty meriting equitable relief unless all relevant facts disclosed and terms fair to client. Hicks v. Clayton, 67 Cal. App. 3d 251, 136 Cal. Rptr. 512 (1977).

LOBBYIST REG. - Cont'd from Pg. 3

ceeding which is recorded or tra: scribed (i.e. where the "influencing" takes place in a controlled public arena). However, this amendment along with many others proposed by the commission was not adopted by the Legislature.

The commission and some legislators had also recommended that the requirement for administrative lobbying registration and reporting be suspended by statute until a new version of the law could be prepared for consideration by the Legislature next year. However, the bills were never enacted. Therefore, under the provisions of the new statute, administrative lobbying now includes the activities of attorneys who appear as counsel for clients in proceedings before administrative agencies or departments of State Government. In addition, attorneys who submit written material or engage in telephone calls and discussions on behalf of clients with State officials who are members of State boards or commissions, members of a State executive branch department from the division director through the Commissioner level or the Governor, Lieutenant Governor and members of their staffs are included in the registration requirements. However, if such activity does not constitute a substantial or regular portion of an attorney's practice for a particular client, the attorney may not be required to register as a lobbyist for that client. AS 24.45.161, AS 24.45.171.

The definition of what constitutes a "substantial or regular" portion of the activities for which a "lobbyist" receives consideration for the purpose of influencing legislative or administrative action is as yet unclarified by regulation. The Public Offices Commission tentatively adopted in its proposed regulations some rather arbitrary standards based upon the amount of consideration received by the individual, the number of hours per month spent by the individual engaged in such activity and the presence or absence of reimbursable travel, living and entertainment expenses.

In the interim set of instructions for lobbyists issued by the Alaska Public Offices Commission the interpretation of the words "substantial or regular" is discussed as follows:

> "At this time, the Commission has published proposed regulations defining substantial or regular to mean:
> (A) Spending 20 hours or more in any 30 day period for which compensation is due in activities directed towards influencing legislative or administrative action as defined by AS 24.45.171 (6); or
> (B) Receiving or becoming entitled to receive payment of $1,500 or more in any 30 day period for activities directed towards influencing legislative or administrative action as defined by AS 24.45.171 (6); or
> (C) Receiving 20% or more of one's gross annual income for activities directed towards influencing legislative or administrative action as defined by AS 24.45.171 (6);or
> (D) Receiving or becoming entitled to reimbursement for travel, living and entertainement expenses for activities directed towards influencing legislative or administrative action as defined by AS 24.45.171 (6), if such is the sole consideration received.
> It is the intent of the Commission that a person would read the above tentative "tests" in advance of lobbying, and determine if he or she can reasonably expect to eventually meet any or all of the criteria. If it was felt that one or more of those tests would be met, then the person should complete APOC form 24-1, Lobbyist Registration. The Commission has summed up this intent in regulation 6 AAC 29.520 (Proposed Reg.), which reads:
> A person who knows, or has reasonable expectation, that he or she, in making contacts with a public official or public officer as defined by AS 24.45.171 (12) will be meeting the definition of lobbyist in AS 24.45.171 (8) and these regulations, must register as a lobbyist and shall file a registration statement on a form prescribed by the commission before actually engaging in lobbying.

In addition, clients who engage in these same activities could be considered lobbyists and therefore subject to the registration and reporting requirements. Even if a client is not engaged in lobbying, he can be construed be to the employer of a lobbyist by virture of his attorney's activities and therefore may have to file APOC form 24.2. The Commission states that this form is required to be filed by "any association, business trust, company, corporation, firm, labor union, natural person, partnership, or society which employs, retains, or contracts

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for the services of a lobbyist." Therefor, it is important for all attorneys to not only review the statute to determine whether or not they may be required to register, but also to determine whether or not their clients must also register either as lobbyists or employers of lobbyists.

Any particular questions should be directed to the State of Alaska Public Offices Commission, 610 C Street, Suite 209, Anchorage, Alaska 99501 (Tel. No. 274-0321 or 276-4176) or to the Juneau office of the Alaska Public Offices Commission located in room 512 of the State Court Building. The address of the Juneau branch office is Pouch AO, State Capital, Juneau, Alaska 99811 (Tel. No. 465-4864).

At its recent meeting, the APOC decided that, in view of the Legislature's failure to enact the law suspending the operation of the administrative lobbying portion of the statute, they would proceed to enforce those statutory provisions. The proposed regulations to interpret and clarify the statute will be written and adopted sometime prior to January 1, 1978.

In the mean time, the Commission will proceed on the assumption that should any complaints be filed with it alleging unregistered and unreported administrative lobbying activities, the individual so accused would be processed through the Commission's administrative hearing procedures and at a minimum would be asked to retroactively file and report from the date the administrative lobbying commenced. In addition, the Commission does have the discretion to consider whether the individual case merits further action such as the imposition of civil penalties or the initiation of criminal prosecution.

COMINGS AND GOINGS

RONALD DRATHMAN 333 W. 4th Ave. #35, Anchorage; JOHN E. DUGGAN 425 G St. #710, Anchorage; MARK A. ERTISCHEK 425 G St. #500, Anchorage; LAWRENCE ERWIN 310 K St. #408, Anchorage; ROBERT C. ERWIN 310 K St. #704, Anchorage; MARTIN A. FARRELL 425 G St. #720, Anchorage; JEFFREY M. FELDMAN 1014 H St., Anchorage; EDITH GLENNON 1016 W. 6th Ave. # 435, Anchorage; KAREN HUNT 2136 Alder Dr., Anchorage; DENNIS P. JAMES 360 K St. #301, Anchorage; JOSEPH P. JOSEPHSON 425 G St. #930, Anchorage; LEONARD T. KELLEY 700 H St., Anchorage.

B of G ADVERTISING (Cont'd from page 1)

the consumer." The decision, however, limits advertising to "truthful advertisement concerning the availability and terms of routine legal services," and warns that advertising may still be regulated.

Prior to this decision restrictions on lawyer advertising, first imposed in 1908, were in effect in all states.

The concern of the Board of Governors of the Alaska Bar has always been whether advertising, if allowed, will help rather than mislead the Alaska public.

The Board will consider the amendments to the Code approved by the American Bar Association House of Delegates at the A.B.A. annual meeting in August. These amendments, while permitting advertising, regulate both content and media. Content is limited to 25 basic facts which include: name, field of law practice concentration, education, client reference, certain fee information and credit arrangements. Advertising media is limited to print and radio unless specific approval is obtained for television ads from the agency responsible for the conduct of attorneys.

The House of Delegates rejected a proposal which would have allowed publication of all information not "false, fraudulent, misleading or deceptive."

The statewide expansion of the lawyer referral service and the publication of an Alaskan legal directory will be considered by the Board as additional means of disseminating information about lawyers to the public.

Recommendations of the Board of Governors must be submitted to the Alaska Supreme Court for final determination.

SEMINAR

Wendell P. Kay is considering presenting a seminar on Trial Practice and the Rules of Evidence if there is enough interest to justify it.

The seminar would be held for approximately 3 days - sometime between November 20 and December 20, in Mesa, Arizona.

Interested parties should contact: Wendell P. Kay, 2600 Denali, Suite 503, Anchorage, Alaska 99503.

ABA GUIDELINES (Cont'd from page 6)

allowed to have counsel present during the questioning.

-- Approved a proposal that medical malpractice arbitration agreements should be entered into only after a dispute has arisen.

-- Approved resolutions supporting equal employment rights for the handicapped and rights of mentally handicapped persons.

-- Defeated a proposal favoring U.S. accession to the "International Convention on the Elimination of All Forms of Racial Discrimination."

-- Approved proposals supporting federal judicial merit selection.

-- Approved proposals seeking to expand and enlarge the duties of federal magistrates.

-- Approved a Code of Ethics for Arbitrators in Commercial Disputes.

-- Approved a proposed Uniform Exemptions Act that would ease the burden of bankruptcy.

-- Defeated a proposal to support a proposed Uniform Class Actions Act aimed at making it easier to bring such actions in state courts.

Atty. Gen. Griffin B. Bell unsuccessfully sought to block House adoption of the proposal to allow grand jury witnesses to have their attorneys with them when they testify. Bell argued that presence of the attorney could slow proceedings and for all practical purposes turn the grand jury investigation into a mini-trial.

Richard Gerstein, Dade County (Fla.) prosecutor who introduced the reform package, pointed out that persons charged with felonies receive more protection than grand jury witnesses.

The delegates also voted to reaffirm support of broad immunity for grand jury witnesses. However, they rejected proposals to require prosecutors to prove relevance of grand jury subpoenas when witnesses move to block them and to allow witnesses to contest subpoenas in federal courts in their own districts rather than in jurisdiction where the grand jury is sitting.

In other action the House approved recommendations to:

-- Oppose in principle giving government title to inventions conceived by contractors while under government contract.

-- Urge states to adopt an administrative procedures act.

In addition to the arbitration agreement stipulation for medical malpractice litigation, the House approved eight proposed changes in tort law and procedure. These include:

-- A potential plaintiff would have to give between 90 and 180 days notice of intention to sue each prospective defendant. Failure to do so would not kill the suit, but could lead to sanctions against the plaintiff's attorney.

-- Health care providers would have five days in which to provide patients with access to medical records.

-- Professional medical societies should establish panels of experts for use in medical malpractice suits.

The House of Delegates deferred action on several proposals, generally to allow further study. These included proposals:

-- To have the ABA assist states in establishing and promulgating specialization programs.

-- Seeking less federal involvement in broadcast programming.

-- Seeking ABA support of adoption of a treaty to give Panama control of the Panama Canal.

-- Seeking ABA support of a limited form of sunset legislation.

-- To have losers pay all attorney costs in civil law suits, with three major exceptions.

-- Supporting a model home buyer's title protection notice statute, a uniform land transactions act, a uniform simplification of land transfers act and a revised uniform limited partnership act.

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