

ALASKA BAR BRIEF

THE QUARTERLY NEWSLETTER OF THE ALASKA BAR ASSOCIATION

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C.L.E. CONVENTION PROGRAM ANNOUNCED

The banquet speaker for this year's C.L.E. Mid-Winter Convention will be James H. Boren. Mr. Boren is an author, lecturer, philosopher, professional bureaucrat, sometimes advisor to the White House, head of an engineering and designing firm and founder, president and chairperson of I.N.A.T.A.P.R.O.B.U.

Mr. Boren's treatises on the workings of government are widely quoted as illuminating, insightful, inside views of the system and its applications and affect on the public.

The first day's program on Friday will focus on current revolutionary trends affecting the profession and the legal system. This will involve an in-depth look at the forces for change in the practice of law and their future affect on the Alaska lawyer. Panel speakers will include the Honorable Robert Boochever, Chief Justice, Alaska Supreme Court; Mark Harrison, President of the National Organization of Bar Presidents and Past-President of the Arizona Bar Association; Ms. Sandra DeMint, Washington, D. C., Executive Director, National Resource Center for Consumers of Legal Services; Keith Brown of Hagans, Smith, Brown, Erwin & Gibbs, Past-President of the Alaska Bar

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ALASKA BAR & ESTATE PLANNING COUNCIL TO PRESENT SEMINAR ON ESTATE PLANNING

A three day seminar on "Estate Planning in Depth" will be presented in Anchorage on January 12, 13 & 14. The course is being presented by the Continuing Legal Education Committee of the Alaska Bar and the Anchorage Estate Planning Council. It will be held at the Captain Cook Hotel from 9:00 a.m. to 5:00 p.m. each day with registration available at the door from 8:30 a.m. to 9:00 a.m. on January 12. The sponsoring groups will host lunch at the hotel from 12:00 to 1:30 p.m. each day.

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UNITED FISHERMEN OF ALASKA FORM GROUP LEGAL SERVICES PROGRAM

A group legal plan was instituted by United Fishermen of Alaska in November 1977 as a benefit for the Association's members. This is the first plan of its kind in the state, according to Shari Gross, the Association's executive director. (Cont'd on Page 10)

KAUAI, HAWAII

This year's Mid-Winter Meeting of the Alaska Bar Association will be held in paradise. Paradise is also known as Kauai, Hawaii, a 555 square mile, nearly circular island at the northern extremity of the Hawaiian Island chain.

Kauai's heavenly reputation rests on a super abundance of features identified with the perfect or dream tropical island. There are uncrowded, unspoiled white sandy beaches; lush tropical forests; hauntingly beautiful caverns and grottos; soaring, awe inspiring cliffs plunging into the emerald sea; mist shrouded valleys; rolling fields of sugar cane and pineapple; and beautiful tropical birds and flowers in abundance.

Of all the Hawaiian islands, Kauai is the most verdant. It is known as the Garden Isle. Geologically it's Hawaii's oldest island and also the first island to be settled by the Polynesians who are reputed to have landed here over a thousand years ago. Kauai is also the site of Captain Cook's first landing in the Hawaiian Islands.

Kauai is less developed than the principal Hawaiian Islands, and from all reports most of the natives would like to keep it that way. The population of Kauai is approximately 34,000 people. The largest town and commercial center, Lihue, boasts of having one-half of all of the traffic lights on the island - two.

Visitors to Kauai are offered an impressive variety of activities and

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President's Page

A TIME TO REFLECT ON WHERE WE'VE BEEN AND WHERE WE'RE GOING

By: Dick Madson

After two years on the Board of Governors and a few months as president, I have tried to stop for a minute to seriously think about what the association has done in the past and what should be considered in the future. My first thoughts, admittedly selfish in nature, are that no matter what we do it is never appreciated by our members or the public so why even write or attempt to write on a subject that only a very few will care about. Having overcome this negative thinking, at least temporarily, this is the time when the real question facing us is whether we shall be a trade association or a public service organization. Some of us "older" members, which is defined as anyone practicing in Alaska more than five years, can remember the "good old days" when the Bar was much smaller and a general "clubby" feeling existed among the members. Life was much simpler then and anything such as a suit against the association for being denied entry into the club was almost unthinkable. There was no question but that we, as well as practically all other bar associations, were trade associations. Suddenly, we found a wave of discontent among the public, the federal government, the legislature, and many younger lawyers that the members were not becoming sufficiently involved in a dramatically changing society. The new theme was that the legal profession was a public trust and it's regulations should be open to public scrutiny. The leadership of the Bar has responded to this demand, often to the point where criticism has now centered on the premise that the professional and economic needs of the lawyers themselves are not being met. Obviously, the easy and simple solution is to do both. However, in trying to satisfy both legitimate interests, the time and energy of the Board is spread too thin and many ideas or goals do not get the attention they deserve. In spite of the great increase in members and the resultant demands made on the Bar Office and the Board, I for one do not want to see an increase in dues. On the other

hand, if we are going to give more than mere lip service to public interest activities such as a statewide referral system or a specialization rule, there is going to have to be either more frequent or longer meetings. Each has it's particular drawbacks, but do have in common the fact that the costs to the membership are certain to be higher. This leads me to the main idea I wish to leave with you.

A very substantial part of your dues and our time is spent on admission matters, including appeals. The Bar Office spends excessive time and money handling appeals by failing applicants or others denied the opportunity to take the bar examination (or one of their particular choosing), residency claims and many other grievances, imagined or real. In spite of a conscientious desire to follow the rules approved by the Supreme Court and act as their administrative agency to insure fairness to both an applicant and the Bar, it is quite clear that we have no real function in this area. The Court has the only power to decide who is eligible to practice law in this state and perhaps it is time to acknowledge this fact and hand them the entire package, thus saving time and money for other worthwhile purposes. I realize this will cause some of you to recall the infamous Bar-Bench fight some years ago and while I only heard about it from some "old-timers", it still seems to me that any belief that we have any real power or function in determining admissions is a fantasy. Consequently, I ask each of you to seriously discuss this idea of doing away with all admission matters. In fairness, you should seek out those who were the Bar leaders at the time the Court and the Bar nearly came to blows. As for now, I merely raise the question for I believe there are other more important goals to work toward which will benefit the general membership and public alike.

I raise the issue through this publication rather than try to write each of you individually. If I don't receive a deluge of letters or phone calls, I can only assume no one has read this or, if read, no one cares one way or the other. Since I cannot admit to speaking in a vacuum, I look forward with great hope and expectations to a wave of responses either pro or con. Where do we really go from here? That is up to you, even if it is one small step at a time.

SIGNS OF OUR TIME

JUSTICE DEPARTMENT AND FTC INVESTIGATE "GREEDY" LAWYERS

Justice Department and FTC investigators are studying whether there has been a "massive conspiracy to prevent enterprising lawyers from selling their services in the market-

place like other ordinary businessmen" and whether "greedy lawyers are putting the squeeze on prepaid legal insurance plans." Jack Anderson & Les Whitten, Anchorage Daily News, December 5, 1977.

COURT CURTAILS BAR'S POWER TO DEFINE PRACTICE OF LAW

Financially interested private attorneys will no longer be permitted to define the extent of their legal monopoly by defining the para-

meters of unauthorized practice of law, Fed. Dist. Ct. of the Eastern Dist. of Va. in Surety Title Insurance Agency vs Va. State Bar Association (1977).

LEGAL PROFESSION'S SELF-REGULATION THREATENED

Bar examinations may be in jeopardy if administered and scored by practicing lawyers because the economic threat to those lawyers already admitted may cause a tightening of

scoring. Joe Simms, Assistant Attorney General for the Antitrust Division of the Dept. of Justice in a recent speech before the Arizona Federated Insurance Counsel.

LAW IS JUST ANOTHER BUSINESS ACCORDING TO JUSTICE DEPARTMENT

"For many years the anticompetitive activities of professionals have survived in a climate of benign neglect. That era has ended." John H. Shenefield, Assistant Attorney General for Antitrust Division of the Dept. of Justice in September-October, 1977 Bar Leader article, Warning: The Justice Department Has Its Eye on the Professions. According to Shenefield, in view of recent Supreme Court decisions, anticompetitive professional practices can no longer be justified with homilies about pro-

fessionalism. "The nation is shifting its preception of professions from a public interest model to a business model, with little weight given to self-serving claims by the professions that their primary concern is public service Antitrust attention will be given to the involvement of private professionals in defining the scope of their legal monopolies, in establishing standards for entry, in accrediting professional schools and in improving discipline."

CITIZENS ARE URGED TO TAKE ON LOCAL LAWYERS

by Public Citizens, a consumer group formed by Ralph Nader, which is sending several thousand pamphlets entitled "10 Ways To Take On Your Local Bar Association", to at least 50 citizen action groups around the country. According to the Nader group report, Bringing the Bar to Justice, 1977, the rights of self-regulation previously delegated to the legal profession over the justice system is, "in retrospect,

extraordinary.....and foolish." The result has proved to be the "devices of a guild seeking to preserve its own profitable domain under a Cannons of Ethics that operated more like a Cannons of Profit.....in the ultimate rebuke, the Supreme Court has had to instruct bar associations six times in a 14 year period to stop violating either the Constitution or the Sherman Act, and allow citizen access to lawyers."

THE END OF THE ADVERSARY SYSTEM?

"The interest groups are politicking, and politicking hard; they are aiming to abolish the adversary system." Tom Davis, ATLA President, letter to attorneys dated October 19, 1977.

"FOR LAWYERS, PRIVACY IS DEAD."

"Black robes, professional jargon, and other legal masks will not protect the profession,

the law schools, the courts or bar organizations from the full disclosure the public

(Cont'd on Page 4)

Signs of The Times (Cont'd from Page 3)

will demand", according to Richard B. Morris, ABA Executive Director for Communications, ".....the public will also hold the profession accountable for failure to provide adequate legal services to all, overcrowded courts and a malfunctioning prison system." Lambasting members of the Bar who refuse to realistically confront the problems currently facing members of the legal profes-

sion, Morris warned: "The view of bar association members is too often 'What has the bar done for me lately?'" This leaves the terrible problems now confronting the profession to a very few "who end up doubly damned when those on the sidelines complain that bar politicians run the show." (Go Public, Your Privacy is Dead by Richard B. Morris, ABA Journal, Nov. 1977.)

LAWYERS INSURANCE RATES GO DOWN AND PREMIUMS GO UP - AN ANOMALY OF OUR TIME

It's the good news, bad news story again and this time it concerns lawyers professional liability insurance rates.

The good news is a rate cut in 1978 premiums for some coverage and no change in 1977 rates for other coverage written by American Home Insurance Company, the sponsored carrier for the Alaska Bar Association. As of January 1, premiums will be lower for policies written with deductibles. 1977 rates are expected to remain in effect during 1978 for other coverage, according to the carrier.

The bad news is that most lawyers will pay more for malpractice insurance coverage in '78 than in '77 regardless of the company from which the insurance is purchased.

The higher premiums will come about due to the rating structures adopted in 1977 by the few carriers remaining in this dwindling market. Under these new rating schedules, the first year premium automatically increases 20% or more per year, per lawyer for up to five or six years, as the insured maintains continuous "claims-made" coverage. According to the carriers, these rate increases are necessary because in each succeeding year the policy is picking up prior acts which occurred during the first year but are only reported in the policy year.

There is more good news! After the 5th or 6th year there will be no more automatic premium increases. Rate increases will then only be generated by loss experience!

BOARD OF GOVERNORS MEETING

The Board of Governors of the Alaska Bar Association held it's regular fall meeting at Kodiak on October 13-15, 1977.

It's single most important item on the agenda was the recommendation

for admission of 95 applicants to the practice of law. A total of 122 candidates participated in the July 1977 examination.

In connection with admissions policy, the Board adopted two standards to be applied by the Committee of Law Examiners in the future. Only those exams with composite scores of 65% to 70% will be re-read. Furthermore, in the re-read process, only the California essay questions will be given a second reading.

A joint meeting with the Alaska Legal Services Board of Trustees had for it's topic the handling of ALSC conflict of interest cases. It was the recommendation of the Board of Trustees that a referral panel of attorneys to handle the cases on a pro bono basis be established by the Board of Governors. Further investigation by ALSC on the in-house handling of conflict cases and exploration by the Bar of a pro bono panel within the context of the lawyer referral service as well as potential funding sources for out of pocket expenses is to be undertaken before a final solution is adopted.

Other topics also considered were substantial revisions to the disciplinary rules in aid of simplification of procedure, a statewide attorney referral service, which was approved, and proposed revisions to applicant appeal procedures.

CONVENTION TAX TIPS

By: Dave Shaftel

The 1976 Tax Reform Act severely restricted the deductibility of transportation, food and hotel expenses incurred while attending foreign conventions. As will be seen below, these new rules do not apply to the bar association's planned convention in Kauai, Hawaii. However, a brief summary of these '76 Act provisions indicates the "belt-tightening" that will be necessary by the world-wide
(Cont'd on Page 11)

AMERICAN BAR ASSOCIATION
INFORMAL ETHICS OPINIONS

Informal Opinion 1386

Mary Carter Agreement
As Chairman of the Commission on Medical Professional Liability, you wrote this Committee asking for an opinion on the ethical aspects of a Mary Carter Agreement.

The Mary Carter Agreement takes its name from the paint company involved in the case and arises out of Florida where some, but not all, of the defendants settled with the plaintiff, but the amount the settling defendants had to pay under the agreement decreased as the amount the plaintiff recovered against the remaining defendants increased. Comparable agreements of this nature are sometimes referred to as "Guaranteed Verdict Agreements" where one defendant is released from liability but plaintiff is guaranteed he will recover not less than the stated amount, with the settling defendants thereby induced, if not required, to aid plaintiff in recovering from the remaining defendant or defendants.

There can be many variations of agreements of this nature under differing circumstances. Many courts have upheld them and ruled that they promote settlements which are in the public interest. There have also been pronouncements that they should be disapproved on the ground that they are deceptive and finance and prolong litigation, and, where insurance companies are involved, constitute champerty and maintenance. The decisions of the appellate courts are not uniform as to the validity, efficacy and propriety of agreements of this nature.

To the extent the issues are ones of law, this Committee is precluded under its rules from passing judgment on them. We, are, however, concerned with the ethical aspects of the lawyers' actions in consummating agreements of this nature and having their clients take advantage of them. In this respect, there are a number of Disciplinary Rules that might have a direct or remote bearing on various problems that arise from the existence of these agreements. The provisions of the Code of Professional Responsibility having application are:

"DR 1-102 Misconduct.

"(A) A lawyer shall not:

"(4) Engage in conduct involving dishonesty, fraud, deceit, or misrep-

resentation."

"DR 7-102 Representing a Client Within the Bounds of the Law.

"(A) In his representation of a client, a lawyer shall not:

"(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

"(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent."

If an attorney has entered into an agreement of this nature, the concealment of it or the failure to reveal it could be misleading and deceptive to opposing counsel, the court and the jury. Accordingly, we think that in the interest of complying with the intent of the quoted Disciplinary Rules a lawyer should reveal promptly to opposing counsel and to the court the existence of any agreements of this nature. This should be done in sufficient time for opposing counsel to be afforded an opportunity to take appropriate steps and employ proper procedures to safeguard the interests of his clients.

INFORMAL OPINION 1392

Division of Fees with Another Lawyer Who is Not a Partner in or Associate of His Firm Without Regard to the Services Performed and Responsibility Assumed by Each

You have requested that this Committee consider the division of fees as proposed by (Law Firm) of (City), (State).

The system proposed by (Law Firm) is aimed at forming a "national network of Resident Associates" who will be "ready to accept referrals and assignments of prepaid legal clients," in accordance with an established fee schedule. The fees to be charged are established by (Law Firm) and in their formalized system (set forth in several documents entitled "The Presentation," "Resident Associate Rules," and "Resident Associate Contract") there is a required division of fees between (Law Firm) and any lawyer or law firm to which a client is referred by (Law Firm). Such division of fees poses an ethical problem. DR 2-107(A) states that:

"(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

"(1) The client consents to em-
(Cont'd on Page 12)

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NEW MEMBERS

BAR MEMBERSHIP TOPS THE 1000 MARK

The number of active, licensed lawyers in the State climbed to approximately 1075 in October following admission ceremonies for 95 new lawyers who passed the July 1977 Bar Exam.

The new lawyers who were certified by the Board of Governors for admission in October, are:

Michael Arruda, Robert C. Bassett, Judith J. Bazeley, Thomas G. Beck, Steven S. Bell, Margaret A. Berck, Robert Blasco, Daniel N. Branch, Robert L. Breckberg, Rhonda F. Butterfield, Timothy R. Byrnes, John K. Cassity, Joseph M. Chomski, David M. Clower, Charles Cohen, Cynthia F. Covell, Teresa B. Cramer, D. Elizabeth Cuadra, Thomas Dahl, Dana Fabe, Gary J. Finnell, Michael W. Flanigan, Alexis G. Foote, Sarah Forbes, John Foster, John N. Garner, David D. George, Raymond Gillespie, Patrick Gilmore, Nancy R. Gordon, James M. Gorski, William Gotschall, Paul H. Grant, Gregory J. Grebe, Marc Grober, Eric Hanson, Dan A. Hensley, Steve C. Hillard, Elizabeth I. Johnson, Judson Lanier, George I. Lee, Valerie L. Leonard, Carl Larson, Doris R. MacKenzie, William D. McCool, Brant G. McGee, Patrick McKay, James A. MacKenzie, Robert A. Mintz, Joseph Moran, Dennis L. Nelson, Michael G. Oczkus, Steven Oliver, Randy M. Olsen, Eric Olson, Paul E. Olson, Robert M. O'Meara, Jan S. Ostrovsky, James Oswald, Grant Pankhurst, Jane Pearia, Mary Jane Pettigrew, William H. Pittman, James H. Plasman, Joseph Polanik, Stephen R. Porter, Robert A. Rehbock, Thomas H. Robertson, William J. Rold, Virginia A. Rusch, James M. Seedorf, Walter Share, Edward B. Simpson, III, Randall G. Simpson, Stephen M. Sims, John W. Sivertsen, Jr., Larri Spengler, Robert S. Spitzfaden, Donald L. Starks, Alex Swiderski, Linda O. Swiderski, Richard B. Swinton, Ann E. Taffel,

Elizabeth S. Taylor, Waller Taylor, III, Gerritt Van Kommer, Diane Vallentine, Kenneth E. Vassar, James R. Webb, George Weiss, Barbara J. Williamson, Joyce Wolfe.

Richard L. Block, William R. Hulen, C. Richard Turnbow and Thomas J. Yerbich.

LAWYERS FAVOR SPECIALIZATION

REJECT RECERTIFICATION, SAYS ABA POLL

Most lawyers favor specialization but reject the concept of recertification, an American Bar Association Journal poll shows.

The survey, taken in August by Quayle, Plesser and Company, Inc., also showed that a majority of the legal profession favors continuation of limited interstate reciprocity for the right to practice.

Results of the survey are being published in LawPoll, a special feature in the December ABA Journal. The results are based on 602 telephone interviews conducted during the last week of August with a random sample of ABA Members.

By a margin of 70 to 16 per cent, lawyers supported the idea of certifying specialists and permitting them to publicize their preferred areas of practice.

Fifty-nine per cent of the lawyers surveyed said they oppose instituting procedures for periodic relicensing examinations; 35 percent notched approval. The examinations would determine whether a lawyer could continue to practice.

On the question of reciprocity--the privilege of being able to practice in another state without passing that state's bar examination--60 per cent said they preferred to leave things as they are as opposed to 36 per cent who said they favor extending reciprocity to provide full interstate practice. Currently, reciprocity is handled on an individual state-by-state basis.

HAVE YOU MOVED LATELY???

The Bar Office would like to remind members to notify the Bar Office when you have a change of address. We receive many "returned" mailings because of incorrect addresses. It is IMPORTANT to both you and the Bar Office to make address changes whenever necessary.

conventioners of the Alaska Bar.

Only two foreign conventions per year, selected by you, can qualify for deduction of travel expenses. Transportation fare deductions are restricted to coach or economy rates, and the full amount of the fare may be deducted only if more than one-half of the total days of the trip (excluding transportation days) are devoted to business related activities. Otherwise, the transportation deduction is limited to the percentage of the fare equal to the percentage of the days of the trip devoted to business activities.

The deduction of food, hotel, local transportation, and similar expenses is subject to more drastic restrictions. These items may be deducted only if during the day when they were incurred the convention had at least six hours of schedule business activities, and you attended at least two-thirds of these activities (a one-half day approach is also provided.) The legislative history establishes that "business activities" under this test are to be narrowly defined, and they do not include social functions. For example, if the convention includes a dinner banquet with a speaker, only the time attributable to the speech can be included, and then only if the speech is business-related. You may avoid this day-by-day qualification by electing an alternative test which focuses on your total attendance during the entire convention, and then applies the two-thirds test. Whichever test is chosen, both you and a convention official must submit written, signed statements verifying your attendance record. Also, if you fail to keep your transportation records separate from your food, hotel and similar expense records then all of these costs will be subject to the harsher rules applicable to the latter category. Finally, even if you satisfy the attendance requirements, food, hotel and similar expenses are limited to the per diem rate of federal civil servants. All of the foreign convention restrictions apply to employers as well as employees, and therefore a professional service corporation is not a vehicle for successful avoidance.

Happily, none of these rules apply to the upcoming Alaska Bar Association's mid-year convention in Hawaii. Contrary to some misconceptions, the reform act does not define "foreign" similarly to the military's definition of "overseas," used for

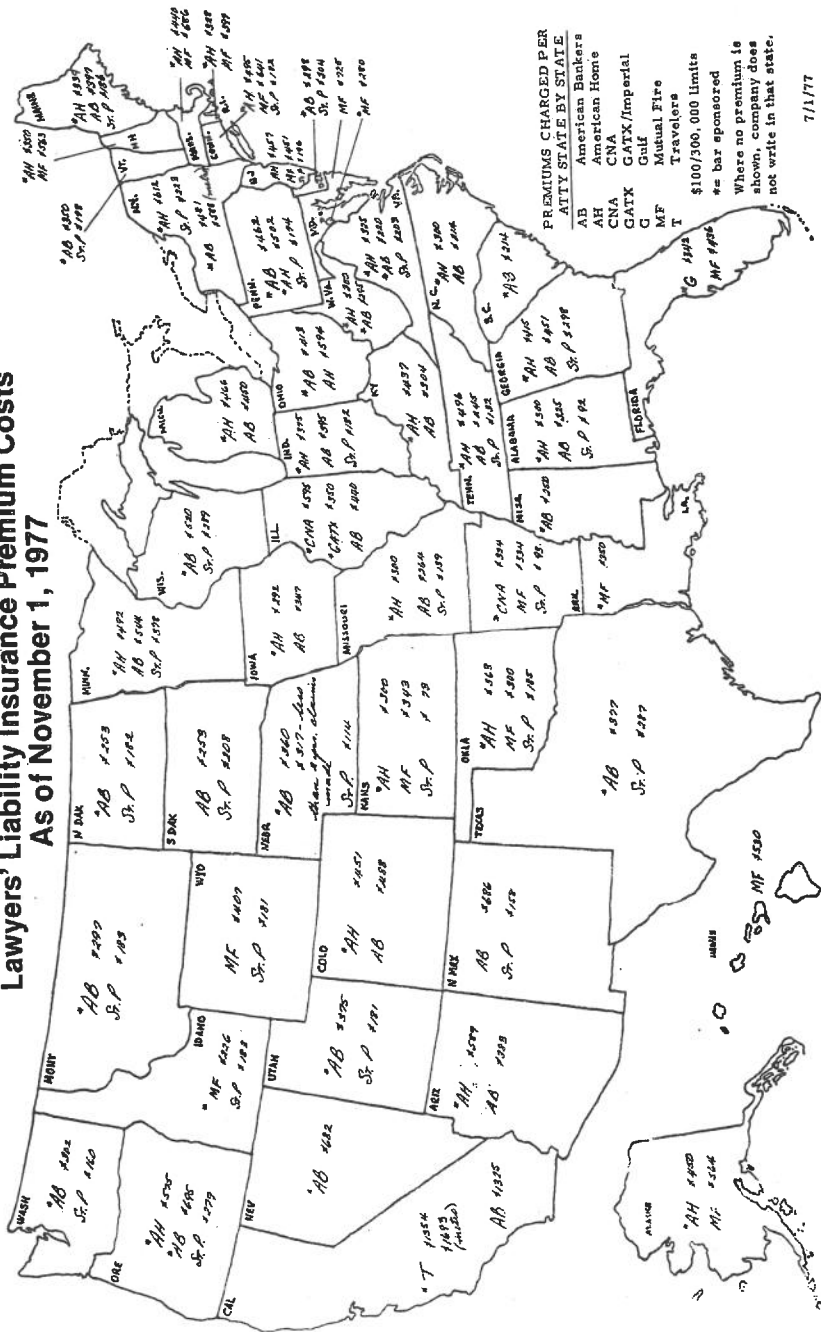
determining pay. Rather, the act defines "foreign convention" as a "meeting held outside the United States, its possessions, and the Trust Territory of the Pacific." Therefore, the deduction of expenses for the Hawaii convention will be governed by the following, pre-reform act, law.

As long as the trip is primarily related to your trade or business, the entire transportation fare is deductible (whether or not more than one-half of the trip was devoted to business activities.) The fare is not limited to the cheapest rate available, but only is restricted against extravagance (leave your 180 at home.) Reasonable tips relating to transportation are also deductible. However, if you are bringing your spouse along, then your spouse's transportation (as well as food, hotel, and similar expenses) is not deductible, unless you can show that your spouse's accompaniment serves a "bona fide business purpose," and is not "mere performance of incidental services." The Internal Revenue Service adds that your spouse's presence must be "essential" before a deduction will be allowed.

Food, hotel and similar expenses are fully deductible for the convention portion (as opposed to the vacation portion) of the trip, as long as these expenses aren't extravagant. While your spouse's expenses of this type probably will not be deductible, you may deduct the full amount of what an item would have cost if you were alone (e.g., full cost of a single room), even though the cost for you and your spouse is not twice as much. Tuition costs relating to the convention are deductible, and interestingly, so are the laundry, cleaning and pressing expenses.

In addition to the types of costs already discussed, it is likely that the conventioner will incur entertainment expenses, such as taking others to dinner, theater, nightclubs and sports events. Briefly, there are three main approaches to deductibility here. The first requires you to establish that the expense was directly related to the active conduct of your trade or business, and the Service's regulations make this test difficult to satisfy. However, the second and third approaches, when applicable, are easier to meet. The second establishes the deductibility of quiet business meals. Business doesn't actually have to be discussed, but the surroundings have to be conducive to
(Cont'd on Page 11)

Lawyers' Liability Insurance Premium Costs As of November 1, 1977



PREMIUMS CHARGED PER
ATTY STATE BY STATE

- AB American Bankers
- AH American Home
- CNA
- GATX
- GATX/Imperial
- G Gulf
- MF Mutual Fire
- T Travelers

\$100/300,000 limits
* = bar sponsored
Where no premium is shown, company does not write in that state.

7/11/77

Kauai, Hawaii (Cont'd from Page 1)

points of interest during their stay. There are three botanical gardens which are open to the public for a small fee. On the South shore there are the Plantation Gardens which feature one of the finest collections of cacti in the Pacific area. At Kalaheo an impressive variety of tropical flora and trees are on view at Olu Pua Gardens. At Nawiliwili near Lihue, an unusual assortment of flowers, shrubs and other Hawaiian plant life may be seen at the Menehune Gardens. In addition to these, the visitor may view Paradise Pacifica, an expansive 23 acre field of gardens, lagoons, exotic birds and a narrated train ride which meanders through a rain forest, a Japanese island, a Filipino village and a Polynesian village. Several nights a week there is a 75 minute program at Paradise Pacifica featuring dances and music of Hawaii, Japan, the Phillipines and Tahiti.

One of the most interesting trips on the island is a fascinating three mile jaunt by river launch up the Wailua River. At the end of the trip passengers disembark to explore the hauntingly beautiful cave luxuriously festooned with growing ferns, known as the Fern Grotto.

There is an exceptional bathing beach at Poipu Beach. Other beaches sprinkled around the island include the famous Lumahai Beach which was chosen for the nurse's beach in the motion picture South Pacific. This beach is unquestionably one of the most popular tourist spots on the island, and probably one of the most photographed as well.

Kauai is a mountainous island. Mount Waialeale is the principal mountain on the island. It is approximately 5,240 ft. high. The mountain is considered the world's rainiest spot. The average annual rainfall is approximately 486 inches. Mountain scenery abounds on Kauai. At Kalalau Lookout above Kokee Park there is one of the most breath-taking views in all the islands where the valley below drops 4,000 feet to the shores of the Pacific.

The valley is bounded by razor sharp cliffs sprinkled by many waterfalls. On the road up to Kalalau Lookout, the motorist passes Waimea Canyon, a baby Grand Canyon ten miles long which drops 2,857 feet. Mountain goats scamper along it's narrow ridges. Other mountain scenery may be found where the roads end on Na Pali coast. There mist-shrouded valleys beckon like Shangri-la, accessible only by

helicopter.

All of these visions of tropical beauty and splendor and many more besides await you this February in Kauai.

Estate Planning Seminar

(Cont'd from Page 1)

The seminar will focus on the 1976 Tax Reform Act. The videotaped presentations and the printed course material will be aimed at the practitioner with some experience in estate planning. The practitioner who deals with estate planning only occasionally, however, will also find some areas which will be especially interesting and challenging. Comprehensive treatment will be given to such estate planning problems as Will Drafting, Estate Planning for Real Estate, Estate Planning for the Corporate Executive, Marital Deduction & Orphan's Exclusion, Joint Property Problems, Valuation, Post Mortem Estate Planning, Income Taxation of Estate & Trusts, Practical Suggestions for Lifetime Gifts - Outright or in Trust.

The lecture portion of this seminar was videotaped by ALI-ABA at it's July 1977 Estate Planning Course in Madison, Wisconsin. Each lecture will be followed by a question and answer period in which a panel of experienced practitioners will discuss the preceding lecture and provide answers to the questions raised by the practitioners in attendance.

The registration fee for the seminar is \$110.00. Reservations may be made by writing the Alaska Bar Association, Box 279, Anchorage, Alaska 99510. Make checks payable to the Alaska Bar Association.

UNITED FISHERMEN (Cont'd from Page 1)

The program offers legal services to association members and their immediate families at fees which are 20% to 30% lower than the prevailing rates charged by attorneys in the surrounding communities. Also included in the services offered by the plan, are two free initial half hour consultations per member.

Participating law firms selected by the U.F.A. are: Wagstaff & Middleton and James D. Gilmore, Anchorage; Martin Friedman and John Rate, Homer; Ely, Guess and Rudd and Fred J. Baxter, Juneau, Ellis, Sund and Whittaker, Inc. Ketchikan; Ben L. Hancock, Kodiak; Greene, Kelly and Tobriner, San Francisco; Stafne and Hemphill and Boyd, Decker, Hanson & Swink, Seattle, Christianson, Royce & Stahla, Sitka; and Arthur Robinson, Soldotna.

discussion. Third, entertainment costs for activities such as dining out, theater, nightclubs, and sports events may be deducted if such activities precede or follow closely, (i.e. usually the same day), an actual "substantial and bona fide" business discussion. Such a discussion includes business meetings at a convention. Under this third approach, your purpose for incurring these entertainment expenses must be to obtain new business or to continue existing business relations. Again, the expenses must be reasonable; any extravagant portion will be disallowed. The entertainment expense area also provides a pleasant marital bonus: if the expense is otherwise deductible pursuant to the third approach, then spouse's expenses (yours and the spouses of the business associates whom you are entertaining) are also deductible. Since spouse's meals are generally not deductible absent such an entertainment atmosphere, this suggests the gambit of a number of couples nightclubbing together each evening, and alternatively picking up the check. However, the IRS has indicated that it will challenge the deductions resulting from such reciprocal meal groups.

In order to survive an audit, you must not only satisfy all of the applicable tests discussed above, but must also meet certain basic record-keeping requirements. You must record, usually in a diary, the following:

1. How much. 2. When 3. Where
4. What 5. Who and 6. Why.

For entertainment expenses, the "why" means the business relationship and the business purpose. The recording process must occur at the time the expense is paid, and it doesn't hurt to produce a tattered diary which underscores the contemporaneous quality of your record-keeping. A credit card receipt can be used as an alternative to the diary if all of the above information is entered on it at the time the expense is incurred. Also, you must state the dates when the trip began and ended, along with how many of the total days were actually spent on business. Generally, receipts are required for all lodging costs, and for all travel and entertainment expenses of \$25 or more. Alternative, more demanding, modes of proof are available if you fail to comply with the diary-receipt method.

Enjoy the Kauai surf - See you in Hawaii in February.

VIOLENT CRIMES COMPENSATION BOARD

Policy Regarding Attorney Fees for Claimants

The Board seldom awards the maximum attorney's fees allowable under AS 18.67.050. Rather, the Board evaluates requests for fees on a case by case basis and awards only that amount which fairly compensates the attorney for work actually done and which was reasonably necessary for processing of the claim. Since the review of claims is not an adversarial proceeding, and since the Board's own staff does all or most of the investigation, there is usually far less legal work needed than for a personal injury action under similar circumstances. In fact, it is not uncommon for the Board to make an award to a claimant on the basis of staff investigation alone, without even requiring a hearing. Occasionally, the Board will request a memorandum of points and authorities on some issue from a claimant's attorney, and this is taken into consideration when an award of fees is made.

MITIGATING THE RISK OF BECOMING A DEFENDANT IN A MALPRACTICE ACTION BY YOUR FORMER CLIENT

By Duke Nordlinger Stern
and Joanne Martin

Legal malpractice has reached crisis proportions and experts predict this frightening situation will continue to deteriorate. Attorney liability claims which were 3 or 4 per 100 policies a few years ago now average 6 or 7; the size of settlements, awards and defense costs have risen dramatically; annual increases in malpractice premiums of more than 100 percent are the rule rather than exception; and insurance protection is decreasing in both availability and breadth of coverage. The literature contains an increasing number of articles describing the legal malpractice trend and exploring its causes, but little is offered to the practitioner in the form of useful advice for avoiding liability claims.

Malpractice will always be a risk faced by the attorney and there are only a minimum of safeguards that are useful against pure inadvertance. However, there are significant steps that can be taken by the lawyer to mitigate professional liability exposure that

(Cont'd on Page 13)

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ployment of the other lawyer after a full disclosure that a division of fees will be made.

"(2) The division is made in proportion to the services performed and responsibility assumed by each.

"(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client."

The rules and agreements sent out by (Law Firm) do not provide for notice to or consent from the client on the matter of division of fees. If notice and consent were required by (Law Firm's) rules, the requirements of DR 2-107(A)(1) would be satisfied.

The uniform 10 percent fee split required by (Law Firm) does not establish a division of fees in proportion to services performed and responsibility assumed, as required by DR 2-107(A)(2). In those instances where (Law Firm's) services to the client consists solely of referral to the local law firm, (Law Firm) would not be entitled to any part of the fee. Formal Opinion 204 (November 23, 1940) states that where an attorney merely performs a referral function, rendering no other services to the client and assuming no responsibility in the matter, a division of fees is improper.

The purported "Associate" relationship of the correspondent (Law Firm) is not that intended by the word "associate" in the exemptive language of DR 2-107(A), "a lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm..." (See Formal Opinion 330, August 1972).

Therefore, the Committee is of the opinion that the (Law Firm) plan to the extent that it requires improper division of fees, violates the Code of Professional Responsibility as noted above.

NOTICE

HEARING OFFICERS NEEDED

The Violent Crimes Compensation Board is in need of hearing officers to conduct hearings on compensation claims. Must be licensed to practice law in Alaska. Per Diem and Travel expenses paid. Apply to Nola Capp, Administrator, Pouch H 02A, Juneau, Alaska 99811. Give date of admission to Alaska Bar and brief description of legal experience.

CLE Convention (Cont'd from Page 1)
Association; the Honorable Christopher
Cooke, Superior Court Judge, Bethel,
Alaska; Don Clockson, Attorney, Alaska
Legal Services; and Frank Flaven,
Alaska's first ombudsman.

The panel will address federal,
state, judicial and consumer movements
for reform of the legal profession;
their various claims, demands and pro-
posed methodology for affecting changes
in the practice of law; the likelihood
of successful reform in specific areas
of practice; and the affect of all
these pressures upon the lawyer, the
courts, and the ultimate consumer, the
public.

The second and third day's pro-
gram under the direction and control of
Henry J. Camarot will address the topic
of the general practitioner advising
the Alaska business. The program will
deal with practical problems encounter-
ed by the general practitioner counsel-
ing Alaska businessmen. The course
will include an extensive desk book
edited by Henry J. Camarot and written
and prepared by the faculty of the sem-
inar. Proposed topics and speakers for
the second and third day's program in-
clude: Introduction, Henry J. Camarot;
Selecting the Proper Entity for New
Businesses, Hoyt Cole; Organizing Cor-
porations Including Foreign Corpora-
tions, Douglas L. Gregg; Partnerships
Including Limited Partnerships, Peter
Lekisch; Directors and Officers Re-
sponsibilities, Professor Douglas N.
Branson, University of Puget Sound Law
School, Tax Ramifications Regarding
Business, Professor Milt Gray, Univer-
sity of Oregon Law School; Security
Laws Involving Small Businesses, Miles
Schlosberg and Mark Copeland; Financ-
ing of Small Businesses, Craig Ball;
Acquiring and Disposing of Going
Businesses, Carl Ege, Attorney, Bogel
and Gates, Seattle, Washington.

In addition, there will be video-
tape programs available to members dur-
ing the three day program. These in-
clude: malpractice, starting a law
office and Irving Youngers new program
credibility on cross examination.

Malpractice Action (Cont'd from Page 7)
results from methods of practice. By
modifying or reorganizing the manage-
ment and techniques of practice an at-
torney might be able to better serve
clients and protect his assets. This
note will offer legal malpractice loss
control suggestions incorporating claim
statistics, the Code of Professional
Responsibility, litigation experience
and conditions in the liability con-
tract.

USING MALPRACTICE CLAIMS STATIS- TICS TO YOUR ADVANTAGE.

Although lawyer professional lia-
bility insurers have generally been re-
miss in gathering useful statistics as
to the causes of claims, the limited
information available from these sources
and other studies point to a few speci-
fic causes of malpractice. Attorneys
who analyze and adjust their own prac-
tices to avoid these problem areas
would be implementing the beginning of
useful loss prevention.

Statute of Limitations


Lawyer malpractice is the most
common cause of professional liabil-
ity claims. As a result, the policy
applications of all carriers require
detailed explanations about the at-
torney's docket control system. Un-
derwriters reportedly pay close atten-
tion to the responses to these ques-
tions. Unfortunately, there are many
areas of practice and numerous points
in each at which a critical date can
be missed. Insurance statistics have
not been collected or refined to iso-
late the high exposure missed statute
situations.

There are a number of docket con-
trol systems available for adoption.
The key to an effective system is not
so much the one selected, but rather
the diligence with which the selected
procedure is adhered to. Therefore,
an attorney must be certain that (1)
each member of the firm understands
and uses the docket control system,
(2) one member of the firm or quali-
fied employee is charged with super-
vising the system, (3) immediately up-
on acceptance of a matter it is in-
corporated into the docket system, (4)
each attorney with primary responsibil-
ity for a matter should frequently re-
check to be certain all critical dates
are correctly noted and followed, and
(5) the person supervising the system
should spot check each matter on a
frequent basis.

Too often in the day-to-day prac-
tice of law an attorney forgets to
follow the primary requirement of an
(Cont'd on Page 14)

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Malpractice Action (Cont'd from Page 13) effective docket control system. As a result, preventable malpractice claims occur.

Real Estate Practice

The second most frequent area in which lawyer malpractice claims arise is real estate practice. Again, the statistics do not describe what situations are most vulnerable in this area. For example, do claims arise most often in the preparation of documents, search of title, giving of tax advice, closings, litigation of real property suits or other areas?

Often in real estate practice because of the volume of matters handled certain procedures tend to become routine and advice generalized. Attorneys who specialize in this area and even those who handle only a few real estate problems are advised to keep alert.

Abuse of Process; Wrongful Garnishment or Attachment

There has been a disturbing increase in the number of legal malpractice claims based on abuse of process, and wrongful garnishment or attachment. The circumstances underlying these claims are not clear from the insurers' experience data. However, it would appear they result from lawyer carelessness since the rules in these areas do not usually require unique expertise.

With clients and third parties demonstrating an increasing awareness of compensable injuries in these areas, attorneys are cautioned to be certain their office practice encompasses the requisite procedures. Often a legal assistant or secretary is delegated the task of preparing the forms, and the practitioner should be certain to verify their correctness and service.

Improper Handling of Tax or Estate Matters

Because of the expertise required for a successful practice in taxation, and estate planning it is not surprising that professional liability insurers are reporting an increase in the number of claims in these areas. The general practitioner with the aim of malpractice loss prevention should consider associating specialists when his client's matter goes beyond the elementary stages.

LET THE CODE OF PROFESSIONAL RESPONSIBILITY BE YOUR GUIDE

The question is often raised as to whether every act or omission which gives rise to a supportable malpractice claim also can be the basis for a disciplinary proceeding based on breach of

ethics, or conversely if a lawyer faces a disciplinary action whether it is reasonable to expect a malpractice claim to follow. The answers to these questions have both affirmative and negative possibilities.

Presently the majority of state bars are unified and have as one of their charges the enforcement of ethical conduct by attorneys. Even those jurisdictions with voluntary statewide bars have separate disciplinary agencies established by the supreme courts. The enabling rules of court which create the mandatory bars or other agencies most often enumerate specific grounds for disciplinary action and usually "malpractice" is specifically one such basis. Even where the standards are silent as to malpractice, the Code of Professional Responsibility is incorporated specifically or by reference, and DR6-101 and other Disciplinary Rules imply that malpractice is a ground for discipline.

In practice, however, the various supreme courts that have considered malpractice in a disciplinary proceeding have concluded that unintentional inadvertence is not an actionable legal ethics violation. Nonetheless, the Code of Professional Responsibility can be critically instructive to the lawyer who wants to practice malpractice claim prevention since the legal professional liability case law is replete with situations that bear close similarity to violations of the Disciplinary Rules.

Conflicts of Interest

Two years ago attorney professional liability insurers reported that conflicts of interest was the cause of less than five percent of malpractice claims. Today this area represents 22 percent of the legal malpractice claims brought against one of the two remaining national insurers.

DR5-101 (A) provides:

Except with the consent of the client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgement will be or reasonably may be affected by his own financial, business, property, or personal interests.

DR5-105 (c) states:

...a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full dis-

(Cont'd on Page 15)

COMINGS & GOINGS

The Law Firm of PETTYJOHN AND PESTINGER announces the relocation of their offices to 716 W. 4th Ave., Anchorage.

ROBERT M. GOLDBERG and DOUGLAS P. ELLIOTT announce the formation of a partnership under the firm name of GOLDBERG & ELLIOTT and the relocation of their law offices to 1107 W. 7th, Anchorage.

BILL and HOLMES announce the relocation of their offices to 618 Christensen Dr., Anchorage.

DAVID G. SHAFTEL announces the opening of his office at 425 G St., # 700, Anchorage.

The Bar Office has received a change of address for the following:

PETER LABATE, RR 1, Box 499, Sequim WA 98382; C.J. OCCHIPINTI, BHA-Federal Office Bldg. Rm.430, 211 E. 7th Ave., Eugene, OR 97401; ROBIN TAYLOR, Box 869, Wrangell; RICHARD M. BURNHAM, RR 3 - Box 3091, Juneau; THOMAS F. KEEVER, 212 Nerland Bldg., Fairbanks; ROBERT BREEZE, SRA 1458C, Anchorage; L. BEN HANCOCK, P.O. Box 481, Kodiak; EDWARD J. FYFE, 1049 W. 5th #105, Anchorage; ALEC W. BRINDLE, P.O. Box 5030-University Station, Seattle, WA 98105; ANDREW J. KLEINFELD, 543 3rd Ave., Fairbanks; ALEXIS G. FOOTE, Box 143, Anchorage; THOMAS B. BURNBULL, Drawer 1180, Kenai; ROBERT WAGSTAFF, 912 W. 6th Ave, Anchorage; RICHARD G. LINDSLEY, 1211 Pacific #10, Santa Cruz, CA; W.C. ARNOLD, 630 W. 4th Ave. #302, Anchorage; R. COLLIN MIDDLETON, 912 W. 6th Ave, Anchorage; JAMES S. MAGOFFIN Box 81248, Fairbanks; DAVID C. STEWART, 602 Barnette St., Fairbanks; PATRICK A. SHEEHAN, 603 Laurel St., New Orleans, LA; ROBERT BRECKBERG, Box 993, Kodiak; WILLIAM R. SATTERBERG, 604 Barnette #233, Fairbanks; CONNIE J. SIPE, 2662 Lovejoy Dr, Anchorage; RANDALL J. LUFFBERRY, Box 896, Palmer; KEITH E. ABBOTT, 525 University Ave # 1005, Palo Alto, CA; DOUGLAS R. DAVIS 430 C St. #301, Anchorage; ANN E. TAFEL, 1058 W. 27th #208, Anchorage; TERRY L. JOHNSON, 711 H St. #600, Anchorage; PAUL S. WILCOX, 2702 Denali, Anchorage; ELAINE ANDREWS, 80 Loree Lane, Millbrae, CA; WILSON A. RICE, 835 D St #201, Anchorage; MICHELLE V. MINOR, 425 G St. #500, Anchorage; THOMAS P. BLANTON, General Delivery, Haines; DOUGLAS A. RIGGS, 444 N. Capital St. #345, Washington, D.C.; MARCIA E. WHITE, Pouch U, Juneau; DORIS LOENNIG, 613 Cushman St. #206, Fairbanks; PETER C. PARTNOW, 360 K St. # 264, Anchorage; G. KENT EDWARDS, 717

K St. #102, Anchorage; JANIS C. WILLIAMS, Box 2915, Kenai; RICHARD F. DEUSER, 630 W. 8th #304, Anchorage; MARGARET RAWITZ, 814 W. 2nd #A, Anchorage; ROBERT L. WOODWARD, SRA 118A, Anchorage; ELIZABETH I. JOHNSON, 310 K St. #408, Anchorage; JOSEPH W. EVANS, SRA Box 134X, Anchorage; JAMES D. DEWITT, 1919 Lathrop #206, Fairbanks; WILLIAM W. GARRISON, 360 K St. #240, Anchorage; EDWARD F. PETERSON, Rt.1-Box 1109A, Ketchikan; KENNETH M. ROSENSTEIN, Pouch Y, Juneau; ERIC A. EISEN, 3327 Military Rd.N.W., Washington, D.C.; THOMAS WALDOCK, 921 W. 6th, Anchorage; G. CHARLES SCHMIDT, 4741 Newcastle Way, Anchorage; KAREN KIRBY, 2638 Redwood Ave, Anchorage; DAIL PARK, P.O. Box 4-2174, Anchorage.

Malpractice Action (Cont'd from Page 14)
closure of the possible effect of such representation on the exercise of his independent professional judgement on behalf of each.

With the foregoing Disciplinary Rules in mind the lawyer is advised to beware of the following situations:

1. Falling into the conflict trap through dual representations, e.g. representing lender borrower, mortgager and mortgagee, vendor and vendee, insured and insurer or husband and wife. Respecting representation of an insured and insurer, for example, in defense of an action under a policy, there are numerous situations where the interests of the defendant and his carrier will become adverse and the attorney will be caught in the middle. Even the most amiable intended divorce actions can give rise to conflicts and exposure to malpractice claims if the attorney continues to represent both parties. The best advice is to avoid a possible conflict of interest from the beginning and represent only one party. Avoid temptation and avoid claims.
 2. An attorney who represents both the administrator and the estate could be faced with a conflict. See ABA Informal Opinion 836 (1965).
 3. The situation of representing a guardian ad litem. The duties owed to both the court and to the minor or incompetent can give rise to problems.
 4. Representation of multiple plaintiffs or multiple defendants in a tort action. For example, how can you urge a particular course of action such as an aggregate settlement when your client's interests are not identical?
 5. Testifying to a matter in dispute
- (Cont'd on Page 16)

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Malpractice Action (Cont'd from Page 15)

between parties who are in litigation when you are still serving as an attorney of record. Avoid the inconsistency and a possible malpractice claim. The duty to withdraw is stated by DR 5-102(A), while DR 5-101(B) applies if a member of your firm is to be a witness.

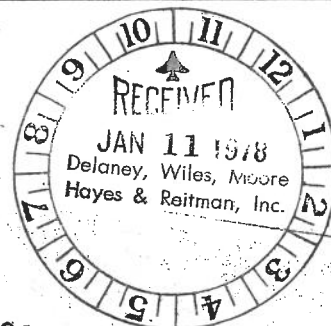
(To be Continued in Next Issue)

CALENDAR OF EVENTS ALASKA BAR ASSN.

- | | |
|---------------|---|
| Jan. 12-13-14 | - Seminar "Estate Planning in Depth" Anchorage |
| Feb. 9-15 | - ABA Mid-Winter Meeting New Orleans |
| Feb. 16-18 | - Western States Bar Convention Scottsdale, Arizona |
| Feb. 21-22-23 | - Bar Examination Anchorage, Fairbanks, Ketchikan, Juneau |
| Feb. 23-26 | - Alaska Bar Mid-Winter Meeting Kauai, Hawaii |
| June 9-10 | - Alaska Bar Business Meeting Fairbanks |
| July 25-26-27 | - Bar Examination Anchorage, Fairbanks, Ketchikan, Juneau |
| August | - ABA Convention New York, New York |

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