

# ALASKA BAR BRIEF

THE QUARTERLY NEWSLETTER OF THE ALASKA BAR ASSOCIATION

VOL. 7

APRIL, 1978

NO. 1

## PRO BONO

BY: KEN JARVI

Many people in the legal profession believe that pro bono service by private practitioners was laid to rest with the creation of the Public Defender's Office and Alaska Legal Services. This myth has been dispelled. Art Snowden, Administrative Director of the Court, advises that Public Defender conflict cases continue to create an unresolved problem. Don Clocksin, Chief Counsel for Alaska Legal Services, states that Alaska Legal Services conflict cases constantly arise and assistance is frequently not available.

Clocksin first addressed the problem of his agency's inability to obtain representation for their conflict cases. He did so at a joint meeting of the ALSC Board and the Alaska Bar Association Board in October 1977 in Kodiak. At that time he requested action from the State Bar Association in providing attorneys to represent otherwise qualified ALSC clients who were in a conflict situation. One suggestion arising from the October meeting was that all active members of the ABA be required to perform pro bono services on a rotating basis. This proposal was not limited to private practitioners only.

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## PRO BONO

by: DON CLOCKSIN

The serious dilemma addressing the members of the bar is how legal help is going to be provided to those who need it but don't get it. There is no question that it should be provided, for individual lawyers have an ethical responsibility to see that the poor receive legal help.

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## BUSINESS MEETING BOMBHELL!!

By: Harry Branson

This year's Alaska Bar Association's Business Meeting in Fairbanks on June 9th and 10th, 1978, promises to be an unusually controversial and challenging event to Alaskan attorneys. The membership may expect the following propositions to be included among the resolutions before them for adoption or rejection.

1. THAT ATTORNEYS SHOULD BE PERMITTED TO ADVERTISE THEIR SERVICES BY ANY LEGITIMATE OR LAWFUL MEANS AND BE PERMITTED TO SAY ANYTHING ABOUT THEMSELVES OR THEIR SERVICES SO LONG AS THEIR ADVERTISING IS NOT UNTRUE, FRAUDULENT, OR MISLEADING TO THE PUBLIC
2. THAT EACH ACTIVE ATTORNEY IN ALASKA REGARDLESS OF HIS EMPLOYMENT MUST ACCEPT A CERTAIN NUMBER OF PRO BONO CASES EACH YEAR OR GIVE A CERTAIN SPECIFIED ANNUAL AMOUNT OF TIME OR MONEY TO PRO BONO REPRESENTATION IN ORDER TO REMAIN LICENSSED TO PRACTICE LAW IN ALASKA
3. THAT THE ALASKA BAR ASSOCIATION SET UP AND RUN A LEGAL CLINIC FOR LOW-INCOME AND MIDDLE-INCOME PERSONS WHO ARE DEEMED INELIGIBLE FOR ALASKA LEGAL SERVICES REPRESENTATION AND CANNOT AFFORD PRIVATE COUNSEL WITHOUT REDUCED RATES
4. THAT IN ORDER TO PRACTICE LAW IN ALASKA EACH ACTIVE ATTORNEY REGARDLESS OF HIS EMPLOYMENT MUST PARTICIPATE IN 24 HOURS OF CONTINUING LEGAL EDUCATION PROGRAMS ANNUALLY
5. THAT EVERY ATTORNEY IN ALASKA BE REQUIRED TO PARTICIPATE IN A MANDATORY MALPRACTICE SELF-INSURANCE PLAN OR LOSE THE LICENSE TO PRACTICE LAW

Concluded on p.8

The Board of Governors has been taking steps to identify attorneys who will provide pro bono services voluntarily. This occurred as part of the state-wide referral system now in operation. The Board has been reluctant to mandate by Board Action a requirement that all active ABA members perform pro bono services. The Board's current feeling is that the matter be decided at the Fairbanks convention.

The problem is difficult. First, what is the definition of pro bono? Does it include an attorney advancing costs from his own pocket? Second, does it include an hourly rate that pays to the private practitioner only his overhead or a portion of it? Third, does it include community service of a legal nature including participation in speeches and seminars on legal topics?

An even more penetrating question exists: Should all active members of the bar be required to participate in a mandatory pro bono system? Why discriminate against the private practitioner?

Connected with the question of who is the question of How? Will administration of a mandatory pro bono scheme take place through the newly re-staffed ABA office? Will an attorney to show compliance have to submit an affidavit and time records? What if he doesn't? Does Bar Counsel then move for the attorney's suspension from practice? Will the attorney be suspended until he complies?

The conflicting philosophical issues that underlie mandatory pro bono are intriguing. First, lawyers are a licensed public service monopoly so therefore conditions can be placed on that license. The counter argument addresses the question of whom should bear the cast burden of our system of justice. Should the attorneys? Or should the public? The legal profession certainly can argue that there is no reason to surtax it by placing on top of each lawyer's personal tax burden the added burden of mandatory pro bono-- a system subsidy. In addition, if in fact the public benefits from a system of justice that provides access to the needy, should not that

public pay that bill at a fair price?

Alternative solutions to mandatory pro bono exist. Art Snowden advises that the Court System now is considering pursuing a government contract concept to obtain representation in public defender conflict cases. Also under consideration is creation of a separate government conflicts agency. This first solution would involve private firms on a request for proposal basis, then subsequently negotiating a contract and having that firm handle all P.D. conflicts. The ALSC conflicts could be handled through a separately established agency, either within ALSC or perhaps run by and funded by the State Bar Association. Such a program would have to seek funds outside of Bar dues. The current State Bar executive director, a person with past experience in such matters, advises such funds may be available.

In criminal conflict cases the private firm has been bearing the burden of appointments through the court system. In Fairbanks every attorney gets these appointments. In other parts of the state, most notably Anchorage, the responsibility has not been so widely distributed among the bar. The burden to the private practitioner is that he gets compensated at \$35.00 per hour. The December 1977 Economic Survey indicates that average law office overhead is in the \$35.00 per hour range. Thus, in these cases, the private practitioner is paid nothing for his professional time--truly pro bono work. Art Snowden advises that as a result of dialogues between the Board of Governors and the Court, the rate has been raised to \$40.00 per hour. Certainly not compensating, but all that budget restrictions of the court system allow.

Mandatory pro bono is a complex, controversial subject. Its notions cut at the core fiber of the profession. The concept gained credibility when Chief Justice Boochever spoke to the members at the midwinter meeting in Kauai. The Chief Justice addressed the problems of the future of the profession and he noted that the time may be near when a system of tithing of time in the performance of probono work would take place.

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer...Every lawyer, regardless of professional workload, should find time to participate in serving the disadvantaged.

Ethical Consideration 2-25.

One method for providing legal assistance is to place the obligation on the legal profession. This can be done one of two ways--voluntarily or mandatorily. There are problems with both voluntary and mandatory plans, but the members of the bar have an obligation to seriously address those problems and attempt to solve them. This article can do no more than briefly touch on the issues and remedies as I see them and it should be considered only a starting point for discussion and maybe even a solution.

Voluntary pro bono efforts could take the form of money or time. The problem with money is that, with only 1000 lawyers, and fewer actually contributing, the contributions would have to be extremely high to be helpful. On the other hand, the problem with volunteering time is that some conscientious lawyers fear they will be inundated by cases if there are a limited number of volunteers.

Mandatory pro bono could be implemented in several ways--a mandatory increase in bar dues, a mandatory minimum number of hours of pro bono work, or an annual showing, like a utility or radio or tv station, that substantial time has been spent on pro bono activities before a license to practice law is renewed. See Tucker, "Pro Bono ABA?" in Verdicts on Lawyers, at 31 (Nader and Green, ed. 1976).

The increase in bar dues has some merit because it would avoid the obvious problem of attorneys not competent in certain areas of the law being forced to contribute hours of representation in those areas. The problem of incompetence is not so severe as perhaps in criminal work (though lawyers are presumed to be competent in all areas of the law, and the admission they are not makes me think the public is being misled as to attorney competence), but more serious when a pro bono attorney seeks to represent an indigent in something other than a run-of-the-

mill case. As one source has observed,

"When cases arise involving more subtle civil liberties questions, private practitioners who spend more of their working lives defending business interests may be 'culturally' unable to comprehend the issues from a plaintiff's point of views."

Tisher, et al., Bringing the Bar to Justice, at 133, (Public Citizen, 1977).

Requiring each attorney to perform a minimum amount of work is said to produce some serious constitutional questions. However, as one author who opposes such compulsory pro bono has admitted:

The vast majority of published opinions have rejected arguments that failure to compensate for such an appointment constitutes a taking of property without due process or without just compensation or imposes involuntary servitude. See, e.g., State v. Rush, (1966) 46 N.J. 399, 217 A.2d 441, 21 ALR 3rd 804; U.S.v. Dillon, (9th Cir. 1965) 364 F.2d 633.

Adler, supra, at 26.

One approach which may ease the perceived constitutional pressures on a mandatory plan could be to give the lawyer a choice of paying money or providing time.

"A realistic concern for both clients and lawyers alike leaves no other choice than to allow a lawyer the option of whether to do the actual work or to provide the financing for a surrogate who wants to do it."

Tucker, "Pro Bono ABA?", supra at 28.

The ultimate question to be answered before mandatory pro bono could be implemented is the extent to which an ethical obligation is enforceable. On the one side it is argued that each person's moral and ethical duties can only be internally and privately enforced. These people attack the "impropriety of attempting to enforce such moral obligations through the use of legal sanctions..." Adler, supra, at 25.

ABA HOUSE OF DELEGATES AT

THE 1978 MIDYEAR MEETING

By: Keith Brown

The American Bar Association's House of Delegates held its 1978 mid-year meeting in New Orleans on February 13 - 15. Alaska was represented by its incoming State Delegate, Richard Gantz, and by me in my capacity as the Alaska Bar Association's delegate. Among the recommendations of the ABA's standing and special committees approved by the House was the resolution sponsored by the Section of Individual Rights and Responsibilities relating to discrimination against pregnant employees. The resolution provides "...that the American Bar Association supports federal and state legislation assuring that prohibition against sex discrimination in employment will also prohibit discrimination because of pregnancy". The resolution supports legislation which would circumvent the Supreme Court's ruling in General Electric v. Gilbert, 429 U.S. 125 (1976) holding that GE's temporary disability benefits insurance plan which excluded payments to disabled pregnant workers did not violate Title VII of the Civil Rights Act of 1964. Limitations of length do not permit a description of the heated debate on this subject; suffice it to say that the resolution ultimately passed on a vote of 159 - 100.

One of the more controversial recommendations to be heard by the House was the Family Law Section's proposal to condemn child stealing and recommend appropriate steps to eliminate or mitigate such activity. Specifically, Report 103A recommended that Congress take steps to require the Attorney General of the United States to direct U.S. Attorneys in the various states so as to require that the Fugitive Felon Act be interpreted to apply generally to child stealing by parents as well as kidnapers. The provision would apply to violations of custody orders and agreements. Although both Dick Gantz and I were impressed with the statistical evidence of child stealing by parents, we were not in favor of the broad proposals urged by the Family Law Section which include amending the Lindberg Act to classify child stealing by parents across the state boundaries as a federal offense. The

measure failed by a voice vote of 82 - 135.

Among the reports approved were the reports of the National Conference of Commissioners on Uniform State Laws as to approval of the Uniform Land Transaction Act, the Uniform Simplification of Land Transfers Act, the Uniform Condominium Act, and certain amendments to the Article 8 of the U.C.C. and Article 2 of the Uniform Probate Code. The voting on the U.L.T.A. and U.S.L.T.A. was extremely close, the latter passing by the narrow margin of 120-119. As I recall the vote, Dick Gantz and I split on this issue; in any event, the narrowness of the passage of this measure underscores the importance of a single vote. Passage of these measures, of course, does not mean that they will or should be adopted by each of the various states. However, the ABA's imprimatur is required by the Commission on Uniform State Law to complete their drafting and revision process.

One act having direct impact on the profession with perhaps particular significance to Alaska is the Uniform Comparative Fault Act; action on that measure was deferred until discussions with interested sections have been completed. Copies of that act are available in the Alaska Court System libraries throughout the state. Your comments on future action concerning the act are solicited.

My report would be incomplete without some reference to the vote on the Illinois State Bar Association's resolution requesting Chief Justice Burger to publicly repudiate statements attributed to him concerning professional incompetency of American lawyers. Although the Chief Justice's remarks were highly publicized and generated considerable disagreement among house members, the consensus was that there was much to lose and nothing to be gained in further public debate with the Chief Justice on the subject.

The Standing Committee on Professional Discipline's proposed standards relating to Judicial Discipline and Disability Retirement were approved by voice vote, not without some debate over a proposal to include incompetence as a basis for removal. The incompetence proposal was so clearly unpalatable to segments of the Appellate Judge's Conference and other groups as to jeopardize passage of the

ABA House of Delegates(Contd. from p.4)  
measure. As a result, the Alaska delegates as well as most of the members of the House found themselves in the position of supporting standards which do not provide for the removal of incompetent judges. The irony of the circumstances with which the House was confronted was not lost to those present.

Members of the Alaska Bar can expect to see some preview of the issues to be before the House at its annual meeting in August in succeeding issues of the bar brief.

Complaints were made by several delegates to the ABA staff regarding the lateness with which the reports were received prior to the midyear meeting. We have been promised that the situation will be rectified. If so, it will again be possible to notify the local Bar Association as well as the Board of Governors of matters appearing in the House of Delegates calendar to insure adequate input from the Association members. Your questions and comments are sought on all issues involving ABA actions.

#### FROM THE ASSOCIATION OFFICES

Mary Lafollette resigned as Executive Director in February following more than nine years of dedication and hard work for the association. During her tenure membership in the Alaska Bar grew at an astounding rate, from approximately 450 members in 1968 to more than 1000 on the present roster. Mary intends to do some travelling before making future plans.

Loyette Goodell was hired by the Board of Governors to fill the job on a temporary basis for a maximum of six months and until the board can recruit and hire a permanent replacement. Loyette was the former Executive Director of Alaska Legal Services and has a background in administration and management.

With the exception of one change, staff in the association office has remained the same. Bill Garrison is bar counsel, Laura Spickelmier is the disciplinary secretary, Willie Jones is the office manager, Mary Blount, Bookkeeper, and Mickey Smith is receptionist and lawyer referral clerk.

The staff has concentrated on reorganizing internal structures, doing some housekeeping, and developing new procedures for handling the business of the bar. In an effort to provide more and better services to members

of the association, we have secured about 500 square feet of additional space in the Australaska building into which the disciplinary unit moved. The landlord has installed new carpeting in the old office, and plans to paint doors and walls of the present offices. We invite members to stop by and see the newly refurbished offices.

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#### STATE-WIDE LAWYER REFERRAL SERVICE

by: KAREN HUNT

The Alaska Bar Association has chartered a State-Wide Lawyer Referral Service in response to public demand for more information about the availability of legal services. The state-wide referral service replaces the Anchorage Referral Service and the Discrimination Referral Service. Any member of the Alaska Bar Association can voluntarily join by registering in five categories of law and paying \$25.

Advertisements are scheduled to begin on May 1 throughout the state. The Anchorage Bar Association Board of Directors has agreed to contribute \$160.00 per month for newspaper advertising in the Anchorage area. The Tanana Valley Bar Association has contributed \$500.00 for advertising in newspapers in the Fairbanks area.

The requests for lawyer referral service are made by telephone or by mail. Upon receipt of a request, the Bar Association office gives the citizen the names and addresses of three attorneys in the geographical area in which the caller resides. The referrals are made in the area of law in which the citizen seeks legal advice. Each participating attorney has agreed to charge a maximum of \$25.00 for the first one-half hour consultation with subsequent fee arrangements to be made between the attorney and the client. The Anchorage Referral Service had received approximately 2500 calls per year while that service was in operation. Expectations are that the number of referrals state-wide may double the number of referral requests because the state-wide service will be advertised state-wide.

Any attorney who has not submitted registration cards and the Referral Service Enrollment Agreement may still submit them to the Bar Office and will be immediately registered in the service. Any attorney who desires additional information regarding the program should contact the Bar office or Karen Hunt.

RULE AND BY-LAW CHANGES

by DONNA WILLARD

The Board of Governors of the Alaska Bar Association, in accordance with the provisions of Alaska Bar Rule 62, hereby gives notice that the following rule and by-law amendments will be considered at its next meeting to be held in Sitka, Alaska, on May 18, 19, and 20th:

1. Rule 39 - Fee Arbitration Hearings

It is proposed that Rule 39 be amended by the addition of a new section (f) to read as follows:

(f) Either party may submit written affidavits by witnesses on their behalf in lieu of or in addition to presenting evidence at the hearing. Such written affidavits must be filed with the executive director and served on the other party at least 10 days before the date set for hearing. The other party may require the witness filing the affidavit to appear at the hearing and be subject to cross-examination by filing with the committee and mailing to the person on whose behalf the witness would appear a notice of intention to cross-examine that witness within five days prior to the date set for hearing. It shall be the responsibility of the person upon whose behalf the witness is appearing to insure the appearance of the witness. Such notice must be made in good faith and not with an intention to cause delay or inconvenience. The committee may award expenses of appearance if it determines that the notice was filed solely for the purpose of causing delay or inconvenience.

2. Rule 44 - Legal Interns

Extensive revisions, specifically directed at a more uniform and clarified system of control over legal interns and their functions have been proposed. Included are the enumeration of acts authorized once a permit has been issued and a clarification of the procedures for issuance of a permit in the first instance. Also provided is a standard

form for entry of appearance in pending cases. A complete copy of the proposed revisions is available upon request, at the offices of the Alaska Bar Association, 360 "K" Street, Anchorage, Alaska or by writing the Executive Director at Box 279, Anchorage, Alaska 99510.

3. Rule 61 - Suspension for Non-payment of Fees

It has been recommended that Rule 61 be amended to read as follows:

(a) Any member failing to pay any fees when they become due shall, after 30 days thereafter, be notified in writing by certified or registered mail that the executive director shall, on April 1, petition a justice of the Supreme Court of Alaska for an order suspending such member for nonpayment of fees.

(b) The executive director shall annually notify the clerks of court of the names and date of suspension of all members who have been then or previously suspended and not reinstated.

1. Any member who has been suspended for less than one year, upon payment of all accrued dues, in addition to a penalty of \$20.00 per month of delinquency but not exceeding a total of \$160.00 in penalties shall be reinstated upon certification by the executive director to the Supreme Court and the clerks of court that the dues and penalties have been paid.

2. Any member who has been suspended for a year or more, upon determination of good character by the board, upon payment of all accrued dues, in addition to a penalty of \$160.00, shall be reinstated upon certification by the executive director to the Supreme Court and the clerks of court that the member is of good character and that the dues and penalties have been paid.

By-Law Changes:

Amend Article IV, section 2, to provide for \$20.00 per month late fee for members who do not pay on time.

Amend Article VI, section 3, to make express what is implicit, ie that the President Elect succeeds to the office of President for the next term or sooner if the President vacates office.

Amend Article VI, section 4, to make the vice-president responsible for day-to-day operations of committees except as the president shall otherwise direct.

Delete Article VII, section 1, relating to "sections".

Add to Article VII, sections as follows:

- a provision for staggered 3 year terms of committee members

- a provision appointing a board of governors' member as a liaison member to each committee

- a provision creating standing committees and special committees

- a provision for a Board of Governors' Executive Committee to function as an overseer of Bar office operations

- a provision requiring the president elect 4 months before he takes office as president to provide the Bar office with his committee appointments

- a provision requiring the Board of Governors to meet with all committee chairmen or their designates at each annual business meeting of the Bar association

- a provision requiring the committee through its chairman to provide a proposed committee agenda for the forthcoming year

Add a new Article requiring the President within 30 days of assumption of office to schedule at least six meetings of the Board of Governors annually, such schedule to be published in the office publications of the Alaska Bar Association and sent to local bar associations.

Add a new Article dealing with Spokesman, position statements, and press releases as follows:

- no lobbying on ABA position statements on proposed or pending

legislation except through a person appointed by the Board or by the President at the Board's direction

- a statement of position on proposed or pending legislation on issue of public interest may be made only by the President or his designate acting pursuant to Board approval or Board direction

- any member testifying or lobbying on proposed or pending legislation to make an express statement that his position is not that of the ABA unless he has specific authorization to act for ABA

Amend Article VIII to provide for an annual midwinter meeting without first presenting the question to the annual business meeting.

#### CODE REVISION COMMISSION

Currently under consideration by the Alaska Code Revision Commission are amendments to improve and modernize Title 4 of the Alaska Statutes which contains the laws relating to the licensing, sale and distribution of alcoholic beverages.

The Commission, which was established as an agency of the Legislature in 1976 to provide a continuing review of laws of the state and propose technical improvements and possible substantive changes to meet current needs and conditions, is examining Title 4 for that purpose. The title, which of course has extensive and continuous practical application in the state, has not been significantly revised since its enactment after the repeal of prohibition.

The Commission is very interested in obtaining initially viewpoints on any problems which it is felt may exist within the scope of the subject matter of Title 4, whether legal, administrative or otherwise. If solutions, by way of changes on the existing law or addition of new provisions, can be advanced, so much the better. Initially, though, it would be helpful to the Commission in seeking an understanding, particularly at the "grassroots" level, of practical problems or possible inadequacies of Title 4. Following its appraisal of the subject, the Commission plans to decide what, if any, revisions should be proposed for the current law.

Any comments or suggestions should be directed to Greg Machyowsky, Legislative Counsel, Alaska Code Revision Commission, Pouch Y, Juneau, Alaska 99811.



OBITUARIES

Nicholas Schaps, 29, a lawyer in Bethel with Alaska Legal Services, died March 20 in that town, reportedly of streptococcal pneumonia. Schaps was admitted to the bar in Minnesota in October, 1976, after graduating from William Mitchell College of Law in St. Paul. He was employed as an assistant prosecuting attorney for Ramsey County, Minnesota before joining VISTA and moving to Bethel. Schaps practiced law in Alaska under a Bar Rule 43 waiver.

He is survived by his parents, Mr. and Mrs. Nicholas V. Schaps, of St. Paul, Minnesota.

Robert H. Reynolds died Tuesday, March 28, at Providence Hospital of an apparent heart attack.

He was born in Logan County, Ark., and grew up in Oklahoma where he moved at an early age with his family. He served several terms in the Oklahoma legislature and one term as Speaker of the House.

Reynolds came to Anchorage in 1967 as the administrative director for the Alaska Court System under Chief Justice Buell Nesbitt. He returned to private practice in 1970.

In 1975 he joined the law firm of Robinson, McCaskey, Reynolds and Frankel, serving as head of the trial and litigation section.

Reynolds served as county attorney in Ottawa County, Okla., from 1953 to 1956 and later became the chief criminal prosecutor for the county attorney's office in Oklahoma City. He also practiced law in Oklahoma City.

An active member and past board member of the Anchorage Kiwanis Club, he also was a member of the Anchorage Elks Lodge and was active on several committees of the Anchorage and Alaska Bar associations.

He received a bachelor of science degree from the University of Arkansas and a law degree from Oklahoma University.

He is survived by his wife, Wade, of Anchorage, and two brothers, Doyle Reynolds of Sacramento, Calif., and Jack Reynolds of Michigan.

Because of his love for animals, it is suggested that in lieu of flowers memorials be directed to the Alaska Society for the Prevention of Cruelty to Animals, Box 776, Anchorage 99510.

COMMITTEES

BY: KEN JARVI

Committee operation of the Alaska Bar Association is in an undefined, and in certain instances unfunctional, pasture. The Board of Governors so concluded at their March 11, 1978 special meeting in Anchorage. In an effort to identify the nature and level of committee activity the Board directed President Elect Ken Jarvi to contact all committee chairmen: this first step has been accomplished. The committee chairmen have been asked to provide the Board with comments on each committee's activity, goals and the need for assistance from the Board or the Bar office.

From this information the Board plans to restructure all committee operations. The goal is to revitalize committee activity in the effort to advance objectives of the profession.

In a reflex endeavor to gain information to finalize a plan for committee operations, the Board of Governors has scheduled a meeting between the Board and all Committee Chairmen at the Alaska Bar Association Fairbanks Business Meeting. The time is 4:00 p.m., June 8, 1978; the place, the Board meeting room, Travelers Inn, Fairbanks.

Any comments any members may have on this mundane but significant topic are eagerly solicited--show up in Fairbanks on June 8th or drop a note to Ken Jarvi, Alaska Bar Association Office, P. O. Box 279, Anchorage.

A note and reminder to committee chairmen: All reports from your committee must be filed at the Bar office by May 9, 1978. If you have given Ken Jarvi a detailed response to his other request, your report is submitted. Also, if your committee has resolutions for submission to the Convention these must be submitted by May 9, 1978 and be sponsored by a local bar association or be signed by 10 members of the Alaska Bar.

BOMBSHELL (Conclusion-from p.1)

- 6. THAT THE BOARD OF GOVERNORS NOT BE PERMITTED TO HOLD A PUBLIC MEETING OUT OF STATE
- 7. THAT THE ALASKA BAR ASSOCIATION NOT EMPLOY THE SERVICES OF A LOBBYIST IN JUNEAU ON A FULL-TIME, PART-TIME OR EVEN ON-OCCASION BASIS



INFORMAL ADMONITIONS SERVED  
ON ATTORNEYS

For the period from Oct. 1, 1977 to March 31, 1978, 8 attorneys received informal admonitions by Bar Counsel. The sanctions were ordered for the following violations of the Code of Professional Responsibility:

1. Violation of DR 9-10(c); an attorney shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official.

The Disciplinary Board in recommending informal admonition noted that Respondent had only been admitted to practice law several months at the time the letter was written. The Board ordered that Respondent be advised as to the contents of DR 7-102(a) (1) (2) (3) & (5) and further that Respondents law firm be advised to exercise greater supervision over the work of newly appointed attorneys.

2. Violation of DR 6-101(a) (3); neglect of a legal matter entrusted to an attorney. Respondent received an informal admonition and directed to reimburse the client \$1,250 in attorney fees previously collected.

3. Violation of DR 6-101(a) (3); neglect of a legal matter entrusted to an attorney. Respondent was directed to immediately close out the estate.

4. Violation of DR 9-102; failure to properly preserve the identity of funds and property. Respondent received an informal admonishment for failure to establish and properly utilize client trust accounts. Respondent was directed to supply the Bar Assn. with proof that a trust account had been established, that said account was being properly utilized and that bookkeeping methods had been established to protect and identify funds deposited in the trust account.

5. Violation of DR 9-102; failure to properly preserve the identity of funds and property. Respondent was informally admonished and directed to provide proof to the Bar Assn. that complete restitution had been made to the guardianship estate plus interest and further that Respondent was to satisfy the Bar Assn. that a trust account had been established, that said account was being properly utilized and that bookkeeping methods had been established to protect and identify funds deposited in the trust account.

6. Violation of DR 7-104(a) (1); unauthorized communications with a party known to be represented by counsel.

7. Violation of DR 7-105(a); a lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter. A paralegal employed by Respondent stated that if an insufficiently funded check was not made good the matter would be turned over to the police. Respondent received an informal admonition and was directed to prepare an internal office manual for paralegals and secretaries.

8. Violation of DR 5-103(b); acquiring a proprietary interest and advancing unauthorized loans to a client; DR 9-102(b) (3); failure to properly account for clients funds; DR 9-102(B) (3); failure to furnish periodic and complete accounting for all property and funds in Respondents possession and control. Respondent received an informal admonition. It should be pointed out that the seriousness of the ethical violations involved herein was tempered to a great degree by mitigating circumstances.

ALASKA BAR ASSOCIATION  
DISCIPLINE REPORT

Statistical Summary of Caseload  
Oct. 1, 1977 to March 31, 1978

CASELOAD

1. Cases pending and carried forward on Oct. 1, 1977:	62
2. Cases filed or reactivated from Oct. 1, 1977 to March 31, 1978:	<u>11</u>
TOTAL CASELOAD FOR PERIOD:	73

Less: Cases closed or ordered held in abeyance:

(a) Dismissed	16
(b) Informal Admonition	8
(c) Abeyance Status	5
(d) Suspension	<u>1</u>

Total number of cases closed or ordered held in abeyance	<u>30</u>
TOTAL NUMBER OF PENDING CASES AT END OF PERIOD:	<u>43</u>

STATUS OF CASES PENDING  
ON MARCH 31, 1978:

1. Investigative Stage	
(a) Review Comm. Members	3
(b) Bar Counsel	<u>28</u>
Total in investigative stage	31
2. Before Hearing Comm.	7
3. Before Board of Governors	3
4. Before Supreme Court	<u>2</u>
TOTAL NUMBER OF ACTIVE FILES ON March 31, 1978:	<u>43</u>

A SMASH HIT!!

Those members of the Alaska Bar Association who went to Kauai, Hawaii this February for the first CLE midwinter meeting enthusiastically participated in a variety of stimulating, provocative meetings on the future direction of the organized bar and the challenges it faces. In addition, they were offered an intensive two-day program on Advising Small Businesses under the direction of Henry Camarot. In addition, there were three outstanding video-tape programs available during the conference.

The kick-off banquet speaker was James H. Boran. Mr Boran, with almost no fanfare or warning, proceeded to demolish a number of sacred cows in the federal bureaucracy. Although most of those present at the banquet may not have realized immediately that Mr. Boran's speech was a humorous one, the awareness gradually dawned as he proceeded to speak in a variety of tongues all familiar to anyone who has had to deal with bureaucrats on any level of government. These utterings, to borrow from the Bard, were "full of sound and fury, signifying nothing."

The first day's program asked and answered a number of questions about the future direction of the practice of law which invited and provoked an enthusiastic response from those present.

The program on Advising Small Businesses was well-attended throughout, despite the obvious attractions of surf, sand, turf, and tennis courts nearby. The guest speakers presented an outstanding in-depth review of the subject matter which was further buttressed by a massive treatise distributed to all participants.

FAIRBANKS CONVENTION

A tentative schedule of activities was mailed to you from the Bar offices for the Alaska Bar Association Annual Convention and Business Meeting which will be held in Fairbanks, June 8, 9, and 10.

The Executive Committee met with the Fairbanks Convention Committee last week to finalize plans for the convention. Several minor changes in the agenda have been made and a final agenda and registration will be mailed out to you soon.

IMPORTANT: There are a limited number of spaces available on the

The second annual midwinter meeting of the Alaska Bar Association devoted to continuing legal education will be held at the site of the first annual midwinter meeting--the Kauai Surf Hotel in Kauai, Hawaii, February 1 through February 3, 1979.

Topics and speakers for the substantive continuing legal education program will be announced within the next few months. The popular columnist and author, Art Buchwald, has been contacted and has tentatively agreed to speak at the program banquet.

A NEW BAR RAG

An invitation to participate in the birth of a new newspaper has been circulated state-wide to all members of the Alaska Bar Association. This newspaper is intended to be a monthly publication that looks, smells, and feels like a real newspaper. The widest possible state-wide participation by attorneys is necessary if this paper is to succeed. Up until now, the Bar has had a quarterly publication on slick paper that has been produced almost exclusively by Bar staff. The new newspaper would call in the talents of the Bar membership and would seek to provide the widest possible coverage of Alaska Bar news. In addition, it is intended that this paper include feature-writing, cartooning, photography, columns, and articles about a wide variety of subjects not limited to legal matters.

Each edition of this newspaper should carry matters of immediate interest to Alaska attorneys whether they are in Anchorage, Fairbanks, Juneau, Ketchikan, Sitka, Kodiak, Nome, Bethel, Kenai, or elsewhere. The newspaper expects to draw its staff and contributors from every section of the state where there are attorneys.

Attorneys interested in participating in this venture who have not already responded to the initial announcement and invitation are urged to contact the Bar office at P. O. Box 279, Anchorage, AK 99510 at the earliest convenience.

riverboat trip. Two riverboats will be available which will carry a maximum of 240 persons. If you intend to go on the riverboat trip, please make advance reservations at once. You should contact Bob Groseclose, Chairman of the Convention and Business Meeting, Box 810, Fairbanks, 99707.

OPEN LETTER TO PRES. MADSON

President Dick Madson,

The last issue of the Bar Brief suggests that you suggested the ABA should get out of the admissions business. With all due respect to you as our own leader I dissent.

Three good reasons exist why the Bar should stay in admissions business. First, who should have a more direct concern about the quality of people admitted to the profession than the profession itself; second, who is in a better position to establish, implement and administer admission policy than the bar itself; third, informed communication with the Court indicates the Court has little interest in assuming this added burden.

An adjunct to the concept that the bar has or should have an interest in regulating and maintaining the quality of the profession is the concept of independence of the profession. Each time any element of control over regulation of the profession is placed in the hands of any bureaucracy, the independence of the profession is eroded. Because in my view the independence of the legal profession is critical to our system of justice I strongly object to any move that would contribute to its loss. Accordingly, I believe the Alaska Bar should continue to perform all functions relative to admission just as it has since pre-statehood days.

The admissions process currently involves 3 steps: 1) determination of residency as required by rules; 2) determination of character fitness; 3) examination to determine minimal competence. This process is administered in steps 1 and 2 by the Bar office staff with Review by the 9 member Board. Step 3 is administered by a 12 member committee of our peers with final review and approval by the Board of Governors.

If admissions were to be turned over to the court who would perform these functions? In view of the court's current workload it is unlikely that the 5 Justices would perform these functions. Educated conjecture would suggest that the court would delegate the functions. To whom? Back to the Bar. Not so if the Bar has rejected its responsibility. Then the candidate for admissions administrating becomes

an administrator. No reflection on present incumbents, but the conjecture or vision then leads us to the likely conclusion that admissions control will reside in a bureaucrat. That vision frankly troubles me, admittedly mostly from past frustrations in dealing with authoritarian bureaucrats.

No, President Madson, I have much greater confidence in the abilities of 21 members of the profession to deal fairly with the admissions process than I do with a bureaucrat.

Finally, I believe your sense of frustration with the admissions process principally comes from questions relating to step 1--residency. The Board of Governors has in the past had many moments of frustration in attempting to apply existing residency rules.

As you know the Board is examining the entire residency question, both pre-exam and post-exam. In my view this is the proper approach to ease the past frustrations emanating from admissions. But it is an abdication of responsibility and an erosion to independence to turn the entire admission process over to an overworked court.

Kenneth O. Jarvi

NOTICE OF SUSPENSION

ARTHUR LYLE ROBSON was suspended from the practice of law for a period of twelve months from June 2, 1977 by order of the Alaska Supreme Court dated November 14, 1977.

\* The Supreme Court, in their opinion issued February 24, 1977, stated that Robson's conviction in the United States District Court, District of Alaska, of aiding and abetting a convicted felon and mental defective in receiving ammunition was a "serious crime" as defined in Alaska Bar Rule II-23. The Court also found that Robson had engaged in the practice of law and was therefore in contempt of the court's order of June 2, 1977 suspending him from the practice of law.

The sanctions imposed by the Supreme Court suspending Robson from the practice of law for a one-year period commenced on June 2, 1977, the date of the prior order temporarily suspending him from practice pursuant to ABR II-23.



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#### COMINGS AND GOINGS

HARRY BRANSON and BERND GUETSCHOW announce the formation of a new law firm, BRANSON and GUETSCHOW. Their offices are at 425 G Street, Suite 650.

KEITH W. BELL has moved from Anchorage to Seattle where he is in private practice with the firm, BURTON, CRANE, COVELLO, WELSH and BELL.

WILLIAM L. CHOCQUETTE and WILLIAM D. ARTUS announce the formation of the law firm ARTUS and CHOCQUETTE, at 805 W. 3rd Ave., Suite 100.

#### ALASKA BAR BRIEF

The Alaska Bar Brief is the quarterly newsletter of the Alaska Bar Assn., published in Anchorage by the Assn. staff. Subscription rates are \$6.00 annually. Additional copies may be purchased for \$1.00 ea. Correspondence, manuscripts and letters submitted for publication are to be sent to Editor, Alaska Bar Brief, Box 279, Anchorage, Alaska 99510.

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(Conclusion from p.3)

The opposite argument is the ultimate practical consideration--there is no evidence that "internal enforcement" works. It isn't used for other ethical violations, and if enforcement weren't necessary, then the entire disciplinary process of the bar and the Supreme Court wouldn't be necessary either.

In conclusion, show me that we can provide lawyers for poor people without a mandatory system and I'll be satisfied that the bar has met its obligation.

Alaska Bar Brief  
Box 279  
Anchorage, Alaska 99510

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Karen L. Hunt  
1007 W. 3rd Ave.  
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