The Alaska BAR RAG

Dignitas, semper dignitas

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258 Clients Served at MLK Day Free Legal Help Events

Text and photos by Lea McKenna

On Monday, January 20, 2025, the Alaska Bar Association, in partnership with the Alaska Court System, Alaska Legal Services Corporation and local Bar associations, hosted its 16th annual MLK Day Free Legal Help events in Anchorage, Juneau, Fairbanks and Bethel.

The free clinics across Alaska served 258 clients (a 58% increase from the 176 clients served in 2024) with civil legal issues, including 30 clients who had their questions answered by Alaska volunteer attorneys online at Alaska Free Legal Answers (Alaska.freelegalanswers.org). Alaska attorneys advised low-income Alaskans in need of legal counsel on civil legal issues such as custody, child support, divorce, housing, public benefits, employment law, probate and wills.

A core leadership team has been spearheading the organization of these clinics for many years, some since 2008 when the first MLK Day Free Legal Help event was held, including Alaska Legal Services Corporation attorneys in Fairbanks and Bethel. In addition, the majority of the judges who do intake and the advice attorneys generously donate their time year after year.

The Alaska Bar Association's partners help make these events a huge success. The Alaska Court System printed forms and offered filing fee waivers to eligible family law clients during the event. Alaska Legal Services Corporation was on-site to screen applicants for ongoing legal assistance through a pro bono attorney or community justice worker. At the Anchorage event, Catholic Social Services provided free shuttle service for clients, connecting the main event location with three Anchorage shelters.

102 volunteers across Alaska, including 61 attorneys and many judges, law clerks and community service organizations helped make these events a success. Collectively, our volunteers contributed 353 hours of time.

The dedication of the MLK Day volunteers is an inspiration to others. They provide a vital service to Alaskans. The words of gratitude from the clients put it best:

"You're not providing legal help, you're providing legal hope."

"I really needed that. I got a load off. It was like going to confession. I feel better now."

"[The volunteer attorney] walked me through the forms and explained the division of assets. It was very helpful."

"It was such a blessing to get my questions answered. I tried as hard as I could to do research myself and it just helped to talk to someone in person."

Local businesses also contributed to the success of this event. Steam Dot and Heritage Coffee donated coffee to keep our volunteers energized. Kaladi Brothers donated coffee drink cards to show our gratitude to our volunteers. Urban Greens gave a 25% discount off of sandwiches for our Anchorage volunteers.

Ryan R. Roley (Family Law Office of Ryan R. Roley) and Karla Huntington (Law Office of Karla F. Huntington) advising clients on family law issues.

Tyra Boose while between clients at family law table.

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Why Is It Called The Electoral College?

A Monograph by Eric A. Kueffner, B.A., M.A., J.D.

The United States Constitution does not mention an electoral college. Article II, Section 1 directs each state to appoint electors, and then says that the "electors shall meet in their respective states" and cast ballots to choose a President and Vice President every four years. Under this original scheme, Thomas Jefferson, John Adams and Aaron Burr screwed things up so badly that everyone agreed to modify the Constitution with an amendment in 1804. The 12th Amendment made it clear that electors would vote separately for President and Vice President but still said nothing about a college. An entertaining discussion of this history can be found in ***Chiafalo v. Washington***, 591 U.S. 578 (2020), in which Justice Kagan cites both the musical ***Hamilton*** and the HBO TV Series ***Veep***.

Federal statutes do not define an electoral college but the term was used in the Electoral Count Act of 1887 (Pub. L. 49-40, 24 Stat. 373), as if everyone knew what it meant and how it worked. This was enacted in response to the screwed up election of 1876. This portion of the law was codified at 3 U.S.C. Section 4, and was left intact when Congress passed the Electoral Count Reform and Presidential Transition Improvement Act of 2022 (enacted in response to you-know-what and you-know-whom). As far as I can tell, 3 U.S.C. Section 4 is the only federal statute that says anything about the electoral college. It reads in its entirety:

Vacancies in the Electoral College

Each State may by law enacted prior to election day, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

This law presumes that the electoral college is a thing, that it meets somewhere at some time, and that it might have vacancies, which may be filled. But the statute does not explain why a gathering of electors for an American president is called a college.

To answer that question, we need to engage in some etymology. Don't worry, this will not involve a lot of dead languages, but it will veer off into early church history with a significant detour to the Holy Roman Empire. The word college is derived from the Latin ***collegium,*** which means colleagueship or partnership. In the Oxford English Dictionary, the very first example of the word "college" refers to a **religious** association:

1. organized society of persons performing certain functions; **a. religious** -Apostolic College.

The Apostolic College consisted

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PRESIDENT'S COLUMN

Outgoing President Reflects on Past Bar Achievements

By Jeffrey Robinson

This column focuses on the Bar's exciting future as we approach our Annual Convention in April, at which time I will formally hand over the gavel to President-Elect Rebecca Patterson.

Please mark your calendars for the return of the Bar Convention to Anchorage. In my view, we landed a keynote whale in Neal Katyal, one of the nation's most renowned commercial litigators and appellate advocates. Mr. Katyal, who previously served as Acting Solicitor General of the United States, has argued more than 50 cases before the United States Supreme Court. Mr. Katyal, a current partner at Milbank, has also served as a law professor for over two decades at Georgetown University Law Center. Mr. Katyal's keynote address will focus on the Modern Supreme Court and the Rule of Law. The Convention will also include the return of Professor Erwin Chemerinsky and Professor Laurie Levenson to provide the U.S. Supreme Court Opinions Update. Alaska Supreme Court Chief Justice Sue Carney will host a session regarding current issues, successes and happenings in the state court of Alaska.

The Convention provides a total of 13.25 CLE credits, of which 3.0 credits are Ethics credits. But the Convention is about more than just re-upping our professional responsibility requirements. It provides an opportunity to network with attorneys from other jurisdictions who we do not see on a regular basis, and to form new contacts with members of the Bar with whom our paths will inevitably cross. The Convention also allows the Bar to recognize the outstanding contributions of individual members during our Awards Reception and to reaffirm our commitment to the community through re-emphasizing our myriad pro bono service opportunities. To this end, we have scheduled an excellent roundtable on this topic, which will be moderated by the Bar's new Pro Bono Director, Lea McKenna.

"My term as President has left me feeling wholeheartedly optimistic about the future of our profession in Alaska."

I have enjoyed a meaningful term of service as your President, and I am thrilled that the Bar will be in Ms. Patterson's capable hands for the next term. Rebecca is a former federal law clerk and talented litigator with Sonosky & Chambers. She has served on the Board since 2022. Rebecca has been a go-to for me in working through complicated Bar matters prior to and during our Board meetings. She is exceptionally well-prepared, a good advocate for her own position, but also a leader who serves with humility and an open mind.

My term as President has left me feeling wholeheartedly optimistic about the future of our profession in Alaska. First, the Board grapples with serious matters and each governor has impressed me with his or her unique perspective in making decisions that impact our membership. By way of example, we have handled numerous Disciplinary Matters in the last year that have called upon us to make difficult decisions and recommendations regarding reinstatement, disbarment and other discipline. We have heard cases from the Lawyers' Fund for Client Protection, such that we can compensate individuals who have lost money as a result of the dishonest conduct of a lawyer, and we have taken a hard look at what we can do better to protect vulnerable clients prospectively. Our decisions on these matters are not taken lightly, and always with an eye to upholding the integrity of our profession.

Second, the Board is reflective of the membership we serve, and we are useless if our membership fails to take initiative and dive into core issues. In the past year alone, we are pleased that new Alaska Bar Sections have formed to create continuing legal education opportunities for their members, and to promulgate forums that address community and professional needs. The Solo & Small Firm and the Technology, AI & Cyber Law Sections have emerged to fill key gaps in these areas. Sections like these, and many others, help our members find commonality, address best practices within niche areas, and connect practitioners with resources that further our practice areas.

Finally, our Board has consistently analyzed our admissions standards, demographics and other data to help us work to increase the pipeline of attorneys to Alaska. As I have mentioned before, we all know that Alaska is the nation's best place to practice law, but we should all feel duty bound to spread this message to the next generation in any way we can. To that end, I will make a farewell plug for members to contribute, to the extent you can, to the Alaska Bar Association Law School Scholarship fund. The goal of this fund is to offer law school scholarships to current 1st or 2nd year law students who demonstrate ties to Alaska, and demonstrate an intent to return to Alaska within two years of graduation. Let's put our money where our mouth is. Hope to see as many of you as I can in April.

Jeffrey Robinson is the president of the Alaska Bar Association. He was born and raised in Rhode Island. He has been a resident of Alaska for 16 years. Jeff graduated from Boston College and received his law degree from Notre Dame Law School. He is a shareholder in the Commercial Litigation Group of Ballard Spahr.

EDITOR'S COLUMN

Turning Towards the Light

By Monica Elkinton

Happy February, friends. As I sit down to write to you today, I have been helping my kids prepare their valentines for their school exchanges. One of my daughters is just giving out candy with a "From:" tag taped to it. The other one chose hologram cards with pictures of axolotls on them. (If you don't have daughters who think they are "soooo cute", axolotls are pink cave-dwelling salamanders from Mexico. They are odd creatures with external gills and a good publicist.)

"What do you lean on when you can't help everyone? When all you can think about stresses you out?"

My third-grader got a letter home last week saying her class would celebrate "Friendship Day" on February 14 and that students were welcome to bring in cards for classmates. I'm ok with this name change. My kids don't need inappropriate Valentine's Day messages like "Be Mine" and "Text Me." The ones she's exchanging have things like "Cool dude" and "U R nice." Childhood can stay innocent for a few more years.

But it got me thinking, what if we had "Friendship Day" for our colleagues? The one day when you give a card to the lawyer down the hall, maybe with a message saying, "I'm glad I get to work with you." Or a note to an opposing counsel saying, "I know we don't always agree, but I know you work hard for your clients." Or "I don't know if this case will settle, but I appreciate your professionalism during that deposition last week. It could have been way worse." How about, "Thanks for getting me that discovery on time." Maybe simply, "I've learned a lot from you and I appreciate working with you."

Many of us deal with pretty heavy issues in our practice, and for some, there can be a lot of external stress too. In my own courtroom, I frequently go from CINA cases to DV Protective Orders to mental health commitments, all of which can have pretty disturbing facts. We could all use a pick-me-up.

What do you lean on when you can't help everyone? When all you can think about stresses you out? I tend to draw closer to my loved ones, spending as much time with them as I can. I check in with my extended family. Call far away relatives, particularly if they are elderly.

Doing good for others or volunteering helps too. We recently had a very successful Martin Luther King Jr. Day Legal Clinic here in Anchorage and in several other locations around the state, as you can read about in this issue. Helping others or volunteering is good for your spirit.

The sun is also coming back. Open your curtains and let in some light, or get yourself outside.

Lawyers are twice as likely to abuse alcohol and we have very high rates of depression. You or some of your friends may be using alcohol or drugs to cope with stress. The Alaska Bar's Lawyers Assistance Committee provides confidential referrals to local counselors and substance abuse treatment. If you know someone in need of help, you can call (907) 272-7469 or any of the Lawyers Assistance Committee members listed at https://alaskabar.org/sections-committees/lawyers-assistance-committee/ .

I hope we can each share a little of ourselves with each other as we move forward into spring. Let's appreciate and support each other. After all, "U R nice."

Monica Elkinton is a magistrate judge in Anchorage. She is a former co-chair of the Unbundled Services Section and serves on the Alaska Bar CLE Committee.

The Alaska BAR RAG

The Alaska Bar Rag is published quarterly by the Alaska Bar Association, 840 K St., Suite 100, Anchorage, Alaska 99501 (272-7469).

Board of Governors meeting dates:

- **April 22 & 23, 2025**
- **June 4, 2025**
- **August 21 & 22, 2025**
- **October 30 & 31, 2025**

Convention and Annual Meeting dates:

- **April 23-25, 2025 in Anchorage, AK**

Publication Dates	Editorial Deadlines
March	Feb. 10
June	May 10
September	Aug. 10
December	Nov. 10

Why Is It Called The Electoral College?

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of the twelve colleagues and partners of Jesus Christ, although they did not elect him president. A religious body that considered itself the successor to the twelve disciples and is nearly as well known is the College of Cardinals. This college does have electoral functions, as it has elected the Pope of the Roman Catholic Church since 1059. Control over papal elections by the College of Cardinals is exercised through the conclave, an institution established in 1274, which is best known as a plot device in Dan Brown's pre-***DaVinci Code*** thriller ***Angels and Demons***, and as the subject of the 2024 film ***Conclave***, starring Ralph Fiennes, Stanley Tucci and Isabella Rossellini.

To make the shift from apostles to purely political actors, we need to look to the second definition of college in the Oxford English Dictionary:

> b. **secular** a body of electors to a particular office; spec. the princes who elected the emperor of Germany.

Now we are getting somewhere. Ever since the Crisis of 1198 and the end of the Fourth Crusade, the emperors of Germany were elected by a group of powerful princes and religious figures known as electors. This election was governed by the principles first codified in the Sachsenspiegel, drafted between 1220 and 1235, and then confirmed by the Golden Bull issued by Charles IV in 1356. Upon election, the German emperor became the leader of the Holy Roman Empire. Since you asked, there were initially three spiritual electors, collectively known as the Kurfurstenrät; four secular electors, collectively known as the Fürstenratt, and eventually a third group was added to the mix: the municipal leaders of several imperial cities. The German term for this third crowd was, and this is why I went through all of this, the Reichsstädtekollegium.

English historians generally refer to these three groups as the colleges of the Imperial Diet. In German, the Imperial Diet is the Reichstag. The Diet (a word that derives from the Latin ***dies***, which means day, the hopeful idea being that the assembly would conclude its work within a single day) held meetings to elect the Holy Roman Emperor as well as to address other matters of concern to the German polity. Everyone knows about the Diet of Worms, in which the three colleges met to decide how to deal with Martin Luther and his 95 Theses. The Diet of Worms is named after the town in which it was held, and not the menu for the imperial dinner hosted by Charles V at the time.

Both James Madison and Alexander Hamilton were very familiar with the history and politics of German imperial elections and both discussed them in the Federalist Papers. Madison, in Federalist No. 19, extensively reviewed German history and identified the Imperial Diet as an example of an ancient governmental confederacy. Although neither of them used the term in the Federalist Papers, both founding fathers would have been aware of the College of Cardinals in the Vatican and the college of prince electors in the Imperial Diet. Just as multiple sheep are called a flock and many geese make a gaggle, the collective noun for electors is a college. It is therefore not surprising that when the writers of the constitution set up a system in which electors meet to vote for a president, they assumed, and the legislators who followed them assumed, that such a gathering would be known as a college. And that is how, long before 2024, the Reichstag came to America.

Eric Kueffner is a retired attorney. He spent his entire thirty year career in Juneau with the firm of Faulker Banfield.

If you are aware of anyone within the Alaska legal community (lawyers, law office personnel, judges or courthouse employees) who suffers a sudden catastrophic loss due to an unexpected event, illness or injury, the Alaska Bar Association's SOLACE Program can likely assist that person in some meaningful way.

Contact the Alaska Bar Association or one of the following coordinators when you learn of a tragedy occurring to someone in your local legal community:

Fairbanks: Aimee Oravec, aoravec@doyonutilities.com
Mat-Su: Greg Parvin, gparvin@gparvinlaw.com
Anchorage: Stephanie Joannides, joannidesdisputeresolution@gmail.com

Through working with you and close friends of the family, the coordinator will help determine what would be the most appropriate expression of support. We do not solicit cash, but can assist with contributions of clothing, transportation, medical community contacts and referrals, and other possible solutions through the contacts of the Alaska Bar Association and its membership.

NOTICE TO THE PUBLIC

**By order of the Alaska Supreme Court,
Dated 11/29/2024,**

ERIN A. POHLAND
Member No. 0812100
Greensburg, Pennsylvania

**is reinstated
to the practice of law
effective 1/21/2025.**

**Published by the Alaska Bar Association,
840 K Street, Anchorage, Alaska 99501
Pursuant to the Alaska Bar Rules**

NOTICE OF PUBLIC DISCIPLINE

**By order of the Alaska Supreme Court,
entered January 7, 2025**

JESSICA WINZINGER
Member No. 1405048
Wasilla, Alaska

has been placed on interim
suspension from the practice of law
effective January 7, 2025

until further order of the court.

Contact the Alaska Bar Association
for more information.

Published by the Alaska Bar Association,
840 K Street, Suite 100, Anchorage, Alaska 99501
Pursuant to the Alaska Bar Rules

258 Clients Served at MLK Day Free Legal Help Events

Magistrate Judge Monica Elkinton with lead organizers Leslie Need and Lauren Sommer (both of Landye Bennett Blumstein LLP) checking in volunteers.

Eva Gardner (Municipality of Anchorage) advises a client on general civil issues.

Court System Rule 12 (e) Attorney Appointments Needed

There is an ongoing need for attorneys to represent Alaskans in adoption matters; minor and adult guardianship cases; estate cases; paternity actions; alcohol commitment proceedings; military service members through the Servicemembers Civil Relief Act; CINA cases; and in post-conviction relief (PCR) cases. The court appoints eligible attorneys under Administrative Rule 12(e) and provides compensation at a rate of $130.00 per hour.

According to Deputy Director Mary Burnell, the court system is "grateful for the attorneys who volunteer to serve on these cases, which often involve clients who lack the resources to protect very fundamental rights." Attorneys may contact Mary Burnell with any questions about this opportunity at mburnell@akcourts.gov.

Attorneys interested in accepting appointments under Rule 12(e) or with any questions, should send their contact information (name, mailing address, phone numbers, e-mail, and fax numbers) and a copy of their errors and omissions insurance to the appropriate Area Court Administrator (ACA). ACA contact information can be found here: https://courts.alaska.gov/media/index.htm#liaisons.

Bethel lead organizers of ALSC and Zach Manzella (Law Office of Zach Manzella) with advice attorney Winter Montgomery (JAG).

Rebecca Lipson (Ashburn & Mason) and Alex Kubitz (Landye Bennett Blumstein LLP) advise clients on housing issues.

Brian Riekkola (North Star Law Group) advises a client with a housing issue.

258 Clients Served at MLK Day Free Legal Help Events

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The Alaska Bar Association strives to expand access to justice throughout Alaska. Alaska has a severe civil justice crisis. Many communities lack local legal help. Alaska Legal Services Corporation (ALSC) has only 3.52 civil legal attorneys for every 10,000 Alaskans in poverty. 71% of low-income households experience at least one civil legal problem; 86% of those who reported received either inadequate or no legal help. We encourage our members to follow the lead of our MLK Day volunteers to help meet this need. There are a range of pro bono opportunities currently available, including:

Alaska Network on Domestic Violence and Sexual Assault – Learn the "Fundamentals of Family Law and DVSA" at ANDVSA's free training on March 5 and 19. Then represent a low-income client in need while learning a new area of law and getting courtroom experience under the mentorship of an ANDVSA attorney. Contact ksoden@andvsa.org for more information.

Alaska Legal Services Corporation – Landlord and Tenant Helpline - Volunteers are needed to join ALSC's Landlord and Tenant Helpline team to cover shifts Monday-Thursday from 6-8pm. One evening a month, calls are forwarded directly to your phone - allowing you to conveniently volunteer from anywhere. Training and resources are provided. Email probono@alsc-law.org to sign up or for more information.

Alaska.freelegalanswers.org (click on Attorney Registration), a 24/7 virtual free legal clinic where low income Alaskans can ask three civil legal questions per year. Volunteers can sign up to be notified of questions asked in their practice areas and can choose which questions they want to answer. This vitual legal clinic helps clients in the legal deserts throughout Alaska to access licensed Alaska pro bono attorneys.

Volunteer at a Legal Clinic (contact lmckenna@alaskabar.org for more information):

- MLK Day Free Legal Help events in January every year
- Elizabeth Peratrovich Legal Clinic at the AFN Conference in October every year
- Join the wills clinic planning committee.
- Organize a legal clinic in your community and/or specific to your practice area.

In the words of Dr. Martin Luther King Jr., "The time is always right to do what is right."

Lea McKenna is the Pro Bono Director for the Alaska Bar Association.

Magistrate Judge Monica Elkinton and Bar CLE Director Kara Bridge greet clients.

Trevor Gruwell (Ashburn & Mason) and Elliott T. Dennis (Law Office of Elliott T. Dennis) advise clients on general civil issues.

NEWS FROM THE BAR

Request for Comment on Proposed Amendments to Alaska Rules of Professional Conduct 1.2, 1.16 and the Comments to Each Rule

The Alaska Rules of Professional Conduct Committee reviewed and analyzed the American Bar Association's 2023 amendment to Model Rule 1.16 after the ABA notified the Alaska Supreme Court of the amendment to the Model Rule and encouraged the Court to adopt the new amendment. This amendment was made by the ABA to specifically add a requirement of due diligence by lawyers to avoid assisting in money laundering and other criminal conduct by clients.

After several meetings, the Rules Committee unanimously agreed to propose amendments to ARPC 1.2(d) and 1.16 to more effectively address the concerns the ABA was purportedly attempting to address with the amendment to Model Rule 1.16. Any member interested in further information about the process can contact Bar Counsel at the email address listed below.

At its January 30, 2025 meeting, the Board of Governors voted to approve publication of this proposed rule change to the membership for comments.

Please send any comments to Bar Counsel Phil Shanahan, shanahan@alaskabar.org, by March 28, 2025.

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

. . .

(d) Except as provided in paragraph (f), a lawyer shall not counsel or assist a client to engage in conduct ~~that~~ if the lawyer knows that the conduct is criminal or fraudulent or if the lawyer chooses to remain deliberately ignorant as to whether the conduct is criminal or fraudulent. For purposes of this Rule, a lawyer is "deliberately ignorant" if the lawyer (1) is aware of a high probability that the client is using or plans to use the lawyer's services to accomplish or facilitate a crime or fraud and, acting with this awareness, (2) the lawyer deliberately chooses not to pursue readily available means of investigating this matter (3) for the purpose of avoiding confirmation of the lawyer's suspicions. A lawyer is not "deliberately ignorant" if the lawyer's failure to investigate is the result of the lawyer's honest belief, despite reasons to suspect otherwise, that the client is not using or planning to use the lawyer's services to accomplish or facilitate a crime or fraud. ~~, but~~ This paragraph does not prohibit a lawyer ~~may discuss the legal~~ from discussing the legality or the potential legal consequences of any proposed course of conduct with a client, nor does it prohibit a lawyer ~~and may counsel or assist~~ from counseling or assisting a client to make a ~~good faith~~ good-faith effort to determine the validity, scope, meaning, or application of ~~the~~ any law.

COMMENT

. . .

Criminal, Fraudulent, and Prohibited Transactions

A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses a lawyer's advice in a course of action that is criminal or fraudulent does not, of itself, make ~~a~~ the lawyer a party to the course of action. ~~However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct.~~ There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity. But a lawyer must not assist a client in conduct that is criminal or fraudulent when the lawyer knows that the conduct is criminal or fraudulent or when the lawyer chooses to remain deliberately ignorant of this fact.

As defined in paragraph (d), a lawyer is "deliberately ignorant" of a client's criminal or fraudulent conduct if the lawyer (1) is aware of a high probability that the client is using (or plans to use) the lawyer's services to accomplish or facilitate a crime or fraud and, acting with this awareness, (2) the lawyer deliberately chooses not to pursue readily available means of investigating this matter (3) for the purpose of avoiding confirmation of the lawyer's suspicions.

To constitute "deliberate ignorance", the lawyer's decision not to investigate must be motivated by the lawyer's conscious goal of avoiding further knowledge that might confirm the lawyer's suspicions that the client is engaged in a crime or fraud. This means that a lawyer is not "deliberately ignorant" if the lawyer's failure to investigate is the result of the lawyer's honest belief, despite reasons to suspect otherwise, that the client is not using or planning to use the lawyer's services to accomplish or facilitate a crime or fraud. Likewise, a lawyer does not act with "deliberate ignorance" if the lawyer *does* undertake a reasonable investigation and, based on this investigation, the lawyer concludes in good faith that the client is not using the lawyer's services to commit or to further a crime or fraud.

The concept of deliberate ignorance differs in important ways from the lesser standards of negligence and recklessness.

To constitute deliberate ignorance, the lawyer's duty of inquiry must be triggered by the lawyer's awareness of a "high probability" — a high likelihood — that the client is using the lawyer's services (or planning to use the lawyer's services) to accomplish or facilitate a crime or fraud. A lawyer is not "deliberately ignorant" if the lawyer simply acts negligently — *i.e.*, if the lawyer fails to perceive a substantial risk of illegal activity that a reasonable lawyer would have perceived.

Even when a lawyer reasonably believes that the client is using (or planning to use) the lawyer's services to accomplish or facilitate a crime or fraud, this reasonable belief, standing alone, does not mean that the lawyer acts with "deliberate ignorance" if the lawyer decides to continue representing the client. In such situations, Rule 1.16(b)(2) declares that a lawyer has the *right*, but not the *duty*, to terminate the representation. The lawyer's decision to continue representing the client does not constitute "deliberate ignorance" of the client's crime or fraud unless (1) the facts giving rise to the lawyer's reasonable belief are so compelling that the lawyer is aware of a "high probability" that the client is using the lawyer's services for illegal purposes, and (2) the lawyer's failure to investigate further is motivated by the lawyer's conscious goal of avoiding confirmation of the lawyer's suspicions. In short, "reasonably believes" is the standard that triggers a lawyer's right of permissive withdrawal under Rule 1.16(b)(2), while "knowledge" or "deliberate ignorance" is the standard that triggers a duty of mandatory withdrawal under Rule 1.16(a)(1).

If a duty of investigation is triggered under paragraph (d) of this Rule, the reasonableness of the lawyer's investigation will depend on the degree of risk that the client is using or seeking to use the lawyer's services to commit or further a crime or fraud. In evaluating this level of risk, a lawyer may reasonably consider

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- the identity of the client (*i.e.*, whether the client is a natural person or an entity — and, if an entity, the identity of the directors and/or beneficial owners of that entity),
- the lawyer's experience and familiarity with the client,
- the nature of the legal services that the client is requesting,
- the identity and reputation of the jurisdictions involved in the representation
- (e.*g.*, whether that jurisdiction is known to be linked to money laundering or terrorist financing), and
- the identities of the people or entities who are depositing funds into, or who are receiving funds from, the lawyer's trust account or other accounts in which client funds are held.

For further guidance in assessing the risk that a client is using a lawyer's services to commit or further acts of money laundering or a scheme to finance terrorism, a lawyer may consult resources such as the *Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals*, the American Bar Association's *Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing*, *A Lawyer's Guide to Detecting and Preventing Money Laundering* (a collaborative publication of the International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development's *Due Diligence Guidance for Responsible Business Conduct*, and the U.S. Treasury Department's list of "Specially Designated Nationals and Blocked Persons," and similar legal resources, as they may be updated and amended.

When the client's criminal or fraudulent course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing except ~~where~~ when permitted by Rule 1.6. However, the lawyer is required to avoid furthering the client's unlawful purpose~~,~~ — for example, by suggesting how ~~it~~ the crime or fraud might be concealed. A lawyer ~~may~~ must not continue assisting a client in conduct that the lawyer originally ~~supposes is~~ supposed was legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required by Rule 1.16(a)(1)(A), and remedial measures may be required by Rule 4.1.

Where the client is a fiduciary, the lawyer may have special duties to a beneficiary. See Rule 4.1.

Paragraph (d) of this Rule applies whether or not the defrauded party is a party to the transaction. However, paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise.

The last clause of paragraph (d) recognizes that determining the validity or proper interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

Rule 1.16 Declining or Terminating Representation.

(a) Mandatory grounds for declining or terminating a representation.

(1) Except as ~~stated in~~ required by paragraph (c) of this rule, a lawyer shall ~~not represent~~ decline to represent a client or, ~~where~~ if the representation has commenced, shall withdraw from the representation of a client if:

(A) ~~(1)~~ the representation will result in violation of the rules of professional conduct or other law; or
(B) ~~(2)~~ the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client. ~~; or (3) the lawyer is discharged.~~

(2) Except as required by paragraph (c) of this rule, a retained lawyer shall withdraw from the representation of a client if the lawyer is discharged.

(3) Before accepting a representation or upon appointment, a lawyer shall assess and, if required by the applicable underlying rule, inquire into the facts and circumstances of the proposed representation to determine whether, consistent with subparagraph (a)(1), the lawyer may accept the representation.

(4) If, during the course of a representation, a lawyer becomes aware of information raising a substantial likelihood that the representation violates the rules of professional conduct or other law, the lawyer shall inquire into and re-assess the facts and circumstances of the representation to determine whether, consistent with subparagraph (a)(1), the lawyer may continue to represent the client.

(b) Permissive grounds for terminating a representation. Except as ~~stated in~~ required by paragraph (c), a lawyer may withdraw from representing a client if:

(1) the lawyer's withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled~~,~~ and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

COMMENT

Client-Lawyer Relationship

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.1. 1.2(c) through (f), and 6.5. See also the fourth paragraph of the Comment to Rule 1.3.

[2] Paragraph (a)(3) of this rule imposes an obligation on a lawyer to assess the facts and circumstances of a representation before accepting it. Paragraph (a)(4) of this rule requires a lawyer to inquire further and to re-assess an existing representation if the lawyer later becomes aware of information raising a substantial likelihood that the client is seeking to use the lawyer's services to commit or to further a crime or fraud.

Mandatory Withdrawal

[3] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or that violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[4] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[5] A client has a right to discharge a retained lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated~~,~~ it may be advisable to prepare a written statement reciting the circumstances.

[6] Whether a client can discharge appointed counsel may depend on applicable law.~~-~~ A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.~~-~~

[7] If the client has severely impaired capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make

Continued on page 8

NEWS FROM THE BAR

Continued from page 7

special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.-

Optional Withdrawal

[8] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[9] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.-

Assisting the Client upon Withdrawal

[10] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Alaska Supreme Court Disbars Joseph E. Wrona

Joseph E. Wrona was a member of both the Alaska Bar Association and the Utah State Bar. He practiced in Utah; he was on inactive status in Alaska, still subject to Alaska's disciplinary rules. In November 2023, he was convicted in Utah of forcible sexual abuse and incest—serious felonies in both Utah and Alaska. The Utah Supreme Court accepted his "resignation with discipline pending." Wrona acknowledged that his name would be "stricken from the rolls" of Utah Bar members, and the Utah Supreme Court enjoined him from practicing law, from accepting any sort of fees for legal services, and even from describing himself as a lawyer.

Wrona's conduct violated Alaska Rule of Professional Conduct 8.4(b), which forbids criminal conduct that reflects adversely on a lawyer's honesty, trustworthiness, or fitness to practice law. In formal disciplinary hearings in Alaska, the only issue would have been the level of discipline to impose. But when a lawyer has already been disciplined in another state, Alaska Bar Rule 27(c) provides that the Supreme Court can impose "identical" reciprocal discipline. "[R]esignation with discipline pending" is not available in Alaska—a lawyer here is not allowed to resign with discipline pending—so there is no "identical" counterpart under Alaska's reciprocity rule. The Alaska Bar Association's Supreme Court petition to impose reciprocal discipline discussed the levels of discipline available in both states, compared Alaska's sanction of disbarment with Utah's sanction of "de-licensure" (the discipline Wrona would have received if he had not resigned), and urged the Court to treat Utah's "resignation with discipline pending" as functionally identical to disbarment. The Court granted the Bar's petition and issued an order on February 20, 2025 disbarring Wrona.

Lawyer joke …

Q: Why don't lawyers enjoy fishing?

A: Because the fish don't fall for their lines!

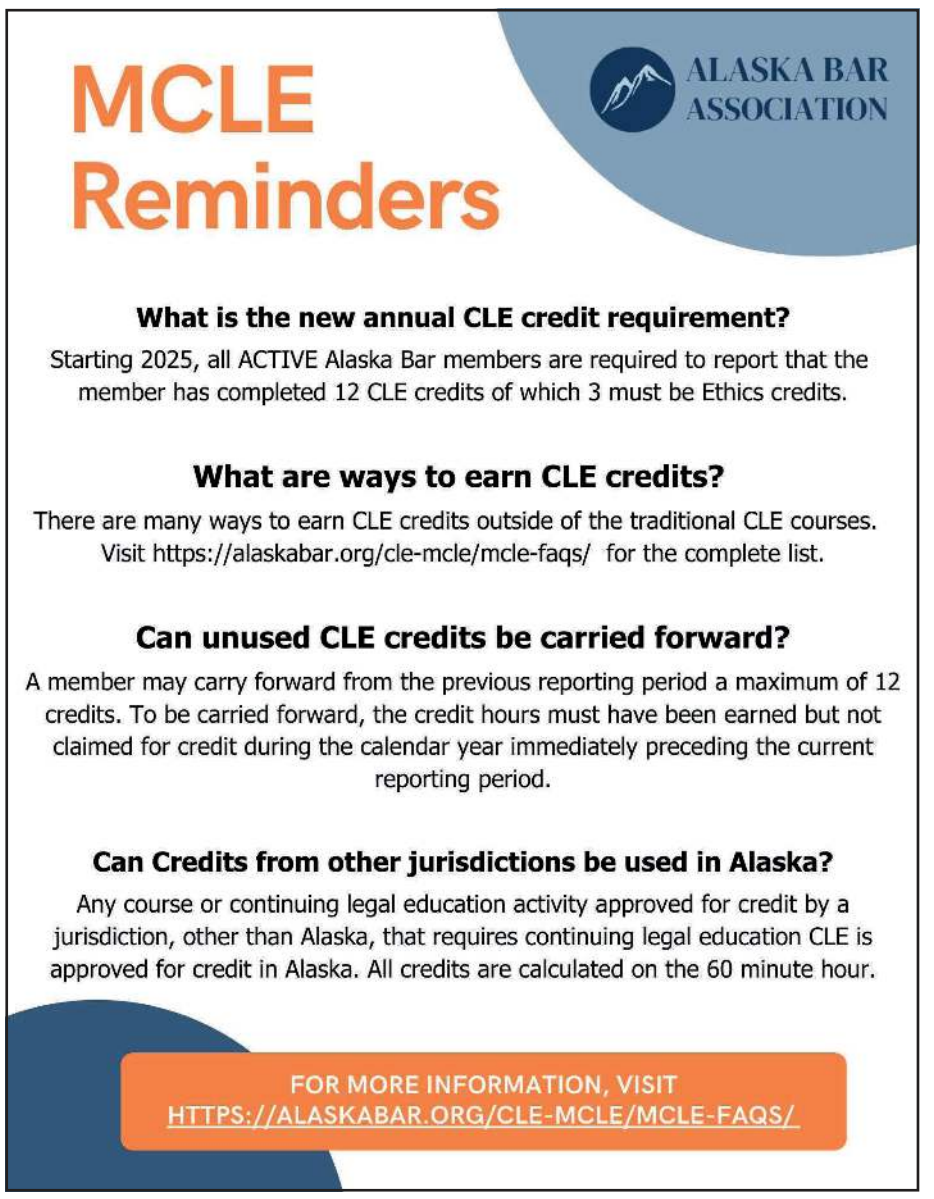
Request for Comment

Board Proposes Bylaw Amendment to Deadline to Transfer from Active Membership to Inactive or Retired Status

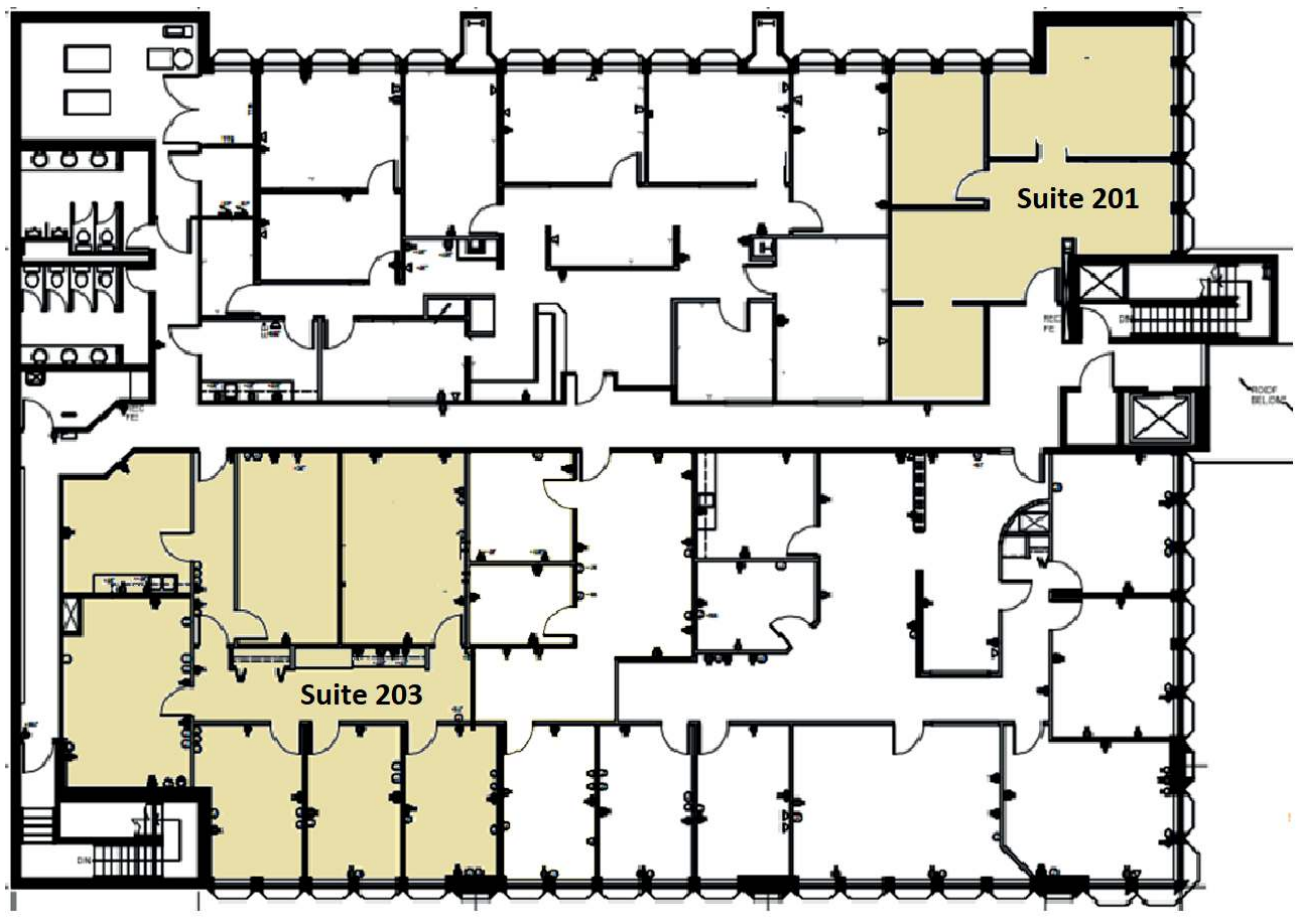
At their January meeting, the Board voted to move the deadline for transferring from active membership to inactive or retired status. Additional accounting verifications are needed if statuses are not set before the licensing fee deadline. Finalizing member statuses by January 1 would streamline administrative operations and prevent confusion regarding dues payments. The amendment would also include a provision allowing the Executive Director discretion to accept later status changes for good cause. Please send comments to Executive Director Danielle Bailey at bailey@alaskabar.org by April 10, 2025.

ARTICLE II. BOARD OF GOVERNORS
Section 2. Transfer from Active Membership to Inactive or Retired Status.

(b) **Member Transfer Requests.** Requests from members to transfer from active to inactive or retired status may be granted if submitted to the Executive Director no later than ~~February~~ **January** 1 of the applicable year. The Executive Director may, for good cause, accept status changes until February 1.



- Suite 201 – 1,017 sq. ft.
- Suite 203 – 2,131 sq. ft.
- Great Downtown Location
- Covered parking available
- Fully upgraded video security system with in-app access.
- Upgraded HVAC including state of the art UVGA filtration
- **$1.90 sq. ft.**



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Alaska Law Review's Quarter 2024 in Review

The Alaska Law Review publishes their Year-in-Review which is a collection of brief summaries of selected state and federal appellate cases concerning Alaska law. They are not an authoritative guide and are only intended to alert the Alaska legal community about judicial decisions from the previous year. Below is a selection of cases from their last quarter of 2024. To access the full 2024 Year-in-Review or follow their blog, visit: https://alr.law.duke.edu/year-in-review-main/.

PROPERTY LAW
Supreme Court of Alaska (2024)
By Melinda Xiong

Park v. Brown

In *Park v. Brown*, 549 P.3d 934 (Alaska 2024), the supreme court held that a homeowner's continuous use of a sliver of her neighbors' land, including mowing the grass, clearing brush, and planting a tree, constituted adverse possession. (*Id.* at 943–44). A woman owned a lot adjacent to a couple. (*Id.* at 937). In between the two lots stood a slightly askew fence that partially intruded onto the couple's property, meaning the woman had effectively annexed a thin sliver of her neighbors' land. (*Id.* at 937). When the couple discovered the intrusion, they sued to establish their ownership, but the woman responded that the doctrine of adverse possession allowed her to acquire title to the property. (*Id.* at 938). The superior court determined that the woman did not meet all the elements of adverse possession. (*Id.* at 939). The woman appealed, arguing that the superior court misapplied the law. (*Id.* at 937). The supreme court agreed with her, reasoning that the maintenance and improvement of the contested land for at least ten years, notably planting a tree that had grown to twenty feet, was sufficient to put her neighbors on notice of the existence of an adverse claimant. (*Id.* at 943–44). The court further articulated that although the woman herself did not maintain consecutive title or possession of the property for the required ten-year statutory period, she could tack her possession onto that of her ex-husband's, who had previously owned the property, because privity existed between them. (*Id.* at 939–40). Reversing the superior court's decision and remanding for entry of judgment in the woman's favor, the supreme court held that because the woman had continuously used the land in a way that would put her neighbors on notice of an adverse claimant, she had satisfied all the elements of adverse possession. (*Id.* at 945–46).

ENVIRONMENTAL LAW
Supreme Court of Alaska (2024)
By Caitlyn Leary

Alaska Trappers Association, Inc. v. City of Valdez

In *Alaska Trappers Ass'n, Inc. v. City of Valdez*, 548 P.3d 332 (Alaska 2024), the supreme court held that a city ordinance regulating trapping was a valid exercise of the city's authority over public safety and land use. (*Id.* at 340). In 2005, the City of Valdez enacted an ordinance that generally allowed trapping for recreational and subsistence purposes, barring some areas of the city. (*Id.* at 333). The city enacted the ordinance to protect "all persons from hazardous devices and to protect domesticated animals and pets from damage and destruction which may result from uncontrolled trapping activities." (*Id.*). The Alaska Trappers Association challenged the ordinance as "invalid and unconstitutional." (*Id.*). The superior court granted summary judgment to the City of Valdez and denied the Association's motion for reconsideration. (*Id.* at 335). On appeal, the Association alleged that because the Alaska Constitution directs the legislature to "provide for natural resource management," any municipal ordinances affecting natural resources are in direct conflict. (*Id.* at 335). But the supreme court affirmed the superior court's grant of summary judgment. (*Id.* at 340). In balancing the city's interest in public safety with the state's authority over natural resource management, the Court reasoned that the "ordinance's impact on wildlife or natural resource management is incidental." (*Id.* at 339). That is, the city enacted the ordinance pursuant to its powers to regulate public safety and land use, not to exercise control over natural resources. (*Id.*). Furthermore, the Court noted that the Association failed to show that the ordinance had such a "substantial effect" on trapping as to constitute a wildlife resource regulation. (*Id.* at 340). Affirming the superior court's decision, the supreme court held that the city's ordinance was not preempted by state law and was a valid exercise of its authority over public safety and land use. (*Id.*).

CRIMINAL LAW
Alaska Court of Appeals (2024)
By Jack Jeffrey

Beltz v. State

In *Beltz v. State*, 551 P.3d 583 (Alaska Ct. App. 2024), the court of appeals held that an arrestee only commits the voluntary act required for the offense of promoting contraband in a correctional facility when the arrestee knows that maintaining possession of the contraband is a separate offense and has had a meaningful opportunity to relinquish possession. (*Id.* at 586). Beltz was arrested and transported to a correctional facility where contraband, a controlled substance, was located on his person during a strip search. (*Id.* at 592). Beltz was subsequently charged with a separate offense, promoting contraband in a correctional facility. (*Id.*). Beltz moved to have the charge dismissed and argued that the State had failed to establish that he had voluntarily brought the contraband into the correctional facility. (*Id.*). The Superior Court denied Beltz's motion, and he appealed. (*Id.*). The court of appeals held that Beltz did not satisfy the statute's voluntary act requirement because he was not afforded a meaningful opportunity to relinquish his possession of the contraband. (*Id.* at 593). Further, there is no evidence that officers discussed with Beltz that possession of the contraband in the correctional facility constituted a separate offense. (*Id.*). Additionally, the court of appeals held that a sign on the exterior of the correctional facility stating that possession of contraband was an offense was insufficient to alert an arrestee that it was a crime to possess contraband in the facility even though it may be sufficient for a visitor. (*Id.*). Therefore, the court of appeals reversed the denial of Beltz's motion to dismiss because he did not satisfy the voluntary act requirement as lacked knowledge that maintaining possession of the contraband is a separate offense and did not have a meaningful opportunity to relinquish possession. (*Id.* at 592–93).

NATIVE LAW
Supreme Court of Alaska (2024)
By Rosa Gibson

Ito v. Copper River Native Ass'n.

In *Ito v. Copper River Native Ass'n.*, 547 P.3d 1003 (Alaska 2024), the supreme court overturned *Runyon ex rel. B.R. v. Ass'n. of Village Council Presidents*, 84 P.3d 437 (Alaska 2004), and held that the Copper River Native Association (CRNA) was entitled to sovereign immunity because, under a five-factor inquiry, it was an arm of its member tribes. (*Id.* at 1021, 1026). CRNA, an Alaska nonprofit corporation whose members were federally recognized tribes, provided services including healthcare to its member tribes. (*Id.* at 1008). The member tribes elected representatives to CRNA's board of directors and passed resolutions authorizing CRNA to provide its services. (*Id.*). CRNA hired Ito in 2018 and terminated her employment in 2019; Ito sued (*Id.* at 1008–09). On appeal, Ito argued that CRNA was not entitled to sovereign immunity under *Runyon*. (*Id.* at 1008). The court undertook a stare decisis analysis, determining it was appropriate to overrule *Runyon* in light of substantial developments in tribal sovereign immunity doctrine from both circuit and state courts. (*Id.* at 1016). Departing from *Runyon*'s single-factor inquiry that focused on the financial insulation of the entity from the tribe, the court instead employed a multifactor approach that weighs (1) the entity's purpose, (2) its method of creation, (3) control, (4) tribal intent, and (5) the financial relationship between the entity and the tribe. (*Id.* at 1020, 1022). The court reasoned that the factors weighed in favor of CRNA's immunity, especially CRNA's purpose to provide essential healthcare services to tribes and its intent to work closely with its member tribes. (*Id.* at 1026). Affirming the superior court's dismissal, the supreme court overturned *Runyon* and held that CRNA was entitled to sovereign immunity because, under a five-factor inquiry, it was an arm of its member tribes. (*Id.* at 1021, 1026).

The Alaska Law Review is a scholarly publication that examines legal issues affecting the state of Alaska. The Alaska Bar Association recognizes a need for a scholarly publication devoted specifically to issues affecting Alaska. Alaska does not, however, have a state law school so the Alaska Bar selected Duke University School of Law to publish the Alaska Law Review. It is composed of second- and third-year law students from Duke University School of Law, and governed by a faculty advisory committee.

Alaska Law Review Volume 41, Issue 1: A Note from the Editor

By Allyson Barkley

The *Alaska Law Review* is pleased to present our December 2024 issue, the first in our 41st volume. This issue is distinctive in several ways. It concludes the fortieth year of the *Alaska Law Review*'s tenure at Duke University School of Law. It represents our sixth biennial symposium issue. It is one of the longest issues we have published and reflects the exceptional efforts on the part of the 28 editors and 14 authors who collaborated over these last eight months.

This year's symposium, entitled "Access to Justice in Alaska," is central to the *Alaska Law Review*'s mission in a particular and special way. Spanning topics from environmental justice to technology to Community Justice Workers, the symposium dealt with a number of recurring themes, including the importance of resources and community-driven work. In listening to these conversations, I was reminded of the importance of intentionally centering the Alaska legal community in everything we do at the *Alaska Law Review*. It is a privilege to serve practitioners in Alaska by providing legal scholarship and resources on current issues in the field. With this symposium issue, we offer a firm recommitment to listening, to adapting, and to centering Alaskan practitioners and readers in each stage of our work.

I am so thankful to you, our readers, who have provided feedback, submitted pieces, and accepted us into your homes and workplaces; your generosity and passion for this work is the heart of the *Alaska Law Review*. I am also proud of our staff, who worked hard to bring this symposium issue to publication. This issue features a transcription of the Keynote Address, five articles, two student notes and one student case comment.

We begin the Access to Justice issue with a transcription of the keynote address by Nikole Nelson. In *Addressing the Access to Justice Crisis: Think Systemically, Act Locally*, Nelson describes the immense access challenges Alaska residents face. She outlines the barriers to access and the ways programs like Alaska's Community Justice Workers are working to overcome those barriers. Finally, Nelson's keynote concludes with a message of hope for practitioners and advocates: If we empower everyone to know and use the law, justice will be universally available.

The keynote offers a perfect segue into our first article, which provides an overview of the creation and implementation of Alaska's trailblazing Community Justice Workers program. Alaska Legal Services Corporation (ALSC) attorneys Joy Anderson and Sarah Carver partner with Dr. Robert Onders for *Community Justice Workers: Part of the Solution to Alaska's Legal Deserts.* This article sets the stage for the following pieces by describing how the Alaska Tribal healthcare system inspired Community Justice Workers, how ALSC successfully mobilized their Community Justice Workers to appeal SNAP denials, and how the program can be expanded to meet other legal needs of low-income Alaskans.

In direct conversation with this piece is *Building Successful Justice Worker Programs: Emerging Insights from Research and Practice*, by Rebecca L. Sandefur and Matthew Burnett. Drawing on quantitative evidence and their work with Nelson, Anderson, and others in Alaska and beyond, Professors Sandefur and Burnett detail ten important factors in establishing and growing justice worker programs. After outlining these factors, the authors conclude with some tips on where to begin the work.

In *Justice Beyond the State*, author Kirsten Carlson grapples with the popular suggestion to restore jurisdiction in local Tribal communities. Professor Carlson analyzes the limited data on Alaska Native justice systems across the state to provide the reader with a better understanding of what it means to expand or restore jurisdiction. She concludes by arguing that extending jurisdiction is a promising solution—as long as state actors preserve the justice traditions and cultural practices of Tribes, rather than imposing Anglo-American adversarial style systems upon them.

Offering a different avenue for expanding access to justice, author J.J. Prescott discusses the exciting potential of technological tools like online dispute resolution (ODR) in Alaska. In *Next Steps in Online Courts: Accelerating Access to Justice Through Court Technology*, Professor Prescott describes the ways technology can breach access gaps, how the Alaska Court System is already using ODR, and finally, some of its pitfalls and possibilities in Alaska's unique legal, geographic and cultural landscape.

Next, Cayley Balser and Antonio Coronado outline best practices for trauma-informed, power-conscious lawyering in their piece *Power-Conscious Legal Work: Building a Roadmap for Rural Access to Justice Through Trust, Accountability and Trauma-Informed Practices.* The authors invite us to consider the importance of place-based advocacy when attempting to enter "legal vacuums" to provide services. Centering rural, Native and historically marginalized concepts of power, Balser and Coronado offer ten domains for practitioners striving to provide reparative and empowering access to justice.

Our first student note is *Glacial Progress: Thawing the Path to a Law School in Alaska*, written by Lewis and Clark law student Kathrine Coonjohn. Coonjohn presents us with the history of law school feasibility studies in Alaska, the barriers to establishment, the ways an in-state law school would close the justice gap, and ultimately, a compelling argument as to how Alaska can effectively open a law school.

Our second student note, *Alaska's Healthcare Markets: The Free Market Is Not a "Cure"*, is authored by *Alaska Law Review* Executive Articles Editor Katie Raya. This piece discusses the Alaska healthcare system, exploring how Alaska has struggled to create access to healthcare due to high costs and the rural nature of the state. As described in the Sandefur and Burnett article, health and wellbeing are inextricably linked to legal and other needs. While Community Justice Workers were inspired by the success of the Community Health Aide model, Raya's note demonstrates that significant work is needed to truly close the access gap and argues for legislative solutions to address the root causes of high healthcare costs.

The issue concludes with a case comment by Alaska Law Review staff editors Erik Gordon and Jack Jeffrey. *Alaska's Arm-of-the-Tribe Jurisprudence: Ito v. Copper River Native Association and Its Contribution to a More Uniform System of Justice in America* explores new case law that standardizes access to justice in cases where Tribal sovereign immunity is at issue. Gordon and Jeffrey first describe the legal background and precedent overturned by *Ito v. Copper River*, before turning to the five-factor test adopted by the Alaska Supreme Court. The authors argue that, while this test is a solid step toward more equitable access to justice, a more comprehensive analysis would establish greater uniformity between arm-of-the-tribe jurisprudence and Alaska's approaches to federal and state entities.

This issue of the *Alaska Law Review*, in addition to each of our previous issues, is available on our website, alr.law.duke.edu. There, anyone can access PDFs of our volumes, which are easily printable and searchable. Our website also houses our "Year-in-Review": summaries of important cases decided by the Alaska Court of Appeals, the Alaska Supreme Court, the U.S. District Court for the District of Alaska, and the U.S. Court of Appeals for the Ninth Circuit each year. We hope that you will visit our website and continue engaging with *ALR* as we strive to serve the Alaska legal community. We welcome your comments, responses and feedback at alr@law.duke.edu.

On behalf of the editorial staff, I hope you find this issue thought-provoking and useful. We are grateful to the Alaska Bar Association for the privilege of publishing the *Alaska Law Review*. We thank Duke University School of Law for its institutional support. Lastly, and most importantly, we thank you for your interest in the scholarship of our published authors. We look forward to future collaboration with the Alaska legal community in the months and years to come.

To view the full issue of the Alaska Law Review, please visit: https://alr.law.duke.edu/.

Scott Oravec, Justice Aimee Oravec, Judge Sharon Gleason, Candace Duncan, Alicemary Rasley, Mike Abels, Robert Groseclose and Barbara Schuhmann.

Rita Allee presenting John Foster Wallace with "The Jacobus" as Ken Jacobus sits in the foreground.

TVBA 4th of July Party in January Annual Celebration

Article and photos by Rita Allee

Even though the Fairbanks Police Department had warned against travel and the roads were sheets of ice, everyone navigated their way to Pikes Waterfront Lodge where the Tanana Valley Bar Association hosted its 4th of July Party on January 24, 2025 at Pike's Waterfront Lodge.

The party celebrated the transition of presidents, as Rita Allee, the outgoing President, presented John Foster Wallace, the incoming President, with the "The Jacobus". The Jacobus is a skull mounted on a staff which was crafted by Ken Jacobus to start this tradition many years ago. Ken Jacobus from Anchorage came to the dinner to oversee the ritual change of office holder.

TVBA presented a plaque to Bobbie Allen, a 2023 inductee to the Alaska Bar Association. She was raised in Nelson Lagoon. She graduated from UAF Cum Laude. She clerked for Judge Bennett for two years. She was awarded numerous scholarships while attending UAF. She is a graduate of Mitchell Hamline School of Law. TVBA wanted to honor an up and coming recent bar member as a way of encouraging participation in TVBA in the future.

The program honored Federal District Judge Ralph Beistline, who is beloved in his hometown. Retired Superior Court Judge Mark Wood shared memories of high school with Ralph and surviving the Fairbanks flood. Robert Groseclose also attended high school with Ralph. He spoke about when Ralph and he were both in remedial reading in third grade at Nordale Elementary School. Ralph Beistline was awarded a TVBA Alaska shaped plaque as a distinguished attorney and judge.

Judge Sharon Gleason of the Federal District Bench, Senior Judge Andrew Kleinfeld of the US Ninth Circuit, and newly appointed Alaska Supreme Court Justice Aimee Oravec were all in attendance.

Mark Wood, Kathy Wood and Ralph Beistline seated with his wife and kids.

Donna Wallace, John Foster Wallace, Bobbie Allen, Christopher Allen and Robert John.

AAWL Corner: Ethics Discussion and Networking Event

Text and photo by Chelsea Ray Riekkola

From left to right, Phil Shanahan, Justice Dana Fabe (Ret.), Jahna Lindemuth and Renee Wardlaw.

This past December, the Anchorage Association of Women Lawyers (AAWL) hosted an engaging ethics event that tackled the intricacies of career transitions within the legal profession. We were privileged to welcome a panel of esteemed speakers whose careers offered a breadth and depth of experience that made for insightful and thought-provoking discussion.

Senior Justice Dana Fabe shared her extensive judicial experience and insights on ethical decision-making for law clerks, attorneys beginning their careers on the bench, and judges and justices entering mediation practice. Justice Fabe, the first woman appointed to the Alaska Supreme Court, served three terms as Chief Justice and continues to contribute to the judiciary as a Senior Justice. Her perspective was demonstrative of her dedication to advancing civic education and mentoring future legal professionals.

Jahna Lindemuth, former Alaska Attorney General and a named partner at Cashion Gilmore & Lindemuth, brought a wealth of knowledge on ethical challenges in transitioning between high-stakes litigation in the private sector and government service. As a high-profile attorney who has taken on major roles in both the government and private sector, Jahna was able to offer a practical perspective on maintaining ethical integrity in transitioning between diverse legal roles.

Senior Justice Dana Fabe shared her extensive judicial experience and insights on ethical decision-making for law clerks, attorneys beginning their careers on the bench, and judges and justices entering mediation practice.

Of course, no ethics presentation would be complete without the meaningful contributions of Bar Counsel Phil Shanahan, whose encyclopedic knowledge of the Alaska Rules of Professional Conduct precedes him. Phil provided valuable guidance on navigating ethical dilemmas faced by attorneys in their day-to-day practice based on his direct experience guiding attorneys through the ethical obstacle course of career transitions.

As we move into a new chapter, we extend our heartfelt gratitude to outgoing President Siena Caruso for her exemplary leadership and dedication through the era of Covid and beyond. Her contributions have strengthened our organization, and we are deeply thankful for her service.

We also bid farewell to outgoing board members Danée Pontius, Melanie Osborne and Erika Kahill, whose commitment and service have been instrumental in AAWL's continued success. Their hard work and passion have helped shape our initiatives and bolster our vibrant community.

At the same time, we are excited to welcome a dynamic group of new board members: Meredith Behrens, Sarah Bryan, Ashley Sundquist, Danika Watson and Ambriel Sandone. We look forward to the energy and fresh perspectives they will bring as we continue to advance AAWL's mission of supporting women in the legal profession.

Looking ahead, we invite you to join us for our upcoming event, *Pivots, Promotions and Partnerships – Speed Networking with AAWL*. The event will take place on Tuesday, March 25, 2025, at the Captain Cook Hotel on the Quarterdeck (Tower 1, 10th Floor). Doors open at 5:00 p.m. for mingling over drinks and heavy appetizers. A structured speed networking session will run from 5:30 to 6:30 p.m., followed by unstructured networking until the event concludes at 7:00 p.m.

This event is free for AAWL members and $35 for non-members. No pre-registration is necessary—simply arrive ready to connect, share and grow your professional network. Electronic or traditional business cards are recommended. Whether you're exploring new career opportunities, looking to hire or just hoping to meet other lawyers in the Anchorage area, this event is the perfect opportunity to make meaningful connections.

We look forward to seeing you there!

Interested in becoming a member of AAWL? Visit our website at aawl-ak.org for more information on membership benefits and how to join. All practitioners are welcome, and we would love to have you as part of our community!

The Laken Riley Act: What Alaska Criminal Defense Attorneys Need to Know

By Nicolás A. Olano

If you practice criminal law in Alaska, you probably only think about immigration detention when explaining the consequences of a plea to a client. With the passage of the Laken Riley Act (LRA) on January 29, 2025, that may change – particularly at arraignment. This new law dramatically expands the scope of mandatory detention for noncitizens and gives state authorities - including potentially Alaska's attorney general - more power to challenge federal immigration policies. Understanding how these changes affect your noncitizen clients could be crucial to their freedom and future.

Expansion of Mandatory Detention: More Than Just Convictions

Before the LRA, immigration detention under section 236(c) of the Immigration and Nationality Act (INA) applied primarily to noncitizens convicted of serious crimes like aggravated felonies and drug offenses. The LRA throws that standard out the window. Now, mandatory detention, without bond, by immigration authorities applies for noncitizens who are merely arrested for, charged with, or admit to committing certain crimes—including some that are surprisingly minor.

Under the LRA, the following offenses now trigger mandatory detention: burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any offense resulting in death or serious bodily injury to another person. Importantly, any noncitizens who are charged with, arrested for, convicted of, admits to having committed, or admits committing acts which constitute the essential elements of any of those offenses are subject to mandatory detention without bond from immigration custody. Unlike in the past, a noncitizen does not even need a conviction to end up in mandatory detention. Requiring mandatory detention of anyone accused of the aforementioned offenses is a game-changer for criminal defense attorneys representing noncitizen clients.

State Attorneys General Get a Say—Even in Alaska?

One of the LRA's most controversial provisions allows state attorneys general to sue the federal government over immigration enforcement, including claims that federal policies have financially harmed the state. While this provision is likely aimed at states with large immigrant populations, the door is now open for Alaska's attorney general to enter the immigration enforcement arena. This could mean future legal battles over immigration policy, even in Alaska.

What This Means for Your Clients

For criminal defense attorneys, the LRA creates new risks for noncitizen clients:

- **Bond from immigration detention will be off the table for many cases.** With more offenses triggering mandatory detention, fewer noncitizens will be eligible for release while fighting their immigration cases.
- **Plea deals carry new consequences.** Even minor convictions - or simply admitting to certain elements of an offense - could mean indefinite detention and eventual deportation.
- **State law variations create confusion.** The LRA relies on state definitions of crimes like larceny and shoplifting, meaning enforcement could vary depending on how a particular state classifies an offense. The long-standing categorical approach used in immigration law—where only the statutory elements of a crime mattered—is now in jeopardy.

Challenges and Potential Pushback

Immigration attorneys and civil rights groups are already preparing legal challenges to parts of the LRA. There are several challenges that will likely be litigated. First, state enforcement powers interfere with federal authority. Immigration law has traditionally been a federal matter. Allowing states to challenge federal policies could lead to inconsistent enforcement and a flood of lawsuits. Another potential challenge is that the LRA's broad detention triggers violate due process. Arrests and mere admissions should not be enough to strip someone of their liberty without a hearing or any possibility to receive a bond. Yet another potential challenge is that retroactivity could be unconstitutional. Applying the LRA's detention provisions to past offenses could violate legal principles prohibiting retroactive punishment.

Takeaways for Alaska's Criminal Defense Bar

If you have noncitizen clients, the LRA changes the landscape in ways you cannot afford to ignore. Here's what you can do now. First, it is critically important that criminal defense attorneys ask every client about their immigration status. Even if it hasn't mattered before, it does now. You cannot tell whether someone is a U.S. citizen by looking at them or hearing the way they talk. The best practice is to ask every client. Second, you should think twice before advising a client to admit to a crime. An admission, even without a conviction, could land them in ICE custody. If the admission is for an LRA offense, they would be subject to mandatory detention. Third, consult with an immigration attorney early in the case. The LRA has made criminal-immigration ("crimmigration") issues even more complex, and collaboration between criminal and immigration attorneys is more important than ever.

Conclusion

The Laken Riley Act marks one of the most dramatic shifts in immigration enforcement in recent history. For Alaska's criminal defense attorneys, it is no longer just a matter of what happens in state court. Your noncitizen clients could now face serious immigration consequences that did not previously exist. By understanding the new law and working proactively, you can help protect your clients from the unexpected fallout of this sweeping legislation.

Nicolás Olano and Lara Nations co-own Nations Law Group. Olano focuses primarily on removal defense, asylum and crimmigration.

ESTATE PLANNING CORNER

Tax Apportionment Clauses - Part IV

By Steve O'Hara

The Alaska statute on Apportionment of Estate Taxes begins with these five words: "Unless the will provides otherwise…." AS 13.16.610(a). Therefore, every Will governed by Alaska law has a tax apportionment clause.

When preparing a Will or Revocable Living Trust, visualize what the document states or does not state in terms of estate and inheritance taxes, whether the taxes are real or theoretical in the particular case at hand.

Withdrawing funds to pay estate and inheritance taxes from a share deductible on a federal estate tax return is a taxable event in that the withdrawal reduces the deduction. Less deduction means more tax.

Tax apportionment clauses can make the effective rate of estate and inheritance taxes 100% and even greater. For example, the effective tax rate is 100% if the decedent directs that your share is burdened with estate and inheritance taxes not only generated by your share but also generated by the shares of other people and, as a consequence, your share is wiped out. The effective tax rate is greater than 100% to you and others if after wiping out your share, estate and inheritance taxes reach into one or more other shares.

A simplistic assumption that has served me well in the design-stage of the tax apportionment clause when working with a client is that if equitable tax apportionment is not adopted, then the client's tax apportionment clause makes the effective rate of estate and inheritance taxes 100% or more. Of course, the relative shares of the beneficiaries determine the result. But clients get the point. Under equitable tax apportionment, if your share does not generate any estate and inheritance taxes, then your share is not charged with the estate and inheritance taxes that the shares of others generate. Cf. AS 13.16.610(i).

Under equitable tax apportionment, if your share does not generate any estate and inheritance taxes, then your share is not charged with the estate and inheritance taxes that the shares of others generate. Cf. AS 13.16.610(i).

Consider Joe Client, a United States citizen domiciled in Alaska. He recently died, survived by his spouse, also a U.S. citizen. As of the day before Client's death, he had no remaining unified credit against gift tax under IRC Section 2505. His lifetime gifts were all sheltered by unified credit such that no gift tax was ever paid or payable. Cf. IRC Sec. 2001(b)(1)(B). Assume that Client's estate will pay 40% in federal estate tax on every dollar of value, not sheltered by a deduction, that he passes at his death. Cf. IRC Sec. 2001(c).

Client's sole remaining asset at his death is separate property of five million dollars, which he is free to give to anyone pursuant to a prenuptial agreement.

Under his Will, Client gives 50% ($2,500,000) to his surviving spouse ostensibly qualifying for a deduction under IRC Section 2056 (the "Marital Share"); 25% ($1,250,000) to a public charity ostensibly qualifying for a deduction under IRC Section 2055 (the "Charitable Share"); and 25% ($1,250,000) to Jane Niece, his niece one generation below him. Niece is domiciled in Alaska. The Marital Share plus the Charitable Share is the Deductible Amount, but there is a complication.

In preparing his Will, Client insisted that Niece must not be burdened with any federal estate tax on her $1,250,000 inheritance. Specifically, under Client's tax apportionment clause in his Will, Client charges all estate and inheritance taxes pro rata to the Marital Share and the Charitable Share.

By reason of client's tax apportionment clause, interrelated computations are required in order to determine the net, after-tax Marital Share and Charitable Share. Under these facts, I offer the math in 17 circular computations in my blog post at **www.oharatax.lawyer** titled "Interrelated Computations: Part 2."

The result is that as of Client's death, with five million dollars on the table, the shares are as follows: Internal Revenue Service, $833,333 (borne pro rata by Client's surviving spouse and the charity); surviving spouse, $1,944,445 ($2,500,000 minus tax of $555,555); charity, $972,222 ($1,250,000 minus tax of $277,778); and Niece, $1,250,000 (no tax apportioned to her by Client).

Intuitively and logically, you know a shorthand way to estimate the federal estate tax in this case is to divide what you know, which I call the Sum Known (i.e., $1,250,000 to Niece free of estate tax), by a percentage. And then you take the resulting number and subtract the Sum Known. The percentage is 1.00 minus the highest nominal tax rate under the facts. So 1.00 minus .40 equals .60 and $1,250,000 divided by .60 equals $2,083,333 and $2,083,333 minus $1,250,000 equals $833,333 of estimated tax. I would not rely on a shorthand computation. To nail things down, I would recommend using a longhand method such as illustrated in my blog post at **www.oharatax.lawyer** titled "Interrelated Computations: Part 2."

We know from the longhand calculations that the federal estate tax payable in our example is $833,333. Question: To what beneficiary is the tax of $833,333 attributable? Answer: Niece. Consider that if all of Client's five million dollars had passed to his surviving spouse or to his designated charity or both, the marital deduction and the charitable deduction would have reduced the taxable estate to zero and, thus, there would have been no federal estate tax payable. See IRC Sec. 2055 and 2056.

Two paragraphs above I use the term "nominal tax rate." My meaning depends on your perspective. I would say the nominal-tax-rate calculation includes tax in the denominator when comparing tax of $833,333 with Niece's share of $1,250,000. So $833,333 divided by $2,083,333 (which is $833,333 plus $1,250,000) is 40%. But consider what you might call the "effective tax rate," which you determine by excluding tax in the denominator. Here, $833,333 divided by $1,250,000 is 67%, reflecting the relative shares of the IRS and Niece. The IRS gets $67 for every $100 Niece receives.

"I suggest that equitable tax apportionment is the most solid foundation on which to draft a tax apportionment clause in a Will or Revocable Living Trust."

The above example, with its non-equitable tax apportionment, has shares that are deductible on Client's federal estate tax return. In other words, those shares are large enough not only to cover federal estate tax payable, but also to pass money to Client's surviving spouse and to his designated charity. The example illustrates that non-equitable tax apportionment does not necessarily increase federal estate tax. Consider that the federal estate tax in the example is the same as would be the case if Client had chosen equitable tax apportionment, meaning only Niece's share would be charged with federal estate tax, while grossing up Niece's share to net her $1,250,000 after federal estate tax. Cf. AS 13.16.610(i).

The math on that scenario would be as follows: Client wants Niece to net $1,250,000 after she pays her share of federal estate tax. So we divide what we know, $1,250,000 to Niece free of estate tax, by a percentage. The percentage is 1.00 minus the highest nominal tax rate under the facts. So 1.00 minus .40 equals .60 and $1,250,000 divided by .60 equals $2,083,333. Client decides to make Niece's share $2,083,333. Client's taxable estate would be that same amount – i.e., five million dollars minus the Deductible Amount. Here, the Deductible Amount would be all except Niece's share of $2,083,333. IRC Sec. 2055 and 2056. Thus, with a 40% estate tax rate, the federal estate tax is $833,333 ($2,083,333 times 40%). Since Niece's share is charged with the federal estate tax attributable to her share, she nets $1,250,000 after federal estate tax ($2,083,333 minus $833,333).

Even though in some cases non-equitable tax apportionment does not increase federal estate tax, I hold firm on my simplistic assumption in the design-stage of the tax apportionment clause. My simplistic assumption is that if equitable tax apportionment is not adopted, then the tax apportionment clause will make the effective rate of estate and inheritance taxes 100% or more.

This simplistic assumption helps to avoid the complexity of interrelated computations of estate and inheritance taxes and helps to avoid situations that could lead to litigation.

Non-equitable tax apportionment is a slippery slope. It is dangerous. Stuff happens. Take a basic example: Client is alive. You are away from the office and, of course, Client calls insisting upon a "simple" Codicil flipping Niece's share to four million dollars and the deductible shares to $500,000 each. With non-equitable tax apportionment embedded in his Will, Client's Codicil wipes out the shares of all beneficiaries except Niece's share.

For the math on that scenario, we can use three columns: Deductible Amount, Taxable Estate, and Tax Payable. We write $1,000,000 under Deductible Amount. And we enter $4,000,000 under Taxable Estate ($5,000,000 minus $1,000,000). Thus, with a 40% estate tax rate, we write $1,600,000 under Tax Payable ($4,000,000 times 40%). Here, Tax Payable is larger than the $1,000,000 ostensibly designated by Client to pass to his surviving spouse and to charity. Thus, Client's Codicil wipes out the shares of his surviving spouse and his designated charity.

In sum, I suggest that equitable tax apportionment is the most solid foundation on which to draft a tax apportionment clause in a Will or Revocable Living Trust.

Nothing in this article is legal or tax advice. Non-lawyers must seek the counsel of a licensed attorney in all legal matters, including tax matters. Lawyers must research the law touched upon in this article.

In private practice in Anchorage, Steven T. O'Hara has written a column for every issue of The Alaska Bar Rag since August 1989.

Bar People

Landye Bennett Blumstein LLP Announces Alexander J. Kubitz as New Partner


Alexander Kubitz

Landye Bennett Blumstein LLP is pleased to announce that Alexander J. Kubitz became a partner of the firm, effective January 1, 2025.

Since joining LBB in 2019, Alex has demonstrated exceptional service to our clients across multiple practice areas, including Alaska Native law, mergers and acquisitions, corporate law and real estate development and transactions.

Alex was born and raised in Alaska. Prior to pursuing a career in law, he was a legislative aide in the Alaska State Legislature. He graduated from Lewis & Clark Law School *cum laude* in 2018. After graduation, he clerked for the Honorable Yvonne Lamoureux of the Alaska Superior Court in Anchorage.

Melanie Iverson Kaufman Becomes Shareholder of Foley & Pearson, P.C.


Melanie Kaufman

Melanie Iverson Kaufman, an estate planning, probate and trust administration attorney, has become a shareholder of Foley & Pearson, P.C. in Anchorage.

Ms. Iverson Kaufman has been a practicing attorney for ten years. She began her career at Shaftel Law Offices, PC (now Shaftel Delman, LLC) and joined Foley & Pearson, PC in September of 2020. She advises a wide range of clients on preparation of wills, trusts and community property agreements, guides fiduciaries through the probate and trust administration process and prepares estate tax returns.

Raised in Anchorage, Alaska, Ms. Iverson Kaufman graduated from Willamette University College of Law. She is a current member and past President of the Anchorage Estate Planning Council and regularly presents to various local organizations on the topics of estate planning and administration.

Two New Attorneys at Meshke Paddock & Budzinski


Aaron Sandone

Meshke Paddock & Budzinski is proud to announce that Aaron Sandone has joined the firm as a Shareholder. Aaron has practiced workers' compensation defense in Alaska since being admitted to the Alaska Bar in 2008. He is a lifelong Alaskan, born in Eagle River and raised in Wasilla. Aaron attended Eastern Washington University, earning degrees in Government and History. He graduated from Golden Gate University School of Law in 2008 and subsequently interned in the Civil Law Division of the Municipality of Anchorage Department of Law.


Leif Haugen

Leif Haugen joined Meshke Paddock & Budzinski in 2024. He focuses exclusively on workers' compensation issues. Before joining the firm, he was the Chief of Enforcement for the Alaska Division of Banking and Securities. Before then, he worked as an attorney handling civil litigation and transactional matters. Leif was born and raised in Anchorage. Before attending law school, Leif worked as a legislative aide for U.S. Senator Ted Stevens for three years in his Washington, D.C. office. He earned his undergraduate degree from the University of Colorado at Boulder and his law degree from the Willamette University College of Law.

Landye Bennett Blumstein LLP Announces River E.M. Sterne as Associate Attorney


River Sterne

Landye Bennett Blumstein LLP is pleased to announce that River E.M. Sterne has joined the firm as an associate attorney. The new hire further strengthens the firm's legal services, especially Alaska Native law, subsistence and natural resources law, transactional and litigation practice areas.

River was born and raised in Anchorage and graduated from Lewis & Clark Law School summa cum laude in 2023. As a law student, River served as Submissions Editor of the Lewis & Clark Law Review and Secretary of the Portland National Lawyers Guild chapter. He also clerked for the Aleut Community of St. Paul Island Tribal Government, worked as a summer associate at Kanji & Katzen, P.L.L.C. in Seattle, and externed for the Columbia River Inter-Tribal Fish Commission. Following law school, River clerked for Justice Dario Borghesan on the Alaska Supreme Court.

At Landye Bennett Blumstein, we have built our practice around great lawyers who are leaders in their respective fields. We are excited for River's future and how he will extend the high-quality legal services we offer our clients and community.

Substance Abuse Help

We will provide advice and support; discuss treatment options, if appropriate; and protect the confidentiality of your communications.

In fact, you need not even identify yourself when you call. Contact any member of the Lawyers Assistance Committee for confidential, one-on-one help with any substance use or abuse problem. We will not identify the caller, or the person about whom the caller has concerns, to anyone else.

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Lawyers' Assistance Committee
Alaska Bar Association

In Memoriam

Alaska Legal Pioneer Donna Willard-Jones Passes Away

By Mildred Link

Donna C. Willard-Jones died peacefully December 4, 2024 exactly 30 years to the hour of her father's death, Donald Arthur Morris. She lived a full, rich life completely on her own terms. Donna was born January 19, 1944 in Calgary, Alberta to parents Margaret and Donald Morris. She attended the University of British Columbia and University of Oregon Law School. She remained a loyal Duck all her life.

Donna Willard-Jones

Donna's early adulthood was spent in Haines, Alaska. There she married Wes Willard. She was a ceremonial Chilkat dancer and considered herself an adopted Chilkat. Wes and Donna later moved to Anchorage and divorced after 12 years of marriage.

Donna, a pilgrim and pioneer, went on to have an accomplished law career in Anchorage, all of Alaska and nationally through her affiliations with the Alaska Bar and the American Bar Associations.

From 1978 – 1979 she served as the first woman president of a mandatory/unified State Bar in the United States. She had previously served on the Board of Governors for the Alaska Bar Association. Former Executive Director of the Alaska Bar, Deborah O'Regan, stated that Donna always attended the Western States Bar Conferences. She recalled she was always knitting while keeping up with everything going on; she was so well versed in parliamentary procedure O'Regan said "if Donna said how a meeting should be conducted you knew she was right!" For good reason, as in 1990 she was awarded the Distinguished Service Award by the Bar for her service on the Alaska Rules of Professional Conduct Committee, and her work on the Alaska Bar Rules. She also served on the Board of Governors for the American Bar Association. She was a member of the Academy of Appellate Lawyers in the American Bar. Donna was awarded the Rikli Solo Lifetime Achievement Award in 1998. She was on the American Bar Association Standing Committee on Ethics and Professional Responsibility.

On October 1, 1983 she married Douglas E. Jones, a retired homicide detective with the City of Anchorage. They shared an active and exciting life together. Their favorite spot to spend time together was at their remote cabin at Donkey Slough, reachable only by boat in summer and snowmobile in winter. In a bold move she and Douglas spent an entire year living 100 miles outside of Anchorage in the bush with Donna practicing law. The ABA Journal (2003) wrote of the "Barrister in the Backwoods" where "Solar panels on the cabin roof fed power to batteries that ran a laptop, computer, printer, fax and satellite phone." Willard-Jones estimated that she made 10 trips a year for ABA meetings – a daunting schedule even living in civilization. She stated "thank goodness for long train rides and laptop computers." Donna admitted she had a great support staff in Anchorage, she stated "I suppose I do it because it is a challenge and to see if it can be done." She also stated "one of her missions as she moved up in the ABA was to be sure to make the voice of solo and small firm lawyers heard."

Donna Willard-Jones' specialty was Appellate law. Judge Niesje Steinkruger remembers a Kenai judge appointed Donna as a Guardian ad Litem for a child in a minor settlement. Steinkruger recalls Donna "rose to the occasion and figured out where the money was going [to] instead of the child. It is a Supreme Court case still seen as the instruction manual for Guardian ad Litem in Minor Settlement, or 'Follow Donna's Example.'"

Donna was totally devoted to the law. As a hearing-impaired person, she worked hard to ensure Alaska Courts provided equipment and technology to serve hearing-impaired people. She gave much of her life in service to others and the cause of justice.

She is preceded in death by her parents Margaret and Donald Morris; beloved husband Douglas E. Jones; former husband Wes Willard and stepgranddaughter Charlene Matthews. She is survived by brother Doug Morris and sister-in-law Theresa; brother and sister-in-law Gary and Leslie Morris (Kelly and Mike); her stepchildren Marie Matthews (Christy and Amber); stepson Dean E. Jones, stepdaughter Julie Garcia, her husband Eddie (Justin, Vanessa and Josh).

Former Federal Magistrate Alaska Judge Terrance Wayne Hall Passes Away

Obituary provided by Rita T. Allee

Terrance Wayne Hall passed away on November 2, 2024. He was born May 15, 1945 on Bell Island, Newfoundland, Canada to Chesley and Gwendolyn (Butler) Hall. In the early 1950s, his family emigrated to the United States, settling in Orange, California. In 1964, Terry became a Naturalized Citizen with a goal of serving his adopted country in the US Army. He was selected for Officer Candidate School and commissioned in the Field Artillery. He served two tours of duty as Forward Observer in Vietnam.

Terrance Wayne Hall

During a 10 year break in active service beginning in 1971, he graduated from Cal State Fullerton and Western State College of Law. He then worked as a Deputy District Attorney in Orange County for three years. In 1981, he returned to active duty in the Field Artillery, serving various positions in Germany, Louisiana and Alaska. His last position was Commander of the ROTC at the University of Alaska Fairbanks. Having fallen in love with Alaska, he and Claire stayed for almost 20 years. Terry opened a private law practice and finished his legal career as the Federal Magistrate Judge for the 4th Judicial District in Alaska.

Terry and Claire retired in 2008 and moved to Texas where he enjoyed woodworking, fishing, hunting and ranching. He cherished time with his family and was most happy when his "DNA" was gathered around him. Sitting on the porch, swapping stories and jokes, sipping on a Lone Star and watching the Texas sunset was his idea of heaven. Terry never met a stranger and gathered friends wherever he went who often became family. His larger than life personality, his all consuming hugs and his deep and unconditional love for his family and friends has left an indelible hole.

Terry is survived by his loving wife of 49 years Claire (Van Sciver) Hall, son Tom Hall, daughter Gwendolyn Shephard and husband Jason, children Evelyn, Aurelia, Sebastian and Augustin; daughter Allison Plourde and husband Jim, children Jack, Andrew and Kara; daughter Anne Seneca and husband Colin, children Trent, Claire and Audrey; sister Bonnie and husband Mike; brother Robin and wife Jeri.

In lieu of flowers the family requests donations be made in Terry's name to K9s for Warriors. Most of all, please share a joke with a stranger and make sure to tell your family you love them.

In Memoriam

Trailblazing Business Attorney Lynn Allingham Passes Away

By Greg Galik

Lynn Marie Allingham, a trailblazing professional executive and business attorney, passed away peacefully on October 30, 2024, at Alaska Regional Hospital in Anchorage, Alaska. Her journey to this moment was marked by a courageous battle with cancer, which she faced with unwavering determination.

Lynn was born December 7, 1955 in Seattle, Washington to William and Ruth Allingham, and grew up in the Shorewood area. After graduating from Evergreen High School in 1974, she pursued her passion for linguistics, earning a bachelor's degree from the University of Washington in 1978. Her thirst for knowledge continued, and she completed her legal studies with a Juris Doctor of Law in 1981. She was subsequently admitted to practice in Alaska and Washington State, District Court for the State of Alaska and Ninth Circuit Court of Appeals.

Lynn's entry into the law field was not without its challenges. The early 1980s were marked by a national recession, compelling her to look to Alaska for employment. Her legal career began with the firm of Ely Guess and Rudd in Anchorage, where she honed her skills in resource and business law.

From there, Lynn's career took an impressive turn as she ascended the ranks, becoming an Assistant US Attorney and later serving as Corporate Counsel for the Aleutian Pribilof Islands Association. Her exceptional expertise and dedication led her to launch her own private practice, Allingham Law, in 1993.

In 1985, while still new to Alaska, Lynn Allingham met her future husband, Gregory Galik. The couple eloped to Hawaii to get married in 1986. Lynn and Gregory went on to have two sons, Geoffrey and Jon-Paul. Despite her busy schedule working in law and raising a family, Lynn was also involved in various activities such as the boys' summer soccer, Boy Scouts, the ski racing community in Girdwood and Montessori education.

Lynn and Gregory collaborated on numerous entrepreneurial ventures, and in 2006, they co-founded the Alaska Brands Group. After the closure of Matanuska Maid in 2008, Lynn took on the challenge of reviving the local bottled water industry. She transformed the company from the ground up into a multimillion-dollar operation, successfully obtaining Federal certifications, hiring employees, purchasing and installing processing equipment, and securing operating permits for manufacturing bottled water.

Together, the couple successfully launched Clear Alaskan Glacial Water to Asian markets such as Tokyo, Seoul, Shanghai and Taipei. Lynn also handled operations and administrative work, raised capital, secured private loans for business expansion, and transformed the company into a world-class manufacturer and exporter. In 2017, her efforts paid off when Clear Alaskan Glacial Water won the prestigious international water tasting competition in Paris, France.

Along with her success in the bottled water industry, Lynn continued her law practice, assisting new businesses in starting up, expanding and achieving success in Alaska. In 2018, she embarked on a new venture, Luma Makai LLC, acquiring distressed properties in Hawaii and the lower 48. These properties were then renovated and refurbished for sale or management by the company, and many of them are still active today. Lynn personally handled much of the planning, design and finishing work for these projects.

Her passion for the principles of justice and fair laws began with her membership in the American Bar Association in 1984. As a 30-year veteran, she dedicated herself to volunteering and engaging with various sections, divisions and regional representation within the ABA, including serving on ABA's Board of Governors. Her goal was to enhance public understanding and respect for the rule of law, the legal process and the role of the legal profession both domestically and internationally.

Lynn actively supported the ABA's efforts to promote just laws, particularly in the areas of human rights and a fair legal process. Every spring, she embarked on a journey to Washington, D.C., to appeal to the Alaskan delegation on the Hill for continued funding and support for Alaska Legal Services. This organization ensured that all Alaskans had access to legal aid. In addition to her work with the ABA, Lynn also volunteered for the World Affairs Council, the World Trade Center and the Anchorage Bar Association. Lynn was a longtime member of Anchorage East Rotary Club, where she is a past board member, and has chaired the Youth Services and Vocational Services Committees. She serves as board member and secretary of the Anchorage East Rotary Service Fund, Inc.

Lynn Allingham

Throughout her career, Lynn demonstrated a remarkable versatility, taking on a wide range of transactional legal and personnel matters. Her expertise encompassed negotiation, drafting, international law and intellectual property matters, making her a sought-after professional in her field.

Beautiful both inside and out, with an infectious smile, and compassionate heart, Lynn was loved and admired by many. She found joy in the company of those she worked with. She mentored and supported young women aspiring to enter the legal field, fostering lifelong friendships. In her free time, she indulged in her passion for collecting Asian art and collectibles, as well as painting captivating designs and scenes inspired by nature.

In May 2024, Lynn's life took a significant turn when she was diagnosed with cancer. This discovery reoriented her priorities, prompting her to cherish every moment spent with her family and friends. This year, she was blessed to witness her son's wedding in Hilo, embark on trips to Kona and Europe, and create unforgettable memories with friends she had known for a lifetime in Alaska.

Lynn is survived by her husband of 39 years, Gregory Galik, and their children, Geoffrey Galik, Jonathan Paul "J-P" Galik, (wife Bianca Bianco) of Hilo, Hawaii; her sister Kym Anton (Richard) and brother John Allingham of Bremerton, Washington; and numerous cousins; the Soriano family from Seattle, and the Busse clan originating from Southwest Washington state.

Lynn's passing leaves behind a legacy of success, mentorship and unwavering dedication to her clients. Her contributions to the legal profession will undoubtedly inspire future generations of attorneys and business leaders.

The KPBA Celebrates Christmas at Paradisos Restaurant

Text and photos provided by Paul Morin

The Kenai Peninsula Bar Association held their 2024 Annual KPBA Christmas Party at Paradisos Restaurant in Kenai on December 20, 2024. They were joined by courthouse staff, judicial officers, members of the local bar and their families. They enjoyed light refreshments, raffled-off Christmas door prizes and had kid-friendly activity tables (including a drawing/coloring station and a cookie decorating station).

TALES FROM THE INTERIOR

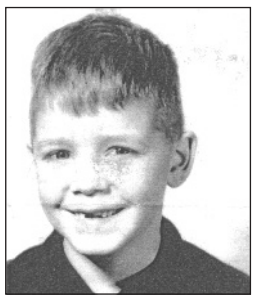
The Power of Sabotage at All Levels is Pervasive

By William R. Satterberg

It was 1977. I was a young, impressionable assistant attorney general assigned to the prestigious State of Alaska's transportation section in Fairbanks, Alaska. Fairbanks was an outpost, generally ignored by the Anchorage and Juneau offices. My supervisor, Gary Vancil, a Vietnam veteran, considered it ideal. Never volunteer was Gary's motto. Stay off the radar screen as much as possible, he said. We were not under the critical eye of either Juneau or Anchorage. We had our own private sanctum. Being ignored can be a good thing. Sometimes, not.

Our anonymity was not absolute. Rather, the deputy attorney general at the time, Wilson "Wil" Condon, decided that the Department of Law should have a get-together. A bonding experience, and even Fairbanks could attend. We would get to fly to Anchorage, go shopping and attend a group meeting. We would sit worshipfully under the tutelage of Wil. Wil was a proven infighter, and, like many second-in-command, Wil's job included being the office enforcer to keep the young pups in line.

I was excited about my Anchorage trip. I was no longer a bench warmer. The day of the meeting, we milled about. Informal introductions were exchanged. People were getting to know each other. Old dogs meeting the young pups. After pleasantries, Wil began his lecture.



"Whether the sabotage power of the legal memo is experienced at the state level, or at lower municipal or corporate levels, its power is pervasive."

Wil's session went on for hours. The clientele and tasks of the various divisions of the attorney general's office were discussed. Attorneys gave accounts of the successes and failures of their departments.

Ultimately, discussion turned to evaluating and improving the efficiency of the attorney general's office. Complaints surfaced. One recurrent complaint regarded the lack of any power of the department to effectuate changes in the client agencies.

. . . Wil reassured us that, although we might be the smallest and one of the least funded departments in the state, we were, in fact, actually "the most powerful department."

Recognizing our concerns, Wil reassured us that, although we might be the smallest and one of the least funded departments in the state, we were, in fact, actually "the most powerful department." Wil's revelation was clearly unexpected. We were dumbfounded. How could the smallest, least-funded state department also be the most powerful department at the same time? After all, wasn't our job to represent the state in litigation and simply provide advice to the client agencies? Seen but not heard? To clarify, Wil explained that we actually had three client groups. Those were the executive branch, the legislature and Alaska's public. Conceptually, we owed shared duties of loyalty and candor to all three entities. This explained why each one of us had received a nice certificate to frame and post on our wall. I came to the realization of the apparent power that we held in the eyes of others, being proclaimed as "Assistant Attorney Generals." Forget the fact that many of us had recently graduated from law school and were rookie "first years." Then, again, we all did have doctorate degrees, didn't we?

Wil next addressed our collaborative frustration of bureaucratic impotency. He explained that we were, in fact, even more powerful than the Department of Public Safety with all of its sophisticated weaponry. In fact, we had a unique power far beyond that of anyone else. The words which I distinctly remember next rolled off Wil's tongue in a deep, booming voice, said it all: "Counselors, you have the Power of Sabotage!"

No longer was I a nerd. Now I was, instead, the legal equivalent of Captain America.

What did Wil mean by the "Power of Sabotage"? Did Wil expect us to go out and blow-up buildings and bridge projects? Hopefully not. After allowing the shock effect of the statement to settle in, Wil explained further. "Counselors, the Power of Sabotage is the legal memo." He explained that, through the legal memo, we young, inexperienced assistant attorney generals could mold the political future for Alaska. Wil told us that all state bureaucrats feared the impact of the legal memo. The damage that could be done by a legal memorandum was phenomenal. If we wanted to move the state to one direction, we simply could write a memo encouraging activity in that direction, and warning of dire legal consequences if the opposite direction were selected. To the same degree, if we wanted the state to go the other direction, a memo could be written maneuvering the government into that direction, as well. It was then that I began to realize just how powerful I really was, even if I had a history of being the high school class nerd, like many other attorneys. My low self-esteem received a tremendous boost. No longer was I a nerd. Now I was, instead, the legal equivalent of Captain America. My feared sword of justice was but a small Bic pen. I realized just how many decisions had been made in government over the years which had been carved out by the ubiquitous legal memo, authored by little nerds of low self-esteem, like me.

Think about it. The oft-heard excuse, "I did this on the advice of counsel" carries an entirely new impact. The legal memo philosophy is still very much alive. Whether the sabotage power of the legal memo is experienced at the state level, or at lower municipal or corporate levels, its power is pervasive. It cannot be disputed that the legal memo carries a tremendous impact upon the direction that one's client chooses to take. As such, the power should be exercised most judiciously. The power should be exercised with a profound understanding that the legal opinion generated by counsel should be objectively accurate, intellectually honest, and will have far-reaching implications. Unfortunately, not all people appreciate the power of the pen that an attorney wields in writing the legal memo. In retrospect, opinions of the attorney general are really nothing more than a legal memo. The opinions may have been written by a first-year law school graduate. Counsel and clients should keep this in mind every time they are tempted to genuflect when faced with the proverbial "legal memo." Always consider the source.

Admitted to the Alaska Bar in l976, William R. Satterberg Jr. has a private, mixed civil/criminal litigation practice in Fairbanks. He has been contributing to the Bar Rag for so long he can't remember.

George Washington's Rules of Civility

8 *"At Play and at Fire its Good manners to Give Place to the last Commer, and affect not to Speak Louder than Ordinary."*

The *Bar Rag* doesn't intend to print them all but will offer one now and then.

Library of Congress

The first U.S. President wrote a copy of the 110 Rules of Civility in his school book when he was 14. The rules appeared in late 16th Century France and were popular in Washington's time. Some have application today.

Planning for Marital Trusts in Light of the Recent Tax Court Developments in Anenberg and McDougall

By Chelsea Ray Riekkola, Shareholder at Foley & Pearson, P.C.

Recent Tax Court decisions in *Estate of Anenberg, 162 T.C. 9 (2024)* and *McDougall v. Commissioner*, 163 T.C. No. 5 (2024), have clarified key aspects of QTIP trust terminations and their gift tax consequences. Both cases address the gift tax treatment of Qualified Terminable Interest Property (QTIP) trusts upon termination. However, they highlight important planning considerations for attorneys, particularly regarding the taxability of transfers made by surviving spouses and the role of remainder beneficiaries.

In both cases, the IRS took the position that terminating a QTIP trust could trigger gift tax under either I.R.C. §§ 2519 or 2511. Under § 2519, *Disposition of a QTIP Income Interest*, if a surviving spouse disposes of their income interest in a QTIP trust, they are deemed to have transferred the entire QTIP trust corpus, which may trigger gift tax liability. Under I.R.C. § 2511, *Direct Gifts of Remainder Interests*, if a remainder beneficiary voluntarily transfers or waives their interest in a QTIP trust, they are making a taxable gift. Further, under I.R.C. §§ 2501 and 2511, as well as Supreme Court precedent, especially *United States v. Irvine, 511 U.S. 224 (1994)*, a transfer is subject to gift tax if it was gratuitous—meaning the donor did not receive full and adequate consideration in return (regardless of whether there was donative intent).

In order to understand the impact of these cases, it is important to first understand the concept of a QTIP trust, often referred to as a Marital Trust. Property allocated to a QTIP trust using the I.R.C. § 2056(b)(7) QTIP election—required to be made on the IRS Form 706 Estate (and Generation Skipping Transfer) Tax Return after the first spouse's death—serves two functions. First, such an election defers estate tax until the death of the surviving spouse. Second, it preserves assets for remainder beneficiaries. I.R.C. § 2056(b)(7)(B) requires that the QTIP trust distribute all income to the surviving spouse for life, but allows the remaining trust property to pass to designated beneficiaries after the surviving spouse's death.

In *Anenberg*, a QTIP trust was terminated by agreement of the surviving spouse and the decedent's children, and all assets were distributed outright to the surviving spouse, who then transferred the assets to her children and grandchildren during her life. The IRS argued that the surviving spouse made a taxable gift of the remainder interests at the time the QTIP trust was terminated. However, the Tax Court held that even if a § 2519 "disposition" occurred, no gift tax applied because the surviving spouse did not make a *gratuitous* transfer. Since the surviving spouse received full ownership of the QTIP trust assets (i.e., they were includable in her taxable estate), she did not relinquish any value, which negated any gift tax liability. This was viewed as a taxpayer victory.

The Tax Court addressed a different permutation of the same question in *McDougall*. A QTIP trust was once again terminated through a nonjudicial agreement. This time, the agreement was between the surviving spouse and his children, who were the remainder beneficiaries of the QTIP trust. The parties agreed that all trust assets would be distributed outright to the surviving spouse. The surviving spouse later sold the assets to trusts for his children in exchange for promissory notes. The IRS argued that this distribution constituted a taxable gift under § 2519 and that the children had also made taxable gifts under § 2511 by voluntarily surrendering their remainder interests.

Following the ruling in *Anenberg*, the Tax Court held that the surviving spouse's transfer did not constitute a taxable gift under § 2519 (following *Anenberg*). However, the Tax Court did deem the relinquished interests by the surviving spouse's children to qualify as taxable gifts under § 2511 because they voluntarily relinquished valuable remainder interests and "received nothing in return." The Court emphasized that the promissory notes were signed after the termination and therefore did not offset the gratuitous nature of the children's original transfer of their remainder interests.

Thus, the take-away for planning attorneys and clients can be summarized as follows:

- A surviving spouse *does not* make a taxable gift under § 2519 when they receive outright ownership of QTIP trust assets.
- Remainder beneficiaries *do* make taxable gifts under § 2511 if they voluntarily relinquish their remainder interests without receiving full and adequate consideration.

So, what are the practical implications for attorneys drafting or administering trusts with QTIP provisions? These rulings emphasize the importance of structuring QTIP terminations carefully to avoid unintended tax consequences for both surviving spouses and remainder beneficiaries. To avoid unintended gift tax on QTIP terminations, one must ensure that remainder beneficiaries receive full consideration for whatever interest they are giving up, and such sales or transfers must be carefully documented to substantiate fair market value.

One might also consider whether it is wise to terminate the QTIP at all, and fully advise the client of the potential gift tax ramifications of such a termination. While some sources have suggested using trust decanting or judicial modification (both of which are allowed under the Alaska Statutes) to circumvent the gift tax issue, this still carries with it uncertainty, as a state court decision may not be persuasive to or binding on the IRS or Tax Court.[1] Finally, for those attorneys drafting estate plans that include QTIP trusts, it is worth considering whether the QTIP trust should include a provision allowing an independent trustee to make distributions for any purpose, or a provision allowing the spouse to demand distributions of principal for any purpose after 16 months, which would allow sufficient time for the QTIP election to be made on a 706. Both of these planning options give the surviving spouse potential access to the principal, so it is important to advise clients on the significance of this power. Tax court cases can impact previously drafted plans and give insight into the IRS's position on planning options. Given the ramifications of these decisions and the IRS's recent focus on QTIP terminations, attorneys should keep in mind the ramifications of the irrevocable trust when drafted, as well as the potential impact of a termination on both the current and contingent beneficiaries.

Footnote

[1]*See* Ahmanson Foundation v. United States, 674 F.2d 761 (9th Cir. 1981) citing and interpreting Comm'r v. Estate of Bosch, 387 U.S. 456 (1967).

Chelsea Ray Riekkola has practiced estate planning and administration at Foley & Pearson, P.C. since 2014.