The Alaska
BAR RAG
Dignitas, semper dignitas
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Preparing for another pandemic; what goes around comes around

By Dan Branch

In 2005 public health officials were busy preparing Alaska for a possible avian influenza epidemic. They had lead time and enough federal money to prepare. The H5N1 avian influenza, first detected in geese in 1996, had re-emerged two years before. Even though the virus had yet to acquire the ability to jump from one human to another, people infected through close contact with diseased birds were dying. This was only four years after the 9/11 terrorist attacks on New York and Washington, D.C. Congress was more than willing to fund state and federal agencies efforts to prepare for the arrival of a mutated virus.

With help from federal officials, Alaska stockpiled the drugs and materials needed to respond to a pandemic. As the state's public health attorney, I participated in tabletop exercises with representatives from the military as well as state and federal agencies. The state and the country braced for a people-to-people virus that never arrived.

Fast forward to the present when the now-retired me has enough quarantine mandated free time to search through copies of my old *Alaska Bar Rag* columns. I found one that I wrote in November 2005 about the possible impact of a pandemic on Alaska lawyers. Few, if any folks outside of state government took the column seriously. Some readers thought it an exercise in very, very dry humor. The Rag's editor at the time may have been in this camp. He commissioned Bud Root to draw a cartoon showing a family of five trapped in their house as dying birds splatted onto their lawn.

Let me know if the column reads differently when quarantined:

Billing hours during a pandemic (2006)

America has weathered, at great costs, pandemics. The 1918 flu epidemic killed 700,000 Americans, including 84 percent of people in Teller, Alaska. In 1900 an epidemic of measles and influenza hit Alaska, killing 25% of all Yup'ik people.

Today the state public health and

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How COVID-19 and recession could impact malpractice claims

By Mark Bassingthwaighte

During a recession, and for the three years following, historically there has been a huge spike in paid malpractice claims, which is a number that typically doesn't return to a more normalized level until five years post-recession. In addition, and looking back at the events of 2008 specifically, legal malpractice insurers experienced a spike in paid claims above $10,000 that ranged from 35 percent to 41 percent. I share this in order to explain why recessions always capture the attention of the insurance industry because given how the markets look of late, another recession appears to be imminent thanks to the COVID-19 pandemic. I wish it were otherwise, but it sure looks like history is going to repeat itself.

As a risk manager for a legal malpractice insurer, one interesting question for me is how will COVID-19 impact our insureds? While only time will tell, I have a few thoughts. Lawyers are already having to deal with telecommuting and all the associated risks, not the least of which is a significant increase in the risk of someone at a firm becoming a victim of a cybercrime. A number of lawyers and more than a few clients will be forced to deal with significant and potentially long-term reductions in household income. Some lawyers may simply say enough is enough and decide to retire while others may be forced into postponing retirement as a result of

iStock photo

steep declines in their retirement accounts and this is just for starters. While I could continue on, I'll admit this is starting to make me feel a bit depressed, so I'll stop.

Here's the point I'm trying to make. Everyone, including lawyers, is trying to find a way to maintain some level of control and normalcy during very uncertain times. The challenge here is to not let emotions, such as fear and panic, cloud one's personal and professional judgment because that's when poor decisions are made. For example, investments get sold at the market's bottom, an attachment to an email that claims to have the answer to preventing the spread of coronavirus is opened too quickly, or an important deadline never gets entered into a calendar all because worry and fear rule the day.

Now, based upon what has happened as a result of past recessions coupled with the realities of the response to COVID-19 from the individual level to that of governments, here's what legal malpractice insurers are currently

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PRESIDENT'S COLUMN

Bar exam rescheduled; executive director retires

By Rob Stone

It is an understatement to say that a lot has happened at the Alaska Bar Association these past three months. When the COVID-19 pandemic hit Alaska, Executive Director Deborah O'Regan did not miss a beat formulating an action plan. Deborah and her staff kept the Bar operational in a smooth and efficient manner. Zoom meetings became the new normal. All employees are working at home. When at the office, they exercised social distancing. Over the past few months, Deborah and others have kept the machine humming right along.

In May, we held the Board of Governors meeting via Zoom. I was a little apprehensive about conducting a Board meeting with 15-plus people participating. But, at the end of the day, we were able to get through the business of the Bar, with everyone able to contribute. Our next regularly scheduled Board of Governors meeting is set for Sept. 1 and 2, but, as explained below, there will likely be other meetings to address additional issues.

One issue that may potentially require a special Board meeting is the bar examination. When the COVID-19 pandemic began its push across the United States, the National Conference of Bar Examiners, bar associations, and state supreme courts wrestled with the issue of what to do about the July 2020 bar examination. State by state, many bar associations and supreme courts postponed their respective examinations. Alaska followed suit. The Alaska bar examination has been postponed and rescheduled for Sept. 9 and 10.

While discussing cancellation of the bar examinations, the issue of admission by diploma resurfaced around the country. Wisconsin grants in-state law school graduates a license to practice law without sitting for the bar ("diploma privilege"). Prior to the COVID-19 issue, Wisconsin was the only state offering the diploma privilege.

In late April, the Utah Supreme Court approved a temporary diploma privilege, designed to accommodate and provide relief to applicants who had applied to take the Utah bar examination in July 2020. The rule requires 360 hours of supervised practice by a licensed attorney practicing law for at least seven years. Kansas, Iowa and Nebraska also considered the possibility of admission by diploma, but all four states rejected the proposal. The discussion continues around the country, primarily fueled by law school graduates seeking bar admission. The debate rekindles a debate regarding the purposes of the bar examination. Does the examination ensure competency? Does it protect the public from incompetent or unethical lawyers?

"As I have repeatedly stated, the Bar Association is located in Anchorage, but we represent all lawyers across the state."

There exists past precedent for bar admission by diploma. During the late 1800s and very early 1900s, the diploma privilege was accepted in many states. But this privilege was short-lived. By the 1920s, most states favored the bar examination. In the 1980s, Mississippi, South Dakota, Montana and West Virginia did away with the diploma privilege, leaving Wisconsin as the last state allowing bar admission without sitting for the examination.

Various other accommodations for law school graduates, such as a limited license to practice until an examination can be held, have been discussed nationwide. But, as stated above, the Alaska bar examination has been rescheduled for Sept. 9 and 10, thus perhaps rendering this discussion moot. The Bar is taking steps to provide a safe environment for the applicants. If issues arise between now and the examination, the Board will meet and make recommendations to the Alaska Supreme Court.

Another issue uppermost in the minds of the Board of Governors involves the retirement of our executive director, Deborah O'Regan. The Bar, the court system, and the public have been incredibly fortunate to have enjoyed Deborah O'Regan's leadership for nearly four decades (since August of 1982). No other bar association nationwide has been so fortunate. Deborah has been the face and voice of the Alaska Bar Association for as long as people can remember. In December, Deborah will say farewell to the Alaska Bar and join her husband in retirement.

On behalf of the Alaska Bar Association, and from me personally, thank you for all that you have done. You devoted your legal career to the Alaska Bar, and it shows. I wish you a long and happy retirement full of adventures with Ron! Godspeed and strong tailwinds!

Join us at the Bar Convention in late October to share a toast to Deborah and her retirement.

Over the next several months, the Board of Governors will recruit and interview candidates for the executive director position. While Deborah's shoes are impossible to fill, we will find a good, qualified executive director who will follow her lead.

I also anticipate another Board of Governors meeting to address and finalize the purchase of a building for the Bar. As many of you are aware, the Board of Governors has long discussed whether it is economically wise to purchase, instead of leasing. Ultimately, the Board of Governors decided to purchase, provided that the cost to own does not exceed the cost to lease. The Board of Governors was firm in its decision to *not increase Bar dues*.

With this directive, we have been searching for a suitable building for the past few years. As we were looking, word made its way to the owner of the building we currently lease. From there, negotiations followed. As of now, the Board of Governors and the owner of the building have reached an agreement under a Letter of Intent. A purchase/sales agreement is in the drafting stages, as of when the Bar Rag goes to publication. The due diligence period will follow. We are hopeful and excited to share with you that it looks like we will have a permanent home sometime this fall. There are exciting changes afoot.

I am also pleased to report that ownership of this building will not result in any budget increase. Over

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EDITOR'S COLUMN

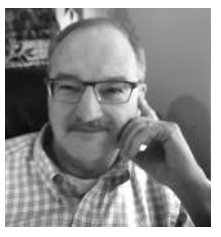
Farewell extended to a valued colleague

By Ralph R. Beistline

Ron Woods' last day as area court administrator for the Fourth Judicial District State of Alaska was April 29, 2020. He served for 29 years under seven different presiding judges. A surprise reception was held at the Fairbanks courthouse utilizing Zoom and strict social distancing guidelines. I was privileged to take part. I share my comments below as my Editor's Column, for the occasion allowed me to recall some exciting history as well as some April Fools jokes that kept the Fairbanks courthouse abuzz every spring.

Good afternoon. Yesterday I drove by the old courthouse on Barnette street — where it all started for Ron and me 29 years ago. I certainly enjoyed the trip down memory lane. My topic today will be *Ron Woods — The Early Years*.

When Ron began as area court administrator in 1991, there were four Superior Court judges in Fairbanks. Soon thereafter the Legislature approved a fifth position, which I was fortunate enough to fill in 1992. I joined a group of very talented, but strong-willed judges who didn't always see things the same way and who expressed their feelings freely. I, on the other hand, was a novice who quickly realized that the best thing for me to do was to keep my ears open and my mouth shut.



"Over the years, Ron accomplished great things, but was content behind the scenes, always supporting his staff and the judges."

About a week into the job, however, I learned that I had been appointed the deputy presiding judge, which required me to, among other things, meet weekly at 7a.m. in Presiding Judge Richard D. Savell's office with Judge Savell, Ron Woods, and the Clerk of Court Sharon Holtrom. This was the training ground for both Ron and me. It also required us to deal with the repercussions of Judge Savell's sense of humor that frequently occurred on or about the 1st of April every year, and which always caught the judges, the staff, Ron and me, by surprise.

I don't have time to go over it all, but, as an example, in 1994 there had been some security concerns about the staff entering the building together at 8 a.m. This had been the subject of discussion both locally and statewide. To address this, Judge Savell prepared a memo to all employees of the Fairbanks Courthouse, which was circulated March 31, 1994. The memo was addressed from presiding Judge Savell and Area Court Administrator Woods. It was entitled *Security — Preparation and Procedures*. Judge Savell informed the staff that henceforth, they were to enter the building in seven-minute intervals, depending on the first initial of their last name. Those with initials A–C were to enter the building at 7:30 a.m. Those with initials D-F were to enter the building at 7:37 a.m., and so on through the alphabet with V-Z entering at 8:15

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The Alaska BAR RAG

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

Bar exam rescheduled; executive director retires

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time, the budget will decrease, resulting in substantial savings to the membership. We are pleased to provide this economic savings to our members.

While there are numerous other important issues attended by the Board of Governors, my article is running long. I am disappointed to report that my outreach trips to Bethel, Kodiak and Dillingham have been cancelled. I looked forward to meeting with members of the Bar in those communities. As I have repeatedly stated, the Bar Association is located in Anchorage, but we represent all lawyers across the state. If you have any comments or concerns you would like addressed by the Board of Governors, please do not hesitate to contact me.

Rob Stone is the owner of the Law Office of Robert Stone and practices plaintiff personal injury law. He is a lifelong Alaskan, graduated from Gonzaga University School of Law and is a prolific outdoorsman. rob@stonelawalaska.com

Letter to the Editor

Keep the Alaska Bar on a steady path

I read Rob Stone's recent letter in the Bar Rag and his statement that our Bar will focus on "core" functions. I certainly agree with that orientation.

I have also been a member of the Washington State Bar Association for over 35 years. I have witnessed how that Bar drifted into being a political organization and lost its focus on supporting its members and their wishes to be good and competent lawyers. What a mess that entity has become.

As an important aside, his letter also mentioned the collegiality of our Bar. That characteristic carries over as our lawyers enter our judiciary. We have a good Bar and a good judiciary. Letting the Bar drift into political/social issues will destroy these two good institutions that we have and that we probably take for granted.

Keep up the good work.

— Ralph Stemp

Farewell extended to a valued colleague as he exits gracefully

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a.m. Employees were still required to work a 7.5-hour day. Therefore, the employees were expected to exit the building alphabetically, again in seven-minute intervals, beginning at 4 p.m. and continuing until 4:45 p.m. This, of course, was to ensure the safety and security of all.

Although dated April 1, 1994, the Savell memo was taken seriously and resulted in more work for Ron and others. In a note to Ron from the children's clerk, Ron was asked whether the memo supersedes the Clerk's Office Policy requiring arrival prior to 8:00 with work to begin promptly at 8 a.m. In any event, given the sensitive nature of children's proceedings, the clerk, despite having the initial J, requested, respectively, that she be allowed in at 7:30 a.m. with the A-C group, and depart with the V-Z group at 4:30 p.m. Kathy Stickland asked to use her maiden name "Hansen" because she would prefer arriving at work before 8 a.m. and leaving before 4:30. And another staffer was very concerned about the irregularity of traffic lights in the morning and preferred arrival at 7:32:30. The Supreme Court clerk wanted to know if the staggered schedule applied to lunch hour as well — Ron had to deal with it all.

And the judges weren't spared. At the time, all court files were kept in the Clerk's Office, with each judge having a colored dot reflecting individual files. One spring day we received a memo indicating that Judge Savell was not happy with the color of dots being utilized by the judges and that, in the interest of efficiency, as well as general esthetics, he was changing the colors of the dots on the files assigned to judges. He then set forth the new colors to be used, effective immediately, and Judge Greene didn't get green. I still recall one judge entering my office, very upset, and indicating that Judge Savell had now gone too far. "Is he the esthetics czar as well?" The judge had missed that the effective date of April 1st.

And then one early spring day I received a telephone call from Chief Justice Allan Compton. "Ralph," he said, "this is the phone call from hell … Judge Savell is stepping down as presiding judge and it is now you, effective today. And your assignment is to bring peace to the valley." I walked downstairs to Ron's office — he knew already — and he just smiled, chuckled a little, and then smiled. It was good to know that Ron was still there. We needed him

Ron Woods speaks at his retirement gathering.

now more than ever. The first thing I did as presiding judge was to end the 7 a.m. meetings.

A few weeks after all this I received a phone call from Supreme Court Justice Dana Fabe. She congratulated me, but just wanted to make it clear that my authority did not include any of the Supreme Court space. In particular, Justice Rabinowitz's chambers, although temporarily vacant, were still being used by the Supreme Court, which, of course, I understood. After we hung up, I walked out to my Judicial Assistant Jan and commented that I thought the Supreme Court was a little paranoid and very protective of their office space. Jan then handed me the memo, which I hadn't seen, but which, on its face, appeared to have been written by me. It was addressed to All Fairbanks Court System Employees and indicated that because of the demands and responsibilities of my new position, I would be vacating my chambers and moving to the vacated Supreme Court chambers. I would also be realigning courtroom assignments so that my courtroom would be closer to my new chambers. This would require Judge Greene, who was senior to me, to take courtroom 4. To reach courtroom 4 Judge Greene would have had to go down a set of spiral stairs and through the Clerk's office. At the bottom of the memo, in print that literally required a magnifying glass to read, were the words "April Fools." Justice Fabe had not seen the memo but had received calls from others regarding my intentions and were concerned that I was already going to far. Justice Fabe was responding to these concerns. I immediately called her on

Justice Susan Carney hands a plaque to Ron Woods.

the phone and clarified that it was an April Fools joke from someone other than me whose initials, if you looked closely, were RDS, not RRB, and I hadn't seen the memo when we spoke earlier. I assured her that the Supreme Court space was safe. And life went on.

But we had a blast over the next five years as we dealt with the challenges of the times. Ron was instrumental in instituting the Quarterly Staff Meetings that we held religiously three times a year, and we prepared to move to a new courthouse. Throughout, Ron Woods was there, pleasant, and stable, and a calming voice that was desperately needed. Over the years, Ron accomplished great things, but was content behind the scenes, always supporting his staff and the judges. And somewhere along the line Ron took up long distance running. He even completed some marathons and did so until his knees gave out. Ron proved his stamina as a runner. And he has certainly proven his stamina, time and again, from one presiding judge to the next, as a loyal and dedicated leader and public servant. Ron has played a vital and important part of the Alaska Court System. We are better for having known and worked with him. So, thank you Ron, for the memories, and congratulations on a job well done. May your next 29 years be as rewarding as the last.

Ralph R. Beistline is editor of the Bar Rag and a senior U.S. District Court judge.

TALES FROM THE INTERIOR

The world offers multiple choices when one contemplates retirement

By William R. Satterberg Jr.

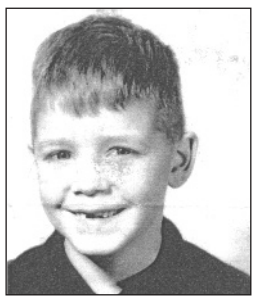
In October 2019, I entered my 44th year of practice as an attorney, no longer an unknown among most local lawyers, having undergone several years of exposure to the courtrooms not only in Fairbanks, but elsewhere in Alaska as well. When I first started practicing law, the most commonly asked question was relating to where I had attended law school or where I worked. Now, the questions have changed. Today the most prevalent question is "When do you plan to retire?" I do not know if people are anxious to see me retire, wishful or fearful that I will leave a gap in the local profession. Clients may possibly be fearful. Other practitioners, however, most likely will welcome my departure.

So, when will I retire? I really do not know. After all, I have been announcing that I will retire for the last 10 years. I recently saw retired attorney Paul Barrett at a local restaurant. Paul, who is not much older than me, retired over 30 years ago. Paul often says he is enjoying his retirement quite well. He used to be a partner in the firm of Call, Barrett, and Burbank. And Winston Burbank, the third name in that triad, also retired several years ago after not only a stint in private practice, but also as a judge.

The next question which often arises about my non-specific impending retirement, is "And what do you plan to do when you retire?" My normal response is that I plan to look for a job.

As far as answering the question with respect to when I plan to retire, the best answer I have been able to give is "When practicing law stops being fun." Although the practice of law has its challenges, I still find the work to be exciting. I enjoy my clients for the most part and usually can put up with irascible judges and obnoxious opposing counsel.

Years ago, I thought about applying for judgeship. After all, the laudatory bar poll results which I would have received would have given me stacks of material for my Bar Rag articles. But that option is now effectively over. The Alaska Constitution states that a judge must enter mandatory retirement at age 70. By the time this article is published, age 70 will be less than one year distant. Although I understand that some state court jurists are now trying to extend the retirement age, that goal is self-serving in my opinion. Still a federal judgeship is possible. If R.B.G. ever retires, I may apply for her position or maybe even president. Ginsburg, Satterberg, Bloomberg. There is a certain ring to these names.



"It is said the most important thing in life is to enjoy life. Enjoy what you do and do it well."

Then again, I may end up handing out shopping carts or checking receipts at Walmart.

Several judges, upon retirement, have become respected mediators. Mediation also has a certain attraction to it, but I seriously doubt if I could tolerate the whining and teeth gnashing that goes on in the negotiations I have attended. But, I have only viewed one side of the process.

Writing is also an enticing option. I actually enjoy writing, even though Judge Blankenship once accused me of writing my briefs with my feet propped up on the desk, like how I do my Bar Rag missives. In fact, when Judge Blankenship announced in court one day at omnibus hearings that he intended to deny one of my motions because it looked like I had written it with my feet "Once again propped up on the desk," I responded with, "And did you write your order denying my motion with your feet propped up as well, Judge?" My somewhat flippant rejoinder drew quite a laugh from the courtroom, attorneys and prisoners alike. And also from the judge. "Touché, Satterberg," was the reply.

Retirement does bring certain benefits. For example, I can sleep in to my heart's content. My problem in that regard is I often wake up in the middle of the night. Then, my brain becomes active with various rubbish and in trying to reconstruct the dream I had before I went to the toilet. Ultimately, I find it very difficult to go back to sleep. So, sleeping in may not be that realistic of an option unless I want to cut down on my before bedtime glass of lemonade.

Perhaps I can become a Facebook junkie like Gregg Olson, the former Fairbanks District Attorney. Gregg now spends the bulk of his time posting sarcastic memes on Facebook. Gregg is not alone. In fact, I have found that a lot of retired people seem to spend a lot of time on Facebook.

I could also set up shop at the local bus station. After Mom passed on, Dad used to enjoy riding the local bus. Dad said he would meet the most interesting people. Dad was not a poor man. He could have easily flown first class and taken taxis. But Dad felt that it was better to meet and interact with those around him. Dad also would go to the local diner as opposed to the fancy restaurants and would leave generous tips for the wait staff, engaging anyone who would listen in conversation.

Dad's regular bus rides had other reasons as well. Dad had glaucoma. Driving was not an easy task for Dad. Personally, I was constantly in fear of the car wreck which fortunately never happened. Dad would often say, "Billy, the car knows its way home." Dad used to tell people that "I don't look so good." When they would say, "Bill, you look great!" Dad would say, "No, I don't look so good. I have glaucoma." Dad was a character who truly enjoyed retirement and in many respects, set the standard I strive to emulate. Like Paul Barrett, Dad had chosen to retire in his early forties and truly enjoyed life right up until the end. Mom, on the other hand, often became exasperated with Dad since he truly had mastered the style of being an old man in retirement, even in his forties. (Dad also smoked pot in his final years, claiming it helped his glaucoma, helped his appetite and also made his jokes funnier.)

Recently, I found another enticing option. I was in the local Costco store when I came upon Fairbanks Judge Pat Hammers. We were heading opposite directions in the same aisle with our essentially empty shopping carts. We were both roaming the aisles as impulse shoppers. We both commented that neither of us had much merchandise in our carts, confessed that we were really hitting the free snack displays. It dawned on me at that point that there would be an advantage of going to Costco virtually every day. Not only could I meet the enjoyable local characters, like Judge Hammers, but I could eat for free simply by circling counterclockwise and then reversing clockwise and by jamming my hand through the crowd surrounding the food display to purloin tasty morsels. True, I might eventually become so much of a regular that the servers would cease to provide the tantalizing little pieces of sausage and gyoza samples. However, a way of countering this risk of discovery would simply be to wear several different colored baseball hats. As long as I changed my baseball hat every lap or two, I could potentially eat at Costco indefinitely and my wife, Brenda, would think I was still honoring my diet even though I was unexplainably gaining weight.

When I spoke with Judge Hammers, I asked about his plans. He told me that he was going to retire during the summer of 2020. He already purchased a home in Wasilla. We then discussed my impending retirement and my aspirations to be a writer. Judge Hammers suggested, "Bill, you ought to write an article entitled Two Old Men." So, here it is.

Since the time of my discussion with Judge Hammers, I have begun to contemplate more realistically what I can do in retirement. Currently, I teach classes for Osher Lifelong Learning Institute (OLLI). My students must be at least fifty-five years of age. No grades are given. The classes are simply for learning. Over the past few years, I have developed a regular group of followers. It is almost a fan club. I chalk it up to the fact that nothing I say is memorable. Either that, or they cannot remember my earlier teachings. Socrates eat your heart out!

One of my friends once told me that I should consider being a "Roads Scholar." The Roads program is another program for old people who travel around the world on educational excursions. Acknowledging that both Brenda and I do like to travel, this is also certainly an option, as long as we don't get locked up on a cruise ship with a bunch of old people suffering from coronavirus.

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Do you know someone who needs help?

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 is 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, aimee@akwater.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.

Name that lawyer

Once again the folks at the Alaska State Court Law Library have come across a photograph with no explanatory information. Can anyone name the man in this picture believed taken in the 1970s or '80s? We offered a prize in the last issue for anyone who could name a person in a picture. Since no one claimed it, the prize is still available for the first person who can "name this lawyer."

The world offers multiple choices

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Recently, Fairbanks Judge Michael MacDonald suggested another program called MasterClass, an online video teaching course. A MasterClass subscriber can take unlimited classes. I signed up for MasterClass in December of 2019. Although I have yet to take a class, I plan to do so someday. Certainly, the curriculums are captivating. There are classes on how to cook, write, produce stand-up comedy, and launch rocket ships. There is no age restriction, but I figure most people who take MasterClass probably have lots of time on their hands, being either unemployed, unemployable, or judges.

Old age has certain benefits. Not only do people get a lifetime hunting and fishing license the day they turn 60 in Alaska, but there is other stuff, as well. Room rates are cheaper. Lift tickets at ski hills are cheaper. In fact, admission to most events is cheaper. McDonald's senior coffee is only fifty cents. And Social Security kicks in, as well as taxes on the Social Security. Not to mention Medicare.

I am beginning to closely study the ads in the back of the GVEA Ruralite Magazine put out by our electric cooperative. I am checking into Mason Shoes and may someday even decide to become a Mason Shoe distributor like my Dad. I have learned that Metamucil comes in different flavors. That suspenders really do have value. And that Depends is also a noun.

As I approach my older years, I have also learned certain medical truths. There is an old statement which goes "You spend your health to get your wealth, and then you spend your wealth to get your health." There is a lot of truth in that statement. Sadly, as we grow older, we find that we have the economic resources to truly enjoy life with hotter cars, wilder snow machines, and more challenging toys. Yet, we also find that we don't have the ability to enjoy those rewards.

I remember when I used to read the local newspaper. Invariably, I would go to the statistics section to see who was getting married. I could then chop those prospects off the market. Later, I would see who were having children. Later yet, I would track who was becoming divorced so I could put those prospects back on the market. But, at my current age, I find myself drawn to the obituaries. It is funny how one's focus changes with age.

So, what will I do when I retire? I really don't know. But, I will do something. I may simply end up being a pest like many old people who show up at their prior employment to sit around, drink coffee, and waste other peoples' time. Certainly, I have earned that right. (And the right to ramble on about things in no apparent order.)

Finally, retirement may not even happen. Rather, I may end up like Anchorage attorney, Cornelius "Neil" Kennelly. When Neil was found on the day that he died, he was slumped over at his desk likely working on a matter. Possibly a brief or time slips. Either way, Neil died with a pen in his hand. A true professional until the end.

It is said the most important thing in life is to enjoy life. Enjoy what you do and do it well. One nice thing about the practice of law is that there really is no retirement age. Just ask Charlie Cole or R.B.G. To some degree, it is like being president of the United States. Just ask Bernie. When I do decide to depart the practice of law, I hope to leave on a high note like Paul Barrett and not like Neil Kennelly. I want to leave a legacy, and to memorably transition out of the practice while mentoring young pups and providing valuable guidance since, by then, I will know where to find the best deals in town, the cheapest bus routes, the free sample sections at the box stores, and how to expand my Mason Shoe's dealership.

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.

Samantha Slanders

Advice from the Heart

Dear Samantha Slanders

I am a personal injury lawyer currently practicing in Atlanta, Georgia. My firm was one month out from a product liability trial that would have been a slam dunk winner. Then a Covid-sensitive court canceled it. My split of the attorney's fees award would have kept me in high cotton. It was going to be Teslas and champagne until I retired to a villa in Rome. (Italy, not Georgia). The defendants are using the pandemic as an excuse to avoid settlement talks. Now we have to rely on fees from unemployment insurance appeals to keep the lights on. According to a buddy at the CDC, Alaska has barely been scratched by the pandemic. Do you think there is a place in your far north for me?

Sincerely,
Smooth Talker

Dear Smoothie:

You may want to look elsewhere to ply your wares. Alaska is what we like to call "hunkered down." We Zoom a lot like you must do in the land of peaches. Most folks won't leave their homes except when their local Safeway is rumored to have a new shipment of flour, hand sanitizer, or toilet paper. If you do come north, could you bring me half-a-dozen packets of yeast? Bored bakers and home brewers have wiped out the state's supply.

Contingently, your new best friend,

Samantha Slanders

Dear Samantha Slanders,

I am in desperate need for video suggestions. While being kept from bingo, bars and baseball by the social distancing rules, I've burned through the libraries of every major streaming service. I've even reprised the viewing experience of my youth by watching all the episodes of *Hill Street Blues, Streets of San Francisco,* and the *Mickey Mouse Club*. Seeing Annette Funicello again made me watch *Beach Blanket Bingo* three times in a row. I need help. You should know that I can't tolerate reality shows, except for *Survivor*, and that for the escapist scenery and deep interpersonal tension.

Sincerely,
Bored in Bird Creek

Dear Birdie,

Have you tried reading a book?

Sincerely,
Samantha Slanders

Dear Samantha Slanders,

I am in love with someone who doesn't realize that I exist. You must know her. She appears on the statewide news every night to give updates on the Corvid 19 pandemic. When they fade to commercial, I rush to the bathroom and wash my hands for 20 seconds, long enough to sing her the happy birthday song. Dr. Anne is the only person I can trust. Her words are persuasive, even when distorted by a bad video connection. The eyes behind her heavy-framed glasses broadcast sincerity as she shares the latest infection totals. Ms. Sanders, you must be a big deal in the state. Can you introduce me to this tower of truth and strength?

Sincerely,
Loving from Afar

Dear Far Out,

While there is no doubt that the state public health officer to whom you refer is a dedicated professional expertly doing a tough job, I am not going to fuel your obsession with a promised introduction. Before it is too late, switch to the BBC News just before the object of your affection is scheduled to appear. Even better, start binge watching old episodes of *E.R.* Or, you could just read a book.

Sincerely,
Samantha Slanders

NEWS FROM THE BAR

Board proposes Alaska Rule of Professional Conduct 8.4(f)-(g)

At its May 7, 2020, meeting, the Board of Governors voted to publish proposed Alaska Rule of Professional Conduct (ARPC) 8.4(f)-(g) to the membership. You can submit comments regarding the proposed rule to Bar Counsel via email at shanahan@alaskabar.org or by mail to the Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99510. Comments should be received no later than August 10, 2020.

Proposed ARPC 8.4(f)-(g) was unanimously agreed upon by the Alaska Rules of Professional Conduct Committee, after consideration of all the comments submitted and working carefully and cordially through Committee members' various opinions and concerns about the Rule.

How discussion of a rule against discrimination and harassment began

On March 19, 2018, then-Bar Counsel Nelson Page received a letter from then-Alaska Attorney General Jahna Lindemuth that described offensive conduct that did not appear to be prohibited under the Alaska Rules of Professional Conduct. She stated:

> We have recently encountered incidents in which an assistant attorney general has been subjected to conduct by opposing counsel that could constitute legal sexual harassment.
>
> We have reviewed the Alaska Rules of Professional Conduct and are unsure whether the conduct is actionable under the Rules. I ask the Committee to consider this question: Is sexual harassment of opposing counsel a violation of the Alaska Rules of Professional Conduct, and if so, which rule would apply?

Mr. Page researched the status of ABA Model Rule 8.4(g), which expressly addresses discrimination and harassment, and how other jurisdictions had responded to that proposal. He then referred the matter to the Committee with his research.

ABA Model Rule 8.4(d) and its omission from the Alaska Rules

It may be helpful to briefly touch upon that question — whether a present Alaska Rule of Professional Conduct ("the Alaska Rules") applies to harassment or discrimination.

Several revisions of the Model Rules ago, the ABA proposed Model Rule 8.4(d), which provides that it is professional misconduct for a lawyer to:

> (d) engage in conduct that is prejudicial to the administration of justice.

The Committee reviewed that proposal and determined that this phrase was too vague. It failed to inform a practitioner of what was prohibited and did not provide Bar Counsel with a meaningful tool for enforcement. The Board of Governors agreed with the Committee's recommendation not to adopt 8.4(d). Therefore, ABA Model Rule 8.4(d) does not appear in the Alaska Rules.

Although it may be that some bar associations use their versions of Model Rule 8.4(d) as a basis for discipline for harassment and discrimination, the Committee maintains that the Alaska Rules must provide more precise guidance.

ABA Model Rule 8.4(g)

ABA Model Rule 8.4(g) provides that it is professional misconduct for a lawyer to:

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these rules.

In creating a procedure for updating the Alaska Rules, the Alaska Supreme Court informed Bar Counsel and the Committee that, to the extent possible, it would prefer that the Alaska Rules track the ABA Rules. The value of that uniformity is that decisions from other jurisdictions regarding the application of a rule may be more instructive if Alaska's rule is the same.

But in this instance, no jurisdiction has adopted ABA Model 8.4(g) *verbatim*, so conformity of an Alaska rule to the ABA Model Rule would not advance that goal.

In advance of its meeting on September 5, 2019, the Board of Governors circulated a draft rule addressing discrimination and harassment, which tracked an earlier proposed version of ABA Model Rule 8.4(g). The Committee carefully reviewed the comments received and requested that the draft rule be remanded to it for additional work. The Board of Governors agreed.

Specific issues the Committee researched and discussed

ABA Model Rule 8.4(g) and the Committee's proposed Rule 8.4(f)-(g) are found in a side-by-side format on page 8.

The Committee determined that the following aspects of ABA Model Rule 8.4(g) needed to be evaluated and possibly revised:

(1) determination of the appropriate mental state - ABA Model Rule 8.4(g) includes a negligent mental state;

(2) providing definitions of harassment or discrimination - ABA Model Rule 8.4(g) does not define those terms;

(3) determination of protected classes for the discrimination portion of the Rule and addressing the possibility that, as drafted, ABA Model Rule 8.4(g) would require a linkage of harassment to a protected class in order to support discipline;

(4) determination of the scope of covered activities - ABA Model Rule 8.4(g) covers a broad scope of activities; and

(5) determination of whether the rule should apply to workplace harassment or discrimination - ABA Model Rule 8.4(g) does so.

The materials reviewed by the Committee in addressing these questions include: ABA Model Rule 8.4(g) and its lengthy supporting report; the comments received from Bar members; the comments received from non-Bar members; the comments made at the September 5, 2019, Board of Governors meeting; a summary prepared by Bar Counsel Nelson Page of what other bar associations have done with regard to ABA Model Rule 8.4(g), which concluded that at that time only one bar association had adopted it in near-*verbatim* form; several United States Supreme Court cases discussing the First Amendment and the scope of what speech may be regulated; several law review articles discussing the scope of restrictions on speech; several municipal codes from across Alaska that prohibit discrimination; Alaska statutes pertaining to the Human Rights Commission, as well as Alaska criminal statutes prohibiting harassment and providing enhanced sentencing in a criminal case if the victim is a member of a protected class, and that status was related to the offense; and a brief overview of the federal EEOC.

The Committee met on six occasions to review and discuss these materials in an effort to resolve these questions. Significant work was done by members in preparation for each meeting. Comments, research materials, research tips, and proposed edits were circulated by members prior to and after each meeting.

(1) mental state

ABA Model Rule 8.4(g) includes the mental state "or reasonably should know," which is the mental state linked to negligence. There is no requirement that the actor in fact know that their conduct constitutes discrimination or harassment. Many of the comments and the articles reviewed expressed concern about this aspect of ABA Model Rule 8.4(g).

The Committee agrees that "or reasonably should know" should not be included in the Alaska Rule. One of the most important factors in reaching that conclusion was Alaska Rule of Professional Conduct 9.1(h), which defines "knowingly" as follows:

> "Knowingly" . . . denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

In light of Rule 9.1(h), a simple denial that the attorney did not know that the conduct constituted harassment or invidious discrimination will not end the inquiry. Under Proposed Rule 8.4(f), Bar Counsel will be fully empowered to look to the specific conduct, the circumstances of that conduct, and to any other relevant evidence in determining if the action was done "knowingly.

(2) scope of covered activities

The original proposed ABA Model Rule, which the Board of Governors circulated for comment in 2019, provided that the prohibition would apply:

> in representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; or participating in bar association business or social activities in connection with the practice of law.

Conduct related to the practice of law

There were many comments about the application of this broad language, with individuals concerned about the possible imposition of discipline for comments made at Bar functions and social gatherings, or in supporting or opposing legislative steps or court decisions. There were also comments raising First Amendment issues. The Committee reviewed numerous materials on this point, including Rule 8.4(g) and the First Amendment: Distinguishing Between Discrimination and Free Speech, 31 The Georgetown Journal of Legal Ethics 319 (2018), by Professor Rebecca Aviel.

The Committee agrees that ABA Model Rule 8.4(g) might pose First Amendment issues. Accordingly, the Committee ultimately modified ABA Model Rule 8.4(g)'s language to limit the scope of the proposed Alaska Rule. In the Comment to the ABA Model Rule, "conduct related to the practice of law" is said to include:

> representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law.

The Committee narrowed application of the Alaska Rule to conduct that impacts the administration of justice as noted in the Comment to the Rule:

> [O]ur justice system depends on the effectiveness of adversary counsel. One of the fundamental aims of our court rules, including the Rules of Professional Conduct, is to assure that adversaries have an equal opportunity to prepare and present their case, so as to advance the achievement of a just result. A lawyer's harassment of or invidious discrimination against other participants in a matter can impair their effectiveness, whether as advocates for opposing views or as officers of the court. An attorney who knowingly engages in such conduct perverts advocacy, obstructs the proper administration of justice, and undermines public respect for, and acceptance of, our adversary system and the legal profession.

This is not to suggest by agreeing to this narrower scope the Committee supports, encourages, or condones other discrimination or harassment. Rather, it is an acknowledgment that the Alaska Rules do not apply to all aspects of a Bar member's personal life, personal actions, or personal decisions, and that a rule of professional conduct should focus on actions that can have a negative effect on the administration of justice.

The Committee believes Proposed Rule 8.4(f)-(g) strikes the proper balance.

Exclusion of workplace discrimination absent an administrative or judicial determination

The ABA Model Rule includes workplace harassment and discrimina-

Continued on page 7

NEWS FROM THE BAR

Board proposes Alaska Rule of Professional Conduct 8.4(f)-(g)

Continued from page 6

tion as a basis for discipline. The Committee concluded that Bar Counsel, Area Hearing Committees, and the Disciplinary Board are not fully equipped to be the first decision makers to address these complicated substantive legal issues. The proposed Rule does include a basis for discipline should an agency like the Alaska Human Rights Commission or the EEOC determine the conduct took place. Specifically, the Rule provides:

> [I]t is professional misconduct for a lawyer to knowingly engage in harassment or invidious discrimination in the lawyer's dealings with the lawyers, paralegals, and others working for that lawyer or for that lawyer's law firm, if the lawyer's conduct results in a final agency or judicial determination of employment misconduct or discrimination.

(3) protected classes covered by the discrimination portion of the rule

ABA Model Rule 8.4(g) might be read to require that both harassment and discrimination be linked to a protected class in order to support discipline. To avoid any ambiguity, the Committee has made clear that the prohibition of harassment defined in Proposed Rule 8.4(g)(1) is not linked to any protected class of individuals. The prohibition of invidious discrimination defined in Proposed Rule 8.4(g)(2) is linked to protected classes.

The Committee reviewed ABA Model 8.4(g) and its list of protected classes. This resulted in the elimination of one protected class: "socioeconomic status." The ABA report did not explain why this class was included, nor identify the harms it sought to proscribe. The Committee agreed that, particularly in light of the lack of legislative record from the ABA, it was not a sufficiently precise term to include in the Alaska Rule.

The Committee did review the scope of protected classes in the Alaska Human Rights Commission, portions of the Alaska Criminal Code that provide certain enhanced punishments, and pending Alaska legislation that would expand the scope of "hate crimes" victims. As a result, the following additional changes were made to the ABA Model rule:

- "gender" replaces "sex"
- "color" is included
- "sexual identity" is included
- "pregnancy or parenthood" is included
- "veteran status" is included

(4) definition of harassment

ABA Model Rule 8.4(g) does not include a definition of harassment, but its Comment provides:

Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical contact of a sexual nature. The substantive law of anti-discrimination and anti-harassment statutes and case law may guide application of paragraph (g).

The Committee has always required that important terms be defined, either in the specific rule itself, or in the definitions found in Alaska Rule 9.1. The Committee concluded that the definition of harassment should be in the rule itself, selected one based on the formulation used by the EEOC and included it in Proposed Rule 8.4(g)(1).

(5) definition of invidious discrimination

The Committee based the definition of invidious discrimination on the Commentary to the Alaska Code of Judicial Conduct Canon 2C. Of note is the insertion of the word "invidious," prior to the word discrimination. This term, commonly used in the law, is to highlight that the Rule is not intended to apply to the simple process of making choices. Rather, the unequal treatment must have "no reasonable relation to a legitimate purpose." Proposed Rule 8.4(g)(2) contains the definition of "invidious discrimination."

Conclusion

The Committee believes that its redrafting of ABA Model Rule 8.4(g), as set forth in Proposed Rule 8.4(f)-(g), addresses harassment and invidious discrimination while meeting the following goals:

- narrows the required mental state
- narrows the scope of conduct covered
- provides definitions to critical terms
- refines the scope of protected classes

and provides clear notice of what is considered to be professional misconduct.

Committee members: Dunnington Babb, Maria Bahr, Matthew Block, Robert Bundy, Andrea Hattan, Douglas Johnson, John Lohff, David Mannheimer, Yale Metzger, Richard Monkman, John Novak, Megan Sandone, John Murtagh, Chair.

Board of Governors Action Items

May 7, 2020

- Approved the results of the February 2020 bar exam.
- Approved 12 reciprocity applicants and nine UBE score transfer applicants for admission.
- Approved a Rule 43 (ALSC) waiver for Ellen Hague.
- Voted to ratify the action of the President and Executive Director to temporarily limit the number of applicants for the September bar exam in line with our capacity and limits placed by distancing requirements; and to direct the Executive Director to look into getting a larger testing space in Anchorage; and that a subcommittee be appointed to discuss options – Brown, Graham and Hofmeister.
- Approved the minutes of the January 2020 board meeting as corrected.
- Appointed an awards subcommittee: Brown, Oravec, Sebold.
- Approved payment and reimbursement for Trustee Counsel Blaine Gilman in the Matter of Corey Stewart in the amount of $8,314.50 from the Lawyers' Fund for Client Protection.
- Approved publication of proposed ARPC 8.4 for comment.
- Voted to purchase the building at 840 K Street (where the Bar office is currently located) at the price offered by Aleut Corp.
- Voted to negotiate with First National Bank regarding the rate and move the Bar's CDs to FNB.
- Voted to take $1.8 million from the long-term capital reserve and the working capital reserve, with the remainder coming from the line of credit at FNB.
- Voted to move approximately $3 million in funds to FNB.
- Authorized the President to sign the nonbinding Letter of Intent setting out the basic terms with FNB.
- Appointed a hiring subcommittee for the Executive Director position: Stone, Graham, S. Cox, Hofmeister and Leonard.

NEWS FROM THE BAR

Comparison of the ABA Model Rule with Alaska Proposed Rule

ABA Model Rule 8.4(g)

It is professional misconduct for a lawyer to:

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these rules.

COMMENT

[3] Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical contact of a sexual nature. The substantive law of anti-discrimination and anti-harassment statutes and case law may guide application of paragraph (g).

[4] Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and (c). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

ARPC Committee Proposal 8.4(f) and (g)

It is professional misconduct for a lawyer to:

(f) engage in conduct that the lawyer knows is harassment or invidious discrimination during the lawyer's professional relations with (1) officers or employees of a tribunal; (2) lawyers, paralegals, and others working for other law firms; (3) parties, regardless of whether they are represented by counsel; (4) witnesses; or (5) seated jurors.

In addition, it is professional misconduct for a lawyer to knowingly engage in harassment or invidious discrimination in the lawyer's dealings with the lawyers, paralegals, and others working for that lawyer or for that lawyer's law firm, if the lawyer's conduct results in a final agency or judicial determination of employment misconduct or discrimination.

This rule does not prohibit a lawyer from engaging in legitimate counseling or advocacy when a person's membership in a protected class is material.

This rule does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.

(g) For purposes of paragraph (f)

(1) "Harassment" means unwelcome conduct, whether verbal or physical, that has no reasonable relation to a legitimate purpose and is so severe or sustained that a reasonable person would consider the conduct intimidating or abusive.

(2) "Invidious discrimination" means unequal treatment of a person because of their membership in a protected class when that unequal treatment has no reasonable relation to a legitimate purpose.

(3) "Protected class" refers to a person's race, color, gender, sexual identity or orientation, religion, ethnicity or national origin, disability, age, marital status, pregnancy or parenthood, or status as a veteran.

(4) "Witness" includes any person who is contacted in connection with a matter because that person may have knowledge or information pertinent to the matter.

COMMENT

Rules 8.4(f) and (g) are intended to be a counterpart to Rules 3.4 and 4.4(a), which declare that, in representing a client, a lawyer shall not use means that lack any substantial purpose other than to embarrass, delay, or burden a third person.

Harassment and invidious discrimination are intolerable because of their adverse effect on the proper administration of justice. The administration of justice is impeded when a lawyer engages in conduct that has no legitimate purpose other than to intimidate or distract those who have independent responsibilities and roles in the justice system.

For instance, our justice system depends on the effectiveness of adversary counsel. One of the fundamental aims of our court rules, including the Rules of Professional Conduct, is to assure that adversaries have an equal opportunity to prepare and present their case, so as to advance the achievement of a just result. A lawyer's harassment of or invidious discrimination against other participants in a matter can impair their effectiveness, whether as advocates for opposing views or as officers of the court. An attorney who knowingly engages in such conduct perverts advocacy, obstructs the proper administration of justice, and undermines public respect for, and acceptance of, our adversary system and the legal profession.

The persons who are protected from a lawyer's harassment or invidious discrimination under this rule include seated jurors, that is, jurors who have gone through the selection process and have been sworn to adjudicate a case. Allegations of harassment or invidious discrimination against *prospective* jurors should be handled by trial judges through the procedures developed under *Batson v. Kentucky*, 476 U.S. 79 (1986).

A lawyer's harassing or invidiously discriminatory conduct directed to persons working for the lawyer or the lawyer's firm adversely affects the proper administration of justice by undermining confidence in the legal profession. Because agencies and courts routinely adjudicate disputes arising out of allegations of harassment and invidious discrimination in the workplace, the existence of such misconduct should be determined, in the first instance, by an agency or court before it may be the subject of professional discipline.

Related Amendments to Professional Conduct Rule 9.1: Definitions

(j) "Party" denotes any person who participates in, and who has a legal interest in the outcome of, any matter for which the lawyer has been engaged.

COMMENT

Parties

In a lawsuit or proceeding before a tribunal, the parties include plaintiffs and defendants, petitioners and respondents, complainants, cross-complainants, cross-defendants, and all other persons with equivalent roles in the lawsuit or proceeding, no matter how they are denominated. In the negotiation, drafting, or action to enforce or alter a contract or other agreement, the parties include all individuals who are bound, or will be bound, by the terms of the agreement. If the matter for which the lawyer has been engaged concerns only giving advice without interaction with third parties, then the only parties are the lawyer's clients.

Throughout the Rules of Professional Conduct, words in the singular include the plural and words in the plural include the singular.

NEWS FROM THE BAR

Proposed Rule 8.4(f)-(g), a dissenting view

Thank you for the opportunity to respond to the Committee's April 23, 2020 Redraft of Proposed Rule 8.4(f)-(g). Last August, we submitted two Joint Comments to the committee, expressing our concerns that the Proposed Rule had certain material defects. We appreciate the committee's recent efforts to ameliorate the Proposed Rule, but we remain concerned.

First, please let us address the March 19, 2018, scenario that prompted the committee's actions. We think that actionability of sexual harassment at the hands of an opposing attorney — the situation described by former AG Jahna Lindemuth in the committee's redraft — is already provided for under Alaska's Rules of Professional Conduct and existing Alaska law. Canon 3(B)(6) of Alaska's Code of Judicial Conduct states that:

[a] judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status.

As we read this canon, any attorney subjected to sexual harassment from opposing counsel has immediate recourse to the judge overseeing the case. If sexual harassment occurs at an out-of-court deposition or conference, then, the complaining attorney or her supervisor should file an appropriate motion for sanctions.[1] Similarly, a Bar complaint pursuant to Alaska Rule of Professional Conduct 8.4(a), coupled with Rule 3.4(c) ("A lawyer shall not knowingly violate or disobey an order of a tribunal or an obligation under the rules of a tribunal") appears apropos.

As pointed out previously to the committee, Alaska Supreme Court case law is rife with examples of attorneys being disciplined for rude and intemperate language. *See Additional Comment on Alaska Freedom of Speech Law and Rule 8.4(f)* at 5-6 (August 15, 2019).

And not only lawyers have been disciplined, but judges as well. In 1997, Chief Justice Compton was privately censured for making sexual advances on two of his female law clerks. Two reported cases involve actions taken against lower court judges for making sexual (and other inappropriate) comments. In the Disciplinary Matter Involving Honorable Timothy D. Dooley, 376 P.3d 1249 (Alaska 2016), In re David Landry, 157 P.3d 1049 (Alaska 2007). So, whether it's a judge or lawyer, it appears the Alaska Supreme Court has tools at hand to discipline the kind of behavior brought to the Bar's attention by Ms. Lindemuth.

For these reasons, we think that the Proposed Rule is unnecessary.

Second, admitting for the sake of argument that additional subsections to Rule 8.4 are necessary, there are three basic problems with the Committee Redraft: (1) vagueness, (2) divergence from employment discrimination law and (3) the pronoun problem and the First Amendment.

(1) There are still vagueness problems with the Rule.

In the words of Voltaire, "If you wish to converse with me, define your terms."

Here, at Proposed Rule 8.4(g)(1), the Committee Redraft attempts to define the terms "harassment" and "invidious discrimination," but the way it does so — particularly with respect to the term "harassment" — is so vague as to be confusing; it fails to give attorneys sufficient guidance on what is prohibited and what is not.

For example, "harassment" is defined as "unwelcome conduct [that] has no reasonable relation to a legitimate purpose" and that is "so severe or sustained that a reasonable person would consider the conduct intimidating or abusive." The problem is that much of what an attorney — particularly an attorney engaged in litigation — engages in as a matter of course is, to the opposing party, unwelcome and so severe and sustained that a reasonable person would consider the conduct intimidating. See, e.g., Feichtinger v. State, 779 P.2d 344, 348 (Alaska App. 1989) (observing that "[o]ften litigants and their attorneys will be particularly vexatious").

Consider the boilerplate response to discovery requests many of us receive on a daily basis: "Objection. Interrogatory No. 13 is harassing." Is creative discovery practice now possible grounds for professional discipline? Or, conversely, is the author of such a written objection now subject to professional discipline for leveling a meritless accusation? Under the proposed rule, the answer looks like "Yes" to both.

If Alaska enacts the proposed rule with the Committee Redraft definition, it will instill fear that zealous representation might offend the rule, and chill our ability as lawyers thereby.

(2) Harassment and invidious discrimination in the employment context.

The second paragraph of Proposed Rule 8.4(g) prohibits, essentially, employment discrimination. It is certainly a salutary provision that, in order for employment harassment or discrimination to be actionable under the rule, the complained-of conduct must "result[] in a final agency or judicial determination of employment misconduct or discrimination." There are, however, several ways in which this provision should be improved.

First, the provision should be modified to read: "In addition, it is professional misconduct for a lawyer to knowingly engage in **unlawful** harassment or invidious discrimination . . ." Since the provision appears to be tying the prohibited behavior to laws that prohibit harassment and discrimination in the workplace, it should be clear that the conduct being prohibited is "unlawful" harassment or invidious discrimination. This would not only make clear that only unlawful conduct is prohibited, but also would give lawyers guidance — by reference to case law under employment discrimination statutes — to what sort of conduct is prohibited. If the conduct is prohibited in statutes or ordinances that prohibit harassment and discrimination in the workplace, then that is precisely the sort of conduct that is also prohibited in legal employment, and not some other sort of conduct.

Second, the requirement should be that the conduct "results in a final and unappealable agency or judicial determination." As long as an agency or judicial determination is appealable, the lawyer should be able to pursue that appeal before being found to have engaged in unlawful harassment or discrimination that would constitute professional misconduct. Otherwise, a lawyer could be professionally disciplined for having been found guilty by a lower tribunal that is subsequently overturned on appeal.

Third, the phrase "misconduct or discrimination" should be changed so as to follow the Proposed Rule – by reading "employment harassment or invidious discrimination." The Rule should be internally consistent and avoid changing the terms of how the prohibited conduct is described. What the rule prohibits is "harassment and invidious discrimination," not "misconduct and discrimination."

(3) The Pronoun Problem and the First Amendment

The Committee Redraft steers clear of addressing the use of pronouns for transgender[2] participants in the legal system, and the latent First Amendment issues therein. This is not an esoteric issue. For example, in Meriwether v. Trustees of Shawnee State Univ., Sep 5, 2019, Case No. 1:18-cv-753 (S.D. Ohio), a university professor refused on religious grounds to refer to a transgender student by the student's preferred pronoun. The university said he had to do so. He sued the university under various theories, including religious freedom, but the court dismissed his case.

On the other hand, in United States v. Norman Varner, 19-40016 (5th Cir. 2020), the court held that a transgender litigant did not have a right to be addressed by a preferred pronoun.

Then there's Soule v. Conn., U.S.D.Ct. Conn., 3:2020cv00201, a pending case in which female athletes sued to bar male athletes (who identify as female) from competing against them. Recently the court ruled that the attorneys for the female athletes had to refer to the male athletes by their preferred pronoun.

As written, then, the "protected classes" of Proposed Rule 8.4(g)(3) are on a collision course with themselves, not to mention First Amendment protections for freedom of speech and religious freedom. If a transgender lawyer is questioning a litigant on the stand, and demands to be called by pronouns that contradict the litigant's religious beliefs, both are in a protected class under the proposed rule. Who wins?

It is not as if our sister state Bars are acting on a groundswell to curb a rampant problem; in fact, as we stated in our Joint Comment to the Committee last August, the American Bar Association's Model Rule 8.4(g) is unpopular.

Since the ABA adopted Model Rule 8.4(g) — although many states have considered it, only one state, Vermont, has adopted it. The supreme courts of four states — Arizona, Idaho, South Carolina, and Tennessee — have expressly rejected the rule. And the supreme court of Montana – the first state supreme court to consider Model Rule 8.4(g) — ended its consideration of the rule and declined to adopt it.

Indeed, the majority of states continue to have no blackletter nondiscrimination rule at all in their Rules of Professional Conduct. Of the minority, eight states (California, Iowa, Minnesota, New Jersey, New York, Illinois, Ohio and Washington State) limit their antidiscrimination rules to "unlawful" discrimination or discrimination "prohibited by law." Nearly half of them (Illinois, New Jersey and New York) actually require that, before any disciplinary claim can even be filed, a tribunal of competent jurisdiction *other than a disciplinary tribunal* must have found that the attorney has actually violated a federal, state, or local antidiscrimination statute or ordinance. The Committee's Redraft now follows this requirement.

Eight of the states with black letter antidiscrimination rules require that the alleged discrimination actually either prejudice the administration of justice or render the attorney unfit to practice law (Florida, Illinois, Maryland, Minnesota, Nebraska, North Dakota, Rhode Island, and Washington State). The Committee's Redraft now follows this, too.

Further, unlike Model Rule 8.4(g) — which has a "know or reasonably should know" standard — four states with black letter rules require the discriminatory conduct to be "knowing," "intentional" or "willful" (Maryland, New Jersey, New Mexico, and Texas). The Committee's Redraft follows this also

While we appreciate these improvements in the Committee Redraft, we maintain that there are good reasons why the majority of jurisdictions have not adopted any blackletter nondiscrimination Rules in their Rules of Professional Conduct — namely, because harassment and invidious discrimination are already actionable under law, including Bar discipline provisions.

CONCLUSION

In sum, the Alaska's current Rules of Professional Conduct should remain unchanged. Whether it's a judge or lawyer doing the harassing or discriminating, recourse is already available under Alaska Statute, Civil Rules, Rules of Professional Conduct, Code of Judicial Conduct, and Alaska Supreme Court case law.

Les Syren	*Mario Bird*
Sonja Redmond	*Jon Stratman*
Peter Brautigam	*Janella Kamai*
Michael Rose	*Robin Eckman*
Paul Morin	*Bob Flint*

FOOTNOTES

[1]Civil Rule 30(d)(3):
At any time during a deposition, on motion of a party, or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the judicial district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition . . . .
See also Civil Rule 37(g).

[2]Cf. Gender Dysphoria or Gender Identity Disorder, Diagnostic and Statistical Manual of Mental Disorders (DSM-5)

ECLECTIC BLUES

Preparing for a pandemic; what goes around comes around

Continued from page 1

emergency management experts are preparing to deal with the Avian flu challenge if it comes. We can make their jobs easier by preparing our homes, families and businesses so we can shelter at home. With some planning, law firms should be able to reduce the negative impact that will come with a pandemic.

One obvious way to avoid catching influenza is to avoid people. During a pandemic outbreak, schools might close. Law office employees with kids will have to stay home from work. Other employees, fearing infection, will also stay at home. Ten or 15 years ago firms would have had to shut down until the pandemic ran its course — 30 days or more. That was before laptops and the Internet.

Today, when lawyers in the lower 48 telecommute to avoid rush hour traffic, we have the tools to get out the work at home. It doesn't take much to prepare contracts or wills in your den —just a computer, a printer and a way to access files.

"It doesn't take much to prepare contracts or wills in your den —just a computer, a printer and a way to access files."

Unless the firm images all documents, lawyers may have to sneak down to the office in the wee hours of night to collect the files they need to bill hours. That may not be possible if the governor or mayor blocks access to the area where the firm's office is located.

With a secure Internet connection, lawyers should be able to e-mail a rough draft document to their secretary at home who can then prepare it for client consideration. The document could then be converted to a non-editable PDF document and then email to the client or opposing client.

If a firm wants to keep going during a pandemic, now is the time to prepare. The first step is to take an inventory of your attorneys' computer skills and the computer hardware and software they have at home. It would make sense to hand out thumb drives to lawyers and staff now so they can use them to upload forms, treatises, and briefs from their office computers to their home computers.

The value of Internet-accessible legal research services like Westlaw and Lexis will increase during a pandemic. No one will want to go the law library, even if it is open, to shepardize cases if it means catching the Avian flu.

A firm's accounting staff may want to consider creative ways to get bills to clients and paychecks to staff without relying on the mail or personal interaction. Employees might be encouraged to set up direct deposits of their paychecks and arrange for online payment of their credit card and utility bills.

Whether law firm employees intend to work at home or not, they should develop their own contingency plan to make sure they can feed their families without going to the store…

Dan Branch, a member of the Alaska Bar Association since 1977, lives in Juneau. He has written a column for the Bar Rag since 1987. He can be reached at avesta@ak.net

How COVID-19 and recession could impact malpractice claims

Continued from page 1

concerned about. First, claim frequency and/or claims severity will change for any number of reasons. We just can't accurately predict how. At a minimum, clients will look to blame their lawyers when their business dealings go south as a result of the near-certain recession that's coming. Lawyers and staff will make mistakes that would otherwise not have been made due to the rapid transition to working from home and/or being under excessive stress. And clients, who are also experiencing excessive stress, will question decisions they made in light of the advice their lawyer gave them if their legal matter doesn't work out the way they expected it to. Regardless, there will be a new normal in terms of claims, at least for a few years.

Second, policy retention may be an issue; but again, we can't accurately predict how this might evolve. Lawyers facing difficult financial times may choose to leave the practice of law entirely or may decide to allow their policy to lapse and simply go bare as a way to save some money. Of course, there's the flip side, some who have previously been bare may decide now's the time to purchase coverage because the value of their assets has dropped, and their level of risk has risen. Only time will tell.

I do understand that right now it can be difficult to turn off the noise and stay focused on the tasks at hand; to stop worrying about finances and family and take care of the business side of the practice; and to keep emotions in check as you try to find the time to document your files, keep your clients informed, and struggle to deal with courthouse closures and emergency orders. It's a given that mistakes will be made; but it seems to me that times like these truly underscore one of the values of having a malpractice policy. It's the comfort that comes with knowing that if some mistake does eventually turn into a malpractice claim, you've got coverage in place.

I need to add one final comment. For all of you who have up until now made a choice to forgo coverage, I can't imagine a better time to rethink that decision because as I stated above, the value of assets has dropped, and the level of risk has increased. The peace of mind that comes with the purchase of a legal malpractice insurance policy is worth every penny.

Since 1998, Mark Bassingthwaighte. has been a risk manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Bassingthwaighte has conducted more than 1,200 law firm risk management assessment visits, presented more than 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics and technology. He is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School. He can be reached at mbass@alpsnet.com

Anchorage Youth Court plans virtual Race Judicata

By Lars Johnson

Amid the Covid-19 pandemic, numerous businesses and non-profits have struggled. Anchorage Youth Court is no exception. However, AYC has adapted during these difficult times to continue providing the alternative justice program that has been AYC's core for over 30 years.

To ensure it can continue to provide its alternative youth justice program, and that Anchorage Youth Court members can continue to act as clerks, bailiffs, prosecutors, defense attorneys and judges, a group of adult and youth board members and Anchorage Youth Court staff began meeting in April to plan how AYC could operate virtual court. Using input from the Division of Juvenile Justice, this committee produced a working document outlining the policies and procedures of online court. These policies and procedures, which Youth Court has continued modifying with ongoing input from students participating in court, accomplish several things:

- Ensuring smooth operation of court;
- Allowing for full participation of all parties involved;
- Protecting confidentiality of participants; and
- Providing thoughtful follow-up so that defendants are able to complete their sentences.

So far, Youth Court has offered multiple mock sentencings to ensure participants understand the rules of online court and the efficient functioning of GoToMeeting, AYC's chosen meeting software. AYC is requiring participants to join at least one mock sentencing before they can participate in actual court. Youth Court planned to hold its first official court hearing Friday, May 15. Youth Court has continued to receive referrals from the Division of Juvenile Justice amid the Covid-19 pandemic and hopes to quickly work through the existing backlog of cases and be able to take on new cases as well.

The majority of Youth Court members and defendants already have the equipment to participate in online court. However, recognizing that this is not the case for everyone, Youth Court is purchasing and outfitting laptops and cell phones so that it can provide the equipment to students who need it. Anchorage Youth Court is planning to purchase enough equipment to provide for all participants.

While being able to continue offering court during the Covid-19 pandemic is important, AYC does not see online court as a temporary fix due to the Covid-19 crisis. Instead, AYC sees this as a tool that can facilitate offering Youth Court to participants, such as youth living in rural communities, who struggle to get to a courthouse.

While being able to continue offering court during the Covid-19 pandemic is important, AYC does not see online court as a temporary fix due to the Covid-19 crisis. Instead, AYC sees this as a tool that can facilitate offering Youth Court to participants, such as youth living in rural communities, who struggle to get to a courthouse.

AYC has also adapted its other programming to be able to continue connecting with the community during Covid-19. For many years, Anchorage Youth Court, in coordination with the Young Lawyer Section of the Anchorage Bar Association, has put on Race Judicata as a Youth Court fundraiser. This year, AYC is still putting on Race Judicata, but the race will be virtual! AYC is inviting everyone to get out between June 7 and 14 to safely run, bike, hike, walk, or do whatever you feel like doing for a fun 5K (or as long as you feel like running, biking, hiking, walking, or doing whatever you want to do). You may register online via https://bit.ly/2020RaceJudicata. To see information about this year's virtual Race Judicata on AYC's website, visit http://www.anchorageyouthcourt.org/race-judicata.html. Take pictures of your personal 5K and send them to AYC for posting online. We look forward to seeing you all staying safe and healthy outside from June 7-14. A limited number of t-shirts are still available, so register early to get yours. AYC will be in touch with registrants on how to receive their t-shirts.

Special thanks go to this year's Race Judicata sponsors. Our top supporter is, once again, Clapp Peterson. At our next highest level are Landye Bennett Blumstein, LLP along with Stoel Rives. Foley, Foley & Pearson, P.C. is next. Then we have several other sponsors — Davis Wright Tremaine, Dillon & Findley, Lane Powell, Richmond & Quinn, Tex R Us (who also provide Anchorage Youth Court's IT services), and Woelber & Associates, P.C.

Stay safe, everyone

Lars Johnson Anchorage Youth Court Adult Board chairperson.

ALASKA BAR ASSOCIATION 1995 - 2020

25 Years of Bar Membership


Jennifer Alexander


Cathryn Aukongak


David Bauer


Sheila Doody Bishop


Steven Block


Laura Bottger

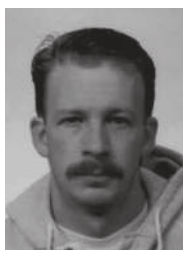

Eric Boyer


Aisha Tinker Bray


Beneth Browne


Jo Ann Chung


Dawn Collinsworth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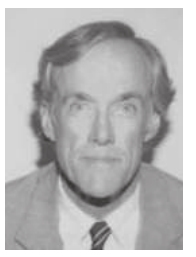
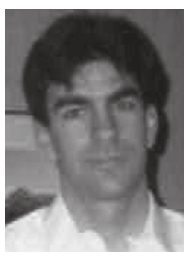
Thomas Dosik


Christine Drager


Edgar Duncan


Suzanne Etpison


Sabrina Fernandez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Michael Franciosi


Lynne Freeman


C. Steven Fury

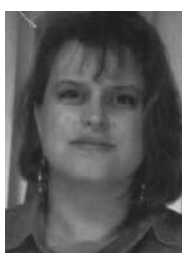

Kelly Gillilan-Gibson


John Gordon


Deborah Greenberg


Tracy Hanley


Elise Hsieh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James Jacobsen


Douglas Johnson


Keoki Kim

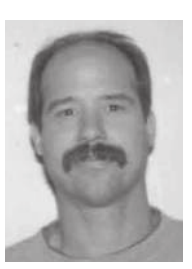

M. Christine Klein


Douglas Kossler


Kathryn Kurtz


Barat Laporte


Stacey Marz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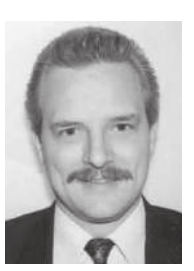
Elizabeth Anne McCord


Amy Menard


Yale Metzger


Stephen Mierop

Joseph Miller

Nicole Mosesian

Sarah Diemer Moyer

Margaret Murphy

Peter Nosek

David Oberg

Ken M Odza

Michele Power

Peter Ralston

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Midori Shaw

Andrew Steiner

Kirsten Swanson

Barton Tiernan

Jim Valcarce

David Wartinbee

Lisa Ann Weissler

James Whitehead

Michael Wirschem

Jennifer Woodruff

ALASKA BAR ASSOCIATION 1970 - 2020

50 Years of Bar Membership


Mer Louis Agi

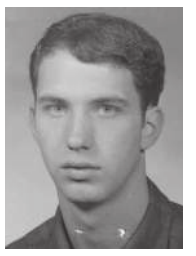

Linn Asper


William Azar


Herbert Berkowitz


Irving Bertram


Alexander Bryner


Walter Carpeneti

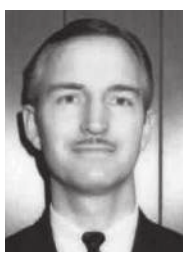

J.D. Cellars


Stephen Cline


Robert Coats


Dennis Cook


Christopher Cooke

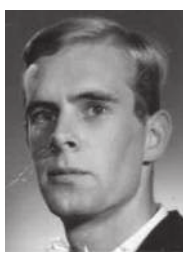

Shirle Debenham


Gordon Evans


Kennith Frank


Keith Goltz


Clark Gruening


Bernd Guetschow


Ray Harding


Richard Helm


Roger Holmes


Thomas Keever


Edward King


Andrew Kleinfeld


Jon R Larson

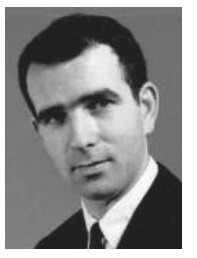

Douglas Lottridge


Jerry Melcher


Charles Merriner


Wallace Mlyniec


Paul Nangle


Thomas Owens


Donna Page


Donna Pegues


John Pletcher


Robert Richmond


John Scott


Joseph Sheehan


John Spencer


Donna Willard


Richard Willoughby

David P Wolf

60 Years of Bar Membership
1960 - 2020

Not pictured:
R. Everett Harris and Virgil Vochoska

In Memoriam

Former Supreme Court Justice Edmond W. Burke dies in Montana

Alaska Supreme Court Justice Edmond W. Burke died March 31, 2020, in Missoula, MT, after an extended hospitalization. His strong will to extend life through intervention was ultimately redirected — his emphasis became quality over quantity. It was within that context that he reached out to family and friends over a period of days, his words lovingly and beautifully articulated, reassuring all of us that life is good and intended to be lived well, a generous man to the end.

Born in 1935 in Ukiah CA, Ed spoke with gratitude for his parents, Wayne P. Burke and Opal Clow Burke, and reverence for his family heritage in the Anderson Valley where he learned to work and play, spending his youth (his younger brother, Doug, often in tow) on horseback herding sheep, fishing and hunting, a childhood "he would trade for no other." Throughout his life he easily made friends and expressed appreciation for those he met along the way, certain that what he received was far greater than what he gave, though many would argue otherwise.

After graduation from Ukiah Union High School in 1953, Ed attended Humboldt State College, where he earned a Master of Arts. He taught junior high school (botany) in Sonoma Valley before beginning his legal education at the University of California, Hastings College of Law, earning a JD degree in 1964.

In 1968 Edmond threw caution to the wind and headed north accepting a position as assistant attorney general in Juneau. He transferred to Anchorage, which would prove a turning point in a career spanning 23 years in Alaska's judicial system. Ed loved Alaska for its natural wonders and the opportunities it provided in raising his two daughters.

In 1970, Gov. Keith Miller appointed Ed to serve on Alaska's Superior Court in Kodiak. In 1975, Gov. Jay Hammond appointed Burke, at the age of 39, to the Supreme Court (he served as Chief Justice between 1981-1984, taking his oath of office on a riverbank while fishing the Tal River). Ed's retirement in December 1993 was celebrated at the landmark Captain Cook Hotel. One former law clerk, and Alaska's first female Supreme Court Justice, celebrated Ed as an advocate for women as leaders. After moving to Missoula, he taught as an adjunct professor at the University of Montana School of Law.

Justice Burke, of formidable stature, was a man of scholar and character, his calm demeaner once described as a "Gary Cooper kind of guy." He was known to be a stern judge "when indicated," yet mindful of the frailties inherent in human nature. His keen intelligence, and yes, irreverent sense of humor, flowed with ease. An adventurous pilot in his own right, he concluded that helicopters were an "abomination," adding that an invitation to take flight could be viewed as an act of attempted murder.

Happy is the story when a somewhat unplanned meeting took place in Anchorage in 1988. Ed and Anna Hubbard married on December 29, 1990, at the family cabin in the Cabinet Mountains in northwest Montana. Anna's 23-foot Christmas tree and Ed's prime rib, both done to perfection, would soon reflect a full life together shared with family, lifelong friends, and an admiration for one another that was to last thirty years. After Anna suffered a stroke in 2012, Ed became her voice, a role he described as the "honor of his life." And he did so without fanfare.

Justice Burke was a member of the Alaska Bar Association, as well as the Anchorage, American, California, and Montana bar associations, the American Judicial Society, and a graduate of the National Judicial College.

Ed was preceded in death by Wayne P. and Opal Burke and brother, Doug Burke.

Survivors include Ed's wife, Anna Burke (Missoula); daughters Kathleen Fisher (Barrow, AK) and Jennifer Burke Richardson (Anchorage, AK); sons John Hubbard (Maryann) of Missoula, , and Lanny Hubbard (Bergetta) of Helena, MT.

Ed's much-loved grandchildren include Abigayle Fisher and Mollie Fisher (Barrow); Daisy Richardson (Sumter, SC); Thatcher Hubbard (Seattle, WA); Michaela Schager (Missoula); Anna Hubbard (Denver, CO); and Leland Hubbard (Missoula). He leaves behind one niece, Tracy Burke Bowen (Goleta, CA).

Memorials can be made to St. Jude Children's Hospital or Shriners Hospitals. Edmond will be interned in Ukiah at a later date.

Friends Karl Johnstone, left and Mark Rowland, right join Justice Burke for a portrait.

Solid advice from the Bench

By Jeffrey Feldman

Justice Edmond Burke was one of the first Alaskans I met. I was hired by Chief Justice Jay Rabinowitz to clerk for what was then an empty seat on the Supreme Court. Judge James Fitzgerald had just moved from the Supreme Court to the federal bench, and Chief Justice Rabinowitz hired four clerks that year — two clerks for himself and two for the vacant Anchorage position. I sometimes needled Chief Justice Rabinowitz that he apparently thought I was good enough to hire, but not for himself. He once replied that he just wanted to make sure that if the governor made a weak selection, the new justice had the two best law clerks. Of course, anyone who knew Chief Justice Rabinowitz, and knew how he felt about his law clerks, also knew that this was an utter fabrication.

Anyway, Justice Burke got the appointment, and I wound up clerking for him. It was a wonderful year. It took me a while, though, to get used to his slow, spare, laconic Gary Cooper-style of speech. Early in my clerkship, Justice Burke learned that my wife, Marge, and I were going out hiking every weekend. Unarmed. He thought this was seriously stupid and encouraged me to take a rifle. Not only did I not own a rifle, at that point I never even knew anyone who owned a gun. One of these many discussions produced the following exchange:

BURKE: You should get a rifle.

FELDMAN: I don't know how to shoot a rifle, and I'd be more of a danger to myself and Marge than would a bear.

BURKE: You should get a rifle.

FELDMAN: Plus, a rifle would be extra weight, and my backpack is about all I can manage. It must be 60 pounds or more. I'm not as big as you (as if he needed to be reminded of that). It really wouldn't work.

BURKE: You should get a rifle.

FELDMAN: How about if I got a pistol, would that work?

BURKE: (Long, patient pause). Yeah . . . that would work . . . (Another long pause) That way . . . when the bear came . . . (Another long pause) . . . you could . . . (Another pause) . . . . blow your brains out.

I'll miss him.

Jeff Feldman is a Professor from Practice at the University of Washington School of Law

In Memoriam

Behind the robe — one dame's view of a one-of-a-kind justice

By Val Van Brocklin

Alaska Supreme Court Justice Edmond Burke passed died March 31 in Missoula, MT with family at his side. He'd decided the week before, based on doctors' prognoses, to "go out on my terms, not theirs'" and instructed all life support removed. In a last surge of energy, the night before he died, Ed — a skilled Alaska bush pilot in his day — took the family at his bedside for a flying lesson. They were in a right-hand pattern and he was quite concerned about other air traffic. When they were on final approach, Ed said, "Well, by this time we crash and are all burnt to a crisp." Ed's stepson, Lanny, wrote, "That about sums up how we feel tonight, but he was irreverent and Ed to the very last."

I first met Justice Burke through an exchange of letters in 1985 — before I moved to Alaska. I was clerking for a trial judge in New Hampshire. My judge had issued a decision, then changed his mind based on a Motion to Reconsider. He handed me the parties' briefing and tasked me with drafting his switch.

As luck would have it, I'd stayed in touch with a lawyer I'd met while clerking for a law firm in Anchorage the summer before. I mentioned my work challenge to him. He said he had just the ticket and mailed me an opinion by Justice Burke.

In *Yute Air Alaska, Inc. v. McAlpine*, 698 P2d 1173 (Alaska 1985), the Alaska Supreme Court was faced with an issue important to a soon-to-be-held election. Fast tracking its decision, the Court announced, "The judgment of the Superior Court is AFFIRMED. Opinions will follow." Between that and the issuance of the formal opinion, Justice Burke changed his mind. Joining the dissent, he wrote,

> "In this instance, the added scrutiny compelled by Justice Moore's vigorous dissent has convinced me that our previously announced decision was dead wrong. Rather than commit a second offense, I prefer to eat my share of the crow now."

Succinct and straight as an arrow. Just like the man who wrote it. No mental gymnastics, no legalese. My judge quoted it and I sent my judge's opinion to Justice Burke with an explanatory letter. I received a gracious reply with an invitation to introduce myself when I arrived in Anchorage, which I nervously did the next year when I returned to work for the Anchorage DA's Office.

I was shown into Justice Burke's chambers. He smiled, rose from behind his desk, strode over, and shook my hand with two warm bear paws that swallowed my extended greeting. The voice might've come from a bear, as well, and the chuckle — deep, sometimes descending to gravely, commanding attention even when soft. I was invited to, "Sit down, tell me about yourself. What are your plans for Alaska?" I mumbled for a few minutes, too nervous to consider asking him about himself, then extricated myself with something about how busy he must be. I was seen off with an invitation to call anytime and stop by again. I didn't. I couldn't imagine imposing on this important man any more than I had.

A few years later, I began seeing a close friend of Justice Burke — Karl Johnstone, himself a Superior Court Judge. Justice Burke became Ed — a pivotal character in my life for over 30 years. He was big-spirited, embracing, poetic, playful, as irreverent about the world of man as he was reverent toward the natural world. Time spent with him felt like being a kid hanging out with Merlin, the Lone Ranger, the Duke, Thoreau and Aldo Leopold, whose book *Sand County Almanac* rests on my shelf with an inscription from Ed.

I remember when I realized I loved this man who'd become like a favorite uncle to me. Ed and I were sitting on some decoys on The North Pothole of the duck flats with Karl's boykin spaniel, Sun, between us. It was a warm September day, with not a whiff of breeze. Dragon flies flitted around solo and piggybacking. Sun sat at the ready, but his eyes and head would droop in a beckoning nap. Then he'd jerk back awake, only to repeat the gestures. Ed and I chatted quietly, easy as two buddies in a pup tent. The conversation centered around our cultish love of nature – a topic that expanded our hearts for the subject and each other.

Midsentence Ed stopped, lowered his head and shoulders and whispered, "Mark." I followed his eyes and saw five ducks in formation, flying toward our decoys. Sun trembled. Ed put a hand on his side and whispered, "Stay, stay." I got my legs beneath me into a crouch, keeping my shoulders below the waving grass. I was locked on the birds. Ed had witnessed me shoot too early in excitement when ducks were still out of my range. I took my safety off and Ed whispered, "Steady." I waited. "Now," he whispered gently.

I stood. The birds saw me and flared high but right over our heads. I picked one, led it, shot once, and two ducks dropped, one on either side of us. I whooped, Ed slapped his thigh and laughed, and we both encouraged Sun with his short retrieves then lavished him with praise.

It was only then I saw Ed had never even closed the break in his shotgun to shoot. When I asked him why, he answered in a John Wayne drawl, "Oh, well, now, I've shot more than my share of birds. It was more fun to watch you." As we settled back in, he stroked the feathers of both ducks smooth and began to show and describe to me how perfectly they were designed for the lives they lived. The black hair on the backs of his hands and fingers glinted in the sunlight and as I looked up at his bushy eyebrows and two-day stubble, I thought of Zorba the Greek, another character I loved.

We walked back to The Duck Shack in companionable silence as the sun lowered. Karl, friends Mark Rowland (His Honor back in Anchorage), and George Grant, a master aviator, had the grill fired up with tin foil wrapped potatoes already among the coals and seasoned, thick rib eyes waiting. They hadn't bothered to hunt in the warm stillness with so few birds flying. As I hung my duck strap up on a peg outside, Ed poured the Glen Livet and proposed a toast — to me, "the only one who brought any game home." I have little recollection of my law school graduation. But I will take that day to my grave.

Ed liked to cook. He was an able chef with thick, dog-eared, stained cookbooks in the kitchen he shared with Anna, the two of them moving about like a pair of swans – graceful and partnered for life.

Conversation with Ed one-on-one was easy, so long as you relaxed into his growly, pondering way of speaking. So was sharing silence. When Karl and I would visit him and his wife, Anna, in Missoula, Ed and I were the early risers. We'd sit at their small kitchen table, drinking coffee, and watch birds flitting around feeders. Often, we'd be graced by deer grazing just outside the windows. Ed wasn't chatty but he listened well. When he spoke, it was "to you," not "at you," and your listening back was rewarded. It felt like sharing homemade bread, fresh from the oven.

Other times, his repartees were like anchovies, salty and nourishing. The man could've held his own at The Algonquin Round Table. Gathered around our dinner table one evening, Ed and other friends were listening to Ed's brother, Doug, cataloging a list of age-wrought inflictions the rest of us were nodding to. When Doug concluded, "It's tough getting old," Ed snorted and retorted, "You damn fool, that's the whole point!" Another time, we were watching some evening news in Ed's and Anna's Missoula living room. There was a well-known politician juggling questions about his then current scandal. Cracking a walnut, Ed chipped in, "He can chew his leg off faster than they can set the trap."

Ed liked to cook. He was an able chef with thick, dog-eared, stained cookbooks in the kitchen he shared with Anna, the two of them moving about like a pair of swans – graceful and partnered for life. In a recent visit to their Missoula home, I took a video of them in their kitchen. Ed is wearing an apron embroidered *Kinky Boots – The Sex is in the Meal,* a play on the name of a Broadway show where Karl and I had purchased it for him. Indulging me, Ed instructs how to make a perfect soft-boiled egg — serious as a judge, except for moments when I crack him up narrating behind the camera lens and he allows a laugh that lights the room. Anna smiles in the background, looking at him lovingly as she slices oranges and butters toast.

Justice Burke's wife, Anna, offers some advice to the cook. Photo by Pam Conner.

Somewhere in our friendship, Ed dubbed me Little Shit and I returned the favor by calling him Big Shit. We signed our correspondences thusly and used the nicknames in conversation. Karl was the one who told me, with tears streaming down his face, about Ed's decision "to go out on his terms." Still crying, he left to walk the dog, a reaction Ed would've sanctioned. I called Ed. He answered in his hospital room, "Hello, Little Shit." I hadn't thought what to say and blurted out in a choking voice, "Damn it to hell, Big Shit." The rest of the conversation was Ed comforting me. At one point, crying, I asked him, "How do you do it, Big Shit? How are you able to face this with such courage and grace?" He paused, drew in a breath, and then warmly answered, "Well, I guess I'd have to credit that to my Mother."

Maybe it's also to his mother's credit the special way Ed had with women. He had a special way with men, too, as Karl's and Mark Rowland's broken hearts attest. But, in my experience, it's a rare man who can bond with women in a way that, while different, is commensurate with the bonds of men. I've thought back to our first meeting, and the 30 years of friendship after, to try to decipher this. I only know, from our first meeting on, Ed looked at me with eyes that gave window to a heart and mind totally open to learning, without preconceptions, what kind of unique person I was. It invited and encouraged me to decode and share my real self.

That Ed took his courage, grace, empathy, open heart and mind to work everyday as a Supreme Court Justice was Alaska's good fortune. That he was my friend, was mine.

My last conversation with Ed, just a few days after he'd tried to console me by assuring he'd "had a good run," I was determined not to burden him with my grief. Instead, we reminisced. He brought up our shared wonder of the natural world and what a special bond that was between us. I told him I'd be taking him on all my walks, my hunts, my flights, my wading with a fly rod. I have and will continue to. And I will try to see them as Ed did — perfectly designed.

Val Van Brocklin is a former state and federal prosecutor in Alaska who now trains and writes on criminal justice, law enforcement, leadership and ethics nationwide. She lives in Anchorage.

In Memoriam

30-year Alaska lawyer dies


Hopper

James "Jim" Leslie Hopper, 74, died March 10, 2020, in Kingman, AZ. Jim was born Nov. 12, 1945, in Red Wing, MN, but grew up in Wisconsin. He lived a life of adventure and is best known for the stories he shared with others.

Jim served as a police officer with the Chicago Police Department in the 1960s before being drafted in the United States Army. He attended Officer Candidate School and served as a Military Police Officer, assigned to Fort Richardson, Alaska. Following his assignment in the military, he joined the Alaska State Troopers and later became an attorney. He served as an attorney for nearly 30 years. Jim retired and finally moved back to Pine Island, Minn., in 2017. He always wanted to return to Minnesota, and shared many fond memories visiting Pine Island in his youth.

Jim died in Kingman, Ariz., following a day trip to the Grand Canyon. He was on vacation and wanted his daughters to see the Skywalk at the Grand Canyon. He became ill and was taken to a hospital where he died.

He is survived by his wife of 34 years, Deborah Hopper; two daughters, Kimberly (Paul) Russell and Sheila (Jake) Flagg; and five grandchildren, Kayla and Max Russell, Elisabeth and Gianna Moffett and Gideon Flagg. He came from a large midwestern family with too many siblings to mention.

Graveside services will be held this summer in Pine Island, MN.

Long-time Anchorage lawyer dies in Oregon


Smith

Anchorage attorney Floyd Vernon Smith died at Kaiser Hospital in Portland, OR., Nov. 20, 2019. He was 83.

Floyd was born on Jan. 24, 1936, in Billings, MT., the only child of Floyd and Edith (Horne) Smith, who were ranchers in North Dakota and Montana. In 1940, the family relocated to Seattle, WA to find work when Floyd was 4 years old. Floyd recounted he was a shy and bookish child who spent his time at the Seattle library, where he developed a deep love of history and literature.

He pursued a history degree in Communist Studies at the University of Washington, graduating in 1957. He then applied for and was awarded the U.S. Woodrow Wilson Fellowship which enabled him to attend Columbia University as a history major. During his time at Columbia, Floyd met fellow history major Barbara Sweetland. Floyd subsequently changed his major to Law and transferred to Harvard Law School. He was the first generation of his family to graduate from college and revered the industrious, hard-scrabble ranchers he came from.

Floyd and Barbara were married near her parents' home in Milwaukie, OR., June 18, 1960. After Floyd's graduation from Harvard Law in 1962, he and Barbara moved to Seattle, where he worked for the District Attorney's office. The couple started their family there, adopting two daughters, Lauren and Allison.

In 1970, Floyd and Barbara moved their young family to Anchorage, where Floyd formed a law partnership with Justice Robert C. Erwin. The firm provided legal services to the growing Alaska industries, school districts and churches.

Floyd enjoyed camping, fishing, hiking and exploring Alaska with his family and friends. He and Barbara traveled extensively in Alaska for business and pleasure over the years, savoring Alaska's diverse people, rich cultures and landscapes, from Southeast and Aleutian coastal towns to Barrow and interior bush villages. Floyd and Barbara loved to travel together and especially enjoyed their trips to the U.K. and Europe.

In retirement, Floyd was able to pursue his passion for woodworking and the comradery of his boy gang, the "Altercockers Club," devoting his time to gardening, cooking, travel, volunteering and supporting the arts in Anchorage. Floyd and Barbara were active members of St. Mary's Episcopal Church and passionate supporters of the FISH program for over 30 years, delivering food and other essentials to Anchorage residents in need.

Barbara died in 2013. In 2017, Floyd relocated to Portland, to be closer to family, where he was embraced by his daughter Allison's family during his battle with progressive dementia. During this time, he kept his sense of humor and continued to be a supportive and loving father to his girls.

Floyd was preceded in death by his wife, Barbara, of 53 years, and is survived by his daughters, Lauren Smith of Lawndale, Calif., and Allison Blandini, her husband Richard Blandini and two grandchildren, Raphael Blandini and Elouisa Blandini of Portland.

A memorial service was to be held at St. Mary's Episcopal Church, in Anchorage, April 25, 2020

Donations can be made to FISH at St. Mary's Episcopal Church or the Humane Society.

The Alaska Law Review (ALR) is accepting submissions for its Fall Volume!

This volume is ALR's biannual Symposium edition, which will be dedicated to Alaskan election law. We are asking for submissions from attorneys on topics related to election law in Alaska. Submissions may take the form of traditional law review articles or shorter essays. ALR is committed to catering to practitioners in Alaska, and we strive to publish practicing attorneys within the state. We also encourage submission of papers about topics other than election law. While these will not be considered for publication in the Fall Volume, they will be eligible for the Spring 2021 Volume.

All submissions must be sent to alr@law.duke.edu by July 15.

If you have any questions or have interest in writing for the Journal, please reach out to the Law Review staff at alr@law.duke.edu.

ESTATE PLANNING CORNER

Interrelated computations still can be performed on napkins

By Steven T. O'Hara

My father was a natural when it came to numbers. He was a salesman and also worked in the sport of boxing. He used backs of envelopes and paper napkins to explain computations.

We estate planners know how to add assets, subtract deductions, multiply tax rates against net amounts, and then subtract credits. We also can do interrelated or circular computations. For example, we compute federal gift tax where the donee in a gift transaction agrees to pay the donor's gift tax. Here the gift tax is calculated on the net amount passing to the donee. IRC Sec. 2502(c) and 2512(b). Another example is the so-called direct skip under the federal generation-skipping transfer tax. In a direct skip transaction (other than a direct skip from a trust), the generation-skipping tax is calculated on the net amount passing to the transferee. IRC Sec. 2603(a)(3) and 2623.

There is a two-step formula (the "Formula Calculation") for interrelated tax computations. First, determine a tentative tax, by which I mean the tax assuming no interrelated computation. Second, divide that amount by the sum of one plus the rate of tax. See Rev. Rul. 75-72, 1975-1 C.B. 310. This formula is illustrated below.

On the other hand, there is nothing like back-of-napkin math to help explain things when you are meeting with clients and also when you are verifying Formula Calculations. Here I am talking about trial and error and logic, a la my late father. This method is also illustrated below.

Suppose in 2019 you had a meeting with Jane Donor, an elderly client who had never married and who had been generous all her life. When you met, she had no debt and $10 million cash remaining after decades of gifting. Now she wanted to gift the full $10 million that very day to Joe Donee, an unrelated individual one generation below herself. And after meeting with you, she did just that — but only after first obtaining Joe's written agreement to pay her federal gift tax on the $10 million.

Donor had previously bought for herself an annuity that lapses at her death but on which she relies for her modest living expenses. She had previously gifted Joe $15,000 in 2019 and had gifted a total of $12 million to other private individuals in previous years. Thus for purposes of discussion she had no remaining unified credit against gift tax under IRC Sec. 2505. At the meeting you pointed out that if Joe agreed to pay her federal gift tax on the $10 million dollars, the federal gift tax would be calculated on the net amount received by Joe after paying her gift tax. IRC Sec. 2502(c) and 2512(b).

"... there is nothing like back-of-napkin math to help explain things when you are meeting with clients and also when you are verifying Formula Calculations."

Donor wanted, at the meeting, an estimate of the net gift to Joe, assuming no federal income tax and no state or local taxes. You explained that she is in the 40 percent federal gift tax bracket, having previously gifted over a million dollars. IRC Sec. 2001(c). Using the Formula Calculation you first multiplied $10 million by 40 percent to come up with a tentative tax of $4 million. Then you divided $4million by 1.4 percent to come up with an estimated federal gift tax of $2,857,143, meaning the net gift to Joe would be $7,142,857 ($10 million minus $2,857,143).

Donor was not satisfied. She explained she could not see how the gift tax was calculated. She said she had time and wanted to visualize, on the back of a napkin, the tax computation using common sense under the trial-and-error method. So what to do?

Here we can make three columns. The first column would be the Gift, the second column the Tax Payable, and the third column the Total Sum of the first two columns.

As we said, Donor is in the 40 percent federal gift tax bracket. So with a 40 percent tax rate and a beginning number of $10 million we can begin our trial and error with $6 million (60% of $10 million dollars) in the Gift column. With a gift of $6 million, we can put $2,400,000 ($6 million times 40 percent) in the Tax Payable column. Here the Total Sum equals $8,400,000, which is $1,600,000 less than the $10 million transferred to Joe. So we know we can increase the Gift column.

If we increase the Gift column by $1million, the amount in the Gift column would be $7 million. With a gift of $7 million, we can put $2,800,000 ($7 million dollars times 40 percent) in the Tax Payable column. Here the Total Sum equals $9,800,000, which is $200,000 less than the $10 million transferred to Joe. So again we know we can increase the Gift column.

If we increase the Gift column by $142,857, the amount in the Gift column would be $7,142,857. With a gift of $7,142,857, we can put $2,857,143 ($7,142,857 times 40 percent) in the Tax Payable column. Here the Total Sum equals $10 million, which is the amount Donor transferred to Joe.

Thus under both the Formula Calculation and the trial-and-error method, the result is a net gift to Joe of $7,142,857 out of a $10-million lifetime transfer.

What if Donor had died in 2019 and had, at her death, given $10 million to Joe as an inheritance? Here federal estate tax would have been approximately $4,240,000. IRC Sec. 2001(b) and (c) and 2010(c)(3). Whereas Joe would have received $7,142,857 under the lifetime transfer, he would have received $5,760,000 from an inheritance. So in this example an inheritance costs $1,382,857 more in tax. Why is that? Part of the reason is the federal estate tax system is tax-inclusive, meaning there is tax on tax, whereas the federal gift tax system is tax-exclusive. IRC Sec. 2502(c); cf. IRC Sec. 2035(b)(inclusion in gross estate of gift tax paid on gifts made within three years of death) and IRC Sec. 2001(b)(2)(federal estate tax payable on so-called adjusted taxable gifts).

My blog version of this article illustrates both the Formula Calculation and the trial-and-error method for determining tax on a so-called direct skip under the federal generation-skipping transfer tax system. My blog is at the bottom of the Home page of my website www.oharatax.lawyer.

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.

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court, dated 3/12/2020,

DAWN D. AUSTIN
Member No. 0608050
Glen Burnie, Maryland

is reinstated to the practice of law effective April 1, 2020.

Published by the Alaska Bar Association, P.O. Box 100279, Anchorage, Alaska 99510 Pursuant to the Alaska Bar Rules

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court, Dated 1/23/2020

COREY G. STEWART
Member No. 1202003
Homer, AK

is transferred to disability inactive status effective January 23, 2020.

Published by the Alaska Bar Association, P.O. Box 100279, Anchorage, Alaska 99510 Pursuant to the Alaska Bar Rules

Top ten rules for being a successful lawyer

By James Gray Robinson

Reprinted from the ABA Journal, June 2019

A third-generation trial attorney, I have spent a majority of my life either working as a lawyer or hearing about it at the dinner table growing up. I was a trial attorney in North Carolina for nearly 27 years and retired in 2004 to go into consulting. I moved to Oregon in 2016 and decided to take the Oregon state bar exam because I had an in-house counsel job offer that required a law license.

Once I passed the bar exam and got my law license, the job did not materialize. I decided to continue consulting with a focus on lawyers. After all, lawyers seem to have many unique skill sets and problems that only lawyers can appreciate. As I prepared for the exam, I began to reflect deeply on my years spent as a family law attorney and as a business consultant working with lawyers and law firms.

In hindsight, many past challenges and issues I experienced became very clear. We are here to live life and be as successful as we can possibly be. I have collected some thoughts about practicing law — and life in general — that can help lawyers to be successful, whether they are young or old.

1 Do not be a prisoner of your past. What happened in your life is a lesson, not a life sentence. We are our own jailors, and our minds are the key. You do not have to obsess over events that were painful or not what you wanted. You are not a victim, so don't act like one. True leaders and winners accept what has happened and move on. However, we do have to learn and not repeat behavior that produces unpleasant results. This may be more important for older lawyers, as they would have more past experiences than a younger lawyer.

2 What comes out of your mouth is more important than what goes in it; however, you are what you eat. This can become a vicious cycle because when we eat or drink things that aren't healthy, it makes us feel depressed, stressed or angry. We can say things we will regret when we feel terrible. So, if you are eating unhealthy foods or drinking too much, you will feel bad, which makes you say negative things, which makes you feel worse. So you will eat and drink more — and on and on. Alternatively, if you are depressed, stressed or angry because of your circumstances, eating unhealthy foods and drinking too much will make you feel worse, which makes you behave poorly and the cycle repeats.

3 People will admire you more for your health and happiness than your bank account. Think about it; who are the people you admire most? What is the object of this game called life? Is it to die with the most toys or the most friends? Wealth and possessions are addictive; you will never have enough. If you are healthy and happy, wealth will naturally come to you in whatever form you choose. Wealth is relative when you are healthy and happy. Wealth will not be enough if you aren't healthy and happy. True wealth is in your heart, not your bank account.

4 Take 10 minutes each day to not think but just breathe. One of the most common complaints among lawyers has to do with overthinking. Everything. We are trained to analyze, anticipate and avoid problems. The problem is we love to think, and that is not always good for us 24-7. Take 10 minutes every day and focus on your breathing. It will make you feel much better and give your brain a reboot.

5 Lawyers are admired more for their honesty (and/or humanity) than winning. We all know those lawyers who are aggressive, confrontational, disagreeable and just plain unlikeable. People may dislike dealing with them or fear them, but they are rarely admired. Think carefully when you choose how to deal with your colleagues, clients and the court. Would you rather be admired for your honesty and integrity or feared because you are a jerk?

6 You have to balance and take care of your body, your mind and your family/community. One of my senior partners once told me, "To be successful, you have to focus on your legal practice, your family and your church." I believe that was incorrect. You have to focus on your physical body, your emotional body and your family, however you define that.

7 Nothing is more powerful than kind words. You can get your point across without being hateful. You will attract more clients with honey than bitterness. There has been a trend lately of lawyers threatening each other with ethics complaints or similar actions. This is ridiculous. Lawyers don't have to threaten each other to make their point.

8 Embrace change. Change is good. Change is growth. Presidents and administrations change at least every eight years. Each time there is change, there is opportunity. Look for the opportunity in change. Don't resist. If you leave a law firm or change your practice, that is a good thing. If we are struggling in our practice, it is evidence that something needs to change. Perhaps you need new partners, a new practice area or to get out of practicing law altogether. Most of the lessons we learn as lawyers are valuable in the business world and can translate to success elsewhere. Alternatively, get a new hobby.

9 If you don't control your emotions, they will control you. Many people don't understand how powerful their minds are and what they can do with them. When we don't focus on positive events and thoughts, chances are we will focus on negative events and thoughts. That is what lawyers do because we focus on worst-case scenarios. It may come as a surprise, but most successful people do not focus on worst-case scenarios, they focus on the best thing that can happen.

Admittedly, if you are stressed, angry or depressed, it is difficult to focus on positive thoughts. However, it is the only way to heal whatever is causing the stress, anger or depression. As a footnote, if you are clinically depressed, best you seek medical advice. Abnormal brain chemistry may need more than positive thinking.

10 Being a lawyer is a gift. Remember we choose to be lawyers, we weren't drafted. Many times, we feel like we are in prison or worse: hell. We are only required to do the best we can and that is always enough. If practicing law is not for you, you can do something else. If you are good at it but aren't having fun, you need to get your mind in proper working order.

When practicing law gets dicey, that is the time you need to be grateful. It is easy to be grateful when you win the big case; it says more about your character and integrity if you can be grateful when times are rough.

James Gray Robinson, a third-generation trial attorney and expert in family law, practiced for 27 years in his native North Carolina until 2004. Since then, he has become an individual and business consultant who works with a wide range of people, professional organizations and leading corporations. Robinson's mission is for all people to have fulfilling, peaceful career experiences and work environments. At age 64, Robinson passed the Oregon bar exam and is again a licensed attorney. Learn more about his work at jamesgrayrobinson.com or email him at james@jamesgrayrobinson.com.

2020 Law Student Scholarship Recipients

The Alaska Bar Association announced the 2020 recipients of the law school scholarships for Alaska law students. The Bar received $5,400 in donations and $300 scholarships were awarded to 18 law students. The 1st or 2nd year law students wrote an essay on their connections to Alaska and why they intended to return to Alaska after graduation.

The scholarship fund is managed by the Alaska Bar Foundation, a 501(c)(3) organization, so donations are tax-deductible. The scholarship program originally existed in the 1980s and was reactivated by the Board of Governors in 2018 to support Alaskans in law school who intend to return to Alaska.

Donations are now being accepted for the next round of scholarships. This is a great opportunity to help struggling Alaska law students make the most of their legal education. These students will return to Alaska to become our next generation of lawyers and judges.

Please send your tax-deductible check, payable to the Alaska Bar Scholarship Fund, to the Bar office, or log on to the Bar's website at www.alaskabar.org and pay online via the Online Store. Contact Bar staff if you have questions.


Sarah Kathryn Bryan


Lily Cohen


Ryan Cole


Amelia Collins


Jeremy Conkling


Jessica Falke


Bryan Haugstad


Christina Isbell


John Macy


Olivia Martinsen


Christina McDonogh


Bobbie McNeley


Chelsea Phelps


Eric Ringstad


Ryan Skajewski


Marc Smith


Jenna Sutton


Emily Walker

2020 SCHOLARSHIP RECIPIENTS:

- Sarah Kathryn Bryan
- Lily Cohen
- Ryan Cole
- Amelia Collins
- Jeremy Conkling
- Jessica Falke
- Bryan Haugstad
- Christina Isbell
- John Macy
- Olivia Martinsen
- Christina McDonogh
- Bobbie McNeley
- Chelsea Phelps
- Eric Ringstad
- Ryan Skajewski
- Marc Smith
- Jenna Sutton
- Emily Walker

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- Paul Morin
- Deborah O'Regan
- Trina Sears
- Moira Smith
- Robert Stone
- Tom Wagner

The Bar thanks everyone for their generous donations.

Bar People

Attorney becomes shareholder in Barber and Associates


Winner

Barber & Associates, LLC is pleased to announce attorney **Adam L. Winner** as its newest shareholder. Winner has worked with Barber & Associates for the past 5 years after earning his Juris Doctorate from Northeastern University School of Law in Boston, Massachusetts in 2011 and clerking for Superior Court Judge Michael Wolverton. In his time with Barber & Associates, Mr. Winner has worked hard for his clients and achieved immense success. As a partner, Mr. Winner will continue to fight for fair compensation for injured Alaskans.

Chambers USA IDs Holland & Hart lawyers, Alaska practice

Holland & Hart LLP announced that *Chambers USA: America's Leading Lawyers for Business*, an annual guide identifying top attorneys and law firms in the U.S., ranked **Jon Katchen** and **Kyle Parker** in Environment, Natural Resources & Regulated Industries and the firm's Chambers-defined practice area Environment, Natural Resources & Regulated Industries in Alaska, in its 2020 edition.

Firmwide, Chambers USA ranked 80 Holland & Hart attorneys and 36 of the firm's Chambers-defined practice areas, by market, reinforcing Holland & Hart's leading presence in our eight-state footprint and in Washington, D.C. The firm's Environment practice was ranked nationally for the eleventh consecutive year, and for the third year in a row, the firm is nationally recognized in International Trade: Export Controls & Economic Sanctions.

Landye Bennett Blumstein LLP names 3 partners, and associate


Boutin

Michelle L. Boutin became a partner with LBB in January 2020. Boutin focuses her practice on creditor rights in commercial matters including work-outs, civil litigation, and bankruptcy. She received a Bachelor of Science (with honors) from the University of Alaska, Fairbanks, and a Juris Doctor from Hamline University School of Law. Boutin is a member of the Alaska Bar Association and has been an active participant and past chair or co-chair of the Bankruptcy Section of the Alaska Bar Association for 30 years, past board member of the Anchorage Bar Association, and past attorney representative to the Ninth Circuit Judicial Conference.


Sommer Boskofsky

Lauren Sommer Boskofsky became a partner with LBB in January 2020. She joined LBB as an associate in September 2013. She focuses her practice on commercial real estate, Alaska Native law, mergers and acquisitions, and other transactional work. She also works with tribes and municipalities.

Benjamin W. Spiess became a partner with LBB in January 2020, after joining LBB in 2018. Spiess has practiced law in the Pacific Northwest since 2010, focusing his practice on Alaska Native Law, including ANCSA, and Real Estate and Corporate transactions.


Spiess

David A. Wilkinson joined LBB in April as an associate. David was born and raised in Anchorage and educated at the University of Alaska, Fairbanks. He studied law at Seattle University, where he graduated second in his class. He began his legal career clerking for Justice Winfree at the Alaska Supreme Court in 2012. In 2013, he joined the state Attorney General's Office in Fairbanks advising on Alaska Native law and handling civil appeals.


Wilkinson

LBB Partner Adolf Zeman has been appointed the Anchorage Superior Court. Zeman was selected from a group of individuals nominated by the Alaska Judicial Council to fill the seat of retiring Judge Michael L. Wolverton. Zeman joined LBB as an associate in 2012 and became a partner in July 2013.


Zeman