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Rabinowitz Gives State of the Judiciary Message to Legislature

On February 7, 1980, **Chief** Justice **Jay Rabinowitz** gave the Annual State of the Judiciary Message to the Alaska Legislature in Juneau. He began by noting that a full decade of tremendous growth in litigation and expansion of judicial services had passed since Chief Justice **George F. Boney** gave the first of these annual messages. In a brief review of the decade, the Chief Justice highlighted several Supreme Court Opinions of the decade including *Hootch v. State*, *Thomas v. Bailey*, and *Hammond v. Hickel*, the Reapportionment cases, the Kachemak Bay and other Environmental/Natural Resources cases and constitutional cases involving the Right to Privacy and the criminal process in general.

Boochever's Appointment

Turning to the present, Rabinowitz spoke of the "extraordinary honor" of Justice **Robert Boochever's** appointment to the Ninth Circuit Court of Appeals. He thanked Alaska's Senators and all others in the Federal Government concerned with the nomination for "attaining a seat for Alaska on the Ninth Circuit and for this outstanding selection."

Three Goals

Passing quickly over his own selection by the *Anchorage Daily News* as Citizen of the Decade which he characterized as "a tribute to, and recognition of the excellence of Alaska's Judicial System," Rabinowitz went on to outline three goals formulated at the beginning of the current decade. These are (1) improving the procedures processing and calendaring of civil cases in the Civil Courts in Anchorage; (2) shorting the time involved in processing and finalizing appeals to the Supreme Court of Alaska and (3) simplifying both criminal and civil trial procedures.

Salary Increases

The Chief Justice requested judicial salary increases to meet the ranges of inflation and "to retain as well as attract the most qualified lawyers in the state to serve as judges in Alaska's Judicial System."

New Court Facility

Rabinowitz cited the pressing need for the physical expansion of the Anchorage court in order to house Anchorage personnel. He noted that even if the legislature approved the current capital request for finding additional space would not be available until at least 1984 due to the time involved in designing and constructing a new building.

Operating Budget

Rabinowitz asked the legislature to approve the Alaska Court System's operating budget for the forthcoming fiscal year of $231,494,100, an increase of 11% over last year's authorization.

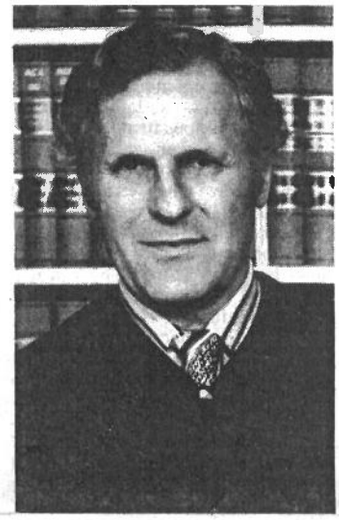
Legislature Responds

The Alaska legislature early in its 1980 session has enacted wide ranging salary increases for public officers and employees. Among those whose pay is retroactively boosted by the legislature are judicial officers.

AS 22.05.140(a) has been repealed and re-enacted to provide a 1979 salary for Justices of the Alaska Supreme Court of $65,000.00. The Chief Justice will receive the same compensation. Superior Court salaries for 1979 were boosted to $57,500.00 by re-enactment of AS.22.10.190(a). The District Court Judges receive $49,000.00 for 1979 pursuant to AS 22.15.220(a).

For 1980, and the future, the same statutory sections are re-enacted so as to refer to a table of salaries in AD 39.27.011(a). This provides monthly pay of $5,839.00 for Supreme Court Justices, $5,260.00 for Superior Court Judges and $4,540.00 for District Court Judges. The act also prospectively amends this salary table to provide additional increases January, 1981.

Boochever Gets Ninth Circuit Nod



Justice Robert Boochever

Juneau Supreme Court Justice **Robert Boochever**, 62, will be nominated by **President Carter** to a seat on the Ninth Circuit Court of Appeals, the office of Sen. **Ted Stevens** revealed on February 4. Boochever, who has been on the Alaska high court bench since 1972, recently completed a three year term as Chief Justice, and had been highly recommended for the Federal judgeship.

News of the first Alaskan appointment to the San Francisco based court was received with considerable approval. Although Alaska has the fourth highest case load on the court, this state has hitherto been the only one without its own Federal appellate judge.

A Juneau attorney before being elevated to the Supreme Court, Boochever has been described as a lawyer's lawyer, a careful judge, and an indefatigable worker who did his own writing, much of his own research, and who never missed a deadline. He is warmly regarded by the bar for his unfailing courtesy, particularly toward young lawyers appearing before the Supreme Court for the first time.

Boochever received his law degree from Cornell and served in World War II before moving to Alaska in 1946. He began as a U.S. attorney, later practiced in Juneau as a trial lawyer specializing in civil litigation.

Although based in San Francisco, he plans to maintain an office in Juneau.

Gross Speculation

Almost as soon as Boochever's nomination had been announced, speculation began that Attorney General **Avrum Gross** would be the next Alaska Supreme Court Justice. The Juneau-based position is traditionally awarded to a Southeastern resident. Gross, who used to practice with Boochever, is acknowledged to be highly qualified and is a good personal friend of Governor **Jay Hammond**. When contacted, Gross indicated he was not sure he wanted the job. But inasmuch as it had not yet been offered, he declined to say whether he would take it or not.

Others

Others who have been mentioned as possible contenders or well-qualified for the position are: Legislative Counsel **Norman Gorsuch**; Former Attorney General **John Havelock**, Alaska Bar Association President **Donna Willard**, and Juneau attorney **William Ruddy**. Those with judicial experience include Superior Court Judges **Tom Schulz** (Ketchikan); **Allen Compton** (Juneau); and **Victor D. Carlson** (Anchorage), a former Southeastern resident.

Sunset: A Progress Report

by Randall Burns

On June 30, 1980, without some affirmative action to the contrary, the Board of Governors of the Alaska Bar Association will terminate as a statutorily created entity. The Board, if terminated, will continue in existence an additional year, however, "for the purpose of concluding its affairs" [see AS 44.66.010(b)]. This event takes place as a part of what is known as "sunset," an ironic misnomer for a terminal process the legislature adopted to establish "an effective and regular system of scrutiny of the programs and activities of all agencies, boards, and commissions" [see Sec. 1, Ch. 149 SLA 1977]. It goes without saying that the Legislature assumes, pursuant to AS 08.08.010, that the Alaska Bar Association is an "instrumentality of the state," and that the Board of Governors, established as the governing body of the Alaska Bar (see AS 08.08.030 - .080), is subject to the sunset review process.

The Board of Governors has gone on record as opposing both the assumption that the Association is a state agency and that it is subject to legislative termination. Hence, the Board has only partially cooperated with the Legislative Audit Division's request for information and records for the purpose of rendering its performance audit of the Bar, since the Board maintains it does not have the authority to waive the confidentiality provisions of Alaska Bar Rules, particularly as regards the discipline and admission files, member files, and executive session minutes. Currently, to end that dispute, the Department of Law—on behalf of the Legislative Budget and Audit Committee—is in the process of petitioning the Supreme Court for a waiver of the Bar Rules regarding the confidentiality of the Association's records. Although the Legislative Audit Division has stated it would utilize procedures similar to those previously established by that Division when auditing confidential tax records, the Board's position is that the Court is the final authority in this matter and the Board itself cannot waive any Bar Rule.

Paradox

The fact that the Department of Law is petitioning on behalf of the Legislature is interesting, if only because it is the Attorney General's contention that the Bar Association

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Federal Magistrates' Jurisdiction Increased

Federal Magistrates Act of 1979

by John D. Roberts
U.S. Magistrate

The Federal Magistrates Act of 1979, signed into law by President Carter on October 10, is designed to "improve access to the federal courts by enlarging the civil and criminal jurisdiction of the United States Magistrates." The Act provides a method for litigants to dispose of their cases voluntarily in federal courts in a less formal, less expensive, and less time-consuming manner.

Alaska has a full-time United States Magistrate in Anchorage, **John D. Roberts**, and part-time Magistrate in Fairbanks, **Peter J. Aschenbrenner**; part-time Magistrate in Juneau, **Gerald O. Williams**, and part-time Magistrate in Ketchikan, **Henry C. Keene, Jr.** The following is a summary of major aspects of the legislation and its effect upon the Alaska Bar:

Civil Trial Jurisdiction

A full-time magistrate and, upon certain conditions, a part-time magistrate, may, upon consent of the parties, conduct any and all proceedings in a jury or non-jury civil matter and order entry of judgment in those cases, when designated to exercise such jurisdiction by the court served. This section ratifies practices already in effect in more than half the federal district courts, including the District of Alaska. In conformity with this Act and based upon certification of the Judicial Council of the Ninth Circuit, Chief Judge **James A. von der Heydt** has certified incumbent U.S. Magistrates John D. Roberts of Anchorage and Peter J. Aschenbrenner of Fairbanks as competent to exercise authority to try civil cases in the District of Alaska as assigned to them for such purposes.

The legislation specified that the clerk of the District Court shall notify the parties, at the time a civil action is filed, of their right to consent to trial before a magistrate. The decision of the parties in this regard should be communicated directly to the Clerk. Local rules of the United States District Court for the District of Alaska are being amended to include procedures to protect the voluntariness of the parties consent. The House Report on the legislation states that §636(c)(1) of 28 U.S.C., as revised does not permit a court to limit references of cases by specifying only particular categories of lawsuits to be tried before a Magistrate.

The appropriate appellate route for the civil case may be agreed upon by the parties at the time of their consent to trial before a magistrate. Normally, an aggrieved party may appeal from the judgment of a magistrate directly to the Ninth Circuit Court of Appeals in the same manner as an appeal from any other judgment of the district court. Alternatively, the parties may consent to take any appeal to a judge of the district court rather than to the Court of Appeals. The latter cases may be reviewed by the Circuit Court only "upon petition for leave to appeal by a party stating specific objections to the judgment."

Criminal Trial Jurisdiction

Magistrates so designated by the district court shall have jurisdiction to try and sentence persons accused of misdemeanors committed within their district. The legislation has expended the trial jurisdiction of magistrates in criminal cases from "minor offenses" to all misdemeanors. Thus, the $1,000 fine limitations on magistrates' criminal trial jurisdiction previously set forth in 18 U.S.C. §3401 has now been eliminated. For the first time, a magistrate is authorized by statute to try a misdemeanor case with a jury.

The jurisdictional requirement that each defendant sign a written waiver of his right to trial before a district judge and consent to disposition of his case before a magistrate has been retained for all misdemeanor cases, including petty offenses. A magistrate shall not try a misdemeanor defendant unless that defendant files a "written" consent to be tried by a magistrate that specifically waives trial, judgment, and sentencing by a district judge.

No change has been made in the appeal provisions for criminal cases. Accordingly, all appeals from judgments of conviction by a magistrate must be taken exclusively to a district judge.

"Youthful offenders" who consent may be tried by magistrates but any sentence to the custody of the Attorney General is limited to one year for a misdemeanor and six months for a petty offense. A youthful offender sentenced to the custody of the Attorney General shall be released to conditioned supervision at least three months before the expiration of the term imposed by the magistrate, and discharged unconditionally on or before the expiration of the maximum sentence imposed. 18 U.S.C. §3401(g).

"Juveniles" who consent may be tried by magistrates for "petty offenses." Such a case may commence by a violation notice or complaint, but no case may proceed unless the Attorney General's certification (18 U.S.C. §5032) is filed at arraignment. No term of imprisonment may be imposed for a juvenile defendant.

Appointment of Magistrates

Under the new law all newly appointed and reappointed full-time and part-time United States magistrates in Alaska must be members in good standing of the Supreme Court of Alaska for a period of at least five years and be appointed and reappointed according to standards and procedures to be promulgated by the Conference at its next meeting - scheduled on March 5, 1980. Such standards would become effective 30 days later. The Act requires that the procedures to be promulgated by the Conference include provision for public notice of all vacancies and for merit panels, appointed by the district courts, to assist the judges in screening applicants for magistrate positions. The statute directs that such merit panels give due consideration to all qualified candidates for magistrate positions, including women and members of minority groups.

New rules of procedures must be developed to implement the law. Any suggested changes in the Federal Rules of Civil and Criminal Procedures may be directed to **Joseph F. Spaniol, Jr.**, Deputy Director, Administrative Office of the United States Courts, for future consideration by the Committee on Rules of Practice and Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In the Matter of an Amendment of the General, Admiralty, Bankruptcy and Criminal Rules of the United States District Court for the District of Alaska

ORDER

IT IS HEREBY ORDERED that the General, Admiralty, Bankruptcy, and Criminal Rules of the United States Dstrict Court for the District of Alaska be amended by the addition of the following Rule 3(B)(1):

> No attorney admitted to the United States District Court for the District of Alaska may seek out, contact or interview any juror of the jury venire of this Court and; no attorney may allow, cause, permit, authorize or in any way participate in any contact or interview with any juror re lating to any case in which the attorney has entered an appearance without prior approval of the Court.
>
> This rule shall be posted in the jury rooms of this district and jurors shall be instructed fully as to this matter.

DATED this 14th day of February, 1980, at Anchorage, Alaska.

James A. von der Heydt
Chief Judge

James M. Fitzgerald
United States District Judge

Miscellaneous General Orders Page 350

More On Magistrates

Dear Rag:

Please publish the following as an open letter to all attorneys:

The Federal Magistrate Act of 1979, P.L. 96-82, which became law on October 10, 1979, requires the clerk of Court to notify all parties in a civil action when filed that may consent to have said case tried before a United States Magistrate. If all parties so consent, and the Court so orders, the matter will be referred to the United States Magistrate for disposition. At the time the consent is given to trial before the Magistrate, counsel may also agree on the appropriate appeal route of the case. Normally, an aggrieved party may appeal from the judgment of the Magistrate directly to the Court of Appeals in the same manner as an appeal from any other judgment of the District Court. Alternatively, the parties at the time of reference of the case to a Magistrate for trial may consent to take any appeal to a judge of the District Court rather than to the Court of Appeals.

The Act specifies that the Clerk notify the parties, at the time a civil action is filed, of their right to consent to trial before a Magistrate. It further provides that the decision of the parties in this regard be communicated directly to the Clerk.

Pending a revision of this Court's local rules, effective *March 1, 1980*, this Office will, at the time of filing a civil action:

1. Provide counsel for the plaintiff (or plaintiff if not represented by counsel) with a form of consent to trial before a United States Magistrate together with instructions for filing said form.

2. Attach to the Summons being served on each defendant, a form of Consent to Trial Before United States Magistrate together with instructions for filing said form.

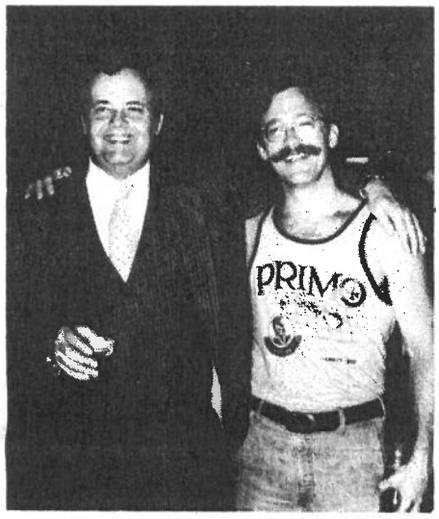
If the parties agree to trial before a Magistrate and to a route of appeal, it shall be plaintiff's responsibility to have the Consent form executed and filed within twenty (20) days after defendants are required to answer.

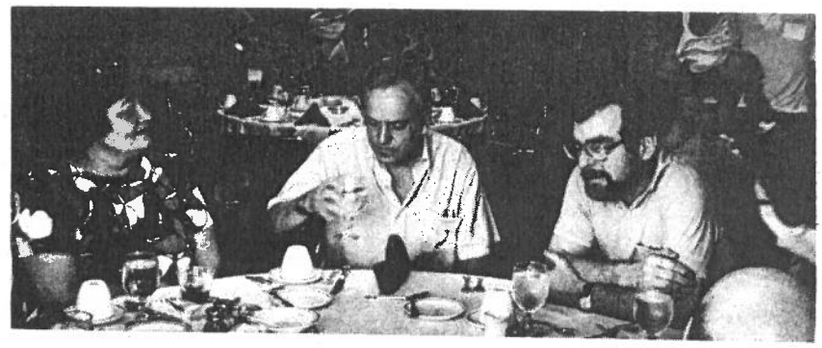
The forms of Consent and instructions will be available from the Clerk's Office to anyone wishing same.

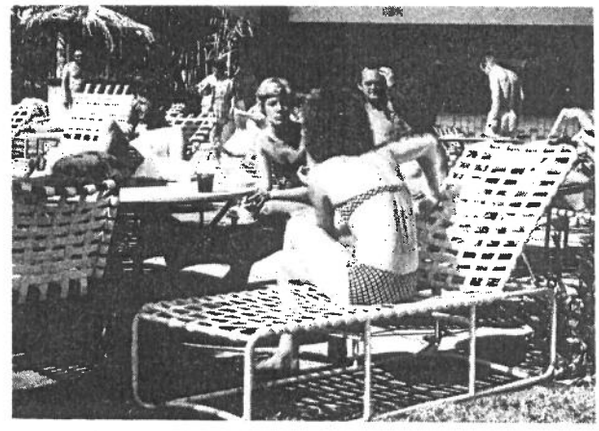
Lastly, should the parties in any civil action filed prior to March 1, 1980 wish to consent to trial before a Magistrate, such consent may be submitted to the Clerk.

Yours very truly,
JoAnn Myres, Clerk

Mid-Winter CLE in Kona







Editorial

The Alaska Bar Association is presently undergoing a Sunset review by the legislature to determine whether the integrated bar should continue to exist and by so doing, continue to exercise control over the functions of admissions to the bar and discipline of its members. House Leader **Nels Anderson** has publicly called for an end to the Alaska Bar Association in a recent *Anchorage Times* front page story. In recent teleconferences and meetings with the legislature, Anderson's committee has asked attorneys why the Bar Association should continue to exist. The burden of proof appears to lie with the lawyers. To date, most of the attorneys who have testified appear to agree that the Alaska Bar Association is doing a good job of providing a wide variety of services for the public as well as its membership including, but not limited to, admissions and discipline; and that these services involve a massive contribution of volunteer or pro-bono time by attorneys which would be almost certainly be severly curtailed, if not lost, if the integrated Alaska Bar Association is dissolved. Public agencies taking over these functions could not count upon these contributions of free lawyer time and would in all likelihood have to spend significantly more money than the Bar Association does to provide the same benefits to the public.

Among those activities which the attorneys felt would be lost or seriously curtailed were the following:

(1) quality CLE programs and annual convention up-dates which benefit attorneys and the public;

(2) the work of Fee Arbitration Panels;

(3) the work of the Law Related Education committee;

(4) State-wide Lawyer Referral service;

(5) the work of the substantive law committees;

(6) the work of the Ethics committee;

(7) the work of the Conciliation Panels;

(8) the continuing maintenance of Client Security Funds;

(9) the effort to provide the least expensive and most effective malpractice insurance for all Alaska attorneys;

(10) the pro-bono work of the various Discipline Hearing committees;

(11) the work of the Committee of Law Examiners;

(12) the services of the bar office staff to these volunteers; and

(13) open channels of communication between lawyers all around the state through the bar office.

The legislators of this state need to know and are finding out, what an organized bar has done and can do in the public interest. Regardless of individual differences with the Bar Association, attorneys collectively and the public generally are better served by the Alaska Bar Association than they would be in its absence by whatever entity the legislature might put in its place.

Inactive Status

January 28, 1980

Washington State Bar Association
505 Madison Street
Seattle, Washington 98104

Dear **Serni Reeves**:

Thank you for your letter of December 28 and the enclosed application for inactive status. I am submitting a check for $140 to continue my active membership in the bar association.

However, I am doing so under protest, and I would like to see a change in the rules for inactive status. According to your rules I must be a resident of Washington to be a member of the bar. Further, if I go on inactive status I must re-establish Washington residency before I am eligible to have active status restored.

As a result, not only am I apparently not currently eligible for Washington bar membership, but I could not return to active status without moving back to Washington. I have no present intention of returning to Washington.

This residency requirement for both active and inactive status is in addition to proof of competency. I believe such a requirement is unconstitutional and should be repealed. The bar's interest is in assuring competency, not demanding local residency. As it stands, attorneys residing permanently outside of Washington could not practice law in Washington despite the fact they have proven their competency by being admitted to practice. Multistate law firms and those wishing to represent Washington residents who are temporarily in Alaska on Washington cases would be prohibited from doing so.

The New York Court of Appeals has agreed that a residency requirement for bar memberhsip is unconstitutional. **In Re Gordon**, 48 U.S. Law Week 2354 (Nov. 3, 1979).

I am requesting that all by-laws and bar rules which require a lawyer to reside in Washington to be a member of the bar be repealed.

Thank you.

Sincerely,
Alaska Legal Services Corporation
Donald E. Clocksin
Chief Counsel

Inside Outside

Information & Observations

by Karen L. Hunt

Circuit Judge **Arthur S.K. Fong**, Honolulu, in the true style of an activist jurist, has decided to do something about what he calls "funnykine" cases (frivolous lawsuits). He has devised rules because he "see more an more attornee come to court all time, bringee funnykine casee and motion all goddam time."

His rules are these:

1. 'All notorious funnykine attorney must submit casee at least one week in advance of file."

2. If clerk determines the suit is funnykine, "no file, Plus ten dollah fine."

3. If Attornee no show up, "case dismiss anyway and attornee get ten dollah fine."

4. Names of funnykine attornee will be published in the Sunday paper and posted by the judge.

Ethics Code Proposed Changes

The New American Bar Association proposed Rules of Professional Conduct will lift the ban on private lawyer referral services. It will eliminate DR 2-103 of the current Code. The proposal is supported by the ABA Standing Committee on Lawyer Referral Services which acknowledges that private referral services would complete with Bar sponsored referral services. The Committee's primary objective, however, is to improve general availability of legal services to the public.

Malpractice

The California Supreme Court approved a rule change in October allowing division of legal fees among attorneys if the client consents in writing after full written disclosure of the sharing arrangement. The rule change follows the decision which imposed liability upon a lawyer for failure to refer a tax case which he was not competent to handle. The rule change is viewed as the court's attempt to encourage lawyers to refer matters beyond their expertise. The enticement is the prospect of collecting authorized referral fees and the threat is malpractice liability. Between those extremes lies better legal services to the public.

Public Defender Liability

The Pennsylvania Supreme Court held in October that Public Defenders are public employees, not public officials. Thus, they accrue no immunity from civil liability for negligent representation. The court said the public defender's public function ceases once an appointment is made and the lawyer becomes akin to a private attorney.

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President-Elect

Dear Editor:

At the meeting of the Board of Governors held in connection with the Mid-winter CLE meeting at Kona, the Board discussed its long range plans for the Alaska Bar Association. As part of that exchange, I presented an outline of my priorities as President-elect for the coming year.

In summary of those discussions, it is apparent that the entire operation of the Alaska Bar Association is undergoing review. We have a new Executive Director in **Randall Burns**, who is rapidly becoming familiar with bar problems and the administrative needs of the Association. He is bringing new insights to the ways in which we manage our office and has already begun to implement constructive changes. On the Bar Counsel side of the office, **Bill Garrison** has advised the Board that he will not renew his contract when it expires this summer. Since his arrival, Mr. Garrison has worked through a backlog of disciplinary matters and established a separate, well-functioning administration for handling discipline and other legal matters confronting the association. With his departure, we will be advertising for new Bar Counsel. The Board will expect new Bar Counsel to work with Mr. Garrison to ensure a smooth transition, and also to take an independent look at how the Bar Association handles discipline, admissions and other matters to see whether changes would be beneficial.

In addition to the reexamination of bar office activities that will accompany the hiring of new personnel, we are undergoing a legislative review as part of Sunset. Whatever the outcome of this process, it has given us the opportunity to do a constructive audit of ourselves. We have prepared a booklet covering virtually all the activities of the Association and we have prepared answers to 87 questions from the House Judiciary Committee.

The focus of my interest in the coming year will be a probing review of our admissions and disciplinary activities, including the bar examination, record-keeping and the degree of confidentiality that should be a part of these activities. At the same time we will be attempting to continue the effort in the last two years to revitalize our committee system. The Continuing Legal Education Committee will again be assigned a special priority. Finally, a careful financial review of the Association's activities is essential. Existing revenues simply will not support continued operation in the year ahead on the same basis as in recent years.

At the Mid-winter CLE meeting in Kona, I took the opportunity to invite the statewide membership represented there to assist us in this review process by making direct suggestions, comments and inquiries to me and the other members of the Board. I am writing this letter for the same purpose. I ask that you take the time to let me know where you think the Bar is not going in the right direction, where it should continue or enhance its present efforts, and where the Association is not doing things that it should be doing. To encourage your response directly to me, my mailing address is 311 Franklin Street, Juneau, Alaska 99801 and my telephone number is 586-2210. We are going to be making some basic decisions about the directions of the Alaska Bar Association in the months ahead and your input is essential.

Very truly yours,
William B. Rozell
President-Elect
Alaska Bar Association

Stan McCutcheon

by Russ Arnett

Stan McCutcheon was second only to Governor **Gruening** in political power in Alaska from the mid '40s to the early '50s. Influenced by his parents who were political notables in Anchorage, Stan was first elected to the Territorial House in 1943, becoming Speaker in 1949. Though the powers of the Territorial Legislature were severely limited by the Organic Act, Stan persuaded the Legislature to use its powers more fully. The 1949 Legislature created the Alaska Statehood Committee. The legislation presumptuously commenced "In recognition of the near attainment of Statehood for Alaska..." Stan served on the Statehood Committee from 1949 until statehood. As Speaker and later as Democratic National Committeeman (1952-1953) he and Governor Gruening reduced the political power of the Seattle-Washington, D.C. axis of fishing, shipping and mining interests which dominated the Territory.

House Speaker

In the 1951 Legislature Stan and House Speaker **Mike Stepovich** engaged in a lively debate over a bill to reorganize the financial structure of the Territory. The bill was a priority of the Democrats, and was rushed out of the House with great expectation. Mike was horrified.

"Mr. Speaker," Mike declaimed in stentorian tones, "We have just seen a bill railroaded out of here with Mr. McCutcheon blowing the whistle - choo, choo, choo!"

"Yes, Mr. Speaker," replied Stan, "I plead guilty to ringing the bell and blowing the whistle, but the train won't move until we get Mr. Stepovich off the breaks and away from the switch."

Stan dropped another bill in the hopper of the 1951 Legislature that would appropriate $5,000.00 to "investigate the pusillanimous activities of **Almer J. Peterson**," an aging and no-so-bright lawyer who argued politics by offering to fight. Almer, also a member of the House, raced forward, took a bare-knuckled stance, and challenged the membership. When Almer retired from practice and before he moved to Washington the Anchorage Bar had a lunch for him. Almer smiled benignly on his colleagues and said, "Well boys, I made it all right here (long pause) and I'm taking it all with me."

The wages of McCutcheon's political success were his indictment for various offenses under the Territorial banking statutes. He was an officer of the Union Bank and technical violations were charged in a very partisan grand jury proceeding. He was fully exonerated, though it took its personal toll. Afterward Stan seemed a changed man. His career from then on was primarily that of a lawyer - the best trial lawyer in Alaska.

Early Beginnings

Always controversial, he was nearly expelled from grade school when he challenged his teacher's scoff that there was not a tree in Alaska you could not reach around.

Stan read law in a law office while still a teenager. His admission to practice in 1939 had to be delayed until he became 21.

He became President of Alaska Airlines in 1949 during the military construction boom and, though still active in politics and his law practice, developed it into a successful interstate airline. On a dead-head run to Seattle, Stan and the pilots left the aging stewardess in the closed cockpit with the controls on auto-pilot. With the pranksters in the aft cabin, the plane started a steep climb, then dived steeply before eventually levelling off. After gaining entrance to the cabin which Stan had locked, they learned that she had ferried B-17's across the Atlantic during World War II.

Liked Natives

Though Stan had a highly successful law practice, he represented many Natives when Natives had no money. **Bea Gaines**, his secretary, heard one on the sidewalk in front of Stanley's office say "I'm waiting for Mr. McCutcheon. He my lawyer." The other Native answered, "McCutcheon your lawyer? He my lawyer, too." Once when Stan was out of town Bea, anticipating what Stan would do, advanced a Native one way bush plane fare to his village from the firm's account to get him off Fourth Avenue. When oil interest picked up, but before the Native Claims Settlement Act, Stan obtained petroleum rights from the United States for the Tyoneks in the exercise of formidable legal and political skill. The Alaska Supreme Court decision in *Metlakatla v. Egan* was against his position, but by emotional and political pressure on the Bureau of Indian Affairs which, like any other government bureau was unwilling to part with power or control, Stan prevailed. The petroleum lease money was at Stan's insistance prudently invested and spent for good housing and permanent community improvements. It was better legal and financial advice than many Native corporations now generally receive.

"Big Stanislaus" was a believer in civil rights and there was not an ounce of prejudice in his 230 pound body, but his vocabulary of 1953 was looser than it shortly became. Stan was in the middle of a fervid political oration on TV when he used the ancient expression, "There's a nigger in the wood pile, folks, on this proposition!" Before he was off the air the phones were ringing wildly and Stan had to buy five minutes more TV time to apologize, but he still lost the election.

Jokers Wild

Roger Cremo and Stan collaborated for the plaintiff in a P.I. case. **George Grigsby** defended for the carrier. In cross examination Grigsby made much of the fact that the plaintiffs, although allegedly injured, were in Cremo's office at 8:30 a.m. the morning following the late night accident. After hearing all too much of this Cremo called McCutcheon to the stand and Stan testified that when he clerked for Grigsby, Grigsby not only got Stan a job at the hospital but he eventually arranged to have him drive the ambulance.

Once **Buell Nesbitt**, Stan's partner and later Alaska's first Chief Justice, replaced the shotgun shells in Stan's pockets with moose nuggets. Another time Stan and Buell lifted the compact car owned by **Felton Griffin**, the Baptist preacher and their friend, and set the car on end on Fourth Avenue, with terror on Felton's face.

A very old placer miner resided in an earlier day log cabin in Anchorage. Stan was his friend, attorney, and executor, so when the miner's

[continued on page 6]

"Random Potshots"

by John Havelock

The Forgotten Minority

In class discussions on the origin of the rule of law, there are usually some references at the opening of the term to the ideals of Greece. As we look at the seamy underside of many of our democratic institutions today, the accomplishments of Athenian democracy seem all the more remarkable. In retrospect, it is only too easy to forget the status limitations which made many segments of Athenian society invisible, notably the slaves.

Invisible Youth

We have our invisibles today. While there has been undeniable improvement in the status of women and racial minorities over the past decades, there is still far to go. But one minority maintains its invisiblity. Sharing in the general prosperity of the times, they are scarcely slaves. Further, we have formally recognized many rights. But the youth of this country still have many problems which result from our insensitivity to their rights as individuals.

We lecture them on the rights and responsibilities of youth with the emphasis on responsibilities, but we rarely educate them in the responsibilities of social institutions to them. Our educational system tends to concentrate on the formalities of cultural information. The reality is discovered through the often rude surprises in actual dealings with contemporary institutions.

Perils of Learning

Hopefully most of this learning comes through harmless discovery. But a youth may find out about some realities the first time he is stopped by a police officer, kicked out of school, fired from a job, accused of damaging property, denied a medical service available to adults, gypped on a purchase or gets caught sampling the alcohol or other drugs which he sees being used by more senior family members.

In times of trouble, adults are presumed to know the resources available to them. We rely on the fiduciary responsibilities of the parent to provide those resources to youth. But those resources are not always there, not always useful and do not always reflect disinterested devotion to the interests of the child.

Grim Parenting

The U.S. Supreme Court recently ruled that parents could commit a child to a custodial institution, without any obligation arising in the parent or the state to give independent representation to the child's interests. The assumption of benign parental wisdom flies in the face of experience. Children and youth frequently do need independent advocacy for their interests.

For the last few years **Bill Jacobs** and I have been associated with a non-profit corporation called Alaska Youth Advocates, which should be of very special interest to lawyers sensitive to the social responsibilities of the profession. We invite your involvement.

Institutional Coping

While Alaska Legal Services Corporation performs a great service in this community, it shares the adult orientation of our other institutions. Further, its caseload does not permit ALSC to engage in preventive law work. Alaska Youth Advocates attempts to fill this gap by providing counseling in "institutional coping." We need persons (non-lawyers as well as lawyers) willing to spend some time in providing youth with financial counseling, counseling with respect to licensing and driving regulation, and counseling with respect to entitlements, privileges and obligations in the context of school, employment rights, health care and other benefits and burdens provided by or imposed through institutional power, economic or governmental.

Youth Advocacy

In addition to particularized counseling, AYA attempts to give voice to collective youth interests in current issues of the community. Advocacy is a lawyer's task and we need volunteer advocates to assist in presenting the youth case to the community. Let me offer a few current examples, by no means exhaustive.

Municipal zoning regulations and the organization of state children's services both impose obstacles to residential child care which are either irrational or represent an overstated recognition of some perceived opposing interest. The effect of these limitations is to create forces for unwarranted institutionalization of youth.

Sentence Discrimination

All readers are aware of the uproar that has resulted from the development of data indicating a prima facie case of discrimination in sentencing. There is no indication that problems of discrimination identified in the adult criminal justice system are not applicable in an equal or greater degree to the juvenile justice system. Yet the adult institutions of the state and community, including those institutions which take a special interest in discrimination matters, have been sweeping this problem under the rug.

Kicked Off Base

There are some indications that the military authorities on Alaska bases are disposing of their problems with alleged juvenile misbehavior by forcing families off base. While other community concerns may arise from this practice, what is this doing to the rights of the youth involved?

Drug Uproar

There is every indication that the tide of drug abuse in the schools, which was a source of so much community uproar a year ago, continues to rise. The community response to this problem, when it is faced at all, is to ascribe it to a breakdown in adult authority. It is redefined as a problem of adults, when the persons primarily impacted are the students. A youth role in finding solutions is largely ignored. By defining the problem as one of adult authority, solutions involving the addition of police in the school, strip searching, etc., have become the norm. The effect of these solutions in polarizing youth opinion and in some cases bringing adult authority into contempt is not given adequate attention.

Rights of Abused

In recent years we have seen a commendable rise in institutional at-

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Stan McCutcheon

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death was reported in the Seattle paper Stan sadly took possession of the cabin and some personalty. Probate proceedings were commenced. The city tried to condemn the cabin and, rather than resist, Stan had it burned to the ground. In the spring the miner returned (a man by the same name had died in Seattle) and Stan had one hell of a time explaining to his friend why he had burned his cabin down.

Sucker Lake

Stan had been a professional chef. Once when Stan thought he was frying beef steaks Buell substituted steaks from a black bear who had been eating fish. Soon the stench in the cabin became intolerable. Stan inferred the cause, and threw the steaks in his cabin mates' bunks.

In the 1950s when Judge McCarrey's territorial judicial reappointment stalled in the U.S. Senate Judiciary Committee, **Frank Orth** came to Anchorage from Washington to look over the situation. Orth had the right political faith, was Under-secretary of the Army, and indicated that he was favored for the appointment. Stan, Buell, and **Wendell Kay**, along with several other lawyers, flew Orth out to their cabin at Sucker Lake for some ice fishing, a steak dinner, poker and 7 Crown. Buell helped Orth set his overnight line through the ice and told him they would check it in the morning. Stan and Buell had brought a 30 pound frozen king salmon along and during the evening revelry Buell slipped down and tied the fish to Orth's line. The next morning everyone was standing around while Orth and Buell checked his line. When Orth felt the weight of a fish Buell told him to act quickly and helped him raise the frozen king out of the snow and ice to a lively round of cheers and jeers. Orth held it shoulder high and Stan took color movies. Orth was speechless. At the Anchorage Bar Christmas party Judge McCarrey was portrayed by the Old Crow Players in a moment of great judicial frustration shaking his fist and declaring "East may be east, and West may be west, but Orth ain't North - YET!"

Stan McCutcheon

The Hell Ship

Stan sometimes holed up in a hotel room with a jug for a week of preparation before a trial. Final argument was his greatest strength. He started a final argument file at the first conference with his client and as arguments occurred to him he would note them down and file them. This thoughtful and prolonged development of his arguments was one reason for their effectiveness.

One of his many notable cases was called the "Hell Ship" case by the newspapers. A young merchant seaman who aspired to becoming a mate had been provoked to homicide by appalling social conditions on his ship. Stan plead his client guilty to second degree murder and evidence was presented for sentencing. The client, who was not from Alaska, was eventually paroled to Stan who took him into his home to live until he could get on his feet. He entered Gonzaga and became a priest (the client, not Stan).

Stan worked for nothing for a full week to get another young fellow off with probation. His client then repaid Stan by forging $1,400.00 worth of checks on Stan's bank account!

Stan the Man

Stan liked young lawyers and always helped and encouraged them. Before **Ken Atkinson** started law school he was driving a well point for Stan and Buell at their cabin. Stan would always buzz Ken with his plane and often dive bomb Ken with rolls of toilet paper. Once during Stan's bombing run Ken observed an erratic approach. When Stan landed he introduced Ken to **"Deefey" Swanson** whose dog's testicles had been caught in the plane's control cables. Stan could not obtain help from "Deefey" because, as his name suggests, he was deaf.

Once I worked with Stan on a case that settled before we agreed to a division of fees. Because of his prominence I could have not objected to any division. A lawyer who had worked for Stan said that if I insisted that he decide how the fee should be divided he would be generous to a fault. I did and he was.

In 1975, as it must to all, death came to **Stan McCutcheon**. The Pipeline boom had been on for a couple years. Hundreds of new lawyers completely changed the character of the bar. They did not have the privilege of his friendship, nor of seeing him in court. I first met Stan in 1952 in Nome and found him cocky and a little too smooth. The longer Stan practiced the more humanity and dedication to his clients he developed.

Forestry Hearing Officers Sought

The State of Alaska Board of Forestry is soliciting applications for Hearing Officer candidates.

Hearing Officers will be responsive for hearing cases of alledged violation of regulations adopted under the authority of the Forest Resources and Practices Act (AS 41.17). Hearing Officers will be appointed by the Attorney General from among members of the Alaska Bar Association who have been nominated by the Board of Forestry.

Hearing Officers are entitled to compensation of $55 per hour plus any travel or subsistence allowance required.

Qualifications:

Mandatory:

1. Member of the Alaska Bar Association.
2. Legal experience with forest resources including timber.

Desirable:

3. A minimum of 5 years law practice experience of which not less than 2 years will be in Alaska, not necessarily in private practice.
4. Training or experience in arbitration

Please send resume's to:
Hon. Kay Poland, Chairman
State of Alaska
Board of Forestry
323 E. 4th Ave.
Anchorage, Alaska 99501

Havelock

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tention to the rights of women in sex offenses, family violence situations, etc. While it is not to be denied that progress has been substantial in recognizing the rights of battered children, this attention tends to lapse as children become awkward teenagers. There is a substantial need to develop advocacy positions for the generalized rights of youth caught up in the turmoil of incest and other abuse situations in a family setting. The rights of youth, when these matters go to court, are entitled to separate representation regardless of who the defendant may be. Legislation recently introduced allowing videotape testimony by children addresses just one aspect of this interest.

Juvenile Detention

While pretrial services and increased use of citation in lieu of arrest have relieved the community of a substantial financial burden and enhanced the humanitarian aspects of law enforcement, the juvenile detention rate in this state continues to be appaling. A study undertaken by a nationally recognized orgnization on juvenile detention practices in this state found our detention rates to be several times higher than the rates in most states and communities perceived to have a higher juvenile delinquency problem and also several times higher than nationally recognized or established standards. Nothing done since that study was completed would appear to indicate a substantial change in this result.

A Voice In Legislation

The legislature is currently considering legislative proposals to increase the legal drinking age and driver's licensing age. There is no indication that any effort has been made to obtain the views of youth on either of these issues.

The school district administration has been undertaking a commendable effort to examine the sources of test score disparities among racialy defined groups of children. To what extent are youths themselves being consulted on the method by which these investigations are being carried out, the objectives and the use to which results will be put?

The Lawyers' Responsibility

These are just some of the critical youth advocacy issues now before this community. You undoubtedly, upon slight reflection, can think of many more of equal or greater important. As lawyers and mature adults, we need heed no call to a children's crusade. On the other hand, it particularly behooves the attorney to identify, protect and promote the interests of those who are incapacitated for any reason to be advocates for themselves. If you would like to contribute, me a call.

Family Conciliation Conference to Meet in Anchorage May 21st-24th, 1980

The Association of Family Conciliation Courts will present a two and one half day program directed to problems of domestic relations with emphasis on families and planning for children in May of 1980. This is the first time this conference will be held in Anchorage and will provide practitioners and other interested persons the opportunity to exchange ideas in the expanding field of domestic relations.

Best Interests

Joseph Goldstein, Harvard Law Professor, co-author of a number of books, including "Beyond the Best Interests of the Child" and now, his new book, "Before, Beyond the Best Interests of the Child" will give an address open to the public Wednesday evening, May 21st. The program will convene Thursday morning with a presentation by Joseph Goldstein and an opportunity for two participants, **Richard E. Crouch**, Editor of the **Family Law Reporter**, and a yet to be selected participant to react to Mr. Goldstein's position and presentation.

White House Conference

The White House Conference on Families will be represented with Mr. **Jim Guy Tucker**, the chairperson appointed by President **Carter** to head up the White House Conference, making a major presentation at the luncheon meeting Thursday, May 22nd. It is expected that Mr. Tucker will be able to bring to the Anchorage community the current activities of the White House conference and some indication as to what the conference will be likely to achieve.

Conciliation

The afternoon of May 22nd, the Honorable **John Van Duzer**, Judge from Ontario, Canada will chair a program which will look at the role of evaluation in family conciliation court systems. Mr. **Arvon D. Lazar**, Director of Policy Planning Development Branch, Department of Justice, Canada and Dr. Stanley N. Cowen, Ph.D. University of Oregon, will be the discussants and will present to the conference research concerning the use of counselling and evaluation in court systems.

Broken Home

Isolina Ricci, author of "**Making it Alone**—Dispelling the Myths of the Broken Home" will make a presentation on Parenting Agreements, A New Approach for Custody and Visitation. Ms. Ricci has in the past made presentations to the conference with a strong position on the importance of the establishment of new home concepts for children and getting away from the broken home attitude. She will be followed by the Honorable **Jean Graham Hall**, a Judge from England, who will present some views on legislation reference to battered spouses in England.

Difficult Litigants

The theme for Friday's program is "Family Problems and How We Cope" with the opening program in the morning titled "Dealing with Difficult Litigants." This will be moderated by **Gerald Lecovin**, an attorney from Vancouver, British Columbia and the panelists will include the Honorable **Frank Orlando**, Judge from Fort Lauderdale, Florida; **Max Gruenberg** and **Harry Branson**, attorneys from Anchorage, Alaska, both with a practice in domestic relations.

Japan and Australia

The international aspects will be touched with a program titled "The View from Japan and Australia" and speakers in this program will be the Honorable **Raymond Watson**, Judge from the Family Court of Australia, and **Ischiro Shimazu**, Professor of Law from Hitotsubashi University, Japan.

Workshops

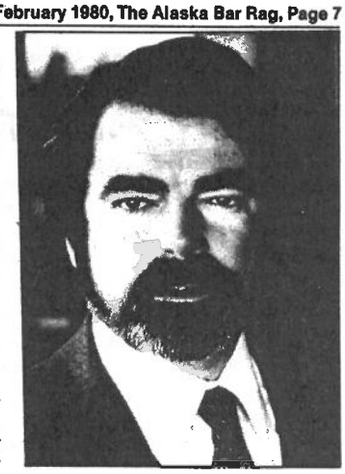
The afternoon on Friday will be devoted to workshops and will include workshops touching on 1) Cultural Aspects on Family Problems, 2) Mediation—Theory, Practice and Court Application, 3)Counsel for Children, 4) Implications of Mobility on Divorcing Families—Custody, Support and Visitation.

Experts in Custody

The Saturday morning program will be chaired by **Anthony J. Salius**, Director of the Family Division, Superior Court of Connecticut, with the main program presented by **Robert Kaufman**, Attorney from Los Angeles, California, who has practices in Alaska and whose topic will be "The Use of Expert Witnesses in Custody Cases." There is a second person to be selected to share the platform with Mr. Kaufman.

The program will conclude by noon on Saturday with **Steve Adams**, Editor of the California Family Law Review, doing a critique on the entire program and a wrap up for the conferees.

Registration for the conference is open to all members of the Bar and specific registration information can be secured by contacting either **Don Williams** of Worldwide Travel, 425 G Street, phone 277-9571 or **Francis M. Stevens**, Custody Investigator for the Alaska Court System, 303 K Street, Rm 214, phone 264-0428.



Robert Kaufman

Kaufman to Address Use of Expert Witnesses at Conciliation Courts Program

Robert Kaufman, a celebrated Los Angeles domestic relations attorney, will be featured in the Saturday morning, May 24th, section of the Conciliation Courts Program at Anchorage.

Mr. Kaufman, age 42, is a graduate of the University of California at Los Angeles and of Southwestern University, where he obtained a J.D. degree. He is a member of the Family Law Section of the American Bar Association and served as vice-chairman of its Law and Procedure Committee. Mr. Kaufman has lectured on the handling of custody cases for the California Trial Lawyers Association and is currently the moderator of the California Continuing Education of the Bar program on "Fundamentals of Family Law." He is a partner in the nationally recognized law firm of Fain, Lavine, Kaufman & Young, which specializes in Family Law. Among some of his well-known clients are **Bob Dylan**, **Cary Grant**, **Ali McGraw** and **Vidal Sasson**. Included in several successfully litigated custody cases in Alaska, Mr. Kaufman represented and obtained for Neil MacKay custody of his son Scotty.

Extensive use of expert witnesses in child custody cases is one of Mr. Kaufman's trademarks as a litigator. In his involvement in cases throughout the United States, he attempts to find the most qualified behavioral scientists to assist him and his clients in the presentation of the cases.

In addition to specializing in Family Law, Mr. Kaufman serves his profession and the California State Bar as a State Bar Court Judge in disciplinary proceedings. Mr. Kaufman and his wife have two children and live in Malibu, California. His hobbies include fly fishing, the raising of registered paint horses and gourmet cooking.

Alaska Bar Rules Amended

Proposed Amendment to Alaska Bar Rule 61

Alaska Bar Rule 61, "Suspension for Nonpayment of Alaska Bar Membership Fees," is repealed and reenacted to read:

Rule 61
Membership Classification and Suspension

(a) Active Members.

(1) Any member now or hereafter admitted to the Alaska Bar Association and who either resides within the State of Alaska or who continuously maintains within the State of Alaska an office in which he conducts the practice of law and with which the public can readily communicate concerning such member's practice in Alaska shall be considered an active member of the Association.

(2) Any member now or hereafter admitted to the Alaska Bar Association who does not at any time fulfill the requirements of subsection (1) above, and who desires to continue as an active member of the association, shall file with the Board, not less than annually, an affidavit that such member does not reside or conduct the practice of law within the State of Alaska.

(3) Any member who fulfills the requirement of either subsection 1 or subsection 2 above shall maintain active status unless transferred to inactive status by the Board of Governors, or unless the member is suspended, disbarred, or judicially declared incompetent or disabled.

(b) Judicial Members. Upon appointment to the bench, a member of the Alaska Bar, whether active or inactive, is automatically transferred to judicial membership status. Judicial membership is thereafter retained unless a member petitions the Board of Governors to change his membership to either active or inactive status.

(c) Inactive Members. Inactive membership in the Alaska Bar Association shall be limited to members who no longer engage in the practice of law, hold judicial office, or any other legal position in the State of Alaska.

(d) Transfer from Active to Inactive Membership. Only the following methods shall be effective to transfer from active to inactive membership in the Alaska Bar Association:

(1) Application to and permission granted by the Board of Governors; or

(2) Transfer by the Board of Governors, after notice and an opportunity to be heard has been afforded the member affected; or

(3) Transfer to inactive status by the Alaska Supreme Court.

(e) Transfer from Inactive to Active Membership.

(1) Upon written request, an inactive member may be transferred to active membership, if the following conditions are fulfilled:

(A) In the case of members who have been inactive for one year or more, the Board of Governors makes a determination of the member's good character; and

(B) The member fulfills the requirements of Section (a)(1) or (2) above; and

(C) Full active annual membership fees for the current year, less any inactive fee previously remitted, are paid.

(2) The Board of Governors may transfer a member from inactive to active membership if the Board determines that the member is no longer eligible for inactive status.

(f) Delinquent Members. Any member of the Alaska Bar Association who fails to pay the annual membership fees established by the By-Laws of the Alaska Bar Association who fails to pay the annual membership fees established by the By-Laws of the Alaska Bar Association shall be deemed a delinquent member. While delinquent, no person shall engage in the practice of law, nor be entitled to any privileges and benefits accorded to active members of the Alaska Bar Association in good standing.

(g) Suspension. Any member who has become delinquent shall be notified in writing by certified or registered mail that the Executive Director shall petition a justice of the Supreme Court of Alaska for an order suspending such member for nonpayment of fees. The Executive Director of the Alaska Bar Association shall, at least quarterly, notify the clerks of court of the names and dates of suspension of all members who have been suspended and not reinstated.

(h) Reinstatement.

(1) Any member who has been suspended for less than one year, upon payment of all accrued dues, in addition to a penalty of $20 per month delinquency but not exceeding $160 in penalties, shall be reinstated upon certification by the Executive Director to the Alaska Supreme Court and the clerks of court that the dues and penalties have been paid.

(2) Any member who has been suspended for a year or more, upon determination of good character by the Board, upon payment of all accrued dues, in addition to a penalty of $160, shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the member is of good character and that dues and penalties have been paid.

Rule 64
Client Trust Accounts

(a) Client Trust Accounts Required.

(1) Every person practicing law

(1) Every person practicing law in the state of Alaska shall not commingle their money or other property of a client with his own and he shall promptly report to all clients the receipt by him of all money and other property belonging to such client, along with a written statement by the attorney stating the following:

(A) That the client is entitled to and will receive a monthly accounting of monies or property retained by counsel;

(B) that the client is entitled to inspect his account or property retained at any time within business hours upon reasonable notice of not more than three (3) days and that he may be accompanies by an accountant, at his own expense, if he so desires; and

(C) that the client, if not satisfied with the accounting produced by his attorney, may then petition the Alaska Bar Association for further proceedings pursuant to this section.

(2) Unless a client, after being duly advised of his right to have his trust funds deposited in a banking institution, directs otherwise, in writing, whenever an attorney collects any sum of money either from or for his client, same must be deposited in a banking institution, in an account separate from the attorney's own accounts, and clearly designated as Client Trust Account or Trust Funds Account.

(3) Unless the client otherwise directs, in writing, all assets other than money received from or for a client shall, whenever possible, be placed in a banking institution safe deposit box clearly designated as Client Trust Account or Trust Funds Account.

(4) Unless the client otherwise directs, in writing, all assets which are impracticable to be retained in trust for clients in the care of a banking institution shall be retained pursuant to written agreement from the client, specifying the person, place, and the manner of retention which will be followed.

(5) No written agreement shall be considered valid for the purpose of waiving the protection provided under (a) of this Rule unless the protection provided is specifically recognized and waived by the agreement.

(b) Client Trust Records Requested.

(1) Every person or firm practicing law in the State of Alaska shall maintain and preserve, for at least 10 years, complete records pertaining to client's funds or assets received by him which are required to be segregated by (a) of this Rule. Upon reasonable request of the Administrator, such records must be submitted to the Board for its inspection, audit, or use. Failure to retain or produce such records shall constitute unprofessional conduct and grounds for disciplinary action.

(2) Required records shall include, but not be limited to, all banking records, including statements, checks and deposit receipts; law office records regarding such funds; and records reflecting disbursement of such funds to the retaining attorney or law firm or law firm members or other persons.

(3) The following records shall be deemed as the minimum requirements of (b)(2) of this section:

(A) A permanent accounting record showing all receipts and disbursements of money and assets, distinguishing therein between

(i) the receipt of money or

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Proposed Amendments

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assets from or for clients and disbursement out of such monies or assets held in trust; and

(ii) money or assets received and money or assets paid on the attorney's or firm's account;

(B) a permanent accounting record showing separately, for each person for whom money or assets have been received in trust, all such money or assets received and disbursed, and any unexpended balance;

(C) a permanent accounting record showing all fees charged and other billings to clients;

(D) permanent copies of all banking records reflecting transactions between the attorney's clients and himself or his firm; and

(E) a permanent record showing monthly computation of the total of balances held in trust, and the total unexpended funds held in trust for clients, together with and reasons listed for differences from previous balances, supported by

(i) a detailed monthly listing of disbursements and receipts of trusts money or assets held for each client, accompanied by an itemization and statement explaining the reason for all such receipts of disbursements;

(ii) a detailed monthly reconciliation of trust monies or assets as sent to each client; and

(iii) a complete record of receipts or billing statements documenting all actual costs or services for which Trust monies or assets are disbursed or collected.

(c) Annual Trust Records Report Required.

(1) On or before April 15 of each year, every person or firm actively engaged in the practive of law in the State of Alaska during any portion of the preceding year shall file with the Alaska Bar Association a separate report on his clients' funds and assets, duly completed and signed by a State of Alaska licensed accountant, along with the signature of the reporting attorney or firm members. The report shall be prepared as follows:

(A) The person or firm required to report pursuant to this section shall retain the services of an independent Alaska licensed accountant and supply him with all client records that are required to be kept under (b) of this Rule, along with the firm's or attorney's written certification that, to the best of his knowledge and belief, the records furnished are maintained in connection with his practice and fully disclose all his trust obligations to clients; and

(B) the Certified Public Accountant shall then be directed to inspect the person's or firm's records and indicate, by written report, whether the records produced comply with (b) of this Rule, and whether the records indicate compliance by the person or firm with (a) of this Rule.

(2) However, the report described in (c)(1) of this section is not required to be filed by persons or firms engaged in the practice of law in the State of Alaska if the attorney or firm has not handled or been responsible for any client's trust fund or valuables in the preceding year and has filed with the Alaska Bar Association, by April 15, an affidavit stating the person's or firm's address, and denying the handling of any client's funds or assets in the preceding year.

(3) Extensions of 30 days for the filing of reports required by (c)(1) of this section may be granted by the Alaska Bar Association upon good cause shown.

(d) Audits of Client Trust Records.

(1) The Alaska Bar Association may, upon reasonable notice, audit the financial records of any person or firm practicing law in the State of Alaska for the following reasons:

(A) Failure to file a financial report as required by (c)(1) of this Rule, or an affidavit as allowed by (c)(2) of this Rule, when no extension as allowed by (c)(3) of this Rule has been granted;

(B) receipt of a complaint of mishandling of funds or assets by a client of a person or firm engaged in the practice of law in the State of Alaska which has been investigated by the Alaska Bar Association and probable cause for further inquiry established; in all such cases, probably cause will not be established until a hearing has been offered to the person or firm accused and adequate opportunity given for the presentation of contrary evidence at such hearing;

(C) upon conviction of a person or member of a firm engaged in the practice of law in the State of Alaska, for a crime of dishonesty, fraud, deceit, theft or perjury;

(D) upon a finding of financial misconduct by the Alaska Bar Association's Disciplinary Committee of a person or member of the firm; or

(E) receipt of a financial report as required by (c)(1) of this Rule, but which fails to state compliance with (b) of this Rule.

(2) All audits allowed under this section will be done at the expense of the Alaska Bar Association, unless the person or firm audited is found guilty of misconduct after full procedural rights have been afforded. In that case, the audit shall be paid by the person or firm found guilty and shall be made part of the disciplinary penalty levied against such persons or firm as a result of the disciplinary proceedings.

(e) Right of Clients in Regard to Monies or Assets Held in Trust.

(1) Right of Inspection of Trust Records.

(A) All persons or firms practicing law in the State of Alaska who have received monies or assets in trust shall, upon written request from a person or entity for whom assets or monies are held in trust, make available to that person or entity the individual records in regard to the monies or assets held in trust for them, within three (3) days of the receipt of the request.

(B) Any person or entity requesting an inspection of trust records may be accompanied by an accountant, if they so desire.

(C) If the third day following the written request for insepction of trust records falls on a Saturday or Sunday, the inspection may be postponed until Tuesday of the following week.

(D) Copies of individual trust records shall be furnished to any person or entity for whom assets or monies are or were held in trust upon written request of such entity or person.

(E) The right to inspection of records given in this subsection shall not include records which were made prior to ten (10) years of the written request.

(2) Right of Client to An Accounting.

(A) All persons or firms practicing law in the State of Alaska must furnish a written accounting to all persons or entities for whom assets are held in trust.

(B) the minimum requirement of (e)(2)(A) of this section shall be

(i) a receipt for all assets or monies received which are to be held in trust;

(ii) an itemization of all disbursements from the person or entity of monies or assets held in trust, accompanies by a detailed explanation for each; and

(iii) a quarterly accounting listing the preceding quarter's balance, all receipts and disbursements, and a resulting balance for the reported quarter.

(3) Right to Release of Funds.

(A) All persons or firms practicing law in the State of Alaska, shall, upon completion of services for a person or entity agreed to, return within 30 days all remaining assets or monies held in trust for the person or entity, and provide a final quarterly accounting, as required by (e)(2) of this section.

(B) All persons or firms practicing law in the State of Alaska shall, upon termination of the attorney/client relationship with any person or entity, return within 30 days all remaining assets or monies held in trust for the person or entity and provide a final quarterly accounting as required by (c)(2) of this section.

(C) If, for any reason, return of assets or monies as required by (3)(A) or (B) of this subsection is impossible for reasons beyond the control of the person or firm required to so act, then a written explanation for the failure to refund shall be delivered to the person or entity for which assets or monies are held in trust within 10 days after the expiration of the time limit set by (3)(A) or (B) of this subsection.

(D) Whenever a written explanation, pursuant to (3)(C) of this subsection is issued, a copy thereof shall also be delivered to the Alaska Bar Association, identifying the person or entity to whom the explanation is sent, along with the last known address and telephone number.

(4) Right to Bring Complaint.

(A) Any person or entity may file a formal grievance or complaint against any person or firm practicing law in the State of Alaska or violation of this rule.

(B) the complaint shall be filed in accordance with the procedures stated in Rule 14. Pursuant to section (f) of Rule 14 and paragraph (d)(1)(B) of this Rule, if no informal resolution can be achieved, the Ad ministrator shall appoint a committee of three (3) persons, two of whom shall be members in good standing in the Alaska Bar Association, the third of whom shall be a resident of the State of Alaska and not a member of the Alaska Bar Association. The committee shall set a date for a hearing on the complaint or grievance to occur no later than 60 days from the date of the complaint or grievance. Such hearing shall be held unless the committee is notified in writing of a voluntary compromise of the complaint or grievance or, for good cause shown, the committee grants a continuance.

(C) A committee appointed under (4)(B) of this subsection shall accept evidence, written or oral, at a hearing set by the committee; make findings of fact as regards evidence pertaining to matters before it; and shall issue opinions in writing granting or denying relief to the complaining person or entity in full or in part, along with substantial reasons and facts supporting the decision.

(D) The committee shall report any unethical conduct shown by the evidence presented at its hearing and shall set forth in each opinion issued a statement as to whether it is turning the evidence received on the matter over to the Alaska Bar Association for further disciplinary proceedings.

Sunset

[continued from page 1]

is a state agency, in which case the office of the Attorney General should also be representing the Bar in this matter against the Legislature, thereby raising valid conflict of interest questions. The Attorney General has not yet commented on the representation question.

Legal questions aside, however, the most immediate result of this sunset process will be the bill which comes out of the House of Representative's Committee on the Judiciary. Chaired by Representative **Charles H. Parr** from Fairbanks, the House Judiciary Committee is the "committee of reference" (see AS 44.66.010) as concerns sunset review of the Board of Governors, and it is the responsibility of this Committee to hold public hearings regarding whether there is a demonstrable public need for the continued existence of the Board or its program. The Board has the burden of demonstrating this need, and also must suggest changes in its current mode of operation which might increase its effectiveness. A bill must be out of the Committee by March 14th.

The Parr Program

In conversations with Representative **Parr**, and from comments made during hearings held last year, it seems relatively clear that the forthcoming bill will undoubtedly reflect Chairman **Parr's** beliefs that the Alaska Bar should 1) be de-integrated; 2) made voluntary, and 3) stripped of the admissions and discipline functions and powers now vested in the Board. It is apparently his intent to create a State board or commission, give that body admissions and grievance duties, and place it within the Department of Commerce and Economic Development, Division of Occupational Licensing. Although it has not been specifically stated, it can be fairly assumed that this new entity would contain a majority of non-attorney members, would be appointed by the Governor (subject to legislative approval), and not be subject to Judicial Branch control.

That Chairman Parr is ruffling separation of powers feathers does not seem to bother him; in fact, he has on a number of occasions publicly suggested that the Court's authority to regulate the practice of law could be constitutionally amended, if necessary. Association President Donna Willard and President-Elect Bart Rozell gave formal testimony on the 14th of February regarding the Association's professional activities and their concomitant benefit to the public. Teleconference hearings were held on February 19th and 20th throughout Alaska to elicit further comment.

Association members **Carolyn Jones** and **Patrick Anderson** (Legal Educational Opportunities Committee), **George Georig** (Taxation Committee), **Sandra Saville** (CLE Committee), **Alex Bryner** (Law Examiners Committee), **Ben Walters** (Fee Arbitration), **John Reese** (Lawyer Referral Service and Family Law Committee), **Bill Erwin** (at-large comments), **Carolyn Johnson** (Ethics Committee and Law Related Education Committee) and **Harry Branson** (Board of Governors) testified before the Committee in Anchorage. All who testified spoke concerning the Association's work, specifically aiming their comments to the public benefit derived from the Association's myraid activities, and the hundreds of hours of *volunteer* service put in by members of the Association to do the work the Association has set for itself.

Is the Bar Necessary?

The Committee's comments primarily focused on three areas: minorities and the bar exam, the affects of de-integration on volunteerism and the Association, and the "special status" accorded attorneys in Alaska. Representative **Thelma Buchholdt** and **Nels Anderson** questioned a number of witnesses concerning the bar exam, specifically as regards the failure rate of minority examinees, and what the Association was doing to encourage the interest of minority students in pursuing a legal career in Alaska. Nels Anderson also came right to the point a number of times by asking witnesses: "Is the Bar necessary?" Representative **Fred Brown**, a Fairbanks attorney, asked a related question: "If the Alaska Bar Association were no longer an integrated bar, would a voluntary, private organization carry on the same activities and to the same extent as currently provided by the Bar?" Most of the Association members present responded to those basic questions. **Patrick Anderson** remarked that the Bar Association was currently the only forum available which provided him the opportunity to put his ideas to work, allowing him to encourage Native students to take up law. **Ben Walters** stated that the voluntary nature of his work on the Fee Arbitration panels was important. If the Bar were de-integrated, and the current work of the Association (i.e., admissions, discipline, conciliation, fee arbitration, substantive law committee work, continuing legal education, etc.) done by a newly created board or agency of the State, or by order of the Court, Mr. Walters stated that the "imposed" duty would alter the membership's current feeling of responsiblity for the state of the legal profession, and that its existing dedication to improvement of the currently self-regulated Association would be substantially reduced. Mr. Walters viewed the services provided voluntarily by attorneys on behalf of the public as done out of a commitment to the profession and in recognition of attorneys' need to demonstrate their acceptance of the duties and responsibilities that accompany certification as an "Officer of the Court."

> On Sunday, February 24th, 1980, the *Anchorage Times* carried a story on its front page captioned "House Majority Leader Calls for End to State Bar Association."
>
> According to the *Times*, House leader **Nels Anderson**, a democrat from Dillingham wants the Bar Association abolished. He would have certain unspecified Association duties (presumably Admissions and Discipline) turned over to the Alaska Supreme Court and the remainder would remain with the Bar if it continues to exist as a voluntary professional organization for lawyers.
>
> The *Times'* story quoted Anchorage Attorney **Ken Jensen**, describing him as a noted dissident within the Bar, on the subject of the destruction of the integrated Bar thusly: "Anderson has done half a job; the other half is the manner in which the public can be protected by establishing and maintaining certain professional standards."

Reese Ruminates

John Reese said that he felt that as members of an Association which was statutorily created, that it mandated and insured "an accountabilty to the Court and the public" which would be lost if the Bar were de-integrated. Obviously, he stated, a "voluntary club" could not be held to the same accountability as an instrumentality of the State, since a private organization would technically have no responsibility to the public or necessarily feel a need to provide services of public benefit. If the Legislature was interested in continuing the services currently provided by the Association, he did not think sunset of the Board and de-integration of the Bar was the proper solution.

Bill Erwin noted that in his experience with those professions which were not "integrated" member associations, the private club atmosphere gave "clique-ish control" to a small, dominant group within that profession, and that there was a resultant loss of "participatory pride" since the organizations were not "democratic" associations. The Bar Association membership, which by statute elects its representatives to the Board of Governors, and which meets annually to determine questions of Association policy, can direct the Association by majority rule.

Saville Speaks

Sandra Saville spoke of the value of the Association's continuing legal education programs, and commented that although she assumed a somewhat diminished CLE program would continue should the Association be de-integrated and organized instead by the State entity given responsibility for such activities, she felt that the current large blocks of time volunteered by attorney members would be drastically reduced. She said that many attorneys currently feel an obligation to their profession to assist with and attend CLE programs, and that obligation evolved from a pride in doing something for the betterment of the legal profession as a whole. If the administration of CLE were taken over by a State entity, for instance, she felt sure that many attorneys would not as willingly volunteer their time and services, or feel compelled to, and that the resultant increased costs of having to pay people to put on a CLE program would have to be taken into account by the House Judiciary Committee when determining how those services would be provided. She stated that she knew of no other profession in Alaska that spent as much time on, or expressed as much interest in, the continued education of its members as the legal profession. She said that this committment obviously stemmed from the Association's acknowledgement of responsibility to the public to keep its members current on legal issues.

Representative **Charlie Parr** wanted to know "why lawyers have to be treated differently" from the other professions, what claim did lawyers have to a "special status?" (i.e., why should attorneys have to continue to be a part of an integrated association?). The answer given by **Carolyn Jones** and others was that as "Officers of the Court," the legal profession functioned in many ways as public officials. In as much as an entire branch of government—the Judiciary—functioned in cooperation with the legal profession, it seemed clear to those testifying that no other profession was so intimately tied to our democratic system of government. A good example: what other profession could be told it must provide its services at a substantially reduced cost - or at no cost - because the State was running out of money and could not afford to fully pay for the services it requested?

MAGISTRATE/LAW CLERK

The Alaska Court System is seeking a Magistrate/Law Clerk in Bethel. Starting salary $2652./mo. Performs magistrate functions in Bethel and area villages; performs legal research; trains and supervises village magistrates; meets with village councils to discuss court system operation within the Bethel service area. Position involves substantial travel in Southwest Alaska villages.

This is a partially exempt position; the incumbent serves at the pleasure of the superior court judge. Preferred qualifications are: Graduation from an accredited law school with a LLB or JD degree and practical experience in Rural Alaska or other cross-cultural setting. Applicants should submit a resume or an Alaska Court System application to the Bethel Superior Court, Box 130, Bethel, AK 99559 no later than March 15, 1980. Anticipated starting date is May 1, 1980. Applications are available at the local courthouse. Selection will be made on the basis of the application or resume submitted.

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The Realities of Collecting Legal Fees

by Jeffrey M. Smith
Atlanta, Georgia

Approximately 15 to 25 percent of all legal malpractice litigation is caused, directly or indirectly, by dissatisfaction with or actual disputes over legal fees. The chances are excellent that if a lawyer sues to collect legal fees, payment will not be made by the client and/or a counterclaim will be brought for legal malpractice or a related claim. It thus becomes important to carefully consider the possible risks attendant to a suit for legal fees prior to commencing such an action.

Unlike many of our predecessors in England, most practicing lawyers are dependent upon reasonably prompt payment by clients for their fees in order to continue practicing. When clients do not pay promptly, most lawyers are professional enough and prudent enough to make reasonable inquiry. Nonetheless, at least in the author's opinion, in all too many instances lawyers do finally resort to threats of legal action or in fact institute a legal action to collect the fees. Such action generally carries with it more potential risk than reward given the reality that clients who do not pay generally do not have the ability to pay or, due to a variety of circumstances, do not feel it is appropriate to pay. Especially in the latter instance, a counterclaim is to be expected.

Other Priorities

The client may have funds available but may have also determined that there are other pressing priorities which are more important than payment of legal fees. In addition, and these are not mutually exclusive possibilities, the client may believe that the statement is too high without regard to the results achieved, or may believe that the fees would have been appropriate had the desired results been achieved.

Simply Unable to Pay

If a client is simply unable to pay, a lawyer may press forward and obtain a judgment, but will have expended additional time and expense with no tangible result, unless of course the lawyer is willing to proceed with garnishments, levying, or perhaps participate in a bankruptcy proceeding. These are generally not desirable courses of action for a lawyer, especially since a person who currently is unable to pay, and is consequently not the most desirable client, may later become economically successful and become a more desirable client. One way to almost ensure that such a client returns for legal services in the future is to treat the client in a manner which generates feelings of loyalty as opposed to resentment.

Suit for Fees

In those instances where a lawyer has analyzed the matter and believes a suit for legal fees and expenses should be filed, it is important to carefully review Ethical Consideration 2-23 of the Code of Professional Responsibility:

> "A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client."

Clients rarely commit fraud in failing to pay a statement for fees and expenses and, if this Ethical Consideration is followed, the analysis generally will be limited to whether a "gross imposition" has occurred. While Ethical Considerations are generally aspirational in nature, the failure to follow this particular Ethical Consideration may lead to problem-ridden litigation with clients, as well as a loss of the case should the client's new lawyer succeed in introducing into evidence the fact that the plaintiff-lawyer failed to adhere to this Ethical Consideration.

Gross Imposition

Assuming that a lawyer has determined that a gross imposition has occurred, at least two significant areas must be analyzed before instituting a suit. The first area involves the factors set forth in Disciplinary Rule 2-106(B):

> "A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

If after a review of these factors a lawyer is not convinced that the fee in question is reasonable, then at a minimum the fee should be voluntarily reduced and a request made that the reduced fee be paid.

Another Opinion

At this point in the analysis of a potential claim against a client, it is beneficial to bring in a lawyer who has not been directly involved in the representation. Certainly it is possible that a member of the same firm could be objective, but a lawyer from another firm is potentially a better choice. This is certainly true if the fee in question is significant and if there is a perception that the client is litigious.

Potential Recovery

The second area of analysis involves the actual, as opposed to theoretical, recovery which might be achieved. In general, the potential recovery from the client is never the actual amount of the statement for fees and expenses, even if the lawyer is convinced that the total fees and expenses are reasonable. The following factors all go to reduce the predicted recovery, even though some of these factors are admittedly subjective:

(1) The cost of retaining independent counsel to represent the firm (the assumption being that no one wants a fool for a client);

(2) The time expended by members of the firm in working with retained counsel, for example to answer interrogatories, prepare for depositions and plan for trial;

(3) The portion of the projected recovery which will be paid in income taxes;

(4) The overall risk of a counterclaim, including the risk that it will be asserted, the chances of an adverse judgment, and the possible size of the judgment;

(5) The fact that the client might have been a desirable client in the future, but certainly will not be one once litigation is instituted; and

(6) The adverse public relations impact, over and above the impact based on the former client's direct criticism of the firm.

Hypothetical Example

As a hypothetical example, assume that a particular statement for fees and expenses totals $12,000.00 and that, after evaluation, a lawyer determines that it is reasonable. If independent counsel is retained on a contingent fee, the law firm will not recover more than $9,000.00 in most circumstances. In addition, at least 20% and very possibly a much higher percentage will be paid in taxes. Assuming that the average tax bracket of the partners in the particular law firm is 25%, the $9,000.00 recovery is reduced to $6,755.00 The other factors which are more subjective must also be factored into the equation, and the ultimate result is that the $12,000.00 statement for fees and expenses is reduced to something less than $5,000.00 depending on the emphasis placed on various subjective factors.

AT a mimimum, suits against clients for legal fees and expenses should be an exception and never a rule.

Note: This article is provided by INAX, the Alaska Bar Association sponsored malpractice carrier as a part of its continuing loss prevention program.

Attorney Investigation Bill

On February 5, 1980, Anchorage Representative **Joseph McKinnon** introduced House Bill No. 674 entitled: "An Act Relating to Unfair Trade Practices and Consumer Protection."

McKinnon's Bill would have the Legislature amend A.S. 45.50.495 by adding a new subsection to read:

> "(c) The Attorney General may investigate complaints of unlawful acts and practices of attorneys which constitute violations of A.S. 45.50.471 and bring actions under A.S. 50.501 to restrain the unlawful acts and practices notwithstanding A.S. 45.50.481(1)."

Consumer Protection

Commenting on McKinnon's proposed legislation, **Connie Sipe**, Chief of the Consumer Protection Section of the Attorney General's Office stated that although she had not thoroughly analyzed McKinnon's Bill, she had always believed her office to have jurisdiction to investigate complaints of unlawful acts and practices of professionals, including attorneys. However, Ms. Sipe cautioned that her belief that the legal profession was not exempt from her office's unlawful acts and practices jurisdiction did not necessarily reflect the official administration position.

Ms. Sipe added that pending further analysis of the ramifications of McKinnon's Bill, she could not comment on the likelihood of the Attorney General's Office supporting Mr. McKinnon's proposed legislation.

Public Interest

According to Ms. Sipe, her office has not handled any complaints of unlawful acts and practices of attorneys. She explained that when her office does receive a complaint against a professional, the complainant is referred to the licensing body or appropriate professional organization. Ms. Sipe explained that the usual professional misconduct complaint is highly individualistic and ordinarily would not involve a pattern of conduct which the Attorney General's Office looks for in determining whether or not to institute a public interest investigation or litigation. Ms. Sipe explained that absent a pattern of conduct affecting many consumers or a practice of either an especially egregious nature or involving a substantial amount of money, her office would not deem an investigation or litigation to be in the public interest.

However, if a complaint involving deceptive advertising by an attorney were brought to her office, and the complaint met the public interest criteria, Ms. Sipe stated that she would not hesitate to investigate the matter.

Administrative Law Committee Reports

The Sun Also Sets

by Donn T. Wonnell

"Ubiquitous" is an altogether appropriate word for it. It begins with the licensed physician who brings you into this world; it ends (possibly) with the licensed mortician who carries you out. In between, it's everywhere: the quality of the air you breathe, the electrical wiring in your home, the cost of your call to Mom on Mother's Day, the number of exits in your office building, the composition of Christmas eggnog. Doctors are subject to it, lawyers practice it. You can still be an Indian chief and avoid its reach but, increasingly, not an Indian (see, *e.g.*, A.S. 45.65.070(1); 43 U.S.C.A. § 1602 (b)).

"It" is that sometimes amorphous, frequently confusing, and inexorably growing body of rules, regulations, statutes, and opinions which collectively go by the description "Administrative Law." For much of the last two decades, discussion on the subject proceeded not so much from considerations of "whether" as from those of "where else." What repays examination of the topic now is the nascent change in attitude, in evidence on both federal and state levels, away from continued growth in administrative regulation.

The appellation "administrative law" itself is of relatively recent coinage, the subject matter being generally perceived as outside the historical mainstream of the common law. It is also a generalization, much like a reference to "air:" both describe a constituency of differing elements with differing aspects and attributes. As a generalization the term administrative law encompasses that body of law, and the associated practice thereof, dealing with decisional and rule making authority exercised under a legislative delegation of power by individuals and agencies other than the courts. It may also include the procedural and substantive norms invoked by the courts in reviewing the actions or inactions of those individuals and agencies.

However defined, and however new the terminology, the basic concept of administrative law is not without a lineage. In the area of rate regulation of public utilities, for example, the Constitutional underpinnings of administrative regulation were ennunciated by the Supreme Court about one hundred years ago. In **Munn v. Illinois**, 94 u.S. 113 (1877), the Supreme Court affirmed the power of the legislature to regulate charges for the use of "property affected with a public interest." In the same period, courts began sustaining the delegation of the thus-recognized legislative power to agencies or commissions for implementation (see, *e.g.*, **Minnesota, ex rel. Railroad & Warehouse Commission v. Chicago, Milwaukee & St. Paul Railway Co.**, 38 Minn. 281, 37 N.W. 782 (1888) (affirming the power of delegation to an agency), rev'd on other grounds, sub nom. **Chicago, Milwaukee & St. Paul Railway v. Minnesota**, 134 U.S. 418 (1890)). Moreover, the court in **Munn** made references to treatises on the subject of rate regulation written in England more than two hundred years before the court's 1877 opinion, making facets of the subject, in a more or less recognizable form, at least three hundred years old.

The more recent, and more familiar, blossoming of administrative regulation may be conveniently dated from the decision in **A.L.A. Schechter Poultry Corp. v. United States**, 295 U.S. 495 (1935), which struck down portions of the National Industrial Recovery Act of 1933 as an unconstitutional delegation of legislative power. For several decades thereafter, the courts demonstrated a general willingness to ratify increasingly broad delegations of power by the legislative arm of government to an agency. The pervasive growth in administrative law spawned directly and indirectly thereby is evidenced by the familiarity of the litany of federal acts engorging the body of administrative law, including the Communications Act of 1934, the National Labor Relations Act of 1935, the Labor-Management Relations Act of 1947, the Housing and Urban Development Acts of 1965, 1968, 1969 and 1970, the Occupational Safety and Health Act of 1970, the Equal Employment Opportunity Act of 1972, the Privacy Act of 1974, and the Freedom of Information Act of 1974.

State government has also generated the sustenance for a healthy, well-rounded administrative law practice. Scores of state-erected boards, agencies, and commissions exist within Alaska. A sampling of some can be found in Title 8 of the Alaska Statutes. Others arise from individual statutory provisions, among them the Alaska Public Utilities Commission (A.S. 42.05.010 et seq.), the Alaska Transportation Commission (A.S. 42.07.011 et seq.), the Alcoholic Beverage Control Board (A.S. 04.05.010 et seq.), and the Alaska Pipeline Commission (A.S. 42.06.010 et seq.). From these and other entities issue the myraid regulations now filling two volumes of the Alaska Administrative Code (AAC; see A.S. 44.62.130). Slaughterhouses, air carriers, amusement parks, pipelines, cosmetologists, garbage collection, and potatoes are all, to one degree or another, affected by Alaskan administrative law.

The extensive sweep of administrative law, alone, would recommend the subject to the attention of the Alaskan practitioner. Signs of incipient change have appeared, however, which make examination of the subject even more desirable and timely in the present. These signs suggest the tide of the last few decades towards increased regulation, and thus toward an increase in the number, scope, and depth of administrative laws, now shows some prospect for, if not turning, at least abating somewhat.

On a federal level, Congress has shown a temptation to yield to the lures of "deregulation," as exemplified by passage of the Airline Deregulation Act of 1978 (92 Stat 1705), modifying at various points the Federal Aviation Program (49 U.S.C.A. § 1301, et seq., as amended). Therein, Congress expressed as a goal "the encouragement, development, and maintenance of an air transportation system relying on actual and potential competition...," a means antithetical to past reliance solely upon regulatory mechanisms. (49 U.S.C.A. 1302(a)(9).) To be sure, there was no pro tanto dissolution of the regulatory agency in question (the Civil Aeronautics Board); yet, the act represents a significant departure from the historical practice of rigid rate regulation imposed by the CAB. (Compare, for example, the modifications in §§ 1302 and 1482 of 49 U.S.C.A. before and after the Act.) The existence of this trend is further confirmed by the multiplicity of bills before Congress designed to apply deregulation concepts to the telecommunications industry. A recent draft of Senate Bill S. 622 (entitled "Telecommunications Competition and Deregulation Act of 1979," and dated November 9, 1979) for example, observes that "market place competition can be the most efficient regulator of new and diverse telecommunications services," and proposes to "eliminate and reduce certain forms of regulation and other limitations which may hinder the development of new technology, inhibit its availability to the public, or which are otherwise no longer necessary." (Draft §§ 2(a)(2), 2(b)(2).) The equating of "regulation" with "other limitations which may hinder development," in a Congressional proposal, provides further evidence of disenchantment with the current state of administrative regulation.

Similar second thoughts on the tendency toward increased regulation appear to have occurred to the Alaska legislature as well. In 1977, the legislature opined:

> ...that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of the agencies, boards and commissions. (§ 1, ch. 149 SLA 1977)

Acting upon this observation, the legislature enacted the so-called "sunset" legislation (A.S. 44.66.010 et seq.) whereby mandatory termination dates were established for various denominated state agencies and commissions (with a subsequent grace period allowed for the conclusion of agency affairs, A.S. 44.66.010(b)). Prior to that extinction, these laws require hearings on the continued public need for the agency, at which the agency itself, members of the public and others may present evidence on the question of continued existence. The statute also establishes criteria for deciding how that question should be answered (A.S. 44.66.050(c), (1)-(9).) Upon demonstrated need, the existence of the agency or commission could be continued by further legislative enactment. If ther is a certain mild irony in this invocation of administrative proceedings to extirpate administrative proceedings, there is also, nonetheless, an expression of concern for the degree to which the requirements of administrative law may have become an excessive burden upon the body politic.

However one may feel about the relative merits of regulation versus deregulation, the sunset laws, or any particular agency affected thereby, the subject of administrative law has an obvious currency and undeniable importance, both in terms of present practice and future change.

That "the people of this state do not yield their sovereignty to the agencies which serve them" is a notion the legislature expressed at A.S. 44.62.312(a)(3). The current season presents a particularly propitious time to reconsider the subject of administrative law and regulation, and to ponder whether the legislature has stated a present fact, or merely expressed a future hope.

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