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The Alaska BAR RAG

Volume 2, Number 5 | Dignitas, Semper Dignitas | May, 1979 | $1.00

Year Long Study Fructified!

Sitka: Vivid History in Magnificent Setting

This year the Alaska Bar Association has picked one of the most beautiful settings in Alaska for its annual convention and business meeting. Sitka, Alaska rests on the shores of the Pacific Ocean, protected by Cape Edgecumbe with its Mt. Fujiyama-like extinct volcano which rises to an altitude of 3,271 feet and myriads of small islands which dot the coast line. The snow capped peaks of the Tongass National Forest serve as a spectacular backdrop for the city in a setting of serene and majestic beauty.

Still rich in both Tlingit and Russian cultures, the Sitka of today is a thriving modern city with a population of 8,300. A $70,000 Japanese owned pulp mill and tourism are the basis of a sound economy. The Japanese current which flows close to Sitka shores keeps the climate moderate all year.

Rich in History

Sitka boasts excellent accommodations and meeting facilities, including the recently constructed Shee Atika Lodge, the Sheffield House, the Potlatch House and the Sitka Hotel. Sitka also has the only complete convention center in Alaska, the Centennial Building which is a hub of visitor and convention activities in Sitka. In addition to four meeting rooms, there are exhibit areas, a kitchen and an auditorium which seats 500 persons. During the summer months, Sitka's New Archangel Dancers present authentic Russian folk dances.

Sitka's history is present in St. Michael's cathedral which is at the focal point of Sitka's history as the capital of Russian America. Built between 1844 and 1848 the original structure was destroyed by fire in 1966. Its many priceless art treasures, including icons and artifacts, were saved and can be viewed in the new cathedral which stands in the same location and is an exact replica of the original church.

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Rare European Oak Dominates Federal Court Complex

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The Alaska Bar Rag

Three or four hundred years ago, a European Oak tree took root in Germany where it lived until it was felled during a windstorm. It was thereafter purchased by a New York firm, which specializes in furniture and rare woods, and transported to its factory where it languished for some 30 years.

That self-same oak, cut into veneer measuring forty one-thousandths of an inch, now decorates the federal court complex in Anchorage's new Federal Building.

At an installed cost of approximately $785.00 per lineal foot, oak paneling covers the walls of five courtrooms and has also been used for the bookcases in five judicial chambers. There is also a sixth chamber yet to be completed.

The estimated cost for the paneling in just one of the large courtrooms is $40,000.00 for materials alone while the bookcases run approximately $10,000.00 per unit. Each office contains an estimated $40,000 worth of shelving and cupboards which were all custom built and hand finished once in place.

There are two large courtrooms, reminiscent of theatres in the round and one intermediate courtroom on the second floor of the building. Facilities for the U.S. magistrate and Bankruptcy judge, smaller in size, are located on the ground floor.

Besides luxurious chambers, the district court judges will have their own elevator to transport them from basement parking to the second floor. While not originally incorporated in the plans and hence the subject of extensive renovation after the building was in place, the elevator was initially to be a stock variety costing some $40,000.

However, further extensive modifications and additional "security" equipment now necessitates a custom build elevator with an estimated cost of $200,000 to $300,000. At first floor level, the elevator will stop in the law library, another sizeable room.

The type of millwork utilized in the court complex does not survive well in the Alaskan climate which has an average humidity of 13 percent. In order to sustain the oak paneling, a constant humidity of 50-55 percent is essential. Thus far, the operators of the Federal Building have only managed to achieve a 34 percent humidity level. As a result, the European oak is warping off the walls.

American oak, which looks almost identical, and which would have fit in well with the government's "buy American" plan, could have been obtained at one-third of the cost.

Judge Kalamarides Dies

Anchorage Superior Court Judge Peter J. Kalamarides, 63, died in an airplane crash at Campbell Lake in Anchorage shortly after noon on Sunday May 6. Judge Kalamarides was alone piloting a 1963 Piper Cub on floats when he crashed on takeoff. An observer indicated that it appeared a wing had fallen off the plane.

Risk Management Committee Makes Recommendations

Resolution #3 passed at the June, 1978 Annual Meeting required a study of malpractice self-insurance by the Alaska Bar Association. The inside pages of this issue of the *Bar Rag* presents the data and recommendations of the Self-Risk Management Committee which has studied the Norman self-insurance proposal and solicited proposals from the insurance market for the past year. The committee members **Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ronald Kull** and **Donna Willard** have recommended one of the proposals to the membership. A survey to get membership response has been mailed to each member and the results will be presented at the Annual Business Meeting in Sitka on Saturday, June 9, 1979.

The Norman Resolution

The Resolution resulted from a presentation by **Peter Norman**, Risk Consultant of Vancouver, BC to the Board of Governors in Hawaii in February, 1978. Norman was hired by the Board of Governors to do a feasibility study of Bar Association self-insurance in Spring, 1978. A claims loss questionnaire was responded to by the membership in May, 1978. Norman reported to the Board of Governors in June 1978 recommending that the Association institute a mandatory and exclusive self-insurance program with a $2,500 individual deductible. The Association would handle all claims up to $25,000 exposure. Coverage up to $75,000 would be purchased from an insurance company making the limit of liability $100,000 per insured member.

The Norman Proposal

Norman was subsequently rehired as a consultant to verify the loss data, make a coverage proposal to the committee and to solicit a private carrier willing to provide the second layer of coverage from $25,000 to $100,000. Although Norman has declined to identify the carrier, he has advised the Association that he has a commitment from it to write the second layer and to enter into a reinsurance agreement with the Bar Association self-insurance fund for a present price of $220 per member. In addition, Norman has recommended that each insured member pay the Bar Association Liability Fund $480 to cover all expenses and pay claims from $2,500 to $25,000 and to pay all claims expenses up to $100,000 liabilty limit.

The committee, with Board of Governors approval, also contacted representatives of each of the only ten carriers presently writing E & O coverage for lawyers in the country.

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Sitka

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Another major historical site is the Sitka National Historical Park where the battle between the Russians and the Tlingit Indians was fought in 1804. This battle won for Russia an overseas empire in North America. Today, the fort and battle site are preserved and interpreted at the Sitka National Historical Park. The visitor center houses exhibits and Indian craft workshops.

Another fascinating historical collection may be found at Sheldon Jackson Museum located on the beautiful campus of Sheldon Jackson College housing one of the finest collections of Indian and Eskimo artifacts in Alaska. Many of the relics were collected by the early missionary for whom the college was named.

In addition to sight seeing, excellent fishing is available in the area. Sitka's waters abound in salmon, halibut, red snapper, crab, herring and abalone. Bring your tackle.

Alaska Lawyers Like CLE

By Ron Kull

As it now stands, Alaskan lawyers and judges like mandatory continuing legal education—but not a whole lot.

In a statewide poll currently being conducted by the Alaska Bar Association, 155 say they favor mandatory CLE while 141 are opposed.

In addition the poll revealed:

1. Most firms have no policy requiring members to attend CLE courses, but nearly all pay the costs of such programs.
2. An overwhelming number of those responding have attended some CLE courses during the past three years, and most of those have done a good portion of their study outside the state.
3. Most favor giving CLE credit for teaching an approved course.
4. Most reject the concept of granting waivers based on geographical remoteness, but most do favor granting CLE credit for attendance at videotape courses.

With the above exceptions, few generalizations can be made from the poll.

On the question of what should be required if a rule mandating CLE is adopted, the responses range all over the place—from a minimum attendance of a quarter of an hour a year to 45 hours a year. If a generalization can be made in this area, it would appear that most favor a given minimum number of hours each year rather than leaving a staggered requirement, i.e., 45 hours every three years.

The judges who voted in the subject appeared to be about evenly split on whether mandatory CLE should be imposed. And rural lawyers likewise were split on the subject.

Interestingly, one judge opined that CLE should be required of all those in active practice, thereby presumably eliminating judges. One court attache said that court clerks shouldn't be required to attend—but that everyone else should.

Also, some lawyers who attend substantial numbers of CLE courses were adamantly opposed to compulsory CLE while some who said they have attended no courses thought CLE should be required.

Members of the Alaska Bar Association will be given the opportunity to cast a formal vote on this topic. As indicated elsewhere in this issue of the *Bar Rag*, a resolution will be introduced at the business session of the annual meeting in Sitka, providing that a minimum of 15 CLE hours per year be required as a condition to the practice of law.

Anchorage Board Seat to be Determined in Election Run-Off

From a field of thirteen candidates, the election for the Board of Governors position from the Third Judicial District has resulted in a run-off election between two Anchorage attorneys. **Rick Helm** gathered the most votes with 101 and **Elizabeth Kennedy** came in second with 85 votes. Run-off ballots containing their names have already been sent to the voters. Results of these ballots are due in the bar association's office by 4:30 May 11.

In the other districts, current members of the Board of Governors won re-election. **William (Bart) Rozell** from Juneau was elected without opposition and **Richard D. Savell** from Fairbanks won a two man contest against **John D. Van Winkle, Jr.** from Nome.

Computer Legal Research Firm to Open

Computerized law research will soon be available to the entire legal community. **Comp.LEX**, a recently organized Anchorage firm, has contracted with West Publishing Company to provide access to its **WESTLAW** service. **WESTLAW** is the publishing company's name for its data base containing hundreds of thousands (millions?) of headnotes, statutes and full texts of cases from reported Federal and State cases plus military court cases.

Comp.LEX will install its terminal facility in its offices in Suite 205, 360 K St. - across from the Law Library. They are predicting a June 1, 1979 start-up date.

The **Comp.LEX** terminal will make it possible for anyone to rapidly receive a review of cases relevant to any issue and a print-out of the material he chooses to take with him.

Research may be accomplished using West's well-known Key Number System or the case citation, if known. The most outstanding feature, however, is the computer's ability to rapidly scan thousands of cases for those containing frequent reference to the words or phrases the researcher used to describe the issues of interest. For example, the terminal will display all cases in which the following sample words appear very frequently: "unsafe food additive and adulterated"

The terminal at **Comp.LEX** will display those cases where the words appear most frequently. Further, the cases will be ranked by the frequency of the sample words. The cases may be further limited to those decided in particular courts, even by particular judges.

The terminal operator need not understand how a computer functions or be familiar with any programming language. In fact, he can be only a "hunt and peck" typist. Parties that contract with **Comp.LEX** will receive a brief training session permitting them the flexibility of personally operating the terminal at **Comp.LEX.** Non-contracting parties will require the assistance of **Comp.LEX** staff in the operation of the terminal.

The contracts will require a minimum purchase of three hours per month (about 42 minutes per week). Contracts are renewed monthly. **Comp. LEX** staff believe that the more law firms use their service the more its great value will be revealed. Use of the terminal at **Comp.LEX** will reduce the time spent doing manual research. In addition, the staff says, the more the terminal is used, the more proficient the operator becomes and the less it costs. Also, a contract saves a considerable sum compared to the same amount of time purchased sporadically by a noncontracting party.

The staff at **Comp.LEX** will conduct limited research for those requesting it, under certain conditions. In most cases, the staff's duties will be limited to operating the terminal under the direction of researchers not desiring to do it themselves.

It will also be possible to telephone **Comp.LEX** say, during a break in a difficult case and request a print-out of that case surprisingly cited by the other side. Or, you may be in Egegik and need some help.

Last, but not least, that same **Comp.LEX** facility will permit the use of dozens of other computer data bases across the nation. There are too many to list from **Comp.LEX's** lengthy catalog, but here is a sample taken at random:

The American Institute of CPA's
Society of Actuaries
Bank of America
National Center for Child Abuse and Neglect
Dow Jones
National Library of Medicine
American Psychological Association
U.S. Environmental Protection Agency
The Financial Post

So, if, for example, you have a whiplash case you can use the terminal at **Comp.LEX** to obtain relevant back injury cases and obtain medical journal articles on whiplash plus any information on psychological aspects, if you suspect some relevancy. All of this information is made available in an unbelievably few minutes. This makes major national libraries

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Special Committee

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Study was also made of the Professional Liability fund in Oregon and the Southern States Bar Conference group approach to purchasing package coverage from a carrier for 13 southern states and Hawaii.

Only four carriers expressed any interest in writing E & O in Alaska: American Home Group through National Union Fire, the present Bar-endorsed carrier; INAX a subsidiary of INA which purchased GATX in March, 1978; ICA a lawyer-owned Texas insurance company writing coverage in Texas and New Mexico; and the Shand Morahan group comprised of Evanston, Northbrook, and Mutual Fire & Marine and American Banker.

National Union Fire and INAX made specific proposals which are presented in this issue. Shand Morahan declined to make a proposal within the time schedule required by Resolution #3, but has indicated through its Alaska broker that it does plan to enter the Alaska market in the future.

Loss data for Alaska attorneys was made available to each of the interested carriers. The data was gathered not only from the questionnaire results from 88.4 percent private attorneys and 65.83 percent public practice attorneys, but also from present and past carriers in Alaska; defense attorney conference with Norman; and the Insurance Division of the Alaska Department of Commerce.

The membership survey and committee recommendation will be considered by the Board of Governors at its meeting in Sitka June 5, 6 and 7, 1979.

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Incorporation in Alaska: Some Tax Considerations

By William Van Doren

This is the first of a two part article dealing with incorporation in Alaska and is intended for the general practitioner not specializing in taxation. General practitioners should be aware of some of the basic tax considerations in advising their clients and incorporating new businesses. The second part, to be published in the next issue of the *Bar Rag*, deals with some of the elementary tax considerations involved with incorporating existing, active businesses, both sole proprietorships and partnerships.

It is assumed that the general practitioner has determined that his client's new business would be better served by commencing in corporate form, tax considerations aside. Provided the requisite formalities are followed, corporations are treated as separate taxpayers. The tax rates are different for corporations than individuals as most practitioners realize. These rates are graduated, like those for indivuduals but at different levels. For the first $25,000, the 1979 rate is 17 percent; the next $25,000, 20 percent; the next $25,000, 30 percent; for the next $25,000 (i.e. between $75,000-100,000) the rate is 40 percent and for income over $100,000 the rate is 46 percent. Within these brackets the rate fixed, thus if the corporation's net annual income is only $5,000, the tax rate of 17 percent applies. (Note: There are limits to the extent a corporation can be utilized by the owners as their private tax-sheltered bank, discussed in subsequent articles). The new corporation can choose its own year-end, thus its tax year can end at any convenient month within one year of the commencement of business. For example, in the fishing industry, most taxable income is earned in the months of July, August, September, By choosing a year-end of June 30, the tax on this income (for 1979) would not be due until August 15, 1980, or a deferral until later next year when subsequent income can more easily pay the tax-estimated tax-due. For industries such as certain retail sales with peak incomes in November and December, deferrals of nearly a year are possible.

Earnings as Services

Because corporations are separately taxed, care is required to get the earnings to the owners with a minimum of tax. For new businesses the owners usually are the persons actually running the business. Earnings will be paid either as dividends or as compensation for services (salaries). It is preferable to take the earnings as services because the owners salaries are treated as "earned income" subject to certain limitations to taxes, if reasonable, taxed often at lower rates than dividends. Salaries are deductible to the corporation (reducing taxable earnings) while dividends are not. Thus dividends are first subject to the corporate tax rates, then taxed again as they are paid to shareholders ("the double tax").

Corporate formalities must be followed to obtain the benefits of the corporate taxes. The government, but not the taxpayers, can treat lack of proper formalities to the advantage of the government. Several traditional problems have arisen. If the assets, bank accounts, corporate minutes, meetings and employment contracts are not properly documented, taxpayers have been hurt. The failure to transfer the assets to the corporation has resulted in treating the business (for tax purposes) as a sole proprietorship, if it results in higher taxes. The same result can occur if bank accounts or contracts are not in the corporate name. If the corporate minutes are not kept, similar problems can arise. Failure to document employment status payroll deductions for the owner employees could result in the salaries being treated as dividends; so too if the salaries are unrealistically high for the type of job in question in the industry, the result could be combined taxes at the corporate and shareholder level in excess of the salaries paid.

Investments as Loans

Most owners prefer to "loan" their investment to the company so that they can withdraw their investment as a non-taxable "return of capital." Carried to extremes, this will not work. Each industry is different but the larger the loan, and the smaller the equity investment, the greater the risk that the loan will be treated as investment equity and the repayments as "dividends" (double tax).

The foregoing problems relate not only to new but existing corporations as well. Of particular note are two provisions that apply at the incorporation stage together with choosing a tax year-end. These are the small business stock and sub-chapter S provisions, taken here in turn.

Code Section 1244

Code Section 1244 (of the Internal Revenue Code) provides a "safety valve" in the event the new venture fails. Normally, when stock becomes worthless and has been held for a time, the loss attributable to the stock is a long-term capital loss to the shareholder and deductible at 50¢ on the dollar, limited to $3,000 per year. Section 1244 allows qualifying stock losses to be deducted dollar for dollar up to $50,000 ($100,000 for joint returns) as ordinary losses against income. Every new businessman hopes and expects his business to be a success, but if the business fails, he can obtain benefits of ordinary losses. The formalities are specific, and are strictly construed against the taxpayer. First, the corporation must qualify. To qualify the property (other than stock and securities) and money received for stock (including paid in surplus) can not exceed $1,000,000; (the corporation needs not formally adopt a plan. Second, only common stock in U.S. companies qualified; Third, only individuals and partnerships qualify as shareholders and of these, and only these acquiring stock directly from the corporation; last, if during the period the corporation does well, its equity plus the remaining stock available under the plan can not total over $1,000,000. It has been recently discovered in California that failure to advise clients of Section 1244 stock constitutes attorney malpractice. The corporate formalities need to be followed as outlined above. Counsel are directed to the fact that there are approximately 100 elections that can be made for new businesses and a check-list of these elections and an explanation can be found in the Prentice-Hall and Commerce Clearing House Services in the Law Library. Each loose leaf service on Federal Taxes also includes check-lists on the various elections that can be made. One of the more important elections, and the other major election to be treated in this article, is the election to be taxed on a sub-chapter S corporation. A qualifying corporation may elect to have its income taxed directly to the shareholders, rather than paying a corporate tax. It has often been said that the sub-chapter S election is tantamount to treating a corporation as a partnership for tax purposes. While there are many similarities between the taxation of sub S corporations and that of a partnership, counsel is cautioned that there are significant differences which may create traps for the unwary. Code Sections 1371 through 1378 of the Internal Revenue Code set forth the requirements, the election, and the operation of the taxing scheme for subchapter S corporations. The BNA tax management portfolios, which are available at the law library, also indicate the several differences between the sub-S Corporation and partnerships and also set forth in greater detail the specifics, an outline of which is set forth below.

Election Eligibility Conditions

In order to be eligible to make the election, a corporation must meet the following conditions:

First: It must have less than 15 shareholders; secondly all shareholders must be individuals or estates (a grantor trust or a pooling trust may also be a shareholder) no other trusts may be shareholders; thirdly it must have only one class of stock; fourthly it must be a United Stated domestic corporation; fifthly it must not be a member of an affiliated group of corporations eligible to file a consolidated return; and lastly it must not have any non-resident aliens as shareholders.

In order to qualify, a corporation may not have passive type income, for example from rents, royalties, or dividends and interest, but otherwise it may qualify and there is no limitation of the size nor the type of its assets. Husbands and wives are treated as one shareholder for purposes of determining the number of shareholders of the sub S corporation. This applies without regard to the manner in which the stock is owned by the husband and wife. Children are treated as separate shareholders even though they are minors.

Debt Equity Ratio Problem

The problem of one class of stock has created much litigation. The general concept is, and has been for some time with regard to qualification of sub S Corporations, that the Code is specific and if the specific provisions are not met, the corporation will not qualify. Counsel should also be aware that the provisions of the election are also specific, and if not met to the letter, will not effectuate a valid election (discussed below). The one class of stock, has resulted in the IRS taking the position that if stock which has been issued has different voting rights, there may be "two classes" of stock, thus disqualifying an election or the corporation for qualification for an election. If each group of shareholders however, has the right to elect members of the board of directors based upon the proportional number of share in each group, there is considered to be one class of stock. A corporation may have two types of stock provided only one type of common stock is actually issued and outstanding. Any special or preference type of stock, having preferencial rights to dividends or distribution of assets upon liquidation, will disqualify the corporation. Private pooling agreements between shareholders may qualify and avoid the problems of "one class stock" provided that such agreements are not part of the formal corporate structure.

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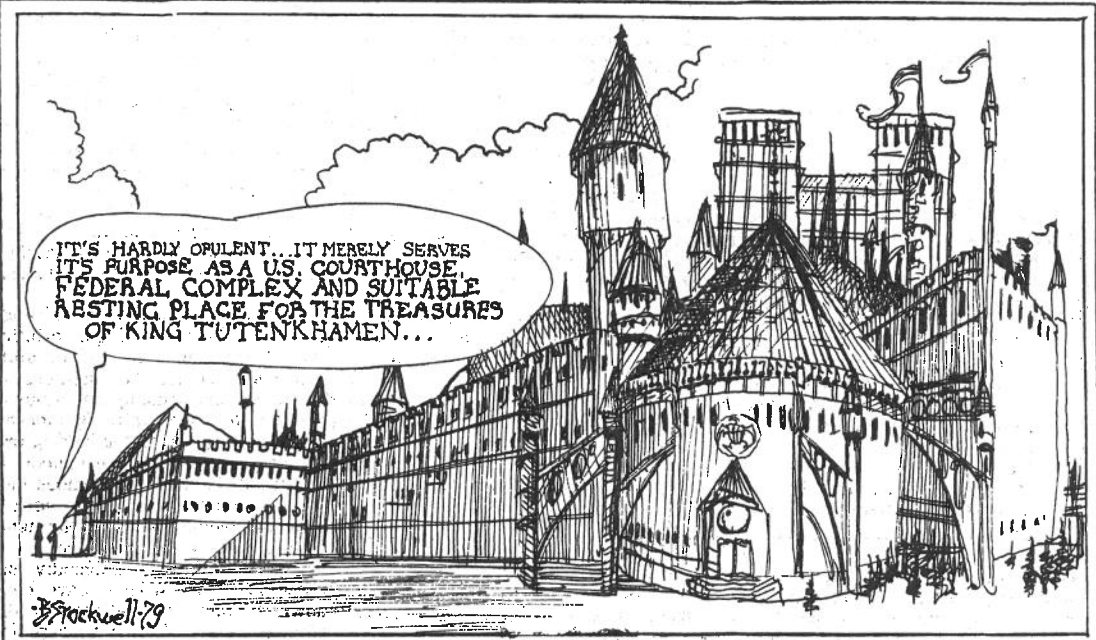

President's Column

By Kenneth O. Jarvi

It has been a sometimes frus- trating, sometimes rewarding year which has lead me at times to wonder what, if anything, I have accomplished as your President.

After a quick mental review, I was ready to conclude that the re- sults were minimal. However, a second more searching analysis, has lead to a positive assessment.

While you, as members of the As- sociation, must reach your own conclusions as to the success or failure of my leadership, I would like to offer the following observations which il- lustrate the fact that the Alaska Bar has not been stagnant during the last year.

First, bar-bench relations, which had deteriorated through misunder- standing and lack of communication have been re-vitalized. The President and President Elect now meet with the Chief Justice and the Court Ad- ministrator on a monthly basis. Those sessions are devoted to frank dis- cussions of all facets of the profes- sion.

Second, and one of my primar goals, there has been a complete re- structuring of the Alaska Bar com- mittees. For far too long, most com- mittees existed in name only. However for the past year they have been ef- fective, functioning units involved i many phases of bar association ac- tivity.

Third is the newly formed Law Related Education Committee which i now providing education in varie aspects of the legal system to a segments of the community. Not onl will this promote a better under- standing of our profession but it fill a gap in public knowledge which ha existed for years.

Other areas in which there hav been marked improvements are th speedy disposition of disciplinar matters, the dissemination of inform- tion to the membership through th newly created "Alaska Bar Rag and an expanded C.L.E. program.

Of a less tangible but neverth- less real nature is the awakened re- sponse which I have witnesse among the members of this Associatio Only two years ago, any mailing fro the Bar Office was greeted wit apathy. In the months just past, w have had more people register for an attend more programs and meeting than ever before. Moreover, mor people have applied for committe assignment than ever I thought possibl

While everyone's desire for a appointment could not be fulfille the interest exhibited at least indicat that the Alaska Bar Association alive and well. I believe that I ha made some contribution to that intere but, even more important, I hop that it will continue.

There are other activities al deserving of mention, not the lea of which is the work of the Sel Risk Management Committee, report elsewhere in this edition, the creatio of policy and personnel manuals f the Board of Governors and the we organized, open-minded operation the Bar Office.

This Bar, together with those the other forty-nine states faces tr mendous challenges in the next tw or three years and it will only b with input and work by the membe of the Association that they will b successfully met. The activities just di cussed indicate that the necessa support is present. If I have in a way generated that sentiment, I fe that I have accomplished a great dea

It has been both a privilege a a pleasure to serve as your Pre dent and I look forward to seei you in Sitka.

Editorial

Cod Liver Oil

One of the resolutions before this year's Alaska Bar Association in Sitka calls for the institution of a mandatory continuing legal education program for the Alaska lawyer. A recent poll of Alaska attorneys on the subject of mandatory CLE, reported elsewhere in this newspaper, brought mixed re- sults with slightly more attorneys in favor of the concept than opposed to it. Of those in favor of mandatory CLE, there appeared to be little uni- formity on the question of how much is good for us.

The resolution raises a number of questions besides those covered in the poll. Perhaps initially the question should be asked, do we need con- tinuing legal education at all? What good does it do us? Does it make up better attorneys? Does it protect the public? Does it protect our clients? Does it make us more money? Do we win more trials, write better contracts or negotiate better deals? So far, social scientists or statisticians haven't been able to prove that consuming continuing legal education programs makes us better lawyers. Many lawyers who attended continuing legal ed- ucation programs would answer the above questions in the affirmative, however. They participate because they hope that these programs in some way will sharpen their skills. If pressed, most of them will tell you that there is something to be gained from al- most every program they attend.

The next question is, if CLE, like cod liver oil, won't hurt you and it might help you, why is it necessary to force attorneys to par- ticipate in these programs? Anyone who has attended CLE programs given by the Alaska Bar Association over the past several years would notice that the participants are the same people mostly, and possibly these are the ones who do not need as much continuing education as the non- participants. It would appear that the majority of attorneys in Alaska do not attend these programs and will not, unless forced to do so. Under a mandatory system, these people would have to attend some program or pro- grams every year. The immediate re- sult would be exposure of all of the bar to some information which might help them to be a better job for their clients, particularly if the quality of the programs is high.

What about the older, wiser, more experienced attorney who has had many, many years of practice of a particular specialty and is generally acknowledged to be a leader in that specialty. Why should he have to take continuing legal education pro- grams? Perhaps, a mandatory program will not satisfy this practitioner's needs. The alternative in this case might be to credit him with his man- datory CLE requirement if he were to teach programs rather than to par- ticipate in them as a student. Or instead of teaching, the experienced attorney might be given credit for writing articles for the UCLA Alaska Law Review or other legal publica- tions.

What about the Alaska practitioner in a remote area? Is it fair to ask him to pay an extra tariff to come to Anchorage or Fairbanks or Juneau or Ketchikan or some other center in order to participate in these programs while the attorney living in the more populated areas has them available without transportation or housing costs. One solution to this is the video tape program which could be made available, at mailing costs, through- out the state and which is compatible with the video tape machinery in all the public schools and libraries in the state. Someone who wanted to practice in a community like Bethel could complete the necessary number of credit hours by watching these pro- grams. Another answer to the bush attorney's problem is to give full credit to anyone who attends the annual meeting of the Bar Association which means that once a year he would have the expense of a trip inside Alaska.

Given enough quality programs, assuming that these programs are accessible to all Alaskan attorneys, and further assuming that there are programs available which will be meaningful to every segment of the Alaska Bar and every experience level, a mandatory CLE program might just help us all, including the public we serve.

The resolution is too simple. Ob- viously, these issues would have to be addressed in any full scale program. Whatever is decided upon this question, it is hoped that as many attorneys as possible come to Sitka and vote on it.

Letters to the Editor

Dear Editor:

While reading **Russ Arnett's** column in the last *Bar Rag*, I thought fondly of watching Russ question the late Frank Evans on a debtor's ex- amination some few years ago. Frank was a rotund gentleman who "owned" a joint out the old Seward Highway called the Club Oasis. He had an extreme aversion to paying anybody anything. He drove a Chrysler Imperial, wore a big diamond ring, a $300 suit, and smoked dollar cigars.

As Russ bored in with his ques- tions, however, it developed that Frank's sister in Texas owned the Chrysler, and "the Corporation" owned every- thing else including the very gold in his teeth. He was exceedingly vague as to who owned "the Corporation."

Eventually, Mr. Evans outsmarted himself; he refused to pay his lawyer. Hell hath no fury like an unpaid **S.J. Buckalew**. Somehow, both Internal Revenue and Buck ended up grabbing the stock in "the Corporation," and Frank's corporate veil was pierced. People got paid and Frank's wife, Mama Joe, ended up running the Oasis. Russ never told me whether his client shared in the bounty.

Changing the subject, **Norm Gor- such's** report indicated that Senator **Ed Dankworth** is trying to "modify"

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The Bar Rag is published monthly. Mail received at Box 3576, Anchorage, AK 99510.

The Bar Rag is available to non-lawyers by subscription for $10 a year, or may be purchased from the Alaska Bar Association office, 360 "K" Street, Anchorage, AK 99501 for $1.00 a copy. Display and classified advertising rates are available.

Bills & Notes

By Norm Gorsuch

May 3, 1979

The First Session of the Eleventh State Legislature is rapidly drawing to a close. It is expected that the Legislature will adjourn sometime before May 7. The Senate, after clearing out of its own Rules Committee, resolutions and citations, adjourned for three days in order to wait for the House to complete its business and send over to the Senate a backlog of bills. At this time in the session, the House and Senate play poker with each other using priority bills designated by the State and House leadership as trading stock. Not infrequently, a bill designated a House priority is not deemed important by the Senate majority and vice versa. This annual exercise in bicameralism adds to the length of the session because these various priority problems must be resolved before adjournment.

★ ★ ★

Caught up in this end of the session process is an Intermediate Court of Appeals Bill, SB 104. There are enough votes on the House floor to pass a Senate Bill which would establish the Court. However, the bill has not yet reached the floor. The House Judiciary Committee added a sunset review provision in its version of the bill which could terminate the court on July 1, 1981. As the bill is now structured, the Intermediate Court of Appeals would have appellate jurisdiction in actions and proceedings commenced in the Superior Court involving criminal prosecution, post conviction release, court jurisdiction over minors, habeas corpus, probation and bail. In addition, the Court of Appeals has appellate jurisdiction in all actions and proceedings commenced in the District Court. Appeals from the new Court of Appeals to the Supreme Court would be within the jurisdiction of the Supreme Court under AS 22.05.010.

★ ★ ★

One reason for the delay in the consideration of the Court of Appeals bill by the House is the refusal by the State Senate leadership to appoint a Free Conference Committee to meet with the Free Conference Committee appointed by the House on HB75, a bill relating to the right of privacy and access to public records authorized by Charlie Parr, D-Fairbanks. Parr is insisting upon passage of a bill more closely resembling the bill that the House passed rather than the greatly altered version passed by the Senate. Parr, as Chairman of the House Judiciary Committee, was one of the key legislators in favor of deferring the creation of a new Court of Appeals until the legislature studies the issue in more depth.

★ ★ ★

Other issues currently holding up legislative adjournment are the Free Conference Committee deliberations over the so called sunset bills. Generally, the Senate voted in favor of continuing the existence of the agencies subject to the sunset review and the House voted to either terminate them or modify their statutes. This different philosophy will have to be ironed out in Free Conference. In addition, the capital improvement budget must be completed by the House and Senate Free Conference Committee on the Budget; a Northwest pipeline project resolution authorizing further interim studies of specific financing questions must be passed; the raw fish tax which passed the House must be concurred in by the Senate; the State lands disposal bill must be completed and last minute efforts are being initiated to complete a proposed bill to at least establish the management structure for the Permanent Fund. Furthermore, the House and Senate leadership are at loggerheads over the state employee pay raise bills currently pending in the Senate Finance Committee. The House wants to pass them and the Senate wants to use the 30 million dollars for other projects.

★ ★ ★

The Court System budget has been reviewed by the Free Conference Committee and is basically a maintenance budget. It is unlikely that the additional Superior Court Judge for Anchorage will be approved by the Legislature this session, although the Kotzebue Superior Court post was authorized. The Judicial pay raise bill is currently lodged in the Senate along with all of the other state employee pay raises.

Resolutions Received

Petitions have been received for the introduction of several resolutions at the annual business meeting of the Alaska Bar Association to be held in Sitka on June 7, 1979. Members of the Bar Association will be asked to consider the following resolutions:

—a resolution that the Alaska Bar Association endorse INAX as the Bar-sponsored malpractice carrier for attorneys practicing law in Alaska;

—that meetings of Alaska Legal Services be published in the same manner and with the same notice required of the Alaska Bar Association;

—that legislation be introduced to amend the Alaska Legal Services Corporation Act to provide that no divorce or personal bankruptcy case be rejected by personnel of Alaska Legal Services if the person applying for legal representation is eligible for their services;

—that the Alaska Bar Association institute a prepaid legal services plan;

—that the Alaska Bar Association institute a cooperative buying association for the benefit of its members;

—that Bar dues for persons admitted less than 5 years be $150; and

—that the license to practice law in Alaska be conditioned on completion of 15 hours of Continuing Legal Education.

Letters

[continued from page 4]

the exclusionary rule. Ed should be given a short course in the background and reasons for excluding evidence which is unlawfully obtained. In the '20s and '30s the common method of obtaining confessions from persons suspected of crime in many cities, particularly New York and Chicago, was to beat the confession out of them. As one High Commissioner to India noted, "It is far easier to sit in the shade rubbing pepper into some poor devil's eyes than it is to be out in the hot sun gathering evidence." Senator Dankworth may not be aware, in any event, that the Nixon Supreme Court has been punching holes in the exclusionary rule for several years. **Stone v. Powell** has eliminated that application of the rule in habeas corpus cases, so that a state trial court can ignore the rule and you will get no relief in the federal court on your writ. **428 U.S. 465. Schecklolth v. Bustamonte** put the official stamp of approval on the vast number of dubious "oral consents" allegedly uttered in search cases, wiping out dozens of well-reasoned contrary cases in the courts of appeal, particularly the Ninth Circuit. **412 U.S. 218.** There are others. After examining the alternatives, the courts have concluded that the only way to limit such police misconduct is to make it unprofitable by excluding the evidence.

The Chief Justice, among others, used to claim that the exclusionary rule is unnecessary because the victim of the illegality can sue the police. However, the Supreme Court pretty well eliminated such suits in **Rizzo v. Good, 432 U.S. 362.** Perhaps **Bob Ziegler** can shape Ed up.

Wendall Kay
Arizona State University
College of Law
Tempe, Arizona 85281

Dear Rag:

Websters defines specter as any object of fear or dread. **Mr. Jarvi** suggests that the inquiry by the federal government as to bar association violations of federal trade law is therefore to be feared and dreaded.

This investigation however has been "in the wings" for several years now and is most certainly deserved under our present laws. One who has nothing to hide need not fear any inquiry. I am one attorney that not only supports publicly responding in full to that questionnaire but also the separation of the bar association from the judicial branch of government.

"Fear of Feds" is of course understandable and for many Alaskans myself included, loathing can be tacked thereon, but perhaps the best way to discourage Federal meddling is to show uncle that our laundry is clean. And it certainly wouldn't hurt the Bar's PR to make public what we are doing to ensure that there are no unfair trade practices happening.

However, if it's not the show and tell that is upsetting but the fact that the Feds have their hands in our pants again, perhaps it is time that we declared a breach in our contract with uncle, uphold our State Constitution, and secede from the Union.

I would rather see my dues spent answering the questionnaire or seceding from the Union than blowing them fighting a losing battle over whether or not lawyers are immune from laws preventing the public from being bilked.

The attitude exemplified by Mr. Jarvi's article is disgraceful and I believe it would be edifying to the public to have it published in the Anchorage *News* or *Times*.

Sincerely yours,
Marc Grober
805 W. Third Ave.
Anchorage, AK 99501

Coming Events

May 10—Institute on the New Rules of Evidence, Juneau.

May 11—Institute on the New Rules of Evidence, Anchorage.

May 12—Institute on the New Rules of Evidence, Fairbanks.

May 17-19—Meeting of the Board of Governors, Anchorage.

June 1—Institute on Basic Estate Planning, Ketchikan.

June 2—Institute on Basic Estate Planning, Anchorage.

June 4-6—Meeting of the Board of Governors, Sitka.

June 6-9—Annual Meeting, Alaska Bar Association, Sitka.

Sept. 8—Institute on the New Bankruptcy Act, Anchorage.

Sept. 21—Stress Workshop, Anchorage.

Sept. 28—Institute on the Alaska Lien Law, Anchorage.

Oct. 12—Institute on the Alaska Lien Law, Fairbanks.

"Random Potshots"

By John Havelock

"Statutory Gripes"

State legislative leaders engage in weekly breast-beating extolling Alaskan hire, throwing themselves with postured abandon at constitutional ramparts.

Legislation may have already passed at the time of this printing which will send the cost of state government soaring by millions of dollars without bringing a murmur of protest in the community. By increasing the already substantial bidding preference granted to Alaskan concerns, the cost of the state's enormous purchasing requirements will be jacked up again, needlessly, all in the name of Alaskan pride and prejudice.

Rooms full of supposedly educated men and women have been known to nod affirmatively to the exhortation that Alaska be kept for Alaskans, without blushing. In short, there is no more a jingoist people under the American flag.

A Profitable Monopoly

Yet this cultural and economic chauvinism appears to present no obstacle to a small firm in far away Virginia that enjoys a profitable Alaskan monopoly over essential goods and services in the state. Not a single item or component of this product is manufactured in the state. Not a single employee of this enterprise is stationed within the boundaries of Alaska. As is generally the case with monopolies, the product of this enterprise is widely complained of among its principal users for inadequacies real or imagined. Strange to say these complaints make up one of the most influential groups in the state yet their objections fall on deaf ears.

Lawyer readers will ruefully recognize the **Michie Company**, publisher of the Alaska Statutes, which has now enjoyed a state-granted monopoly, free of competition in price or service, for seventeen years, under the specific patronage of the legislature, with no end in sight.

Yes, Virginia

Virginia is assuredly the last refuge of true gentlemen. For the pace at which Alaska Statutes are reduced to form for the compilation is indeed gentlemanly. One suspects that out of respect for tradition, legislative enactments are tied with ribbons and sealing wax and dispatched in a leather pouch aboard clipper ships around the Horn to Charlottesville, there to be labored over by scriveners with quill pens in the cooler hours of the evening before the lead is poured and the print run for a return to Alaska by the same method.

Know Alaska

In a knowledge based society, speedy and extensive access to legislative enactments, Supreme Court annotations, internal cross-references and external references such as administrative interpretations is essential. Looking to future needs, we should be developing a linkage between the statutes and electronic data retrieval systems that is accessible to the average practitioner. Instead, we are struggling with a system which scarcely leaves the researcher beyond where he would be with a copy of enrolled bills. Adequate cross-coding between statutes and regulations such as the Alaska Administrative Code is a must to the contemporary practitioner. Interpretative memoranda of the Attorney General and the Legislative Council, cross referencing to federal statutes and the borrowed statutes of other states, the inclusion of federal laws of special applicability to Alaska and the interpretive gloss on those statutes given by administrative decisions and solicitor's

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Tax Committee Reports

In late 1978, the Board of Governors of the Alaska Bar Association approved the formation of a Taxation Committee, and appointed the initial membership of the committee. Subsequently, on January 18, 1979, the Taxation Committee held its organizational meeting. The membership discussed the goals of the committee, and created the following subcommittees:

(1) **Legislative Subcommittee.** The four members of this committee (representing Anchorage, Fairbanks and Juneau) will attempt to keep a constant monitoring upon tax and tax-related legislation which is before the legislature. The Committee intends to review such legislation, and where appropriate, make recommendations to the legislature. In addition, we plan to recommend needed legislation in the tax area. We will work with the Taxation Committee of the CPA Society, and propose unified legislation recommendations, where possible. **George Goerig** and **Ralph Duerre** are Co-Chairmen of this subcommittee, and the other members are **Franklin Fleeks** and **Steve Pearson.**

In April, the Taxation Committee met and discussed tax legislation pending before the legislature in Juneau. The committee's conclusions and the recommendations were subsequently drafted and sent to the Chairman of the Senate and House Finance Committees.

(2) **New Tax Law Developments Subcommittee.** The purpose of this subcommittee is to monitor new developments in the area of state taxation. This subcommittee will bring such developments before the Taxation Committee for general discussion. In addition, this subcommittee will coordinate the preparation of monthly tax articles which will be published in the *Bar Rag*. The purpose of the articles is to provide practical, useful tax information to the members of the Bar. **William Van Doren** and **Bernard J. Dougherty** are Co-Chairmen of this subcommittee, and all of the members of the Taxation Committee will work upon the projects of this subcommittee.

(3) **Continuing Education and Public Education Subcommittee.** This subcommittee will coordinate, organize and assist the presentation of continuing education programs in the field of taxation. In addition, this subcommittee will provide organization and personnel for this presentation of programs to the public relating to taxation matters. **Peter Ginder** is the Chairman of this subcommittee, and **Stanley Reitman** and **David Shaftel** are also members.

In addition to the above subcommittees, **Stanley Reitman** has agreed to serve as liason between the Tax Committee and the CPA Society, and has agreed to be the Law Library Resources representative.

The Taxation Committee has monthly meetings on the second Friday of each month at the conference room of **Cole, Hartig, Rhodes, Norman & Mahoney.**

Coastal Seminar Announced

A one day seminar on the implementation of the Coastal Zone Management Act in Alaska will be presented on Saturday, May 19, 1979 from 9 a.m. to 4 p.m. on the University of Alaska's Anchorage campus. This program is a joint presentation of the Environmental Law Committee of the Alaska Bar Association and the University of Alaska's Planning Program of the Department of Business and Public Affairs.

The committee has designed a seminar which brings together representatives of all the groups which will be affected by the implementation of the Act. Speakers will include **Jon Tillinghast**, Asst. Attorney General, Juneau, **Wayne Pinchon**, Coastal Zone Management Coordinator, U.S. Fish and Wildlife Service, Anchorage, **Roger Beers**, Natural Resources Defense Counsel, San Francisco, California and **Francis A. Ulmer**, Director, Division of Policy Development & Planning Office of the Governor, and co-chairman of Coastal Policy Council. The speakers and panelists are each knowledgeable representatives of particular points of view that are expected to influence the decision making process under the Coastal Zone Management Act. Each participant is actively involved in the policy formulation process under the Act, and will share his or her experience with those attending the seminar.

Advanced registration may be obtained by contacting **Jane M. Pearia**, 190 Muldoon, Suite "C", Anchorage, Alaska, 99504, Telephone 333-5588. The cost of the seminar is $20.00 or $10.00 for students. Late registration will begin at 8:30 a.m. at room 188 of the Consortium Library on the University of Alaska campus in Anchorage.

Dept. of Justice Has Computer

JURIS, a legal research computer terminal was installed in the law library of the United States Attorney's office in Anchorage in January. According to **Richard Kibby**, Assistant U.S. Attorney, this research aid was originally to be used by various divisions of the Dept. of Justice in d-2 lands cases, but now is routinely employed for a wide variety of legal research functions.

The system contains all Federal case law from 1960 and U.S. Supreme Court opinions from 1900 in full text. It also has the West Key number headnotes for all states from 1967. Searching is done by asking the computer to locate cases containing given words or combinations of terms. Searches may also be limited to certain jurisdictions and names of judges may also be search words. It is estimated that use of the computer terminal cuts research time by 75 percent.

Although JURIS is presently available only to members of the Dept. of Justice and the U.S. District Court, other Federal agencies have expressed interest in its use. The terminal will be located in the new Federal Building in Anchorage when the U.S. Attorney's office moves there.

Computer

[continued from page 2]

available in Alaska without travel or manual research.

The **Comp.LEX** staff are busy preparing a "mail-out" to all members of the Alaska Bar Association and any other persons that might be interested. This mail-out will provide the necessary information about contracting, receiving the brief training, or using the terminal only occasionaly. **Comp.LEX** plans to offer complete law research services, legal writing and a word processing facility in the near future.

With both **WESTLAW** and the other many national libraries available through the **Comp.LEX** terminal, close to the Law Library and the State Court building, Alaska attorneys will have an invaluable research tool near at hand. The terminal's time and money saving features will be appreciated by many. The staff at **Comp.LEX** will be glad to hear from all interested parties. Why not drop them a line? As of May 15, **Comp. LEX** will be receiving mail at Suite 205, 360 K St., 99501.

Potshots

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opinions are essential tools to the lawyer's work.

Hope and Faith

In his 1962 preface the Publisher promised "copious references" which "will serve to tie together the kindred portions of the Statutes." "It is our hope and belief" said Vice-President Dublett, "that these annotations are both exhaustive and accurate." How many Alaska lawyers would join in that expression of faith today?

Apart from necessary access by lawyers and judges, a law driven society cannot afford to shut off laymen from access to special parts of the law of concern to them. Criminal codes, commercial codes, laws relating to corporations, laws relating to consumer protection, laws relating to the organization of state government, these and dozens of other specific areas of the law need to be separately packaged and published for local users.

The full exploration of the publishing necessities and potentials with respect to Alaska law making simply cannot be met by an organization not attuned to the existing political and economic structure of the state.

Serious consideration should be given, considering the growth of the state and changes in technology, printing and communications to bringing this enterprise up to date, at home.

Charity

Even if it proves undesirable to shift from Michie, a serious review of the publisher's effort in maintaining the statutes and its distributional practices should be undertaken

Loss of Zip

It is absurd that pamphlet replacements are not available within the boundaries of the state. The volumes should be coordinated with a workable advance sheet system on legislation and judicial opinion. Likewise, there is no excuse for having to wait weeks for a new set of volumes from the time of ordering. Lawyers owning a set with any maturity will find that the metal grips have lost their zip and the binders jam or fall apart unexpectedly. The index tabs are split. The covers pop from unanticipated pamphlet loads.

No doubt the gentlemen at Michie make a professional effort. However, a lot has changed in Alaska since that contract was first let. Both the needs and capabilities of the state's legal community have changed substantially.

Overdue Review

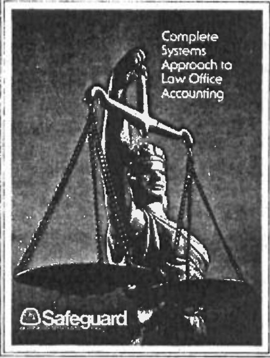
The performance of the Michie Company under its contract has never been reviewed by a disinterested body of users. Such a review is long overdue. The system of knowledge transfer in law from law making to law use in this state has not been examined in close to twenty years.

If the publishing of the Alaska Statutes was brought home it would doubtless spawn a variety of subsidiary legal publishing ventures which would improve the access of the Bar and the public to legal information. One has in mind, for instance, the needs of the several hundred lawyers and laymen who now use the Alaska Native Claims Settlement Act in their daily practice. With a major contract to meet the overhead, one could hope that a small but brisk trade could be begun in Alaska in publications encompassing less than the whole thing.

CLE pamphlets for probate, trial practice, collections, etc., would be very helpful and would likely be forthcoming if we had someone in the state hustling to expand his business.

Gloomy Note

Closing on a gloomy note, there are an increasing number of hungry young lawyers in the state now who would be willing to work at relatively low rates in producing a more extensive and useful product.



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Committee Recommends INAX

After a year of study of the current availability and cost of malpractice insurance in Alaska including the Norman proposal for Bar Association self insurance, the Self-Risk Management Committee comprised of **Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ron Kull** and **Donna Willard** unanimously recommends that INAX be sponsored by the Bar Association as the Bar-endorsed malpractice carrier for Alaskan attorneys. Committee recommendation is based upon the following nine factors which the committee considered to be weighted in favor of the INAX proposal:

1. INAX covers paralegals, investigators, abstractors and law clerks at no additional charge to the policyholder, but they are not named insureds.
2. INAX coverage includes libel, slander and malicious prosecution claims.
3. Under the INAX policy, defense costs are paid in addition to coverage limits and are not deducted from liability limits.
4. INAX liability coverage is available in Alaska up to a 5 million dollar limit.
5. Under the INAX policy, if the policyholder does not agree to a settlement offer that is less than its policy limits, the company does not limit its liability to the amount for which the claim(s) could have been settled. It continues to defend. Additional defense costs will be paid by the company on a pro rata basis, but future settlement or judgment will be paid up to policy limits.
6. The INAX-furnished defense is not withdrawn should policy limits be exceeded but the company continues to defend and pays its pro rata share of expenses if liability limits are exceeded.
7. For the attorney who has been in practice with two or more years of prior acts exposure, the premium rate is less. The premium for zero or one year of prior acts exposure is greater under the INAX policy, but the committee weighted the cost break given to the more experienced attorney as affecting more members of the Association. Thus, the premium structure of the INAX policy was considered more favorable to most of the members.
8. INAX has recognized the value of and need for a loss prevention program in those areas where most claims arise. Thus it has developed and provides, at no cost to the Association or to the policyholder, an in-house loss prevention program which includes two annual CLE seminars with expert speakers, films, video and brochures.
9. INAX will select an in-state adjustor to develop knowledge and expertise in handling attorney malpractice claims.

The committee recommends INAX realizing that INAX did not have as favorable provisions as National Union Fire in three areas. INAX does require that the policyholder deductible be paid for each occurence which results in claims made in one policy period. National Union Fire requires only one deductible per policy period regardless of the number of occurences which gives rise to claims. Loss data indicates very few attorneys have more than one occurence per policy period that results in malpractice claims.

INAX does not have as favorable an extended reporting endorsement or tail available in that it only provides an unlimited tail for 225 percent of the last annual premium due 30 days after termination of the policy. National Union Fire provides the same unlimited tail at the same premium rate, but also provides an optional three year and six year tail at reduced charges. The National Union tail premium can also be paid in installments.

Finally, INAX does not provide discounts for CLE as does National Union Fire. However, the committee determined that the CLE discount offered may be of limited value to many of the members because it requires the individual attorney to first pay at least a $1,000 annual premium before the discount is applicable.

The committee evaluation of the Norman self-insurance proposal is reported elsewhere in this issue of the *Bar Rag*.

Loss Control Program to be Considered

A mandatory feature of the Norman self-insurance proposal is a loss prevention program to attempt to prevent malpractice claims. The program is based upon the fact that the number, scope and cost of attorney malpractice suits in Alaska have doubled in the past five years. The resultant high damages paid have resulted in insurance carriers withdrawing or limiting their coverages; lawyers paying higher premiums or going bare; and the Bar Association attempting to find solutions to the underlying causes.

In order to effectuate a self-insurance program which can aid in loss prevention, the Self-Risk Management Committee recommends the following:

1. Mandatory reporting of all claims to the Bar Association office in order that the type of claims being alleged can be known for use in planning CLE seminars.
2. Because the majority of claims are made regarding errors or omissions in law office management, a rule change be proposed to the Supreme Court requiring each active practitioner to attend six hours of law office management CLE in a three year period. A bylaw change should be passed by the Board of Governors mandating that the Association present six hours of such CLE every year rotating the program between districts two and four, district three and district one.
3. The Board of Governors enact

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Loss Prevention Program Proposed

A mandatory feature of the Norman self-insurance proposal is a loss control program to attempt to control the scope and severity of malpractice claims once an act or omission has occured but which act or omission may potentially be controlled to lessen or eliminate the damage to the client.

In order to effectuate a self-insurance program which can aid in loss control once an attorney is aware of a potential malpractice problem, the Self-Risk Management Committee recommends the following:

1. Because many malpractice claims may be capable of repair before reaching the lawsuit stage, the Board of Governors should propose a rule to the Supreme Court requiring attorneys to report possible claims to the Association as soon as the lawyer reasonably foresees a potential claim.
2. The Board of Governors should create a standing claims repair committee to which three lawyers are appointed to serve staggered terms of three years each. The committee should function as follows:
   A. The lawyer gives notice of a potential claim to the insurer and to the committee which within five days selects a Repair Expert who has at least five years of experience in the area of potential claim. Said expert's fees to be paid as defense costs from the Association Self-Insurance funds. Client disclosure must also be made.
   B. Within 20 days after his appointment, the Repair Expert takes whatever action, if any, is possible to repair the error or omission. Disclosure of all such activities must be made to the client.
   C. Neither members of the Repair Committee, the Repair Expert nor any member of their firms can represent any party if repair is not accomplished and a lawsuit results.
   D. The Bar Association indemnifies members of the Repair Committee and the Repair Expert should they be sued in any resultant lawsuit.
3. The Conciliation Panel procedures of new Bar Rule 16 should be developed to encourage discontented clients who have neither a fee dispute nor an ethical complaint to utilize the procedures to achieve resolutions of their complaints.

Self Insurance Is Not Recommended

Peter Norman, Risk Management Consultant hired by the Board of Governors, has made the following proposal to the Association recommending that it initiate a self-insurance malpractice program for Alaska attorneys. Norman's proposal requires mandatory participation by each attorney engaged in any form of private practice in the State of Alaska. Each attorney would be required to pay a flat fee per year of $480 to a group fund managed by the Bar Association or lose the license to practice law.

The fund would pay costs, defense fees and damages for malpractice claims between the limits of $2,501 and $25,000. The fund would also pay defense costs on all claims up to $100,000. The individual attorney would pay the first $2,500. For an additional $220, each attorney would be covered up to $100,000 liability limit with coverage obtained by the Bar Association from an insurance carrier. The carrier would also provide stop-gap coverage in the event that fund monies were exhausted during the policy year.

Attorneys that wanted more than $100,000 limits would need to secure the additional coverage from an insurance carrier. Prior acts would be covered up to the $100,000 limit. Upon retirement or appointment to the Bench, an attorney could purchase "tail" coverage for $100 per year for claims presented in the future for some act or omission during the policy period.

Participation Required

All attorneys licensed to practice law in Alaska would be required to participate in the program except government employed attorneys; corporation employed lawyers (this does not exempt professional corporations); public aid attorneys; and admitted attorneys not engaged in the private practice of law in Alaska. Exempted attorneys would be required to participate in the fund if they did any pro bono, family or friends' legal work, however.

The Bar Association would administer the fund, issue policies, bill for premiums, and investigate, adjust and otherwise handle the claims. The Association would also be responsible for either complying with the Alaska Insurance Code requirements or getting legislative exemption, in part or in whole, for its insurance program. If legislative exemption resulted in the insurance industry antitrust exemptions being non-applicable, the Association would also be responsible for complying with the state and federal antitrust laws. The tax exemption issues would also be the responsibility of the Association.

Norman's proposal also mandates aggressive loss prevention/loss control programs to be administered by the Bar Association. See articles elsewhere in this issue of the *Bar Rag* for an explanation of those two programs.

Norman suggests that there are several advantages to the members if the Board of Governors adopts his proposal. The primary advantage is Bar Association control over attorney malpractice problems in Alaska. Through the mandatory loss prevention and loss control programs, both the extent of and type of claims would be under the continuous scrutiny and management of the Association.

Coverage Always Available

A second advantage proposed by Norman is that minimum coverage of $25,000 would always be available to each privately practicing attorney

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Alaska Claims Follow National Trend

E & O claims against Alaska lawyers have followed three national trends. (1) The number of claims has drastically increased. (2) Majority of claims are based upon acts or omissions in meeting filing dates; ignoring statutes of limitations; or delayed advice to clients causing most of them. These claims are frequently classified as law office management problems. (3) Finally, damages paid in settlement or judgments have skyrocketed.

The major E & O carrier in Alaska for 1970-1975 was Mission Insurance Company. During that period Mission collected $152,637 and paid out $187,750 in claims and $26,623 in defense expenses for a loss ratio of 140 percent.

In 1974 six claims were made. The figures for 1975 when National Union Fire became the Bar-endorsed carrier reveal that eight claims were made. In 1976 eight claims were made. The number of claims made in 1977 and 1978 jumped to 12 each year. Through March, three claims have been reported to the Bar-endorsed carrier for 1979.

No E & O lawsuit against attorneys has been tried to date. Settlements range from dismissed for no dollars to over a quarter of a million dollars. Defense costs have ranged from less than 10 percent of the settlement figure to as high as 50 percent of the settlement paid. The majority of closed cases incurred defense costs of approximately 25 percent of the settlement amount.

For the years 1974 through 1978 at least nine claims were made alleging missed statute of limitations or other filing dates. A possible additional 13 claims may have alleged similar negligence. Research has revealed 44 known claims in the past five years. Additional claims may not be known because they were not listed on the questionnaires or not discovered because the coverage was placed through out-of-state brokers and written by international carriers not admitted to write in the State of Alaska.

DISCLAIMER

The informaion contained within the *Bar Rag* regarding coverage terms and premium costs is information furnished to the Self-Risk Management Committee by the named brokers and/or insurance carriers and/or Peter Norman. Each broker and carrier was given an opportunity to review information and to advise of errors or misrepresentations. The Bar Association, Board of Governors and committee members disclaim any and all responsibility for the accuracy of the information presented. The reader relies upon the information to his/her detriment at his/her own risk.

E & O Insurance Programs Compared

AREA COVERED	PRESENT BAR-ENDORSED AMERICAN HOME (NATIONAL UNION FIRE)	INAX	NORMAN
INSURED	Sole proprietors, partners of a partnership, stockholders or members of professional corporations or professional associations. Any lawyer who is an employee of the named insured. Any lawyer who was previously a named insured (other than sole proprietor) who terminated his relationship with the firm, but only for professional services rendered prior to termination. Changes in firm must be reported to company within 30 days. For additional charge, paralegals, law clerks, abstractors and investigators may be covered.	The named insured and predecessor firms; any partner, officer, director, stockholder, or employed lawyer of the named insured or lawyer who, during policy period becomes such: any former partner, officer, director, stockholder, or employed lawyer acting in his professional capacity on behalf of the named insured; the heirs, executors, administrators, and legal representatives of each insured in the event of death, incapacity, or bankruptcy. The lawyer is covered for acts or omissions of his non-attorney staff without additional charge; however, they are not "additional insureds."	Mandatory participation required as a condition to maintain an active license to practice law in Alaska except for the following: 1) Attorneys elected or employed exclusively on a full-time basis by a governmental entity. 2) Attorneys employed exclusively on a full-time basis by a public or private corporation, association or other business entity except for a professional corporation whose business is the practice of law. 3) Attorneys employed by legal aid services corporations who are eligible for professional liability insurance through the National Legal Aid and Defenders Association. 4) Attorneys not engaged either full-time or part-time in the private practice of law in Alaska.
COVERAGE	Covers claims arising out of acts or omissions of the insured and any other person for whom the insured is legally responsible for professional services rendered, or which should have been rendered in the insured's capacity as a lawyer. When the insured acts as a fiduciary, such services shall be deemed professional legal services but only to the extent that the insured would have been legally responsible in the usual attorney-client relationship as attorney for a fiduciary, except for any loss sustained by the insured as the beneficiary or distributee of any trust or estate. Libel, slander and malicious prosecution are excluded.	Claims first made against the defined insured for any act or omission in professional services rendered or which should have been rendered in the insured's capacity as a lawyer or Notary Public. When the insured acts in a fiduciary capacity, such services shall be deemed professional services but only to the extent that the insured would be legally responsible in the usual attorney/client relationship as attorney for a fiduciary except for any loss sustained by the insured as the beneficiary or distributee of any trust or estate. Claims for libel, slander and malicious prosecution (personal injury) arising out of the conduct of professional services of the insured as a lawyer or Notary Public.	Claims arising from any act or omission of the defined insured arising out of the performance or failure to perform professional services for others, in the insured's capacity as an attorney except that, the insured when acting in a fiduciary capacity, shall be covered only for acts or omissions in the usual attorney/client relationship. Unknown as to whether libel, slander and/or malicious prosecution are covered.
DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS	The company shall defend. Written consent of the insured before settlement. If the insured refuses to settle as recommended by the company and elects to contest the claim, company's liability shall not exceed the amount for which the company would have been liable at that time. Company shall not be obligated to pay any claim, claims expense, or continue defense after limits of liability have been exhausted. Claims expense included within limits of liability, and if limits are exhausted the company shall have the right to withdraw, tendering control of defense to the insured.	The company shall: defend even if suit is groundless, false, or fraudulent; make such investigation and negotiation as it deems expedient; but written consent of the insured is required before the company can settle a claim. If consent is refused, applicable policy limits are still available. Defense costs are payable in addition to the limit of liability, however, in the event of payment of a claim in excess of the limit, the company shall pay such proportion of claim expenses as the amount of the limit of liability bears to the total amount paid to dispose of the claim.	The Bar Association shall defend even if allegations are groundless, false or fraudulent; but the Bar Association may make such investigation and, with the consent of the insured, such settlement of any claim or suit as it deems expedient; if the insured and Bar Association fail to agree on whether settlement shall be made then such issue shall be decided by an arbitrator being a member of the Alaska Bar Association appointed by the Chief Justice of the Supreme Court of Alaska whose decision shall be binding. Total defense costs are deducted from first $25,000 layer including costs incurred for damages payable from $75,000 layer.
CLAIMS MADE FORM	Applies to acts or omissions if claim is first made during the policy period or extended reporting period. Claim is first made if: a) during the policy period or extended reporting period insured knows or becomes aware of a possible claim and gives written notice to the company; b) if payable claim is made, any additional claims brought subsequently to that policy year resulting from the same or related acts shall be considered part of the claim first made during the policy year. A claim is considered first made when company first receives notice.	Applies to acts or omissions if claim is first made during the policy period or extended reporting period. Claim is first made if: a) during the policy period or extended reporting period insured knows or becomes aware of a possible claim and gives written notice to the company; b) if payable claim is made, any additional claims brought subsequently to that policy year resulting from the same or related acts shall be considered part of the claim first made during the policy year. A claim is considered first made when company first receives notice.	Applies to claims first made during policy period if insured first knows or becomes aware of claim or possible claims and gives written notice to the Bar Association during such period.
PRIOR ACTS	Prior acts included if the insured did not know nor could have foreseen a possible claim before effective date of policy. If other valid and collectible insurance exists, this policy shall apply as excess with claims expense included in the limits of liability.	Prior acts covered if the insured had no knowledge, nor could have reasonably foreseen a possible claim before the beginning date of the policy when there is no other valid and collectible insurance applicable to the claim. If other valid and collectible insurance exists, this policy shall apply as excess.	Unlimited coverage if insured did not know and could not reasonably have foreseen claim prior to policy period and if no other insurance is applicable.
POLICY PERIOD	The period of time between the inception date and effective date of termination, expiration or cancellation of coverage, specifically excluding any extended reporting period.	The period from the effective date of the policy to the expiration date or earlier termination date, if any. Policies are issued for one year.	From the time when coverage has been effected through the Alaska Bar Association and for which a premium has been paid, until either the expiration date or until cancellation of coverage, whichever first occurs.
TERRITORY	Worldwide providing claim is made or suit is brought within the United States or Canada.	Worldwide.	Worldwide providing claim is made or suit is brought within the United States.

EXTENDED REPORTING ENDORSEMENT (TAIL)	In cases of cancellation or non-renewal by either the insured or the company, the insured may purchase an endorsement providing an unlimited extended reporting period for claims which occurred prior to the termination of the policy period but which are first made in the extended reporting period. The insured shall pay a premium equal to 225% of the last annual premium. A three year limited tail is available at 100% last annual premium. A six year limited tail is available at 150% last annual premium. Premiums may be paid in installment.	Unlimited extended reporting endorsement is available to the insured for 225% of the last annual premium in the event of cancellation or nonrenewal by the company of the insured. Covers claims which arise during the policy period but are reported during the extended reporting period. Payment of the additional premium is due within 30 days of the termination.	For an annual charge of $100 unlimited tail is available. Because coverage is mandatory for all active members of the Bar Association in full or part-time private practice, tail is available only to members who cease practicing law or change to judicial status.
LIMITS OF LIABILITY	Claims expenses are included within the limits of liability. All claims expenses shall first be subtracted from the limits of liability with the remainder being the amount available to pay money damages. The first limit is applicable to all claims and expenses arising out of the same or related professional services without regard to the number of claims. The aggregate limit is available for all claims made in a policy period. Deductible applies only once during policy period regardless of number of claims during same period.	Claims expenses are not deducted from limits of liability. The "aggregate" amount is limit for all claims made during each policy year or last policy year plus extended reporting endorsement if purchased regardless number of lawyers in firm. Deductible is subtracted from total amount of damages and claims expenses paid and company is liable only for difference. Deductible is applicable to each claim made during policy period regardless of number of claims made during same period.	$100,000 per occurrence includes $2,500 deductible and the $75,000 liability limit obtained by Bar Association from private insurance carrier for all damages arising out of all acts or omissions in connection with the same professional services regardless of the number of claims or claimants, and regardless of the number of certificates that have been issued to the partnership or corporation, its members or employees against who claim or claims are being made. Deductible is paid per claim.
CLAIMS EXPENSE	Fees charged by attorney(s) designated by the company. All other fees, costs, and expenses resulting from the investigation, adjustment, defense and appeal of claim if incurred by the company or by the insured with written consent of the company. Does not include salary charges of regular employees or officials of the company. Deductible applies to these expenses.	Legal expenses arising from the defense of any claim, including attorney's fees, arbitrator's fees, court costs, expert's fees, and costs incurred in connection with the attendance of witnesses at a trial or arbitration proceedings. The deductible applies to these expenses. The cost of investigation and adjustment of claims by salaried employees of the company (including attorneys) and fee adjustors shall be borne by the company.	All adjusting costs and fees, defense costs and fees are borne by the self-insurance fund of the Bar Association.
EXCLUSIONS	1. Criminal or malicious acts. 2. Deliberate, dishonest or fraudulent acts. 3. Employer's claim against salaried employee. 4. Bodily injury or property damage. 5. Insured's activities as officer, director of any employee trust, charitable organization, corporation, company or business other than that of the named insured. 6. Punitive or exemplary damages. 7. Claim arising out of any other business enterprise owned, controlled or managed by the insured, including property. 8. Prior acts if the insured knew or could have reasonably foreseen a possible claim before effective date of policy. 9. Standard Nuclear Energy Liability Exclusion. 10. Libel, slander and malicious prosecution.	1. Criminal, or malicious acts. 2. Deliberate, dishonest or fraudulent acts. 3. Claims arising out of any other business enterprise owned, controlled or managed by the insured including property. 4. Insured's activities solely as a partner, officer, director, or stockholder of any firm or corporation not named in the declarations. 5. Bodily injury, sickness, disease, death or property damage. 6. Insured's activities as a public official or as an employee of a governmental body, subdivision, or agency thereof. 7. Standard Nuclear Energy Liability exclusion. 8. To discrimination by the insured on the basis of race, creed, age, or sex. 9. Lawyers who practice patent/copywrite law for over 51% of total practice. 10. Lawyers who practice entertainment law for over 16% of total practice. 11. Lawyers who practice title/abstracting law for over 76% of total practice. 12. Punitive damages are not specifically excluded, but all intentional acts are excluded which may lead to coverage questions.	1) Any dishonest, fraudulent, criminal or malicious act or omission of any insured. 2) To any claim made by an employer against an insured who is a salaried employee of such employer. 3) Bodily injury to, or sickness, disease or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; unless arising out of the performance of professional services, which is covered hereunder. 4) Acts or omissions committed prior to the policy period if the insured on the effective date of this policy had knowledge that such acts or omissions might be expected to be the basis of a claim or suit. 5) Conduct of any business enterprise owned by the insured or in which the insured is a partner, or which is controlled, operated or managed by the insured, either individually or in a fiduciary capacity, including the ownership, maintenance or use of any property in connection therewith. 6) Any punitive or exemplary damages.
WAIVER OF EXCLUSION AND BREACH OF CONDITIONS	Coverage is provided for the "innocent partner." If a dishonest, fraudulent, malicious or criminal act is committed without the personal knowledge or personal acquiescence of other named insureds or personal passivity after acquiring such knowledge. Coverage is also provided to the "innocent partner" relating to the giving of notice to the company with respect to which any other insured is in default. After receiving knowledge, the insured will comply with such condition promptly.	Coverage is provided for the "innocent partner." If a dishonest, fraudulent, malicious or criminal act is committed without the personal knowledge or personal acquiescence of other named insureds or personal passivity after acquiring such knowledge. Coverage is also provided to the "innocent partner" relating to the giving of notice to the company with respect to which any other insured is in default. After receiving knowledge, the insured will comply with such condition promptly.	Coverage is provided for the "innocent partner." If a dishonest, fraudulent, malicious or criminal act is committed without the personal knowledge or personal acquiescence of other named insureds or personal passivity after acquiring such knowledge. Coverage is also provided to the "innocent partner" relating to the giving of notice to the company with respect to which any other insured is in default. After receiving knowledge, the insured will comply with such condition promptly.
OTHER INSURANCE	If the insured has other applicable insurance, the company shall respond pro rata. With respect to prior acts coverage, the insurance will only apply as excess over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limits of this policy exceeds the sum of applicable limits of all other insurance. If this policy is treated as excess, any claims expense allowed shall be included in the limit of liability.	With respect to prior acts coverage, the insurance will only apply as excess over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limits of this policy exceeds the sum of applicable limits of all other insurance.	If the insured has other insurance against a loss covered by this policy, except insurance specifically arranged to apply as excess over the insurance provided by this policy, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance and shall not be called upon in contribution.
CONFORMANCE TO STATE STATUTES	No such provision.	Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.	Terms of this policy in conflict with Alaska Statutes are hereby amended to conform to such statutes.
MAXIMUM LIMITS AVAILABLE	$1,000,000/$1,000,000	$5,000,000/$5,000,000	$100,000/$100,000

[continued on page 10]

NOTICE OF CLAIM OR SUIT	As soon as the insured becomes aware of any act or omission which would reasonably be expected to be the basis of a claim or suit covered by the policy, written notice shall be given to the company as soon as practicable together with the fullest information obtainable. If claim is made or suit is brought, all documents shall immediately be forwarded to the company. If during the policy period or the extended reporting period, the company receives written notice of any act or omission which could be expected to give rise to a claim, any claim which subsequently arises shall be considered to be a claim reported during the policy year when written notice was received.	During the policy period or the extended discovery period, the company shall be given written notice of any act, error or omission which could reasonably be expected to give rise to a claim against the insured under this policy. Any claim which subsequently arises out of such act, error or omission shall be considered to be a claim reported during the policy year or extended discovery period in which the written notice was received.	Upon the insured or the named insured becoming aware of any act or omission which might reasonably be expected to be the basis of a claim or suit covered herein, written notice shall be given by or on behalf of the insured to the Bar Association as soon as practicable. If claim is made or suit is brought against the insured, the insured shall immediately forward to the Bar Association every demand, notice, summons or other process received by him or his representative.
ASSISTANCE AND CO-OPERATION OF THE INSURED	The insured shall cooperate with the company and upon request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any insured who may be liable to the insured. The insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.	The insured shall cooperate with the company and upon request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any insured who may be liable to the insured. The insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.	The insured shall cooperate with the Bar Association and, upon the Association's request assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee or any insurer who may be liable to the insured because of acts or omissions with respect to whom insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expenses.
SUBROGATIONS	The company shall be subrogated to all the insured's rights of recovery against any person or organization other than an employee of an insured. The insured shall assist however necessary to secure such rights and do nothing after the loss to prejudice them.	The company shall be subrogated to all the insured's rights of recovery against any person or organization other than an employee of an insured. The insured shall assist however necessary to secure such rights and do nothing after the loss to prejudice them.	In the event of any payment under this policy, the Bar Association shall be subrogated to all insured's rights of recovery therefore against any person or organization other than (i) an employee of any insured, (ii) an employee or member of any insured partnership, (iii) any corporation or an employee or member of any corporation owned by the insured but only with respect to services in connection with the practice of law, and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.
ASSIGNMENT	The interest hereunder of any insured is not assignable. If the insured shall die or be adjudged incompetent, this policy shall cover the insured's legal representative.	The interest of the insured shall not be assignable. In the event of the death or incompetency of the insured, this policy shall cover the insured's legal representative as an insured as respects any liability previously incurred and covered by this policy.	The interest hereunder of any insured is not assignable. If the insured shall die, be adjudged incapable of managing his affairs or become bankrupt or insolvent, this policy shall cover the insured's legal representative as an insured with respect to acts or omissions covered by this policy. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurer of any of its obligations hereunder.
CANCELLATION	The insured may cancel by surrendering the policy or by giving written notice stating when cancellation should be effective. Return premium shall be computed short rate. The company must give 30 day written notice of cancellation. Return premium shall be computed pro rata.	The insured may cancel by surrendering the policy or by giving written notice stating when cancellation should be effective. Return premium shall be computed short rate. The company must give 30 day written notice of cancellation. Return premium shall be computed pro rata.	First $25,000 level of insurance through the Bar Association is mandatory and exclusive. Cancellation by individual member and/or Bar Association not permitted. Second level of insurance covering claims in excess of $25,000 up to $100,000 limit will be subject to cancellation by carrier and/or Bar Association as per terms of the agreement entered into.
CLE DISCOUNTS	5% if premium in excess of $1,000 or individual participates in Bar Approved CLE. 10% if premium in excess of $1,000 and individual participates in Bar Approved CLE. 15% if premium in excess of $5,000 and 50% or more of firm members participate in Bar Approved CLE.	None.	None.
LOSS PREVENTION PROGRAM	None.	In-house loss prevention program which provides at least two law office management seminars per year at company expense. Program includes expert speakers, video and brochures. Mandatory participation by Association; does not require attendance by policy holders however.	Mandatory loss prevention and loss control programs both as explained elsewhere in Bar Rag this issue.
RULE 82 ATTORNEY FEES	Covered by policy. No endorsement necessary.	Covered by policy. No endorsement necessary.	Unknown.
BROKER	Clary Insurance Agency.	Dougan, Eader, Reynolds, and Wheller	None selected to date.

E & O Insurance Premium Information

AMERICAN HOME PRESENT PREMIUMS

Deductible	Limit	No Prior Exposure	1 Year Prior Exposure	2 Years Prior Exposure	3 Years Prior Exposure	4 Years Prior Exposure	5 years or more Prior Exposure
- 0 -	100,000/ 300,000	400	540	630	720	810	900
1,000		320	432	504	576	648	720
2,500		300	378	441	504	567	630
10,000		260	351	410	468	527	585
25,000		200	270	315	360	405	450
50,000		160	216	252	288	324	360
100,000		80	108	126	144	162	180
- 0 -	200,000/ 600,000	500	675	788	900	1013	1125
1,000		420	567	662	756	851	945
2,500		400	540	630	720	810	900
5,000		380	513	599	684	770	855
10,000		360	486	567	648	729	810
25,000		300	405	473	540	608	675
50,000		260	351	410	468	527	585
100,000		180	243	284	324	365	405
- 0 -	500,000/ 500,000	600	810	945	1080	1215	1350
1,000		520	702	819	936	1053	1170
2,500		500	675	788	900	1013	1125
5,000		480	648	756	864	972	1080
10,000		460	621	725	828	932	1035
25,000		400	540	630	720	810	900
50,000		360	486	567	648	729	810
100,000		280	378	441	504	567	630
- 0 -	1 million/ 1 million	700	945	1103	1260	1418	1575
1,000		620	837	977	1116	1256	1395
2,500		600	810	945	1080	1215	1350
5,000		580	783	914	1044	1175	1305
10,000		560	756	882	1008	1134	1260
25,000		500	675	788	900	1013	1125
50,000		460	621	725	820	932	1035
100,000		380	513	599	684	770	855

1) No surcharges applied to any type practice.

2) CLE deduction: Deduct 5% if premium over $1000 or individual participates in CLE
Deduct 10% if premium over $1000 and individual participates in CLE
Deduct 15% if premium over $5000 and at least 50% of firm participates in CLE.

3) To cover paralegals, law clerks, abstractors and investigators, add 50% of lawyers' average annual rate to total firm rate. (e.g. in a ten person firm, take average years of experience of lawyers, find premium rate applicable to that experience and add 50% of that charge to total firm premium.)

4) Broker has binding authority unless applicant has had three or more claims in five years of practice.

5) Company requires that coverage under one policy be purchased for all attorneys who share space, staff and/or otherwise give appearances of an existing partnership.

INAX PROPOSED PREMIUMS **

Deductible *	Limit	No Prior Exposure	1 Year Prior Exposure	2 Years Prior Acts Exposure	3 Years Prior Exposure	4 Years Prior Exposure	5 Years or More Prior Exposure
$1000 (Minimum)	100,000/ 100,000	400 (Base)	440	480	520	560	600
	250,000/ 250,000	560	600	640	680	720	760
	500,000/ 500,000	640	680	720	760	800	840
	1,000,000/ 1,000,000	720	760	800	840	880	920
	2,000,000/ 2,000,000	1008	1048	1088	1128	1168	1208
	3,000,000/ 3,000,000	1188	1228	1268	1308	1348	1388
	4,000,000/ 4,000,000	1332	1372	1412	1452	1492	1532
	5,000,000/ 5,000,000	1440	1480	1520	1560	1600	1640

* For $2500 deductible subtract $40 from the rate applicable to the number of years in practice and the limits wanted.
For $5000 deductible subtract $60 from the rate applicable to the number of years in practice and the limits wanted.
For $10000 deductible subtract $80 from the rate applicable to the number of years in practice and the limits wanted.
For $25000 and higher, application must be submitted to underwriters for rate determination.

** Surcharges on some types of practice

1. BI-Plaintiff: if 50 to 75% of total practice add $60 to applicable rate.
   BI-Plaintiff: if 76 to 100% of total practice add $100 to applicable rate.
2. Patent/Copywrite: if 25 to 50% of total practice add $100 to applicable rate (if more, coverage unavailable).
3. Real Estate: if 50 to 75% of total practice add $60 to applicable rate.
   Real Estate: if 76 to 100% of total practice add $100 to applicable rate.
4. Entertainment: if 1 to 15% of total practice add $40 to applicable rate (if more, coverage unavailable).
5. Title/Abstracting: if 50 to 75% add $100 to applicable rate (if more, coverage unavailable).
6. SEC: Submit to underwriting because modification factors will vary depending on nature of practice.
7. $200 is maximum amount that can be added to applicable rate regardless of number of modification factors applicable to applicant.

Deductions possible:

1. If using a computorized system of docket control deduct $60 from applicable rate.
2. If law firm has over 25 lawyers $80 deduction from applicable rate may be available depending on length of establishment, loss experience and type of practice.

1. Paralegals, law clerks and secretarial staff are covered without additional charge.
2. Broker has binding authority unless applicant has SEC practice.
3. Company requires that coverage under one policy be purchased for all attorneys who share space, staff and/or otherwise give appearance of an existing partnership.

ALASKA BAR ASSOCIATION SELF-INSURANCE PREMIUMS

Deductible	Limit	Premium regardless of years in practice or prior claims
$2500	100,000/100,000 *	$700) full-time or part-time private practice)) ($220 paid to insurance carrier; $480 paid to Bar Association))

* Of this limit, the individual attorney is responsible for $2,500 payable for claims and/or expenses.

the Alaska Bar Association is responsible for $22,500 payable for claims and/or expenses.

an insurance carrier will be responsible for $75,000 payable for claims and for stop-gap re-insurance for the Bar Association fund.

1) At inception, no surcharge is added for prior claims, type of practice or law clerks, secretarial staff or paralegals.

Self Insurance Not Recommended

[continued from page 7]

in Alaska thereby eliminating the risk that any attorney would need to be without malpractice insurance either because the cost was too great or carriers refused to write coverage in Alaska for that attorney.

Finally, Norman points to an annual premium of $700 per year per attorney for $100,000 coverage as a lower cost policy than what is available from the insurance carriers willing to write $100,000 levels of coverage in Alaska for attorneys.

After spending a year studying the current malpractice insurance market and the Norman self-insurance proposal, the Self-Risk Management Committee is unanimous in not recommending that the Alaska Bar Association self insure its members for malpractice claims. The committee, comprised of **Keith Brown, Charles Flynn, Roger Holmes, Karen Hunt, Ken Jarvi, Ron Kull and Donna Willard,** found the following factors weighed against recommendation that the Bar adopt the Norman self-insurance program.

The program would have to be mandatory and exclusive malpractice coverage which would require that every member of the Bar Association who did any private practice for friends, family, etc, would have to pay a premium and participate in the Fund.

The program would require the Bar Association to purchase a group deductible policy of $25,000 per member from an insurance carrier. Oregon, with a membership of over 5,000 lawyers, has been unable to purchase such coverage although it has a group deductible of $100,000.

Although the Association Fund would operate on the one hand as a group deductible in relationship to an insurance carrier, on the other hand the Bar Association would become an insurance carrier itself for the first $25,000 of coverage thereby requiring it to either meet the minimum one million dollar capitalization requirement of the Insurance Code or to get statutory exemption from the Legislature.

Statutory Exemption

If statutory exemption were granted to the Bar Association by the Legislature, depending upon the scope of the exemption, the Fund could be subject to antitrust considerations. Because insurance companies are regulated by the insurance codes, they are exempt from antitrust legislation. If it is exempted from insurance code regulations, the Association becomes exposed to antitrust determinations particularly because to be economically feasible, the Fund must be mandatory and exclusive malpractice coverage for Alaska lawyers.

Also, if exempted from the code, individual attorneys lose the scope of Insurance Code protections developed for policyholders or regular insurance companies.

In order to avoid depleting the Fund in a single year when high damage claims are paid, re-insurance of the Fund must be obtained from the insurance market. Oregon has been unable to secure such coverage to date although it has over 5,000 attorneys participating at $500 per attorney per year.

If re-insurance of the Fund cannot be obtained, the individual attorneys in Alaska in the private practice of law become subject to an additional assessment above the normal premium charge to cover the amounts necessary to pay the defense costs and damages incurred in one year. The defense costs for all claims up to the $100,000 limit must be paid by the Fund although it is liable only for the first $25,000 in damages.

Costs to Association

Self-insurance requires the Bar Association to go into the insurance business which means incurring all of the policy writing, publishing and billing costs which would require the Association administration and Board of Governors to become experts in the insurance business.

Because the Fund would earn interest on the premium collected, tax liabilities will also be incurred by the Association. Bookkeeping, auditing and tax reporting costs would also have to be met from the premium charged. For merely $25,000 of Fund provided coverage, these costs are uneconomical.

The premium for a $2,500 individual deductible on every claim, $22,500 Fund liability and $75,000 carrier liability program is proposed at $700 per lawyer. The sum of $220 is the projected figure per member for the level of insurance from $25,000 to $100,000 with $480 remaining in the Association Fund to pay all administrative costs, defense costs up to the $100,000 limit and claims damages up to $25,000 (minus the individual $2,500 deductible). The cost is uneconomical when compared with the same limits and deductible from National Union Fire ($720) or INAX ($560) for attorneys with five or more years of experience. With less experience, the carriers' premiums are less.

The projected revenues collected for the fund for one year are $399,000, calculated as follows.

750 private practice attorneys pay	$480 =	$336,000
100 part-time attorneys pay	$480 =	48,000
150 judges and/or retired attorneys (not practicing law anywhere) pay	$100 =	15,000
		$399,000

The cost projections by Norman are as follows:

(a) Broker's fee for securing coverage from $25,000 to $100,000	$25,000
(b) Norman's consulting fee (payable for two years)	25,000
(c) Administration cost for part-time secretary	8,000
(d) Accounting and office expenses	8,000
(e) Estimated adjusting and defense costs per year	100,000
(f) Maximum of six claims paid per year	136,200
	$302,200

The committee considers these costs projections to be unrealistic because Norman is suggesting that actually to run the program, a part-time secretary, paid $8,000 a year, can be an expert able to run an insurance company and be a claims handler for active files.

Defense Costs Not Included

Secondly, the defense cost allocation permits only approximately $17,000 per file for legal defense fees at $75 per hour for six active claims per year. No defense costs are included in this breakdown. Last year, one claim settlement plus the defense costs and fees would have required more monies than the amount allotted for all claims and all defense costs for the entire year. Likewise, given that the known number of claims for the past two years have been double the projected number, the committee thinks that the estimate of only six claims per year is unrealistic.

The considerations discussed above were the major reasons for committee rejection of the Norman self-insurance proposal. The final determination of the committee is to recommend that INAX be the Bar-sponsored malpractice carrier for attorneys in Alaska.

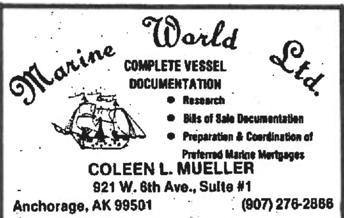
The premium charge for equal coverage is less expensive than the self insurance proposal and offers coverage options up to five million liability limits. Therefore, based upon availability of coverage and cost considerations, self-insurance was not, in the committee's opinion, economically necessary or feasible at this time.

Loss Control Program

[continued from page 7]

a bylaw change requiring the Association to present CLE seminars in every area of substantive law where two or more claims have been made. The Board of Governors should also strongly consider a proposal to the Supreme Court requiring attorneys who have a claim made against them to attend CLE in areas of substantive law where E & O is alleged.

4. The Board of Governors enact a bylaw change mandating the Association to present, as a part of the annual meeting, an annual update on current developments in the substantive areas of law.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Little Will

By Wayne Anthony Ross

Living in Alaska keeps a body away from family. If you don't bring 'em with you when you move to Alaska, chances are you seldom see aunts, uncles, cousins, nephews or nieces except on occasional visits outside. Often years go by without seeing favorite relatives.

My nephew and godson, my brother's oldest son, I hadn't seen since 1971 and even then I only saw him for one day in Dallas, Texas. He was then nine years old, a thin, scrawny kid with glasses.

Last year when little Will was in high school, I thought it might be fun to have my boys meet their Texas cousin so I invited Little Will to come to Alaska in August.

At the airport, when Little Will's flight was arriving, I waited in vain for a scrawny kid with glasses. Suddenly behind me I heard a deep voice say "Hello Uncle Wayne." I turned around and looked up into the face of my nephew, Little Will.

He was smoking a cigarette (16 years old!) and was over six feet tall. I would guess he would go 235 lbs. Little Will was little no longer.

After getting him home, and getting him set up with an ashtray (never did get used to that ashtray!), we planned his vacation.

He had brought a fishing reel but no fishing rod, so I gave him an extra Eagle Claw take-down rod that I had. We then went to the store where I bought him about $30 worth of lures.

Will Breaks Rod

The next day saw us at Eagle Rock on the Kenai River. About the first cast Will lost a $3.00 lure in the tree behind us. After more casts, the tree behind us looked Christmasy with all the bright colored pieces of metal hanging from it. I was just about to tell Will that we'd better leave before we'd have to file an environmental impact statement, when Will got a strike. The silver salmon took off and Will let out a holler. Will reared back on the rod, hard, and I heard a loud crack. The fish kept going one way and Will went the other, falling backwards over a log onto his butt, the broken remnants of my Eagle Claw in his hand. Back to Kenai we went.

Did you know that the cheapest fishing rod in Kenai during salmon season is over thirty dollars? Nephew Will needed a fishing rod so I contributed to the Kenai economy. I also replaced the fishing lures Will lost in the trees. That Kenai sporting goods store put a big dent in a hundred dollar bill.

We went back to a different spot on the Kenai River where there were less trees. Will walked out on a log to fish. I cautioned him about the swift current. I then went upstream about fifty feet to fish. I saw Will's first cast miss the trees behind him and sail out nicely over the swift water. The line wrapped around the only snag in about two miles of river. Will had to break the line (and lose the lure) to get free. As he bent over his tackle box (with the new assortment of lures I had just bought), I heard a mighty splash. Will had slipped off the log tipping the tackle box over and spilling its contents into the swift current. Will was wet up to his waist and since we didn't have any more lures we called it a day.

Will Destroys Reel

On Friday afternoon Will decided, without my knowledge, to take his fishing reel apart and clean it. When I got home Will met me at the door with a handful of pieces in his hand. "Uncle Wayne," he said, "Do you have an extra spring?" When he had taken the reel apart a spring had flown out and was last seen flying past the TV set into the No Man's Land of the toy box. Now, I am the first to admit that I am not mechanically inclined, (I even have trouble setting the alarm clock!) so I knew that even if the impossible happened and we found the spring, I'd still never be able to get the reel back together. We therefore put the parts from Will's reel in a bag and put it back in his luggage. I then went out to the garage and from a shelf I got down a fine old Shakespeare reel I had owned and used for many years. After cautioning Will to be careful with it, I showed him how to use it in preparation for the morrow.

On Saturday, Jerry Yester and his brother-in-law, Dave, Will and I took off in Jerry's plane for Prince William Sound. We landed in a lake, taxied to shore, and then prepared to walk about a mile downstream from the outlet of the lake to salt water to fish where the stream runs into Prince William Sound.

Will Baptizes .22

Finally we reached salt water.

The tide was out. The salmon were in. We put our gear down and clambered over the rocks to the water. The first cast Will snagged a rock and broke his line losing another lure. After his second cast, I saw him looking into the water below the rock he was standing on. "What's the matter, Will?" I asked.

"Oh...nothing," he said continuing to look into the water.

I walked over to him. Then I noticed that my fine old Shakespeare reel no longer had a handle on it. "What happened to my reel Will?" I asked.

"The handle fell off into the water, Uncle Wayne," he said.

"Find it, Will," I said with some firmness.

Will hung over the water peering into the depths. "Be careful Will," I said. "You'll fall in. That rock you are sitting on is slippery."

"I'm O.K., Uncle Wayne," said Will.

As I turned my back I heard a splash. Will emerged from the water a moment later, my 22 revolver which he was carrying, and his Dad's pocket watch, both wet with salt water. (Did you know that a pocket watch won't run more than a half hour after emersion in salt water? And you should see how quick a colt Diamondback starts to rust!)

Will Breaks Another Rod

We finally borrowed another reel from Dave (who didn't know any better).

Will was consistent. He made the next cast with the borrowed reel and caught the lure on the same rock he had caught with his first cast. With a shout "I GOT ONE, UNCLE WAYNE!" Will reared back, on the rod hard and again I heard a loud crack. Good-bye one thirty-five dollar Kenai fishing rod.

By this time I was beginning to see it as a challenge. In the interests of science, I decided, I would continue furnishing equipment to this young man until I saw just how much destroyed equipment it took before one young Texan could catch a fish.

I slipped Dave ten bucks and borrowed another rod for Will. Will promptly lost three more lures. I bought six extra lures from Jerry. Will lost two more.

The tide was coming in when we noticed Will's tackle box floating out in the water. He had put it below the high water mark and as the tide came in the box floated away. Fortunately, we retrieved it as well as my colt Diamondback which was not submerged. Will had put the Diamondback on a rock to dry out, again below the high water mark. It was easy to find. The leather belt was sticking out of the water.

Will Breaks Thermos

We then sent Will with the thermos jug back upstream a hundred yards or so, to fresh water, to fill it up so we could have a drink of water. When he got back, I noticed the thermos tinkled. Will apparently had slipped on a stump dropping the thermos and breaking its liner.

Back we went to fishing. I finally got a nice silver salmon on the line. "I'll net him for you," said Will. "I'm wet anyway!" Will grabbed the floating landing net and ran into the water again. (The silver was still 50 yards from shore and not at all convinced that he wanted to be landed). As Will entered the water, he and the floating landing disappeared. The net floated to the surface first. Then came Will sputtering and coughing. He had stepped into a hole. Instinctively he grabbed my fishing line to steady himself. The line broke. My silver got away.

We finally made it back to Anchorage after Jerry made Will promise not to touch any part of the airplane.

It was a warm August afternoon as we landed at Lake Hood. While unloading the airplane Jerry brought out three beers from a cooler he had in the back of his car. I got one swig out of mine before putting it on the pier to unload more gear. A moment later I heard a splash. Will had tripped over the bottle with his foot, kicking the beer into Lake Hood.

We have several more incidents involving Will such as dropping the collection plate full of change the next day at Sunday Mass and I am still finding my tools in the woods below our house as the spring snow melts. (How a Texan would hope to cut firewood with a hammer and tire iron is beyond me but we finally got Will back on a plane to Texas).

Last week I got a note from Will asking me to send him college brochures from Anchorage Community College. Says he's considering moving to Alaska. I think President Carter must have heard about Little Will. That certainly would explain Carter's concern over the Alaskan environment which resulted in his massive land withdrawals. Carter's afraid what might happen to the environment if Will were to move up here permanently.

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Bodily Injury Reparations

by Tony Smith

The Bodily Injury Reparations Advisory Committee published its report on March 27, 1979. The committee was established by Administrative Order 45 on December 12, 1977, with directions to study the availability and expense of personal injury insurance in Alaska and make recommendations as to the advisability of fundamental changes concerning: (1) the adequacy of present reparations systems; (2) legal principles of bodily injury reparaion; (3) legal procedures and expenses; (4) functioning of bodily injury insurance systems; (5) the availability of insurance; and (6) possible alternative methods of bodily injury reparations.

The committee was composed of individuals representing the health care delivery system, the Alaska insurance industry, the legal profession, consumer groups and legislators. Mr. **Perry Eaton,** Vice President of United Bank Alaska, was initially committee chairman. In July 1978, he resigned and **John Anthony (Tony) Smith** was appointed chairman for the duration of the committee's deliberations.

Rowan Group Survey

Members of the legal profession in reviewing the committee's recommendations and analyses should begin with the data and analysis gathered by the Rowan Group. The committee retained Rowan Group, Inc., to do an attitude survey of a random cross-section of the public. The entire analysis and narrative data is included in the appendix of the report and is worthy of consideration by anyone involved in the bodily injury process. Surveys of this nature are accurate within four percent and are an important information-gathering tool.

At the conclusion of the general public opinion poll, the Rowan Group did an indepth analysis of those people in the initial survey who had suffered a bodily injury in an accident. The poll was conducted in Anchorage as a result of budgetary constraints, but the committee felt the conclusions were illustrative of the situation statewide.

The committee's analyses and recommendations are broken down into seven general areas. In some cases the committee made specific recommendations for action, and in others the committee recommended further follow-up analysis.

Arbitration Recommended

In the subsection entitled "Legal Issues" the committee recommended that all bodily injury claims for $25,000,000 or less be arbitrated: that interrogatories be limited and that the courts sanction attorneys for frivilous motions, discovery requests and pleadings; that Ad Damnum clauses be prohibited; that structured settlements involving periodic payments be encouraged; and that Rule 68 be amended to allow a plaintiff's offer of settlement.

In the "Professional Malpractice" subsection the committee recommended that the statute of limitations in all professional services malpractice cases be two years with an additional two years for discovery, with the exception of minors, where there would be a total of eight years for discovery ending on the eighth birthday: or two years after the alleged occurence of malpractice plus two years for delayed discovery (whichever occurs later); require that health providers maintain insurance with a minimum coverage of $250,000.00; and the repeal of certain statutes which developed out of the medical malpractice commission.

Alaska Compensation

In the "Workmen's Compensation" section the committee recommended that the Governor appoint a commission to study the implementation of a program entitled "Alaska Compensation" which would accomplish the merger of workmen's compensation and non-occupational benefits; that a more equitable method of appropriation cost of cumulative injuries be determined and there be a requirement that employment be demonstrated a causative factor in a cumulative injury claim; that workmen's compensation benefits be offset against any other employer-sponsored and paid benefit to the extent that not more than the employee's actual after-tax wage at the time of injury would be paid in total; that while the employee's sole remedy against his employer may be workmen's compensation, it shall not be applicable to the situation where there is clear and convincing evidence of an employer's wanton and willful disregard for the safety of his employees; that workmen's compensation claims limit the time for filing claims to twelve months from the date of injury, or in the case of occupational disease, twenty-four months from the date that the employee first has knowledge of the condition and its relation to his employment; and that a prehearing conference be required on all cases before presentment to the workmen's compensation board.

In the "Insurance" section the committee recommended that the State enact a no-fault insurance plan containing certain minimal requirements; that insurance companies be allowed to pay claims by draft; that there be available in Alaska under-insured motorists coverage; and that motor vehicle insurance for bodily injury and property damage be compulsory.

Strike Force Recommended

The committee devoted an entire section to "Driving While Intoxicated." The committee found that a substantial number of accidents involving bodily injury are caused by drivers under the influence of alcohol. As a result the committee recommended that the State fund a "strike force" for the apprehension of those driving under the influence of alcohol and that there be an amendment to Alaska Statutes to provide for the seizure and the immediate impoundment and forfeiture of a driver's equity interest in a motor vehicle if the person's blood alcohol was found to be in excess of 0.15 percent.

In the "Health Care" section the committee recommended an increase expenditure of money for health, driver's safety, industrial safety, parenting, child abuse and drug abuse educational programs; the establishment of a health information center; the encouragement of a completion of a basic swimming course and water safety program for all junior high school students; the vigorous promotion of a basic first aid/CPR course as a required high school course and as part of any commercial driver's or pilot's license; the requirement that all motor vehicles operated and registered within the State be provided with a carbon monoxide detector; the establishment of computerized registry of serious injuries; that State, local governments and private enterprise structure benefit packages to provide balanced coverage for alternative and more economic sources and treatment of health care; that each hospital in the State provide each physician on its staff and patients upon admission an accurate up-to-date list of all charges in plain English and understandable to the consumer; and that Federal and State governments implementing broad based programs affecting health care should be encouraged to insure cost effectiveness.

Minority Reports

There were minority reports on almost every issue included in the report. Doctors **Arndt Von Hippel** and **Michael Armstrong,** although many times voting with the majority, filed minority reports on almost everything including the historical background and development of the Bodily Injury Reparations Advisory Committee. While Dr. Von Hippel's feelings toward the legal profession are well known to many attorneys, his minority reports contain a number of interesting and thought-provoking ideas, statements and comments. This writer definitely feels that the legal profession would be remiss in dismissing Dr. Von Hippel's thoughts out of hand.

Ames Luce drafted a vigorous minority report on the no-fault automobile insurance proposal. Many of our brethren I am sure will find Ames' dissent more persuasive on the no-fault issue than the committee's recommendation. While this writer concurred in the no-fault proposal, Ames' minority report is a well written, cogent and persuasive argument for his side of the issue.

Carl Anderson, Alaska Pacific Assurance Company, was in the minority on a number of issues. Mr. Anderson joined the committee on December 18, 1978, after the committee's work was completed except for the finalizing of recommendations. He was appointed as a result of the untimely death of Mr. **Hugh Fischer,** president of Industrial Indemnity Insurance Company of Alaska. Had Mr. Anderson participated throughout the committee's deliberations it is possible that he might have altered some of the recommendations. His minority position certainly reflects the considered analysis of a leading member of the insurance industry in the State of Alaska.

The report was drafted, with committee review, by **Debbie Halladay,** the executive director of the committee, and **Dr. Chris Calvert,** the staff writer. Unlike many government reports the BIRAC report is well written and makes for interesting reading. This is largely the result of Ms. Halladay and Dr. Calvert. Dr. Calvert is a professor of English Composition at the University, having received his undergraduate and master's degrees in England, and his Ph.D. from the University of California. His Ph.D. dissertation was an analysis of the works of Kurt Vonnegut. He was therefore a very appropriate staff writer for a committee analyzing the bodily injury reparations system.

Committee Membership

The committee was composed of: **Arndt Von Hippel, M.D.** (Anchorage heart surgeon), **Michael Armstrong, M.D.** (Anchorage intermist and rhematologist), **Robert Ogden** (administrator of Valley Hospital in Palmer), **Hugh Fischer** (president of Induatrial Indemnity Insurance Company of Alaska, **Lois Clary** (executive vice president and treasurer, Clary Insurance Agency), **John C. Smith** (president of Northern Adjusters), **Carl Anderson** (Alaska Pacific Assurance Company), **L. Ames Luce** (Kelly and Luce), **John L. Sund** (Ellis, Sund and Whittaker), **Edward L. Hite** (risk manager for the Municipality of Anchorage), **John Anthony (Tony) Smith** (Smith, Taylor & Gruening), **Tina Monigold** (community affairs activist in Kodiak), **Julie Wroe** (AkPIRG), **A. Douglas Hulen** (Alaska Sales and Service), **Senator John Butrovich, Senator Pat Rodey, Representative Larry Carpenter** and **Representative Lisa Rudd.**

The Nose (Knows The News)

THE ANCHORAGE COURT SYSTEM was buzzing recently over open confrontation between one of the Superior Court judges and a Senior Court secretary. The Nose hears that the secretary described the judge as "that animal which fell into the pit on the Sabbath."

NOW THAT THE CLUB BAR has been closed, its attorney patrons have moved down the street to the Milky Way much to the grumbling of **Ken Jensen, Joe Palmier** and some of its other established patrons.

SPEAKING OF GRUMBLING, three Superior Court Judges will be absent from the Anchorage Bench during the month of May. One on vacation and two attending the judges' school in Reno. Later on this summer four will be gone at one time.

THE NOSE UNDERSTANDS that **Brian Shortell,** Public Defender, will resign in August.

AN ANCHORAGE ATTORNEY was recently charged with a traffic offense. During his trial he interposed himself so often while his partner was defending him, that in absolute frustration his partner stormed out of the courtroom and left him to defend himself.

IF YOU CAN'T PASS THE BAR, drop in and see **Fritz Pettyjohn** and **Michael Keenan.** Fritz bought **Swiftwater Bills** on International Airport Road. Mike recently purchased the **Double Muskie** in Girdwood.

THE NOSE HEARS **Joe Balfe,** Anchorage D.A., was shown how to play the "numbers" game, by **Margo Savell** while in Hawaii.

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Incorporation

[continued from page 3]

and the same should not be set forth in any by-laws.

Planning Loss Periods

As was discussed in the preceding section concerning Code Sec. 1244 stock, the problem of debt-equity ratio has also surfaced in the area of "one class of stock" and number of "shareholders" in litigation involving sub S elections. The commissioner has taken the position that if corporate debentures or loans to the corporation are in reality hidden "equity" they create a new different class of stock, thus disqualifying the corporation. While there are cases indicating that the IRS is without authority to attempt to inject the debt-equity argument into litigation in an attempt to invalidate an election, such cases have been outside the 9th Circuit Court of Appeals. The tax court has held that a bona fide loan which does not have any incidents normally attributed to equity stock ownership may not create a second class of stock even if disproportionate to the actual stockholding equities of the shareholders. Great care was exercised in those cases to insure that all of the formalities of proper debts were followed. Again, as discussed in the section on 1244 stock, where equity is extremely small, and debt extremely large, there is a greater risk that a court could find that the debt represented actual-equity and thus a second class of stock. The admonition set forth above with respect to the small business stock should also be reviewed with regard to the sub-chapter S election. Where non-shareholders have loaned money to the corporation and it can be shown by the commissioner that such "loans" represent equity, in fact, the IRS will take the position that such non-shareholder creditors are in fact shareholders and the limitations on number of shareholders may thus be violated by the corporation and the election be deemed invalid. This is particularly true when viewed by analogy with other sections of the law when purported holders of debts from a corporation have been deemed to have been shareholders. One other problem has arisen with regard to qualifying shareholders, and that is if one of the shareholders becomes bankrupt. It has been held by the service that the trustee in bankruptcy does not qualify as a shareholder and therefore the election will be terminated. An assignment for benefit of creditors, on the other hand, and receivers, may be treated as "agents" of the shareholders, provided that the shareholder retains a significant beneficial interest in the stock. Should the stock ultimately be sold for the benefit of creditors or the receiver that could invalidate the election if the purchasers will be a corporation, alien, or other non-qualified entity or person. The election to be treated as a sub-chapter S corporation must be made within the time period set forth by law. Litigation has occurred over such minor violations as filing the elections within the time-period but a postmark being made on the following day by the post-office, and under such situations the election has been deemed invalid. For calendar-year corporations in 1979 and for corporations subsequently an election may be made at any time during the first 75 days of a taxable year. An election cannot be filed by a corporation that is not in existence under state law. In order to file a consent, all shareholders who were shareholders on the latter of the first day of the corporation's taxable year or, on the day of election, must file a consent on Form 2553. New shareholders added after the date the election was made, must voluntarily refuse to consent to the election within 60 days of acquiring their stock, unlike the prior rules concerning sub-S corporations. There is language in the regulations that states that a corporation is in existence when the first of the following occurs: when it is formed, when it acquires assets, has shareholders, or beings doing business. The possibility that a corporation could transact business before it is formally constituted under state law, could be argued by the commissioner with uncertain results. Certainly a corporation is in existence when a charter is granted, when it has assets and conducts business. And the time period would then begin to run. The better way to plan for a corporate business is to first form the corporation, then begin negotiations for contracts, opening bank accounts, and doing other acts which would indicate the existence of the corporation. For calendar year corporations therefore, an election could be made during the first 75 days from the date that the corporation was formally incorporated under state law. Shares of stock should be issued prior to the expiration of the 75 day period in order that the shareholders may consent to election by the corporation.

Because most businesses operate at a loss at least initially, by careful planning and financial advice from accountants or other financial advisers, the shareholders may be able to determine the approximate period of time during which a company may be operating at a loss. They may thus elect sub-chapter S corporation taxation initially, with a short year-end covering the period of losses and low profits. Once a corporation begins making larger profits they may diselect the sub S election for a subsequent year following a short year-end and elect to retain income in the corporation and thus avoid personal income taxes on corporate profits. Another election cannot be made for years however. It should be kept in mind, that other than for capital gains, a sub-chapter S corporation is not a conduit such as a partnership. A corporation's income and expenses are first determined and then, if a profit is made, the shareholders pay taxes on the proft in a pro-rata amount according to the shares that they hold whether the money is actually withdrawn from the corporation. Conversely, if losses are sustained, the shareholders may use those losses to offset their other income, provided the losses do not exceed basis of the shareholder's equity and loans in the company. By utilization of careful planning, with the knowledge of 1244 stock and also the provisions under sub-chapter S dealing with corporations, counsel can assist clients in obtaining tax benefits for new businesses. Next month's article will be dealing with incorporating ongoing businesses.

1980 CONFERENCE OF ASSOCIATION OF FAMILY CONCILIATION COURTS

By Frank Stevens

The Association of Family Conciliation Courts has selected the city of Anchorage for the annual meeting for the year 1980. Dates selected are May 21, 22, 23 and 24th. A local program committee has been involved in attempting to develop a program and we are asking members of the Alaska Bar to respond to the following suggestions, also to make any suggestions that they might wish to concerning program content. The Association of Family Conciliation Courts is an international association of judges, counselors, attorneys, and others concerned with court connected family counseling services.

The Association was established in 1963 to develop and improve the practice and procedures of family counselling as a complement to judicial procedures. Also to promote, maintain and preserve high professional and ethical standards in court-related marriage and divorce counselling. It does provide an interdisciplinary forum for the exchange of ideas and development of solutions to family counselling problems.

The conference will be in Anchorage at the invitation of the Alaska Court System and will be the first international forum of its kind to have a program in the state of Alaska. This Association ordinarily qualifies for continuing legal education credit and should prove of interest to most of the members of the Alaska Bar.

The preliminary meetings of the program committee have indicated interest in the following areas:

The pro and con of family court; use of prepaid legal services in the field of domestic relations; rights of children; criteria for custody investigations; interstate concerns, both in respect to Uniform Marriage and Divorce Act and the Uniform Interstate Custody Act; expert witnesses in custody disputes—Who are they and how are they used; the Military and its place in the civil domestic relations area.

We are interested in responses as to the desires of the members of the Alaska Bar for this program. To date the program has been given a letter of support from **Governor Hammond** and from **Senator Stevens** and there was an indication that **Senator Gravel** may be available to participate in the program. Any responses should be directed to **Francis M. Stevens**, Program Chairman, 1980 Conference, Family Conciliation Courts, 303 K Street, Room 214, Anchorage, Alaska 99501.

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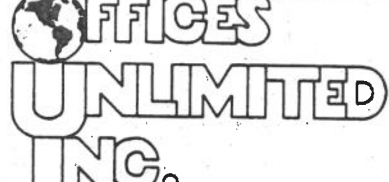

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Recent Fee Arb Decisions

By William W. Garrison

In December of 1977 Respondent was retained to represent Petitioner in a contested divorce action. A fee agreement was entered into at the initial conference whereby Petitioner would be billed at an hourly rate. Petitioner was informed that although Respondent would attempt to recover his fees from the defendant, Petitioner would nevertheless be ultimately responsible to Respondent for his attorneys' fees.

The complaint was filed and valuable services were rendered. Prior to March of 1978, without notification to Respondent, Petitioner reconciled with her husband. Respondent learned of the change in circumstances at some later date when Respondent contacted the defendant's attorney in an effort to obtain an answer to the divorce complaint.

In May Petitioner, without Respondent's assistance and again without Respondent's knowledge, filed a petition for dissolution which was granted in July. Petitioner's ex-husband also filed for bankruptcy thus precluding Respondent from obtaining an award for attorneys' fees.

Respondent sued Petitioner for his attorneys' fees in District Court. Petitioner filed for Fee Arbitration alleging that Respondent did not obtain a divorce in a timely manner and further that Petitioner felt that Respondent should obtain his attorneys' fees from her ex-husband. Respondent requested, in the event he prevailed, that the Fee Arbitration Committee award him attorneys' fees comparable to that which would have been awarded by the District Court.

The Committee found that Respondent was entitled to recover the fees and costs incurred for services rendered. The Committee denied an award which would have represented costs and attorneys' fees.

* * *

Respondent was hired to represent Petitioner in a dispute between Petitioner and a contractor hired to construct a residential structure. An hourly fee agreement was entered into. Respondent conducted substantial negotiations and obtained major concessions for the benefit of Petitioner.

There was no major dispute over the amount of time expended by Respondent, however, Petitioner questioned whether Respondent's efforts were constructive. Petitioner's primary complaint was that Respondent refused to file a lawsuit against the contractor and further that Respondent's fees were not justified by the result. Respondent took the position that given the concessions granted that litigation would only be contra-productive and too expensive to justify.

The Committee found Respondent's position to be reasonable and in any event his failure to file an action did not detract from the services performed. The Committee found that Respondent had rendered services of value which equalled or exceeded the amount charged to Petitioner.

* * *

Petitioner, in an effort to obtain a permanent visa for her brother, sought Respondent's services. At the initial meeting no clear fee agreement was reached, however, it was agreed that Respondent was to obtain further information and then consult with Petitioner regarding further legal services.

Respondent thereafter, on Petitioner's behalf, contacted and met with the Naturalization Service. Respondent then scheduled a subsequent meeting with Petitioner to discuss the matter further. Unbeknownst to Respondent Petitioner's brother had returned to his native land. Petitioner did not meet again with Respondent although she knew that a meeting was scheduled.

Respondent presented Petitioner with a bill for $240. Petitioner contends that she did not understand that she was obligated to pay Respondent for his legal services, believing only that Respondent was to determine whether legal services were required and then to contact Petitioner.

The Committee found that although an agreement had been reached at the initial conference whereby Respondent would undertake to obtain initial information no clear fee arrangement was entered into. Although Respondent rendered authorized legal services in pursuing permanent visa status the Committee found that it was Respondent's responsibility to clearly lay out the fee arrangement. The Committee reduced Respondent's fee to $80.

* * *

Respondent was retained to prepare certain legal documents for Petitioner. No hourly rate or fixed price was agreed upon.

Respondent spent one and one-quarter hours with Petitioner at the initial conference. One and one-half hours were spent drafting the initial agreement and a quarter hour was subsequently spent discussing the document and its ramifications with Petitioner.

The employment contract contemplated the preparation of additional documents which were prepared by Respondent but which were not received by Petitioner within the period of time previously specified to Respondent. There was no proof that Petitioner made use of the latter documents. One and one-half hours attorney's time was attributed to the preparation of these items. Respondent billed Petitioner for a total of four and one-half hours.

The Committee, given the fact that no fee agreement had been reached, first determined a reasonable hourly rate which could be attributed to Respondent's services. The Committee then found that Respondent's total hourly billing should be reduced by one and one-half hours.

Respondent-Attorney was retained to represent Petitioner in a contested divorce matter. The couple had four children, two of whom were born of the marriage. The divorce was quite complex including a dispute over a right to a substantial amount of money which Petitioner claimed belonged to her and the children. A guardian ad litem was appointed to protect the interests of the children. Respondent-Attorney was dismissed by Petitioner prior to a resolution of the dispute.

Respondent-Attorney billed Petitioner $3,338.81. Petitioner alleged that Respondent-Attorney was not representing her best interests and further that Respondent-Attorney's acquaintanceship with opposing counsel compromised her cause.

The Panel found that Respondent-Attorney had rendered authorized legal services for the Petitioner and further that the services rendered were reasonable and conferred a valuable benefit upon Petitioner. The Panel, after reviewing time slips, ledger cards and statements, reduced the total amount of the fee charged by $265.

Environmental Law Committee

Following is a report on the activities of this Committee submitted in accordance with the requirements of the Bylaws of our Association calling for a report to be submitted prior to the annual business meeting of the Alaska Bar Association.

The Alaska Bar Association Environmental Law Committee has been extremely active this year. Thanks to Ken Jarvi's committee reorganizational efforts, we now have a full complement of active and enthusiastic members. The Committee has held ten meetings during the past year. At several of the meetings representatives of local government agencies and others interested in environmental law in Alaska have attended, given brief presentations, and exchanged ideas with the members.

At our organizational meeting, **John A. Reeder** was elected Vice Chairman and **Jane Pearia** was elected Recording Secretary. With the staggered membership terms, the Committee is looking forward to continuity that has been lacking in the past.

The primary focus of the Committee's activity this year has been on the emerging area of coastal zone management in Alaska. In conjunction with the University of Alaska, the Committee is sponsoring a one-day seminar on the implementation of the Coastal Zone Management Act in Alaska, to be held at the Anchorage campus of the University on Saturday, May 19th.

In summary, I can say that it has been a productive year for the Environmental Law Committee. Although my term on the Committee is now expiring, I have every reason to believe that the committee will retain the momentum that we have gathered this year, and that we can continue to look forward to having this Committee be one of the most active committees in our Association.

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