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Anchorage, Alaska

The Alaska BAR RAG

Volume 3, Number 12 | Dignitas, Semper Dignitas | November-December Issue 1980 | $1.00

Sentencing Panel Announced

The Alaska Supreme Court has implemented the three-judge sentencing panel called for by AS.12.55.175. That statute, effective January 1st, 1980, created a three-judge Superior Court panel appointed by the Chief Justice. The panel's task will be to sentence defendants subject to sentencing under certain provisions of the new AS.12.55.125 where the trial Court "finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating and or mitigating factors (not specified in AS.12.55.155 or) from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors...". AS.12.55.165. In such circumstances the Trial Court enters its findings and conclusions and transmits a record of the proceeding to the panel.

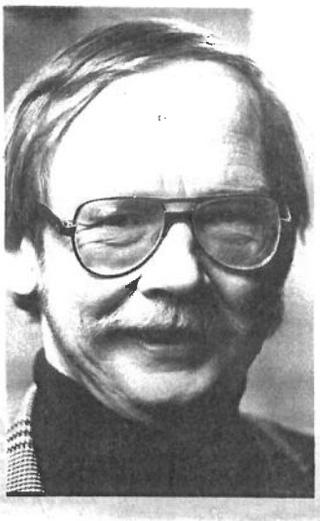
Under the statute the Chief Justice designates the panel consisting of three judges and two alternates pursuant to rules promulgated by the Supreme Court. The Chief Justice has appointed Judge **Victor Carlson** to a three-year term. Judges **Seaborn Buckalew** and **Thomas Schulz** have been appointed to two-year terms. Judges **Justin Ripley** and **Jay Hodges** are designated as alternates who will sit in cases where panel members are disqualified.

Extraordinary Circumstances

Judge Carlson stated that no cases had yet been referred to the sentencing panel. The panels' activities are triggered only by the existence of truly extraordinary circumstances involving repeat offenders, therefore, a light case load may be expected. No definite estimate of the case load can be given formed in the absence of further experience with the panel. Although, among cases that Judge Carlson has handled under the new sentencing act the panel has not been called for and the judge has not felt constrained by the provisions of presumptive sentencing, he can visualize circumstances where the panel will be needed to mitigate otherwise harsh or inappropriate sentencing requirements. Other aspects of our criminal justice system may also minimize occasions for panel consideration. For example, prosecutors understand the limitations of the public purse and may choose not to prosecute or prosecute as lesser offenses certain technical felonies which could otherwise result in harsh presumptive sentencing.

While the limited application of this new panel will mean that few attorneys will immediately be rushing to the panel, members of the bar should keep these provisions in mind for the extraordinary case which may any day face them.

Tunley, Others Appointed to Bench



Charlie Tunley
photo by Ken Roberts

Sentences Homogenized: Judicial Council Study Released

by Teri White

The Alaska Judicial Council announced today that its most recent study of felony sentences showed that racially disparate sentences have virtually disappeared. A constitutionally-established agency composed of three public representatives and three attorneys, the Judicial Council is chaired by Chief Justice **Jay A. Rabinowitz**, and was funded by the legislature in 1979 to conduct the study. "Disparate sentences for Natives were virtually eliminated between 1976 and 1979," said **Nick Maroules**, the Council's Research Director.

The study included all sentences imposed for felony charges by the state's superior court judges. It was a follow-up of an earlier study by the Judicial Council of sentences in Anchorage, Fairbanks, and Juneau. That research showed Native and Black defendants from 1974 to 1976 receiving longer sentences for property and fraud crimes. "The disappearance of disparities for these types of crimes may reflect a quick response by the state's judiciary to our earlier study," suggested **Teri White**, Executive Director. "No accurate information about sentencing patterns had been available until the Judicial Council's studies in 1977 and 1978. The Council will continue to monitor sentences at the request of the Supreme Court and the legislature."

Blacks Pay More for Drugs

According to Maroules, that monitoring may help to explain the one remaining area of disparity. "Blacks receive longer sentences for drug crimes," he said. "The disparity hasn't changed since 1974. Most of the disparity comes in sentences for heroin offenses. Even when the defendants are similar in every respect: amount of drug involved, number of prior offenses, and so forth, Blacks still are sentenced to jail more frequently and for longer terms. As we continue to look at sentences in the next few years, we may find that the sentencing guidelines now in use help reduce this disparity."

The follow-up study focused on the elimination of racial disparities in sentencing, the target of the supreme court and legislative concerns. However, other sentencing patterns came to light simultaenously. "In order to see whether one factor, such as race, affects sentencing," explained Maroules, "We have to find out all of the factors that are important. We use several different statistical techniques to perform a rigorous analysis that will withstand any scrutiny. We want judges and the public to be able to rely on our findings for an accurate picture of the courts. As a result, we see that for any given offense, about 8 to 10 factors can be isolated that significantly change the sentence.

Death Increases Sentence

"As you would expect, the defendant's history of prior offenses always affects the length of his sentence significantly. Also, if the defendant is convicted of a more serious offense, or of more than one offense at the same time, his sentence is longer. Other factors that change the length of sentence depend on the type of crime. Death of a victim increases the sentence for violent crimes, and a high property value

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Compton Picked For High Court

Popular Anchorage attorney **Charlie Tunley** has been selected by the Governor to fill the coveted Nome Superior Court position left open by the retirement of Judge **William H. Sanders**. The Governor's Office announced this appointment Thursday, December 11th along with that of Juneau Superior Court Judge **Allen Compton**'s selection to fill Justice **Boochever**'s seat and the appointment of **Daniel Moore**, **Brian Shortell** and **Douglas Serdahely** to the Anchorage Superior Court.

The Skagway Years

In an interview with the **Bar Rag**, Saturday, December 13th, he expressed his pleasure over the appointment saying, "I'm a small town boy who wanted to be a small town Judge. I was born and grew up in Skagway, Alaska where my father, like practically everyone else in town worked for the White Pass and Yukon Railroad. The town was so small, we didn't even have a traffic signal. I didn't see one until I first went to Juneau. I was so used to life in a small town that I used to say hello to just about everybody I saw in Seattle where I attended Seattle University as an undergraduate.

I see Nome as being a lot like Skagway. It's a place where everybody knows and has to tolerate everybody else. I've had several cases in Nome over the years. I've co me to like the town and its people. I think I can do a good job up there. I'm sure going to try."

The Practice

After graduating from the University of San Francisco Law School in 1964, Charlie came to Anchorage where he first clerked for **Jim Tallman**. He next worked for the Alaska State Housing Authority for about a year. Then he signed on as an associate for **Charlie Hagans** before going into a partnership with **Herb Ross**. Charlie and Herb practiced together for about seven years. For the last seven years Charlie has practiced alone. His law practice has always been people rather than institution oriented. He has been a champion of unpopular causes and

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INSIDE

SENTENCING

[continued from page 1]

raises the sentence for property and fraud crimes. The increases are relative to all other sentences for those types of offenses."

In addition to sentence length, the research also took into account the frequency of probationary sentences for different types of crimes. "On the whole, sentences that don't include jail time are less common since 1976," said Maroules. "Probation for violent offenses declined from 35% of the cases between 1974 and 1976 to 19.7% of the cases since then. For property offenses, probation has gone from 48% of the cases to about 41%, and we see similar decreases in every other type of crime.

More Trials, Longer Sentences

"At the same time, sentence lengths have gone up for most offenses. Sentences for violent offenders average about 30 months—2½ years—longer, an increase of 82%. Poperty sentences are up 92%. Other increases are less striking, and drug offense sentences have actually dropped a bit, but the trend is clear. Fewer people are getting probation or suspended sentences since 1976 and those who go to jail spend longer there. It seems to be a trend that appeared shortly after former Attorney General Av Gross prohibited plea bargaining. Trial rates went up as well. They've leveled off now, as have sentences, but we can hypothesize that we're seeing some longer-range effects of the ban on plea bargaining."

Longer sentences and more trials don't necessarily go together, cautioned Maroules. "Our data don't support such a conclusion. We find that sentences are longer after trials, but that is statistically significant only for property offenses. In other words, the fact that a defendant went to trial, in the context of every other important fact about his case, makes a difference only for property offenses. For all other types of crimes, the differences appear to be explained by other facts about the crime."

Drugs and Alcohol

Examining the sentencing patterns which showed the disappearance of racial disparities turned up other facts of interest. Alcohol, drugs, and repeated crimes go together. Maroules noted that alcohol problems tend to be associated with a record of prior misdemeanor offenses, and problems with drug use are correlated to a history of one or more previous felony crimes. "If evidence in the case file or presentence report showed no history of drug or alcohol problems," he stated, "they were likely also to show that the defendant had no prior record of crime. That held true for about half of the defendants with no drug or alcohol problems. We can't be sure that all drug or alcohol problems were recorded in the files, but when they were, there was a very significant correlation with past offenses.

Use of alcohol and drugs at the time an offense was committed was also very high. A majority of violent offenses and nearly half of all other offenses (with the exception of fraud and forgery offenses) were committed under the influence of alcohol, drugs, or a combination of the two. "Our figures are conservative," said Maroules. "The case files probably don't reflect every instance of drug or alcohol use. Alcohol use, by the way, is far more frequent than drug use."

The Judicial Council's present study included sentences for felonies charged in rural areas as well as Anchorage, Fairbanks, and Juneau. The Council's present Director, **Teri White**, who supervised the data collection in 1979, said, "We have nearly ever single case for the years we studied except for a few cases in Tok, Valdez, and Cordova. This is not a random sample of cases." She also noted that the number of felony cases in which a sentence is imposed has declined every year since the Council began studying sentences in 1974. 537 of the study's 1901 cases were found in rural areas, including Barrow, Bethel, Kenai, Ketchikan, Kodiak, Nome, and Sitka.

Rural and Urban

"The patterns are somewhat different than those in urban areas," Maroules noted. "For one thing, the distribution of offense types leans towards more property crimes in rural areas, and more drug and fraud offenses in urban areas. Also nearly 30% of the violent and property crimes in rural areas were reduced to misdemeanors before sentencing, compared with about 7% of the violent crimes and 13% of the property crimes in urban locations. Sentences for both types of crimes are considerably lower in rural areas, while the chances of receiving a probationary sentence are somewhat higher."

Racial Disparity

"Another place where patterns differ is in the effect of race on sentencing. While Natives receive significantly lower sentences for violent crimes in urban areas than either Blacks or Whites, they are sentenced to slightly longer terms for property crimes in rural courts. Since this is our first detailed study of rural sentencing patterns, we can't isolate trends until we've been able to monitor sentences for another year or two."

White added, "We will begin a study of selected 1980 misdemeanors in January, and plan to begin looking at 1980 felony cases in March. We hope to see the continued absence of racial disparities, and perhaps determine some of the factors which make rural sentencing so different from that in urban areas."

The Judicial Council's members include Anchorage attorney **Joe Young** and contractor **Kenneth Brady**, Homer fisherman **Robert Moss**, Fairbanks attorney **Marcus R. Clapp**, Petersburg retired fisherman **John Longworth**, and Juneau attorney **Walter Carpeneti**.

Joe Rudd Scholarships Awarded

The Rocky Mountain Mineral Law Foundation has announced the award of the first two Joe Rudd Scholarships. The $2,000 scholarships were awarded to **David A. Gottenborg** of Denver, Colorado and **Carl A. Propes, Jr.** of Anchorage, Alaska.

Gottenborg is a third year law student at the University of Denver and is specializing in natural resources law. He holds an undergraduate degree in geology from Colorado College, and has recently been appointed as the law student representative to the Natural Resources Law Section of the American Bar Association.

Propes is the Director of Lands and Natural Resources for Chugach Natives, Inc., an Alaska Native regional corporation. He received his undergraduate education at Yale University and did graduate work at the University of Alaska. Propes has been accepted as a first year law student at the University of Denver, and anticipates commencing his studies there in the fall of 1981.

At the time of his death in an airplane accident in December of 1978, **Joe Rudd** was acknowledged as the preeminent natural resources attorney in the State of Alaska and was well-known nationally for his expertise. In recognition thereof, the Joe Rudd Scholarship program was established by his family and friends and the Rocky Mountain Mineral Law Foundation for the purpose of encouraging the study of natural resources law.

The Joe Rudd Scholarship is to be awarded on an annual basis, and must be used in connection with a program sponsored by one of the law schools which is a governing member of the Rocky Mountain Mineral Law Foundation. The scholarship is open to all law school students who are undertaking the study of natural resources law, but preference is given to Alaska residents and students.

TUNLEY, OTHERS

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clients, such as the Brothers—an Anchorage motorcycle gang. "They were good clients, I never had any trouble with them," Charlie remarked. Most recently, he fought the School Board in *Tunley vs. the Anchorage School Board*, a lawsuit over the projected closing of a neighborhood school which his children attended. When he learned of Charlie's appointment to the Nome Bench, one Anchorage attorney remarked, "There goes our best street lawyer!"

On to Nome

Charlie told the **Bar Rag** he didn't expect the appointment, especially after his meeting with the Governor. "I was scheduled for 20 minutes, and it only took me eight minutes. He asked me a lot of questions and it was over. I was really discouraged." When the Governor called me up and told me I had the job, he said, 'I hope our paths meet again.' "

New Judicial Council Director Named

Teri White, a seven-year veteran of the Alaska Judicial Council staff and Deputy Director since March of 1980, was recently selected by the seven-member council as Executive Director, replacing Michael Rubinstein who resigned in August.

Although not a lawyer, Ms. White does not feel that this will handicap her in her carrying out her new responsibilities as Executive Director since she has supervised the Council's major studies in the past as well as worked extensively on the budgetary process with the legislature.

To those who might question the appointment of a non-lawyer, Mrs. White responds that the position of Executive Director primarily demands administrative, research and supervisory experience rather than a legal background, and the Council currently has two staff lawyers, Nick Maroules, research director and Holli L. Ploog, staff attorney. She points out that the Alaska Judicial Council was created by the State Constitution to perform two primary functions: solicit, screen and nominate applicants for gubernatorial appointment to judgeship positions, and conduct studies for improvement in the administration of justice, reporting to the legislature and the Supreme Court at least once every two years.

Ms. White's current agreement with the council includes her commitment to remain as the Executive Director until the fall of 1982 when she expects to enter law school. (This summer, prior to her appointment, she took the law school entrance exam, scoring in the 98th percentile.)

Currently the Council is working on its final report on the 1976 through 1979 felony statistical study which is a follow-up study funded by the legislature to the Council's plea-bargaining study. The legislature requested the Council to follow-up on its findings of racial disparity in sentencing, and according to Ms. White, the Council's final report will reflect that disparity in sentencing has disappeared for the most part except in drug offenses involving black offenders. The Council staff is also working on a variety of other projects, including assisting probation officers and judges in developing a new sentence report format and is about to commence a new misdemeanor sentencing study.

One of Ms. White's primary goals as Executive Director is to develop better public understanding of the Council's function in nominating judicial candidates as well as educating the public to participate more fully in the judicial retention process. According to Ms. White, one of the biggest reasons that voters seem to disregard Judicial Council recommendations in retention elections is that the public misunderstands the judicial selection and retention process and the role of the Council in evaluating judges prior to a retention election. She feels that under the present system, the voters really do have a say in determining whether a judge is retained, pointing to the recent retention election of Justice Warren Matthews. She hopes to develop better informational systems to bring the Council's recommendations on retention of judges to the public's attention, including creating a deeper public awareness of the Council's judicial retention recommendations and the format followed by the Council in its evaluation process.

Notice of Intent to Contract for Guardian Ad Litem Services

The Alaska Court System is presently soliciting bids from qualified Alaska attorneys who are interested in contracting with the Alaska Court System to provide guardian ad litem services in cases arising in the Third Judicial District which involve indigent parties and require such services. Interested parties should contact the Office of the Area Court Administrator, Room 320, 303 K Street, Anchorage, 99501, for further information.

The Bar Rag Thanks its Advertisers For Their Continued Support

Fred Eastaugh Awarded Man of Year Honor

The Alaska State Chamber of Commerce has awarded its outstanding man of the year award jointly to Fred Eastaugh and Lew Williams Jr.

Mr. Williams, a newspaper publisher in Ketchikan and Mr. Eastaugh a senior partner in the Juneau/Anchorage law firm of Robertson, Monagle, Eastaugh and Bradley were selected by a vote taken among past chamber presidents.

It is only the second time in chamber history that two candidates have tied for the honor. Both men were honored for their many years of unselfish contributions to their State and their community.

Mr. Eastaugh born in Nome and raised in Alaska has also recently been recipient of the Juneau Chamber of Commerce Man of the Year Award. Mr. Eastaugh is known as a dedicated Juneau promoter. He has been instrumental in a legislative housing project for Juneau and the establishment of Juneau as headquarters for the 17th Coast Guard District. He is active in Juneau Civic organizations and other Juneau activities.

His other activities also include numerous projects beneficial to Alaska. He is a promoter of State Tourism and Alaska Mineral Resources development.

The legal profession is probably most acutely aware of his main efforts encouraging high standards for the practice of law as well as his dedicated work for his well-known law firm.

Season's Greetings

Judge Cutler Addresses Women Lawyers

There are at least 727 women judges in the United States, 98 of whom are in California, Anchorage District Court Beverly Cutler told the Anchorage Association of Women Lawyers on November 5, 1980.

Judge Cutler was addressing the group on the second annual meeting of the National Association of Women Judges she attended in Washington, D.C. Approximately 250 judges attended the conference, which included a reception by the president and one by Justice Berger.

Information passed on by Judge Cutler included statistics; although there are over 45,000 women practicing law in the U.S. (10% of the bar) only 5% of the state judiciary and 6.6% of the federal consists of women.

The Anchorage Association of Women Lawyers meets at the Tea Leaf Restaurant at noon on the first Wednesday of every month. Anyone is welcome to attend.

NOTICE

The National Center for Professional Responsibility is interested in receiving manuscripts for its "Monograph Series: Problems in Lawyer Professional Responsibility." The series will consist of approximately 20 separate essays describing and analyzing specific problems of lawyer ethics and discipline. Authors interested in having their manuscripts included in the series may request further information from:

National Center for
Professional Responsibility
American Bar Association
777 South Wacker Drive
Chicago, Illinois 60606
(312) 621-9250

Random Potshots

by John E. Havelock

"Sour Grapes"

Anyone milled through an evaluation process is going to end up with some evaluative thoughts on the evaluators. At the comprehensive level, **Harry Branson's** magisterial work "Its Political" (**Alaska Bar Rag,** October 1980) sets the standard for accuracy, scholarship and summation in the field. But a footnote may usefully throw some light on the Judicial Council's particular institutional role as a colossus astride the path to appointment.

The state constitution establishes the Council and gives it a share of the power of judicial appointment but it does not identify the standards it is to bring to the task. The Supreme Court has criticized other agencies, the constitutional Local Boundary Commission for example, for not establishing clear standards and procedures. The Local Boundary Commission and dozens of other agencies have followed the mandate.

The Council deliberates with virtually no guidelines to its task. It should not be surprised then if its operations are subject to speculations sometimes unfavorable or even cynical, continuing a rich folklore of rumor and result going back to its beginnings.

American Bar Approach

The problem of standards might be illustrated by comparison with the American Bar Association's exercise of its responsibility for federal judicial appointments. The American Bar has been screening judicial appointments for some time with a high degree of bar and public support. In part the credibility of ABA screening may be attributable to the direct accountability of the screening committee to the profession and the care, over many years, with which the responsibility is exercised. But, the prestige of the committee may also relate to the standards which it follows. The ABA purports only to separate out the "unqualified," "qualified" and "well qualified:" Unlike the Council, its role is only advisory which may also result in a more cautious and better fortified exercise of judgment.

Sharing the Appointive Power

The Council, on the other hand, as it has defined its role (the bare language of the constitution being open), shares the appointive power. It is under no obligation, legal or otherwise, to send forward a name merely because the candidate is "qualified" or "highly qualified." It need only send forward the two candidates it likes best. Popular history has it that in at least one case, the Council attempted to force the selection of a favored candidate by sending up that candidate with the name of one other unqualified on any standard. Each member of the Council, then, is entitled to proceed on his own assumptions concerning the nature of his duties and the criteria of judicial qualification.

Some Informal Standards

Some members obviously have viewed their function as at least partly political: to protect the Governor from the temptation to appoint someone too conservative or too liberal, for example. Each Council member may also be moved by his perceptions of the need for "balance" or change in direction on the court—more cerebral or more common sense candidates, more practitioners or more judges. Geographic balance has undoubtedly influenced the Council's deliberations as it has the Governor's. Surely Council members must each tend to develop their own favorite candidate and be at least conscious of the effect on the Governor's choice of various combinations of names sent forward.

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Editorial

PORTENTS

Funny things happened on the way to this year's judicial retention election. An ultimately unsuccessful Anchorage house candidate ran a series of last-minute newspaper ads urging voters not to support the retention of Justice **Warren Matthews**—blaming him for the outcome of the Zobel case; suggesting that he and the court took a position they could not have taken in a case that wasn't appealed; and arguing that the court was unfair to sportsmen when it upheld a short jail sentence for a hunting violation. The "sportsman" in question shot a pet deer on its owner's front lawn. He had previously been convicted of attempting to exterminate a dog with his automobile.

Justice Matthews lost by a heavy margin in Anchorage, the only location in the state where the ads were run. Fortunately, he did well enough elsewhere to keep his seat.

In Juneau, a district court judge not recommended for retention after a disastrous Bar poll was quoted in the newspapers suggesting that his response to the Judicial Council's action was to drop his pants on a main street in Juneau, bend over and permit its members to kiss his backside. He was retained by Juneau voters.

The number of voters who voted to retain Anchorage superior and district court judges averaged approximately 5% less than it did in the previous retention election, as it has in each of several preceding elections.

If these trends continue, unless the Bar and the Judicial Council do something in the future to educate voters about the judges up for retention, we run the risk of losing some good judges who have been unafraid to make unpopular decisions when the facts and the law warranted. We might also lose judges solely because the public is angry at the selection/retention process as evidenced by some of the letters to the editors of the Anchorage papers after the election. Finally, we can expect to keep judges the Bar and the Judicial Council rate unfit when these jurists, correctly reading the mood of the public, are willing to pander to its anger, resentment and mistrust in order to keep their seats and their pensions.

Letter

Anchorage Times
Letters to the Editor
P.O. Box 40
Anchorage, Alaska 99510

Dear Editor, Anchorage Times:

The Anchorage Association of Women Lawyers disagrees and is distressed with the editorial attack and the paid advertising campaign waged against Supreme Court Justice **Mathews** in the November election. Both were either based upon incorrect information or deliberate misrepresentation of the role of the court and an individual justice in arriving at a politically unpopular decision.

The role of the court and the justices is to uphold the rights of individuals in accordance with constitutional principles. To declare a justice incompetent simply because he reached a conclusion contrary to one's personal wishes is to ignore the proper role of the court, constitutional precedent, and individual constitutional rights.

A charge of incompetentness should be based on an individual justice's lack of reasoning ability, disregard for precedent, or unwillingness to work. The "popularity" of his or her decision is not a proper gauge of his or her competence.

The Anchorage Association of Women Lawyers does not dispute the need or the right of citizens to vote on the retention of judges and justices. However, it does urge responsible editorial comments grounded on the justice's competence as it has been or has not been demonstrated, rather than merely a recitation of one's personal anger at a specific decision. It is a disservice to the public to disguise one's anger as a rational analysis of competence.

Sincerely,
Larri Irene Spengler
President
Anchorage Association of
Women Lawyers

cc: Daily News & Bar Rag

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The Bar Rag is published monthly. Mail received at Box 279, 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.

INSIDE/ OUTSIDE

Comments & Observations

by Karen L. Hunt

Does Code=Malpractice?

The trend for courts to hold that the Code of Professional Responsibility can be the basis for a malpractice action against attorneys gained momentum with two recent court decisions. The Illinois Supreme Court in *Rogers v. Robson, Masters, Ryan, Brumund & Belom* held that a defense attorney who settled a malpractice suit within policy limits may be liable for damages to the defendant-doctor who was not informed of the settlement negotiations even though the doctor had no right to veto a settlement. The court wrote that:

> *It would anomalous indeed to hold that professional standards of ethics are not relevant considerations in a tort action, but are in a disciplinary proceeding. Both malpractice actions and disciplinary proceedings involve conduct failing to adhere to certain minimum standards and we reject any suggestion that ethical standards are not relevant considerations in each.*

The Sixth Circuit Court of Appeals in *Woodruff v. Tomlin* held that a plaintiff's attorney representing both passenger and driver may be sued and the Code provisions regarding representation of conflict of interests will be the basis for the malpractice action.

Does Advertising=Malpractice?

Observers of legal malpractice are once again raising the specter of the UCC giving rise to causes of malpractice action against attorneys. In the context of implied warranties, it is conceivable that lawyers may be considered as "merchants" for the purposes of section 2-314 of the UCC. If the implied warranty of merchantability is extended to lawyers who advertise, the advertising attorney must make certain that his services are indeed "merchantable." Merchantability does not mean perfection, it merely means that the attorney's legal services must pass without objection in the trade. Thus, in the event an attorney advertises a limitation of practice, he must represent his client in a manner that attorneys similarly limiting their practice would consider to be satisfactory. The dissatisfied client need not prove negligence.

It is also arguable that the implied warranty of fitness for a particular purpose may be applicable to attorneys. If an attorney advertises that he is a specialist in a particular area, and the client with a highly technical legal problem is drawn to the lawyer because of his advertisments, it may be that the attorney is warranting his ability to satisfy the particular purpose requested by the client. Failure to do so many result in a breach of such implied warranty.

Michigan Lawyer Solicitation Law Constitutional

A Michigan statute that imposes criminal sanctions on "ambulance chasing" attorneys, but not on attorneys who solicit other kinds of legal business, survived constitutional challenges by several members of the state's personal injury and workers' compensation bar. The Michigan Supreme Court ruled that the statute, which applies only to solitication of persons "injured as the result of an accident," does not violate equal protection and is not void for vagueness.

Federal Agencies to Pay Attorney Fees

Fee-shifting legislation cleared the Congress October 1 in the form of an amendment to HR 5612, a small business assistance bill. President Carter signed it October 21 despite Justice De-

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All My Trials

by Gail Roy Fraties

My readers have asked me to comment on recent efforts by the Alaska Bar to ingratiate our profession with the public. The feeling seems to be that we are not understood—and I am reminded of a comment attributed to Dorothy Parker that, "Women complain that men don't understand them—but women understand women, and don't like them." However, I suppose it is worth a try.

One of the plans that has been advanced is that of putting laymen on the Board of Bar Governors, on the premise that if they sit in on and contribute to that body's deliberations, they can help explain our attitudes to the laiety. A further question arises, however, as to the composition of such a civilian delegation.

Some guidance can be derived from police review boards, now a popular national phenomenon. A careful study has indicated that such boards are usually comprised of three blacks, three Chicanos, one women's libber and a gay. Certain variations occur depending upon regional differences, but this is the standard, or "Weidner ratio" (see *Burying the System for Fun and Profit*, Weidner, at page 493).

The Weidner Ratio

If we are to have laymen on the Board, a strong argument could be made that at least half of them should be criminals (to recognize their proportionate involvement with the activities of the Bar, and court system in general). It should be apparent that a rapist is more intimately connected (if that is the expression I want) with the administration of justice than, say, a housewife or clergyman. Given the degree of their involvement, convicted felons, in the process of serving maximum sentences for a variety of bizarre and inexcusable crimes—would be best qualified. Many of my own clients fit into this category, and would be happy to serve.

Of course, civil litigants should have equal representation, and Anchorage attorney **Bob Baker** has proposed the following meld: three convicted felons, one quadriplegic victim of a heavily insured vehicle, one insurance adjuster, and one divorced party whose wife ran away with her lawyer. Possibly it would be appropriate to have a few lawyers on the Board of Governors as well, if only to serve as a counterbalance.

I perceive that the basic problem of our trying to explain ourselves to the public is that lawyers don't talk like other people, don't think like other people, and don't act like other people either. Whatever law school does to the human brain and personality is subtle enough to be unnoticeable until one is dealing with a legal problem—at which point we start acting like lawyers, to the complete mystification of the untutored.

A Case in Point

A sentencing hearing is a case in point, and usually goes something like this:

Court: It is my understanding that the Defendant wishes to change his plea.

Defense counsel: That is true, your Honor.

Court (addressing Defendant): Have any threats or promises been made to you, in order to induce you to plead guilty?

Defendant: Well, I understand we have a deal. (Hurried consultation between defense counsel and his client.)

Defendant: No, your Honor.

Court: You understand, of course, that I am not bound by the recommendations of either counsel—and if I wish, I may sentence you to the maximum which—in this case—is 3,000 years at hard labor, or life, whichever ends first.

Defendant (in a strangled voice, after another prolonged consultation with defense counsel): Yes, your Honor.

Court: You are charged with sexual abuse of a minor under Section 11.41.440 of the Criminal Code in that you're alleged to have had sexual penetration with a person under sixteen years of age but thirteen years of age or older. The law requires that I question you as to the facts of this case. Did you do such a thing?

Defendant: Did I do what?

Court: What I'm asking you is whether your penis entered the vagina of a female person under 16 years of age.

Defendant (shocked): I don't think so, your Honor.

Defense counsel: Your Honor, my client may be a bit confused—may I interpose a question of my own?

Court: Of course, Mr. Keenan.

Defense counsel: Isn't it true that you fucked your little sister?

Defendant: Oh, that. Well...sure.

The Media Influence

Further to the subject of police efforts to popularize themselves with the community (see above) I would say that television has been an effective vechicle for that purpose. No one can watch "Starsky & Hutch," "Baretta" or "The Streets of San Francisco" and come away unmoved, and even the grim world of forensic pathology has been humanized by the engaging Dr. Quincy. Some years ago, there was a sporadic attempt to popularize criminal lawyers—but it quickly faded out. There is a paucity of believable fact situations where a criminal lawyer can be depicted as defending an innocent man, and of course the public rejects any other concept. They don't want to know what we really do—but if they did, I'm sure it would make for some interesting viewing.

Suggested pilot: The defense of a kiddy pornographer. The defense counsel by legal legerdemain, excludes 200 pictures of various children under the age of seven years engaging in unnatural acts with each other, the defendant, and his pets. In a dramatic courtroom confrontation, he suppresses the Defendant's boastful admissions concerning his conquests of various members of the fairer sex (ages six to nine) on some variation of the *Miranda* warning problem (Anchorage-based policeman failed to give warning when he phoned Defendant at his summer home in Kailua).

The Defendant is not allowed to take the stand because he has told his counsel all about his transgressions in chilling detail, the child witness for the prosecution is impeached (and reduced to tears) by the revelation that she was caught "playing doctor" with several neighborhood boys two years before the purported crime, and the jury is unable to make a positive identification of the Defendant in the pictures that did escape exclusion, because his face is obscured by various portions of the children's anatomy.

The Defendant's twelve previous convictions are kept out on relevancy objections, and a passionate plea to the jury for fairness by defense counsel wins an acquittal, after which a fee of $30,000 changes hands and the victorious lawyer is roundly congratulated by other members of his firm for winning a tough case. The scene closes with the young attorney, now a popular hero, receiving phone calls from other wealthy child molesters. Fade out to the strains of "The Impossible Dream."

The Sport of Trial

That's the defense side, of course. The prosecution phenomenon—if truthfully presented—offers similar possibilities. Anyone who has ever been a prosecutor is familiar with "The Sporting Theory of Litigation." This, roughly translated, means, "Let's run it by a jury and see if they'll convict." It works a lot better if you're dealing with bad guys in the first place.

I remember one time in my former incarnation as a felony prosecutor in Salinas, California, being ordered by Mr. **Ed Barnes**—the Assistant District Attorney—to prosecute the members of a motorcycle gang who were accused of raping the gang mama. Students of California subculture will be aware that such an individual obtains her status by being readily available to all members of the motorcycle organization, their designees, assigns and heirs, for sexual enjoyment. In this particular case, the young lady in question had formed an attachment with someone outside the gang, and had decided to be faithful to him. After about twenty-four hours of this, the gang members came around, took her out of the house, and enjoyed her favors anyway. She was mildly indignant, but didn't complain. However, her new boyfriend did, and the gang members were arrested.

I asked Mr. Barnes why we were pursuing the case, and he replied candidly that it was because the Chief of Police had bet the District Attorney $100 that I couldn't convict them. A two-week trial ensued, half a dozen members of the gang went to state prison, and money changed hands all over the courthouse. By this time, of

[continued on page 14]

RANDOM POTSHOTS

[continued from page 4]

Use of Bar Poll

Since the Council now designs it, possibly the bar poll categories may be advanced as criteria of judicial qualification, at least ex post facto, but it is hard to see how the Council otherwise searches for evidence of these criteria or could avoid the deep subjectivity involved in categories which read like a partial list of the seven deadly sins. The general impression is that poll results, as such, will be used by the Council member when they please him.

Though the Judicial Council's role is not restricted to culling out the unfit, it is an elimination contest. The approach is inherently negative. Each member will draw from the record reasons for eliminating all candidates but the one (or more) favored by him.

This process probably tends to produce results converse to an elective system. Color and controversy which are an asset in the electoral process are a libility in the Council screening system. The gray journeyman with little of record to criticize is advantaged.

A Question of Accountability

The Council's action in taking over the bar poll has tended to preempt an independent, vigorous bar role in the selection process. While laymen tend to look at the lawyer domination, lawyers may note that the Council's size and composition allow the three lay members, by picking up a single lawyer vote, to control outcomes.

There is no independent input into judicial selection by bar representatives. The lawyer members, while (customarily) elected by the bar for six-year terms, are not representative in the sense of accounting to a constituency. Nor can we expect that one lawyer from each district could represent the many currents of a diversified bar. It is not lost, even on a male applicant, that Council meetings have the good cigars, real leather and old bourbon feel of a men's club.

An Independent Role for the Bar

The Council will, of course, continue to operate according to its own lights. The bar, however, might look to strengthen its independent responsibility for the selection and quality of the judiciary.

The bar should consider, for example, methods for developing encouragement of judicial candidates and informal evaluative screening techniques. It might consider ways of ameliorating the gauntlet-like aspect of judicial candidacy and the penalties associated with an unsuccessful candidacy. The bar should ask itself whether it should not have its own version of the American Bar Association judicial oversight process. A committee on "polling and elections" which takes hind tit to the Judicial Council is not enough.

Plato's Haiku

Outside
City walls
Poets
Wait their turn
Pretending to be
Beggars

—Harry Branson

The Rule of Law

by J.B. Dell

There has been a notable trend in recent years to solve all social, economic, and political problems through recourse to litigation. In the spirit of this trend, the **Bar Rag** looks back in time to see how some famous difficulties might have turned out had the persons involved utilized the formalities of the law.

Dateline 1500 B.C.

Paris of Troy has kidnapped the beautiful **Helen**, wife of **King Menelaus** of Sparta. One thousand Greeks unite to file a class action against the Trojans for replevin and alienation of affection. Through procedural maneuvers, the Trojans keep the case tied up in discovery for five years. Paris loses interest in Helen and takes up with a lady metaphysician from Carthage. Helen is forced to take in laundry in order to buy a ticket home.

Dateline 200 B.C.

The Great Wall of China is constructed. Several years later an as-built survey shows that the entire wall actually lies a foot and a half into Mongolia. Panicking, the Chinese seek to cover up the error by slaying all 682 surveyors under a trumped-up charge of stealing the emperor's chickens. The Chinese nervously wait out the 10-year adverse possession period. The Mongolians fail to discover the error and the wall stays Chinese forever.

Dateline 1760

France files suit against Italy for possession of Corsica. Italy fails to answer and is defaulted. Corsica becomes a French colony for 300 years.

Dateline 1776

The American Continental Congress drafts a resolution condemning Britain for taxation without representation, the unlawful quartering of troops, and for "generally kibitzing in the affairs of the colonies." The Congress asks lawyer **Samuel Adams** to obtain possession of the colonies on a contingent fee basis. Adams declines but agrees to write a demand letter for $55. Adams' letter asks that America obtain possession of the colonies while Britain would retain Cleveland and certain sections of New Jersey. The British are insulted and immediately declare war.

Dateline 1919

Woodrow Wilson asks Senate leaders to approve joining the League of Nations. Senate leaders consider the League as going too far and instead suggests "forming some sort of fan club." Wilson is enraged and files suit in the Hague Court seeking to compel Senate ratification. Senate leaders agree to join as part of an out of court settlement only after Wilson extends membership benefits to include group life insurance, a gold tie tac, and 24-hour towing. World War II is avoided.

Legal Secretaries

Anchorage Legal Secretaries' Association's Seventh Annual Boss of the Year Luncheon was held at the Elks Club on October 17, 1980. Over one hundred legal secretaries and their employers attended the reception.

140 Persons Present

Attorneys **Harry Branson, Rand Dawson** and **Linda O'Bannon,** joined ASLA members **Gayle Odsather, Edwina Klemm,** PLS, and **Donna Bohner,** CPS, PLS, as the "ALSA Players" and presented a skit entitled "Law Daze."

Donna Bohner, CPS, PLS, instructor at Anchorage Community College, presented a desk nameplate to each person obtaining the Professional Legal Secretary (PLS) rating this past March. **Virginia Retzlaff, Carol Brunet, Chris Hedburg, Diana Waddell, Kathy Conger,** and **Edythe Klevens** were successful in obtaining the PLS rating during the March examination. The PLS exam is a two-day comprehensive examination given twice a year to legal secretaries who met the qualifications set for the examination.

"Three for Me" was the title of the runner-up essay. **Shirley Langner,** who is employed by the law firm of Wanamaker, DeVeaux and Crabtree, wrote the composition. Shirley is a member of Anchorage Legal Secretaries' Association and joined the Association in September of 1979. She began working at Wanamaker, DeVeaux and Crabtree in April of 1979 and this is her first experience with the legal field. Prior to this, she worked at a bank. Shirley came to Alaska in 1969 and thoroughly enjoys her job at Wanamaker, DeVeaux and Crabtree.

James Wanamaker was born in Seattle, Washington, and was admitted to the Alaska Bar in 1961. He received his preparatory and legal education at the University of Washington. He served as Assistant Attorney General for the State of Alaska from 1960-62; he was the Assistant District Attorney, Anchorage, from 1962-64 and the District Attorney from 1964-65. He is presently applying for a Superior Court Judgeship for the Third Judicial District, Anchorage. He is a member of the Anchorage, Alaska, and American Bar Associations.

Leroy DeVeaux was born in Evergreen Park, Illinois, and was admitted to the Alaska Bar in 1973. He received his preparatory education at Dana College and his legal education at Arizona State University. He is a member of the Anchorage, Alaska, and American Bar Associations, and the American Law Institute.

Richard Crabtree was born in Fargo, North Dakota, and was admitted to the Alaska Bar in 1975. He received his preparatory education at Reed College and his legal education at Northwestern School of Law of Lewis and Clark College. He is a member of the Alaska and Anchorage Bar Associations.

The winning composition was written by Anchorage Legal Secretaries' member **Majorie Courtemanche** and was entitled "Diary of a Secretary's Daze." In her composition, Marjorie described her average work week as secretary to **Michael Sharon** of Hartig, Rhodes, Norman & Mahoney. Marjorie moved to Alaska from Duluth, Minnesota, in the summer of 1979, and went to work for Hartig, Rhodes, Norman & Mahoney in August of 1979. She joined ALSA shortly after beginning work in Anchorage. Marjorie worked for 10 years as a secretary and court reporter for the Staff Judge Advocate General's Office, United States Air Force, in Minnesota. She is married to Tech. Sgt. Ronald Courtemanche, who works in the JAG Office at Elmendorf Air Force Base. The Courtemanches live in Eagle River with their daughters, Dawn and Jill.

The 1980 Boss of the Year, **Michael Sharon,** was born in Berkeley, California, and was admitted to the California Bar in 1972 and the Alaska Bar in 1975. He received his preparatory education at the University of California at Santa Barbara and his legal education at the University of Arizona. After passing the California Bar exam, he practiced at Redwood City, California, for a year and a half. He came to Alaska in June of 1974 and worked as a guide for four months. He was later employed as the City Manager of Galena, Alaska, for little over a year. He clerked at Hartig, Rhodes, Norman & Mahoney for a little over three months and in February of 1976 he opened the Kodiak branch office for the firm. In January of 1979 he returned to the firm's Anchorage office. He is a member of the San Mateo County Bar, Alaska Bar Association, State Bar of California, and the California Trial Lawyers Association.

Previous recipients of the Boss of the Year Award are the following: **Richard Collins** (1974), **L. Ames Luce** (1975), **Julian L. Mason III** (1976), **Raymond A. Nesbett** (1977), **David Shimek** and **Max Peabody** (1978), and **George Hayes** (1979). Judges for this year's essay contest were Raymond Nesbett, David Shimek, Max Peabody, and George Hayes. Mistress of Ceremonies for this year's luncheon was **Paula Machin.**

Anchorage Association of Women Lawyers Minutes

AAWL assembled as usual on November 5, 1980 at Noon at the Tea Leaf Restaurant under the direction of **Larry Spengler,** President.

1. *Judicial Candidates:* Two women were among those recommended by Judicial Council for two Anchorage Superior Court appointments. AAWL will urge the Governor to appoint qualified women to the bench.
2. *Women & Law Course:* Thanks was expressed to **Karen Hunt, Pat Kennedy** and other women lawyers who have participated in the organizing and teaching of the Women and the Law course at ACC. The members decided to devote such part of the honorarium paid to AAWL on account of these persons efforts, at the end of this semester, to a dinner to show our appreciation of these members. Andrews/Vaillancourt motion.
3. *AAWL Christmas Party:* **Elaine Andrews** has offered her home for the annual AAWL party. A committee consisting of **Kathleen McGuire, Joyce Rivers, Mary Ann Foley** and **Tonja Musko** agreed to organize the event.
4. *Meeting Place:* The officers explored the possibility of holding our meetings at the Tiki Cove. That restaurant offered luncheon at $7.50 per plate with a minimum of 26 persons. There was no motion to consider that alternative.
5. *Far West Regional Conference on Women & the Law:* Two people applied for AAWL sponsorship to this Seattle conference Oct. 15 to 17, but only one was able to attend. **Alexis Foote** has prepared a written report on the conference and will give an oral report to the next meeting. **Susan Vaillancourt** has copies of the resource materials provided at that conference. Interested persons may contact her.
6. *Assistance to AWAIC:* **Karla Huntington** asked for AAWL assistance or donations to the Abused Women's Aid in Crises program. AWAIC has two VISTA attorneys with no funds for their bar fees or for statutes or other law books. Karla will present a request to the next meeting for a decision at that time.
7. *Support to Justice Mathews:* Support of Justice **Mathews** and concern over the mud-slinging campaign waged against him by one District 7 candidate was a topic of discussion. **R. Curruth** moved that the officers draft a letter to the editor expressing our indignation.
8. *Featured Speaker:* Hon. **Beverly Cutler,** District Court Judge, addressed the group regarding the National Association of Women Judge's Conference which she recently attended. About 727 women judges have been counted nationwide on courts of all levels. Many, however, are judgeships on the municipal court level. California has 98 women judges. Presently, 44 of the 667 federal judges (6.6%) are women. Of those, 42 were appointed by President Carter! Judge Cutler discussed opportunities and obstacles for women judgeship appointments. The Judicial Appointments Project of the National Women's Political Caucus has devoted its efforts to promoting the appointment of women to state and federal benches.

SUBMITTED: S. Vaillancourt

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Rules, Rules

Proposed Amendments to Article III of the Bylaws of the Association

A. Article III of the bylaws of the Association, entitled "Membership," is amended by adding a new Section 7 to read:

Section 7. RETIRED MEMBERS. Retired membership in the Alaska Bar shall be limited to former active members of the Alaska Bar who are age 65 or older and who no longer engage in the practice of law, hold judicial office, or any other legal position in the State of Alaska or in any other jurisdiction.

B. The succeeding sections of Article III are renumbered accordingly.

C. Section 8 (formerly Section 7) of Article III is amended to read:

Section 8. TRANSFER FROM ACTIVE TO INACTIVE MEMBERSHIP *OR RETIRED MEMBERSHIP,* OR FROM ACTIVE TO INACTIVE ADJUNCT MEMBERSHIP. Only the following methods shall be effective to transfer from active to inactive *or retired* membership:

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

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

(3) Transfer to that status by the Supreme Court of Alaska, pursuant to Rule 26 of the disciplinary rules.

D. Section 9 (formerly Section 8) of Article III is amended to read:

Section 9. PRIVILEGES OF INACTIVE *OR RETIRED* MEMBERS. An inactive *or retired* member may attend the annual and special meetings and participate in any debates at such meetings, and may be appointed upon any committee, but no active *or retired members shall hold office* or vote.

E. Section 10 (formerly Section 9) of Article III is amended to read:

Section 10. TRANSFER FROM INACTIVE *OR RETIRED* MEMBERSHIP OR INACTIVE ADJUNCT *MEMBERSHIP* TO ACTIVE MEMBERSHIP OR ACTIVE ADJUNCT MEMBERSHIP. (a) Upon written request, an inactive *or retired* member, or inactive adjunct member, may be transferred to active status, if the following conditions are fulfilled:

(1) In the case of members who have been inactive *or retired* for one year or more, the Board makes the determination of good character;

(2) The member fulfills the requirements of Section 2(a) or (b) of this Article or the requirements of Section 3(a) of this Article, as the case may be; and

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

(b) The Board may transfer a member or an adjunct member from inactive *or retired* to active membership or adjunct membership if the Board determines that the member is no longer eligible for inactive *or retired* status.

PROPOSED AMENDMENT TO ARTICLE IV OF THE BYLAWS OF THE ASSOCIATION

A. Section 1 of Article IV of the bylaws of the Association, entitled "Fees," is amended by adding a new subsection "e" to read:

(3) *Retired Members.* There shall be no membership fee for a retired member.

B. The succeeding subsections of Section 1 of Article IV are redesignated accordingly.

PROPOSED AMENDMENT TO ARTICLE IV OF THE BYLAWS

Section 2 of Article IV of the bylaws of the Alaska Bar Association should be amended to read as follows: DELINQUENT MEMBERS. Any member failing to pay any fees when they become due shall be subject to a penalty of $5.00 per week of delinquency (each fraction of a week to be considered a whole week) during which such fees are unpaid and delinquent; thirty (30) days after delinquency such member shall be notified in writing by certified or registered mail that the Executive Director shall petition the Supreme Court for an order suspending such member for nonpayment of fees. Such notice shall be sufficient if mailed to the address last furnished the Association by the delinquent member.

The Executive Director shall annually notify the Clerks of Court of the names and dates of suspension of all members who have been then or previously suspended and not reinstated. Any suspended member whose suspension has been in effect for less than one (1) year, upon payment of all accrued dues and the foregoing penalty of five dollars ($5.00) per week (not to exceed a total of $160 in late filing penalties), shall be reinstated upon certification by the Executive Director to the Supreme Court and the Clerks of Court that the dues and penalties have been paid. Any member who has been suspended for one (1) year or more, upon determination of good character by the Board, and upon payment of all accrued dues, in addition to a penalty of $160.00, shall be reinstated upon certification by the Executive Director to the Supreme Court and the Clerks of Court that the member is of good character and that the dues and penalties have been paid.

PROPOSED AMENDMENT TO ARTICLE VI OF THE BYLAWS OF THE ASSOCIATION

Section 1 of Article IV of the bylaws of the Association, entitled "Officers," is amended to read:

Section 1. OFFICERS. A President-Elect, Vice-President, Secretary and Treasurer shall be elected from the members of the Board by a majority vote of the active members of the Alaska Bar in attendance at the annual meeting. Newly elected officers of the Association shall take office at the end of the annual business meeting at which they have been elected. *The officers, other than the President-Elect, shall be elected from those members of the Board who have at least one year remaining in their term of membership on the Board. The President-Elect shall be elected from those members who have at least two years remaining in their term of membership on the Board.*

PROPOSED AMENDMENT TO ARTICLE VII OF THE BYLAWS OF THE ASSOCIATION

Article VII of the bylaws, entitled "Committees," is amended by adding a new section to read:

Section 3, *Sections:*

The President, with Board approval and in consultation with the Chairman of any Committee which deals with an area of substantive law, may designate such Committee as a Section. Membership in, and the activities of, any Section shall be open to all members of the Association and the Section shall be directed by an executive committee appointed by the President.

PROPOSED AMENDMENT TO ALASKA BAR RULE 2

Subsection (1)d of Alaska Bar Rule 2, entitled "Eligibility for Examination," is amended to read:

(d) Be of good moral character, *which shall be found unless prior to present conduct of the applicant would cause a reasonable person to believe that the applicant would, if admitted to practice law, be unable or unwilling to act honestly, fairly, and with integrity toward clients, tribunals, or other counsel;*

PROPOSED AMENDMENTS TO ALASKA BAR RULE 3

A. Alaska Bar Rule 3, entitled "Applications," is amended by adding a new section to read:

Section 4. The Executive Director shall initially determine whether an applicant has met the requirements of Rule 2. If the Executive Director determines that an applicant has not met the requirements of Rule 2, the applicant shall be denied an examination permit, which denial shall be final, subject to the review procedures of Rule 6. The issuance of an examination permit by the Executive Director may be reviewed by the Board as provided in Rule 4.

B. The succeeding sections of Bar Rule 3 are renumbered accordingly.

PROPOSED AMENDMENTS TO ALASKA BAR RULE 4

A. Section 4 of Alaska Bar Rule 4, entitled "Examinations," is amended as follows:

Section 4. The Board shall determine the qualifications of each applicant upon the basis of the report of examination, the recommendations of the Executive Director, and such other matter it may consider pertinent under these rules. *The Board may reverse a decision of the Executive Director that an applicant has met the requirements of Rule 2.* The Board shall certify to the Supreme Court the results of the bar examination and its recommendations as to those applicants who are determined qualified for admission to the practice of law who have complied with the provisions of Rule 5 [6]. Notice of the Board's determination shall be provided in writing to each applicant. Notice to an applicant determined not qualified shall state the reason for such determination *and shall advise the applicant of his right to appeal and the procedure therefor.*

B. Alaska Bar Rule 4 is amended by adding a new section to read:

Section 5. The Board may, if it concludes such action to be warranted on the basis of the reports of the character examination and of the Executive Director, inform the applicant that it will maintain a record of the prior actions of the applicant or proceedings against him which shall be available to the Disciplinary Administrator for consideration in any future disciplinary proceeding.

C. The succeeding sections of Alaska Bar Rule 4 are renumbered accordingly.

PROPOSED AMENDMENTS TO ALASKA BAR RULE 6

A. Section 3 of Alaska Bar Rule 6, entitled "Review," is amended to read:

Section 3. In any appeal the applicant shall have the burden of proving the material facts upon which he relies, *except that if the applicant has been denied an examination permit or certification to the Supreme Court on the basis of his lack of good moral character, the burden shall be on the Bar Association to prove lack of good character. The party upon whom a burden of proof is placed must discharge that burden by the preponderance of the evidence.*

B. Section 4 of Alaska Bar Rule 6 is repealed and reenacted to read:

Section 4. The President shall determine whether an appeal shall be heard by a master or by the Board. If the President determines that the appeal shall be heard by a master, he shall appoint as master an active member of the Association. Not less than twenty days before the hearing, the Executive Director shall give the applicant notice of the date of the hearing, whether the hearing is to be heard by the Board or by a master, and the identity of the master, if any.

C. Section 7(c) of Alaska Bar Rule 6 is amended to read:

(c) Where an examination permit *or certification to the Supreme Court* has been denied on the basis of character, the applicant has a right to inspect minutes of any meeting of the Board of Governors at which his application has been discussed, together with a statement of the specific grounds upon which denial of the permit was based.

PROPOSED AMENDMENTS TO ALASKA BAR RULE 7

A. Section 1 of Alaska Bar Rule 7, entitled "Procedures," is amended to read:

Section 1. All hearings [BEFORE THE MASTER] shall be electronically recorded with the facilities provided by the Alaska Court System. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision. The record may be destroyed two years following the last date upon which administrative appeal rights may be available under the provisions of this Rule.

B. Alaska Bar Rule 7 is amended by adding a new section to read:

Section 3. If the Board conducts the appeal hearing, it shall have all authority set forth in Section 2(a) through (i) of this Rule.

C. All succeeding sections of Alaska Bar Rule 7 are renumbered accordingly.

D. Section 4 (formerly Section 3) of Bar Rule 7 is amended to read:

Section 4. The Alaska Rules of Civil Procedure shall not apply to proceedings held pursuant to Rule I-6 [I-7].

E. Section 5 of Bar Rule 7 is repealed and reenacted to read:

Section 6. If the hearing is conducted before a master, the master shall prepare findings of fact, conclusions of law, and a proposed decision, and transmit them to the Board together with the record, which he shall cause to be certified to the Board. A copy of the record shall be provided to the applicant upon his payment of costs, and shall in any event be available for reveiw by the applicant. The proposed decision shall be served on the applicant and the Executive Director and either party may file a brief with the Board within twenty days after such service.

F. Section 7 of Bar Rule 7 is repealed and reenacted to read:

Section 7. The Board shall consider the master's proposed decision, and the record and briefs, and may in its discretion hear oral argument, after which it shall either adopt the decision of the master, in whole or in part, or render its own findings of fact, conclusions of law, and decision. If the Board conducts the appeal hearing, it shall give each party the opportunity to submit written final briefs, and shall enter findings of fact, conclusions of law, and a decision.

PROPOSED AMENDMENTS TO ALASKA BAR RULE 23

A. Alaska Bar Rule 23, entitled "Attorneys Convicted of Serious Crimes," is amended by adding at the end of the title the words "or Posing a Threat of Irreparable Harm."

B. Alaska Bar Rule 23 is also amended by adding new sections to read:

(i) Upon petition by the Disciplinary Administrator that an attorney poses a substantial threat of irreparable harm to his clients or to prospective clients, the Court may enter an interim order suspending the attorney from practice. If the order is entered without notice, then within ten (10) days from the entry of the order a hearing shall be held by the Court or a single justice to determine whether the interim suspension shall be continued, in whole or in part, pending the final disposition of disciplinary proceedings. In any case in which interim suspension has been ordered, such proceedings shall be diligently prosecuted.

(j) Interim suspension shall terminate upon the final disposition of disciplinary proceedings or upon the entry of an order by the Court terminating interim suspension.

(k) An attorney suspended under sections (i) of this Rule shall comply with sections (a) and (b) of Rule 26.

PROPOSED AMENDMENTS TO ALASKA BAR RULE 31

Section 1 of Alaska Bar Rule 31, entitled "Confidentiality," is amended to read:

Section 1. *(a) Upon filing and service of a petition in accordance with Rule 15(e), or upon the filing of a petition for reinstatement, all pleadings,*

[continued on page 10]

Zobels

Penny and Ron Zobel responded to the Bar Rag's request for an interview, stating that although they had been disappointed in their ability to explain the substantive aspects of the lawsuit to the general public, they welcomed the opportunity to discuss the reasons for challenging the income tax refund law and permanent fund distribution with the legal community.

Why the Lawsuit?

RON: I think that the permanent fund distribution system with its durational residency requirement creates a perpetual division of the population of this state into classes based on how long one has lived here. It creates a caste system that is essentially undemocratic. We have an important interest here, the interest people have in the oil and gas resources of the state. If we are to see this principal applied to many of the other benefits and rights which the citizens of the state have, we will see a caste system and that is why I am against it.

PENNY: Well you certainly see that mentality expressed in reactions to us. The feeling that we should "Go home" or go back where we came from because we are not worthy of being Alaskans since we dared to challenge something so sacrosanct as the fact that people who have been here since statehood have sacrificed and given more than people who are new. That's the kind of a caste system that can be very dangerous especially when dealing with resource money that has been developed in the last ten years and could only have been made possible with people coming in from the outside to develop it. And everybody ignores that fact when they talk about good versus bad Alaskans worthy of receiving a portion of the funds.

RON: We started out trying to explain to people what the lawsuit was about, thinking that we would be able to persuade the public that there was something seriously wrong with these laws. I have now given up on that and I am personally in the position of believing that this is a situation where the judiciary has to uphold the rights of a minority and that trying to persuade a great number of people of the state that there is something wrong with these laws isn't going to work. We are just going to win, that's all. We are going to win in court. I suppose I thought it would be a little bit easier in the beginning to try to explain the rationale behind our challenge to these laws. I think it is indicative of the invidious kind of reaction we have had. All of this hatred and abuse and it just seems to be a misunderstanding of what it means to be a citizen in a community.

PENNY: Our statements don't mean that we aren't saying that the people who have been here since the beginning of time and the first people who came and developed the land and created Anchorage and built all the roads out of the wilderness are not to be respected. We think very highly of those people. But when the law starts saying that they, because they did these things are necessarily much better than all the other citizens who came after them, then you're talking about a kind of discrimination that can't stand under our constitution, which encourages a mobile society.

Lawyers Reactions

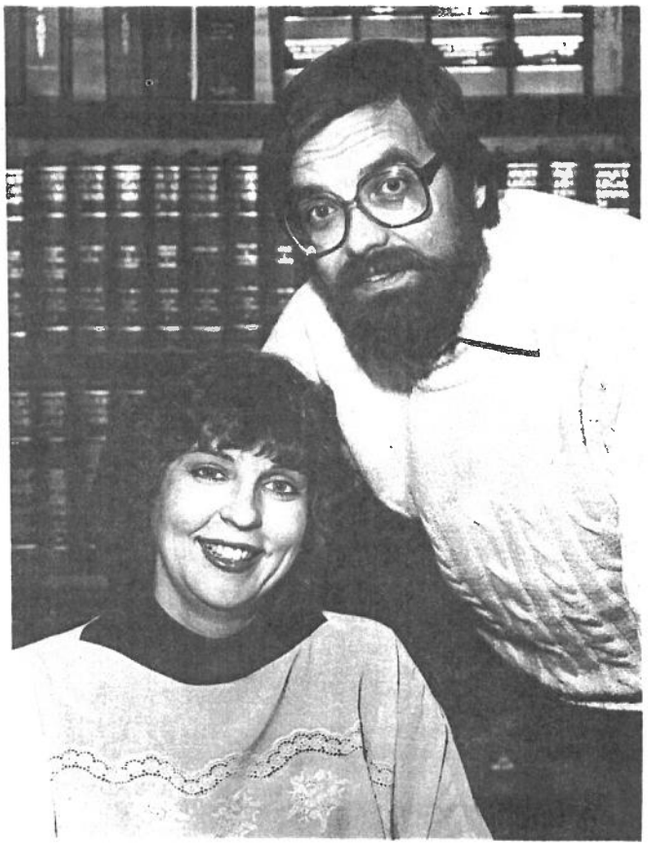
RON: Lawyers have reacted differently. I think many of them, although they may not necessarily agree with our position have recognized it is a legitimate lawsuit. They don't regard it as frivolous. Many of them have expressed support.

PENNY: Obviously, lawyers are much more supportive of our right to appeal.

Why These Plaintiffs

RON: We made a big mistake by not forming a plaintiff committee. I thought it would obviously be a politically hot issue but I didn't think that it would result in this kind of personalization. We see all kinds of lawsuits all the time and I thought it was to some extent a better lawsuit. I realized that it had serious political implications because of the importance that the legislature put upon the program. As far as why it wasn't a class action, we thought it was necessary to move as quickly as possible. We did not want to be in a position of trying to get an injunction so that meant that we needed to get to the merits as quickly as possible. We didn't want to get hung up in the intricacies of a class action. For example, we would have had to have twenty different classes since there are 21 classes of distribution of the permanent fund.

RON: Certainly being lawyer-plaintiffs has encouraged some of the reaction. Lawyers evidently don't have very good reputations. It has been very hard for people to separate client from lawyer because of the fact that we are lawyers. I think I underestimated what a lawsuit really means. Looking at it from an attorney's perspective is very different. As the lawyer, you are much more removed....



As far as using a different plaintiff, who else would want to do it? I am not in the business of scaring up plaintiffs. I am the plaintiff. There didn't seem to be anybody else coming forward and it was clear that the lawsuit had to be filed quickly.

Matthews Fallout

RON: I think that one of the most disappointing thing has been the way some people reacted to **Justice Matthews'** vote. I regard that to be almost an attack on the rule of law. I certainly don't think that those justices who voted against it should be tossed out of office because they voted against it. I think that we should toss out of office those members of the bench who don't have the integrity or the legal skills and intelligence to be there and not judge them on how they make a decision on one case. I don't think that anybody in the state, if they thought about it, would want their case to be decided by popular vote.

PENNY: That's the whole reason we have courts and constitutions: to protect the rights of the minority in a majority-run society. You can't have tyranny of the majority anymore than you can have tyranny of the minority. So what you have is a check and a balance and the court is the ultimate check.

RON: There is a constitutional provision that no one can be a member of the legislature unless they have been here for three years. It's curious that they came up with an income tax law with a three-year residency requirement. I don't think that is any accident. I think that new residents are not represented in the legislature, so only the court can protect them.

Rabinowitz Astray

RON: I never thought that the Supreme Court of Alaska would reverse itself on ten years of law. We went to state court because we thought we could go swiftly and we have. We were in the United States Supreme Court in October. That is one reason we didn't bring a class action and why we avoided every procedural and jurisdictional snarl. But another reason why we chose state court is because the Alaska Supreme Court's position up until *Zobel I* was that strict scrutiny would be applied to every single residency requirement. To see the court abandon that law is very disappointing and to see **Justice Rabinowitz** abandon his view in his concurring opinion in the *Beirne Homestead* case was disappointing. The decision is unfortunately parochial and political. I think that the justifications given for the durational residency requirement exhibit an excessive sensitivity for the uniqueness of

[continued on page 9]

ZOBELS

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Alaska and not enough emphasis upon the place that Alaska has in the federal union. I don't think that Alaska has acted like a state yet.

Gross and Randolph

RON: There have been two people on opposite ends of the political spectrum who have publicly defended us, **Avrum Gross** and **Dick Randolph.** The statement that no public official has spoken out in support of us is untrue.

Media Coverage

RON: The best exchanges that we have had are discussions of the issues on KAKM By-Line and even then you realize that you are talking to an audience made up primarily of laymen. I expected more people to understand the issues. I certainly think the average person has been misled by the media. We are both graduates of a journalism school. Here I am after years of being avid for the press yet I see the way the press handles us and misquotes us. Things we didn't say have been attributed to us and things have been misused. I sit and watch news broadcasts and they say "here is the good news" and they say "and here is the bad news: the Zobels got a stay from the United States Supreme Court today." But it isn't just that kind of distortion or that kind of expression of sentiment which is alarming. It is an inability to focus on the substance of the suit rather than the personal aspect.

PENNY: This became a public interest story very early on, and I think part of the reaction we have gotten sometimes has been fired by all the personal attention which we have received.

Starving Children

PENNY: Because you are new in the state doesn't mean that you don't need the money as much as someone who has been here for 25 years. It is quite possible that people who have been here since statehood need the money less because they have jobs and occupations while somebody who has been here only two, three, five years may need it more. That person may have children who are starving. For us to be attacked because people feel we are taking money out of their pockets which could be food in the mouths of starving children is just ridiculous. Aren't those people taken care of already without this kind of a welfare system? If they want to give out the money and separate the people who need it from the people who don't they are talking about another broad classification. They are saying that people who have been here since 1959 need it more. It is just irrational.

RON: It was interesting that the State filed an opposition to our application for stay by U.S. Supreme Court which talked about the need of more people in Alaska to get this money. They made it sound like a welfare program. The welfare program in *Shapiro v. Thompson* is right on point. If they want to turn this into a welfare program, let them be my guest.

Harassment

PENNY: We had to change our phone number. Before we changed the number (which we did for a housesitter) we would pick up the phone and if callers identified themselves we would talk to them whether they were for or against us. We tried to explain the suit to them. At times these were rational conversations, but a lot of people would start yelling obscenities and those we hung up on. Many evenings we just unplugged the phone out of desperation. We have received a lot of mail. A lot of letters are unsigned. A lot of them are really nasty, some are threatening. Those are unsigned. I received a letter at my office the other day that said "unsigned for professional reasons." It was an anti-Zobel letter.

Personal Price

PENNY: It's a constant pressure. It's a constant tension. I walked through a store the other day and the sales clerks were talking about us and it just nauseated me. I left the store because of the things they were saying. They were nasty and their comments were based on things they didn't know.

I guess it was a mistake to go to Africa for our vacation. That was too flashy. It was something we had planned ten months ago. It is something we have always wanted to do and we saved our money. It was a relief to get away and be normal again. When we came back, we found out that we had won the tax suit from the customs' man. One thing I have found distasteful and that really hurts me are cracks about my pregnancy. That cuts to the quick.

RON: To have people introduce you and have people recognize the name, who have a one dimensional view they have gotten from the media bothers me. I get so I expect that reaction and I am kind of defensive. "Oh my, here it comes."

Alaskans Now and Forever

PENNY: We're here. We have no plans at all to move. I am a sourdough now. I have been here through a winter. This is my third winter. Our car has not been shipped out. I do not reside in Washington, D.C. There must be someone else named Zobel who left in desperation.

To the U.S. Supreme Court

RON: The ideal that we should not have appealed to the U.S. Supreme Court shocks me. The idea we violated a rule of etiquette by going to the U.S. Supreme Court. My goodness, I can't really believe that people think that!

Yet a major newspaper endorses that view. Don't people here want to be able to appeal their rights to the U.S. Supreme Court? We are talking about serious constitutional issues.

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MEMORANDUM

TO: Federal Public Defenders of the Ninth Circuit, U.S. Attorneys of the Ninth Circuit, Lawyer Representatives of the Ninth Circuit Judicial Conference, Selected Legal Newspapers Within the Jurisdiction of the Ninth Circuit.
FROM: Richard H. Deane, Clerk, U.S. Court of Appeals for the Ninth Circuit.
DATE: November 17, 1980
RE: Proposed Changes in the U.S. Court of Appeals for the Ninth Circuit Rules and Procedures for Monitoring Transcript Production.

The U.S. Court of Appeals for the Ninth Circuit is considering the adoption of the following proposed local rules:

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
Addition to Rule 4(c)

(1) "In criminal appeals, the appellant must make suitable arrangements for payment of the transcript with the court reporter on or before the date the designation is filed in the District Court or be subject to possible sanctions for failure to make these arrangements for payment."

The rule is proposed to clarify any ambiguity as to when arrangements for payment for the transcript must be made in criminal appeals.

DESIGNATION OF THE REPORTER'S TRANSCRIPT
Proposed Change in Rule 4(c)

(2) *Civil Appeals*—"Within ten (10) days after the notice of appeal is filed, the appellant shall serve on the appellee notice of the portions of the transcript which will be ordered for the purposes of the appeal. Within ten (10) days after notice by the appellant, the appellee(s) shall serve on the appellant notice of any additional portions of the transcript which are deemed necessary for the purpose of the appeal. On the twenty-first day, the appellant will file one designation of the transcript in the District Court. At the same time, a copy of this designation will be sent to the court reporter and arrangements made for payment of the transcript."

The proposed change will allow for only one designation of the transcript to be filed in the District Court in civil cases. At the present time, this is the established practice for criminal appeals.

(3) Proposed Addition to Rule 4(e)

"In civil appeals, the filing date for the ordered transcript will be determined by the Clerk of the U.S. Court of Appeals based primarily upon the recommendation of the court reporter and the number of days of the trial."

"In criminal appeals, the filing date for the ordered transcript should be thirty days, in compliance with FRAP 11(b). The U.S. magistrate or judge, in consultation with the court reporter and counsel may extend the transcript filing date to give an additional thirty (30) days, if good cause is shown. The proposed time schedule is subject to review by the U.S. Court of Appeals."

The proposed rule will allow some flexibility in determining the initial date for the transcript. In civil appeals, the reporter will use a *Transcript Filing Schedule*, to determine the filing date for the transcript based on the number of days of trial. In criminal appeals, the criminal time schedule as set by the U.S. Magistrate will determine the transcript due date. Further extensions of time to complete the transcript will be granted to the reporter by the Court of Appeals, upon submission of a request for additional time filed by the reporter.

(4) Proposed Addition to Rule 22

"The Clerk will have the authority to grant verbal extensions of time to file the transcript in civil appeals. These extensions will be for no more than fourteen (14) days and will be subject to reconsideration if opposition is filed by either party within ten (10) days."

Under the proposed rule, if a verbal extension of time is granted to the court reporter, it will be his/her responsibility to contact counsel and relay this information. Should the Clerk feel that is necessary to request the court reporter to file a confirmation letter, showing that a verbal extension was granted, this will be served on all counsel by the court.

In addition to the above changes in the local rules, the U.S. Court of Appeals will initiate for use throughout the Circuit, a multi-part form to designate and order the transcript. The form has already been in use for several months in the U.S. District Courts for Northern California and Arizona. The form will be distributed by the District Court to the appellant when the Notice of Appeal is filed. The Court has also taken under consideration a list of proposed guidelines should court reporters fail to adhere to FRAP and Ninth Circuit Rules. Finally, the Court is considering the adoption of a resolution encouraging magistrate time conferences with all parties present to set due dates for the transcript and briefs in criminal appeals.

Written comments on the proposed rules are invited. In order to be assured of consideration by the Court, responses should be submitted prior to December 31, 1980 to Ms. Fiona Humphrey, Clerk's office, U.S. Court of Appeals, Box 547, San Francisco, CA 94101. Request for a complete report on the proposed rules and procedural changes should also be directed to Ms. Humphrey. Please enclose a stamped, self-addressed envelope.

MORE RULES

[continued from page 7]

proceedings, and matters in evidence in any disciplinary matter shall be public except:

(1) deliberations of a hearing committee, the Board, or the Court; and

(2) any matters ordered to be kept confidential by the hearing committee, the Board, or the Court.

(b) In all cases involving allegations of disability, all pleadings, proceedings, and matters in evidence shall be confidential, and all participants therein shall preserve confidentiality with respect to such proceedings. [ALL PROCEEDINGS INVOLVING ALLEGATIONS OF MISCONDUCT BY OR DISABILITY OF AN ATTORNEY SHALL BE KEPT CONFIDENTIAL AT ALL LEVELS OF THE PROCEEDINGS, AND MEMBERS OF THE BAR PARTICIPATING IN THOSE PROCEEDINGS ARE REQUIRED TO KEEP THEM CONFIDENTIAL; PROVIDED, THAT UPON THE FILING OF THE RECORD IN THE COURT, THE RECORD SHALL BE CONSIDERED PUBLIC INFORMATION, EXCEPT IN CASES INVOLVING ALLEGATIONS OF DISABILITY.]

(c) The Administrator's [BAR COUNSEL's] files are also confidential, and are not to be reviewed by any person other than *the Administrator* [BAR COUNSEL] and members of the Disciplinary Board. This provision shall not be construed: (1) to deny a complainant information regarding the status and disposition of his complaint, and *the Administrator* [BAR COUNSEL] shall from time to time so notify complainants; (2) to deny to the Bar or to the public such statistical information, with the names of subject attorneys kept confidential, as *the Administrator* [BAR COUNSEL] is, by Rule 15(b)(5), required to keep; or (3) to deny to the public facts regarding the existence or the nonexistence of a proceeding (investigation, hearing, etc.), and facts regarding the stage of any such proceedings, with respect to a specific, named, respondent-attorney's conviction of a crime, or when an inquiry is received regarding an attorney who has been conficted of a crime. In addition, the Board shall transmit notice of all public discipline imposed by the Court, and all transfer to inactive status due to disability, to the National Discipline Data Bank maintained by the American Bar Association. Nothing contained herein shall be construed to limit in any way the right of a respondent-attorney to a public hearing and to complete disclosure of all files pertaining to him to any person or persons or to the public.

PROPOSED AMENDMENT TO RULE 37

Section (b) of Alaska Bar Rule 37 (entitled "Venue of Fee Arbitration Proceedings and Composition and Appointment of Comittees") is amended to read:

(b) The committee shall consist of *eight* [FIVE] panels, with *four* [TWO] panels [BEING] situated in Anchorage, *two panels situated in Fairbanks,* and one panel *each in Juneau and Ketchikan* [BEING SITUATED IN EACH OF THE FOLLOWING COMMUNITIES: JUNEAU, FAIRBANKS, KETCHIKAN.

PROPOSED AMENDMENT TO ALASKA BAR RULE 46

Rule 46, entitled "Applications for Reimbursement," is amended by adding a new section as follows:

(d) The form shall include in its body the pro tanto assignment from applicant to the Alaska Bar Association of the applicant's right against the named lawyer, or his personal representative, his estate or assigns, as required by Alaska Bar Rule 55.

PROPOSED AMENDMENT TO ALASKA BAR RULE 61

Section (b)(1) of Rule 61 is amended to read as follows:

(1) Any member who has been suspended for less than one year, upon payment of all accrued dues, in addition to a penalty of *$5.00 per week of delinquency (each fraction of a week to be considered a whole week),* [$20.00 PER MONTH OF DELINQUENCY] but not exceeding a total of $160.00 in penalties, shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the dues and penalties have been paid.

PROPOSED AMENDMENT TO DR 2-105

DR 2-105, entitled "Limitation of Practice," is amended by adding a new section to read:

(A) A lawyer shall not hold himself out publicly as a specialist, *or* as practicing in certain *fields* [AREAS] of law, or as limiting his practice permitted under DR 2-101(B), except that

(1) A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation "Patents," "Patent Attorney," "Patent Lawyer," or "Registered Patent Attorney" or any combination of those terms on his letterhead and office sign.

(2) A lawyer who publicly discloses fields of law in which the lawyer or the law firm practices, or states that his practice is limited to one or more fields of law, shall do so by using designations and definitions [AUTHORIZED AND] approved by the Board of Governors. Such disclosures and statements shall include the following statement: "The Alaska Bar Association does not certify that any attorney possesses specialized training or skill in a particular field of law."

(B) The following designations have been approved by the Board of Governors for utilization by a lawyer or a firm which publicly discloses his or its limited areas of practice :

(1) Admiralty;
(2) Administrative Law (government agencies);
(3) Bankruptcy;
(4) Commercial Law (real estate transactions, all forms of Business Organizations);
(5) Consumer Law (credit, collections);
(6) Criminal Law;
(7) Discrimination;
(8) Eminent Domain;
(9) Environmental Law;
(10) Family Law (divorce, child custody, adoption, name change, etc.);
(11) Immigration;
(12) Labor Relations;
(13) Landlord-Tenant;
(14) Mining;
(15) Negligence (personal injury, personal damages, professional malpractice, products liability, libel/slander, workmen's compensation);
(16) Patent-Copyright;
(17) Public Interest;
(18) Tax;
(19) Traffic;
(20) Transportation; or
(21) Trusts, Estates and Wills

Alaska Leads Nation in Discipline Costs

CHICAGO, October 29—The National Center for Professional Responsibility, a division of the American Bar Association, today announced that states in the nation spent an average of $22 per lawyer during 1979 to enforce disciplinary rules.

The states allocated an average of $24 per lawyer in their 1979 disciplinary budgets, according to the center, which has issued a statistical report based on an annual survey of disciplinary budgets and expenditures.

The survey, jointly sponsored with the ABA Standing Committee on Professional Discipline, also lists the annual dues and fees required to be paid in most states by lawyers with 10 or more years of practice. Not all states were able to provide full information, but each was asked how much of the dues and fees were allocated for discipline, client security funds and continuing education programs. All except 10 jurisdictions responded to the survey.

Alaska Highest

Alaska allocated and spent $75 per lawyer for disciplinary enforcement during 1979, the highest figure reported by any state. Louisiana allocated and spent the lowest amount per lawyer among the states responding, $3.

South Dakota listed the highest level of mandatory dues and fees in the nation, among the reporting states. South Dakota lawyers in practice 10 years or more must each pay $200 to maintain their licenses, with $15 of that allocated for discipline, $50 for continuing education programs and $135 for other unspecified uses. No funds from dues or fees are allocated for client security funds. Membership in the State Bar of South Dakota is mandatory.

New York reported no mandatory dues or fees, and lawyers in that state are not required to join the state bar association to continue in practice. Delaware reported the lowest dues or fees figure, listing its fees as $10. Membership in the Delaware bar is not required, but the $10 mandatory fee is obtained through a court assessment on practicing attorneys.

Jurisdictions not responding were Alabama, Colorado, Kentucky, Mississippi, Missouri, Montana, New York's second and third departments, North Carolina and Wyoming. In New York, four regional departments enforce disciplinary rules.

The full report is available for a price of $3.00 from the National Center for Professional Responsibility, American Bar Association, 77 South Wacker Drive, Chicago, Ill. 60606.

State-wide CLE

The state-wide CLE Committee under the leadership of newly-appointed chairman **John Havelock** met in Anchorage November 8 to plan CLE for Alaska Lawyers for 1981. The Committee adopted long-range rotational scheduling whereby each substantive law committee will present a major CLE seminar once every three years. The seminar will be in addition to the Annual Update on Recent Developments presented by each Committee at the Annual Meeting. Each substantive law committee is also encouraged to prepare model "form packages" for distribution to interested Alaskan lawyers.

Vice-President **Stan Fischer,** Kodiak, is currently writing a committee chairman handbook which when completed will contain seminar planning guidelines and printed material formats. He is assisted in the handbook preparation by executive director **Randall Burns** and president-elect **Karen Hunt.**

Although the Committee warns that all scheduling is still tentative, the 1981 schedule planned is for a Workers Compensation program in January; Federal Practice presentation in February and Torts Substantive Law Committee seminar in March. May programming is for an update on Alaska's Rules of Evidence plus the independently arranged China Law Tour. Following the annual meeting in June, an ABA seminar on "How To Try a Divorce Case" will be presented in July. August is the second NITA of The North week-long trial practice seminar. Loss Presentation and Ethics will be combined for a traveling program in September. Business Law will be the subject of the October seminar and the year will conclude with an out-of-court skills presentation in November.

Members of the Committee attending the meeting were **Jim Douglas** and President **Bart Rozell** from Juneau; **Deborah Medlar, Art Robson** and **Bob Groseclose** from Fairbanks; **Dennis McCarty** from Ketchikan and Chairman **John Havelock, Nancy Gordon, Brad Owens, Frank Rothchild** and president-elect **Karen Hunt** from Anchorage.

IN THE SUPREME COURT OF THE STATE OF ALASKA

In the Matter of the Petition of the LEGISLATIVE BUDGET AND AUDIT COMMITTEE to Relax Alaska Bar Rules I-4(5), I-7(6), III-39(n)(1), and V-58(a).

Supreme Court No. 5183

STIPULATION

In order to amicably resolve the dispute in the above captioned matter, the parties agree as follows:

1. The Legislative Budget and Audit Committee will submit the attached proposed order;

2. The Alaska Bar Association will file a statement of non-opposition to the proposed order;

3. If the proposed order is approved by the court, all other matters will be stayed pending completion of the audit, at which time this action shall be dismissed;

4. If the proposed order is disapproved by the court, briefs requested by this court will fall due 15 days after receipt of written notice of the court's disapproval of the proposed order.

DATED this 21st day of November, 1980.

WILSON L. CONDON
ATTORNEY GENERAL

DATED: 11/21/80

By: **Bruce Botelho**
Assistant Attorney General

ALASKA BAR ASSOCIATION

DATED: 11/21/80

By: **Marvin S. Frankel**
Bar Counsel

IN THE SUPREME COURT OF THE STATE OF ALASKA

In the Matter of the Petition of the LEGISLATIVE BUDGET AND AUDIT COMMITTEE to Relax Alaska Bar Rules I-4(5), I-7(6), III-39(n)(1), and V-58(a).

Supreme Court No. 5183

STATEMENT OF NON-OPPOSITION

The Alaska Bar Association states that as a matter of comity with the legislative branch of government, it will not oppose entry of the proposed order submitted herewith by the Legislative Budget and Audit Committee, provided that the Supreme Court, in the exercise of its inherent jurisdiction over the practice of law and in accordance with the rules promulgated by the Supreme Court, determines that such an order is appropriate.

A majority of the Board of Governors believes that the proposed order provides reasonable protections for confidential information, and that entry of the proposed order may facilitate the Alaska Bar Association's ability to fulfill its responsibilities to its members and the public. However, the Alaska Bar Association advises the Court that the Tanana Valley and the Ketchikan Bar Associations have communicated to the Board of Governors their objection to the Alaska Bar's statement of non-opposition. The Anchorage and Juneau Bar Associations have voted their approval of the Board's action. The Alaska Bar Association also advises the court that review of confidential records in the manner set forth in the proposed order may affect the rights of individuals, including individual attorneys, applicants for admission, complaining parties and witnesses who provided information and testimony with the understanding that it would be kept confidential. Accordingly the Court should consider whether those individuals are affected in a manner that should require notice to them an opportunity to be heard.

DATED this 21st day of November, 1980.

ALASKA BAR ASSOCIATION

By: **Marvin S. Frankel**
Bar Counsel

IN THE SUPREME COURT OF THE STATE OF ALASKA

In the Matter of the Petition of the LEGISLATIVE BUDGET AND AUDIT COMMITTEE to Relax Alaska Bar Rules I-4(5), I-7(6), III-39(n)(1), and V-58 (a).

Supreme Court No. 5183

ORDER

WHEREAS the Alaska Division of Legislative Audit has attempted to conduct a performance audit of the Alaska Bar Association; and

WHEREAS the Alaska Bar Association has previously made available to Legislative Audit, as a matter of comity, all of its non-confidential records; and

WHEREAS a disagreement has arisen over the release of confidential records concerning admissions, discipline, fee arbitration and the client security fund to Legislative Audit; and

WHEREAS the parties have now submitted a Stipulation, together with an Order proposed by Legislative Audit and a Statement of Non-Opposition filed by the Alaska Bar Association; and

WHEREAS this court has made an independent review of the questions presented and has determined that it is appropriate to enter the proposed order; now therefore

IT IS ORDERED that the Alaska Division of Legislative Audit shall be permitted access to confidential records and files of the Alaska Bar Association concerning admissions, discipline, fee arbitration and the client security fund for the purpose of conducting a performance audit, subject to the following conditions:

1. The legislative auditor, after consultation with the Alaska Bar Association, shall nominate a certified public accountant ("designated auditor"), subject to the approval of the court, to review the non-confidential records of the Alaska Bar Association and the confidential records concerning admissions, discipline, fee arbitration and the client security fund.

2. As a condition of approval, the designated auditor shall agree in writing to maintain as confidential all records and information concerning admissions, discipline, fee arbitration and the client security fund. Violation of this agreement and order shall be deemed to be a contempt of court.

3. The designated auditor will be granted access to the above referenced records in order to prepare a preliminary survey and work methodology. The designated auditor will review only a random selection of files for the years 1976-1980 sufficient to permit a statistically valid sample to be reviewed.

4. During the audit all records and work papers will remain locked at the offices of the Alaska Bar Association. The designated auditor shall remove no files, documents, notes or copies of records from the association's offices, nor shall he prepare any notes or memoranda concerning confidential records outside the association's offices.

5. Upon completion of the audit, the designated auditor shall provide a copy of the final work papers to the Executive Director of the Alaska Bar Association for purposes of review to ensure that they contain no confidential information and no names, specific factual references or other details which might identify confidential information to one not otherwise familiar with that information.

6. Upon verification that the final work papers contain no confidential information, the designated auditor shall be permitted to remove the final work papers for use in preparing a preliminary report. The final work papers shall be kept confidential by the designated auditor and shall be subject to review only by the legislative auditor if such review is necessary and under the same conditions of confidentiality as apply to the designated auditor.

7. The designated auditor shall prepare an interim letter which shall be distributed only to this court and to the Board of Governors of the Alaska Bar Association for its confirmation that it contains no names, specific factual references, or other details which may identify confidential information to one not otherwise familiar with the facts. Exceptions with respect to confidentiality shall be resolved in the manner set forth in paragraph 10. The Alaska Bar Association may forward a reply to the interim letter to the designated auditor.

8. After resolution of matters related to confidentiality, if any, the designated auditor shall prepare a preliminary report to the Legislative Budget and Audit Committee. Upon approval by the Committee, the preliminary report shall be released to the Alaska Bar Association for a formal response. The final report shall consist of the preliminary report, any response filed, and any rebuttal to the response prepared by the designated auditor. The final report will be submitted to the Legislative Budget and Audit Committee. If a majority of the Legislative Budget and Audit Committee approves the final report for public release, the final report shall be distributed in the manner provided for in legislative audit rules. The preliminary report and final report shall contain no names, specific factual references or other details which may identify confidential information to one not otherwise familiar with the facts.

9. The audit and review of records shall be conducted in a manner that will minimize the cost, inconvenience and administrative burden on the Alaska Bar Association, its officers and staff. All costs reasonably incurred by the Alaska Bar Association in connection with the audit and review shall be borne by the Division of Legislative Audit. The review of records shall commence after December 1, 1980, to permit the Executive Director of the Alaska Bar Association to be of assistance when the review is conducted.

10. Disagreements which arise concerning the implementation of this order, including but not limited to disagreements over approval of the designated auditor nominated by the legislative auditor, the method of selection and number of files to be reviewed, enforcement of the confidentiality provisions of this order, compliance with the procedures provided for herein, and payment of costs, shall be submitted to this court for resolution.

DATED this 21st day of November, 1980.

WILSON L. CONDON
ATTORNEY GENERAL

DATED: 11/21/80

By: **Bruce M. Botelho**
Assistant Attorney General

ALASKA BAR ASSOCIATION

DATED: 11/21/80

By: **Marvin S. Frankel**
Bar Counsel

ORDER

IT IS SO ORDERED THIS _____ day of November, 1980.

IN THE SUPREME COURT OF THE STATE OF ALASKA

Special Order of the Chief Justice
Order No. 589

Appointment of Members of Three-Judge Sentencing Panel Pursuant to Supreme Court Order No. 436

IT IS ORDERED:

Pursuant to the provisions of Supreme Court Order No. 436, relating to the establishment and operation of a three-judge sentencing panel of the Superior Court, the following appointments are made:

1. The Honorable **Victor D. Carlson,** Judge of the Superior Court, is appointed to be a regular member of the three-judge sentencing panel and is designated as the Administrative Head of the panel. This appointment is for a term of three years;

2. The Honorable **Thomas E. Schulz,** Judge of the Superior Court, is appointed to be a regular member of the three-judge sentencing panel for a term of two years;

3. The Honorable **Seaborn J. Buckalew, Jr.,** Judge of the Superior Court, is appointed to be a regular member of the three-judge sentencing panel for a term of one year;

4. The Honorable **J. Justin Ripley,** Judge of the Superior Court, is appointed to be the first alternate member of the three-judge sentencing panel for a term of two years;

5. The Honorable **Jay Hodges, Jr.,** Judge of the Superior Court, is appointed to be the second alternate member of the three-judge sentencing panel for a term of one year.

DATED: October 23, 1980
EFFECTIVE DATE: Nunc pro tunc October 1, 1980

Jay A. Rabinowitz
Chief Justice

Distribution:
Supreme Court Justices
Superior Court Judges
Area Court Administrators
Arthur Snowden, II
Deena Hale
Calendaring

AAWL Meeting

A letter to the Anchorage Times denouncing the general advertising as well as the editorial campaign against Justice **Warren Mathews** has been sent by the Anchorage Association of Women Lawyers (AAWL). Copies have been sent to the Daily News and to the Bar Rag.

This action was approved at the regular December 3, 1980 meeting at the Tea Leaf Restaurant. (AAWL meets there at noon the first Wednesday of every month.)

At the same meeting, AAWL decided to purchase a set of Alaska Rules and Statutes for the Abused Women Aid in Crisis Center (AWAIC), and make a donation toward a reception held for **Gloria Steinheim** in Anchorage on December 10.

December 10 was also the date of the annual AAWL Christmas Party, held at the home of **Elaine Andrews.** Happily, the time of that gathering did not conflict with either the reception for Ms. Steinheim, or her speech later that evening.

U.S. Court of Appeals to Expand Court Sessions in Seattle and Portland

The Clerk of the U.S. Court of Appeals for the Ninth Circuit has announced that, effective January 1981, the Court will conduct several monthly sessions in Seattle. Heretofore, the Court has conducted hearings in Seattle every other month. It will also hear an increased number of cases in Portland in alternate months.

The schedule contemplates that appeals from the District Courts in Alaska and the Eastern and Western Districts of Washington will be heard in Seattle. Those from the District Court of Oregon will be heard in Portland. Appeals from Montana and Idaho usually will be calendared in Seattle or Portland, but may also be heard in San Francisco.

For further information, call the Clerk's divisional office in Seattle at (206) 442-2937 or **Cathy Catterson** at the Clerk's office in San Francisco at (415) 556-7340.

New Proxy Rules For Native Corporations

by Paul D. Kelly

The Division of Banking and Securities of the Alaska Department of Commerce and Economic Development has completed review of proposed regulations affecting proxy solicitations by native corporation shareholders and directors. The DOC expects the regulations, proposed as 3AAC 08.400 - 3AAC 08.450, to be enacted shortly.

Drawing on the authority in the Alaska Securities Act of 1959, the new regulations will affect proxy solicitations for Alaska native corporations having at least one million dollars in assets and at least 500 record shareholders. Corporations meeting those requirements must present detailed information in the proxy statements. The proposed regulations specify the informational requirements for the proxy statements.

Failure to comply with the regulations could result in a false or misleading statement and a violation of the Alaska Securities Act.

No effective date for the proposed regulations has been determined.

Since space prohibits a substantive review of the regulations, comments and inquiries should be directed to **Larry Carroll,** Chief Securities Examiner, Division of Banking and Securities (907-465-2521).

Advertising May Expose Lawyers to Greater Malpractice Liability

CHICAGO, October 28—In 1977, the Supreme Court gave lawyers the right to advertise, and indications are that this has helped to lower the costs of legal services to consumers. But will advertising have an effect on the malpractice exposure of lawyers who advertise? **David J. Beck,** writing in the November 1980 issue of *The Brief,* suggests that it will.

Beck, past chairman of the Economics of Law Practice Committee of the American Bar Association's Tort and Insurance Practice Section (TIPS), warns that lawyers who advertise may find themselves liable under an expanded list of of malpractice theories. These may include, he says, false or deceptive advertising, stricter negligence standards for advertising a specialty, or in some instances even a warranty theory.

Beck notes, for example, that in medical malpractice cases some jurisdictions hold specialists to a higher standard of care than is applied to general practitioners. In the past, this has not been true in legal malpractice actions, but Beck argues that since the ABA Code of Professional Responsibility now allows a lawyer to advertise his or her speciality, and "since many jurisdictions now officially recognize an attorney's specialized skill or knowledge, a higher standard of care will probably eventually be recognized. A client who retains an attorney specializing in the area in which the client has a problem is certainly entitled to expect the attorney to possess a greater degree of competence."

Advertising could also open lawyers to totally new theories of liability. A claim for false advertising, for example, would be inconceivable if there were no advertising. A client trying to use a false or deceptive advertising statute could have a problem, because most such statutes only provide for a criminal penalty. Beck notes, however, that they generally do not *exclude* the possibility of a person using them to maintain a private suit, and says that, "until a court in a particular jurisdiction concludes that...no such implied cause of action exists, it is certainly arguable that violation of a false advertising statute by an attorney also subjects him or her to civil liability."

INSIDE

[continued from page 4]

partment opposition to the fee-shifting provisions.

The fee-shifting provisions, which become effective October 1, 1981, will require agencies to reimburse "parties" who substantially prevail in most administrative adjudications for costs incurred unless the agency's position is substantially justified or special circumstances would make an award unjust. In addition, federal courts will be required to award costs to parties prevailing in civil actions involving the U.S. (excluding tort actions) unless the government's position is substantially justified or the award would be unjust.

Smith To Rally Bar To Help Poor

New American Bar Association President **William Reece Smith, Jr.** has announced that he will be emphasizing increased voluntary private bar involvement in delivering legal services to the poor during his term of office.

"Lawyers individually, and as members of the organized bar, have a heavy responsibility to assure the poor have access to justice," Smith said at a press conference at the ABA Annual Meeting. He said that no more than fifteen percent (15%) of the poor's legal needs are being met now through public and private efforts combined.

THE SUPREME COURT OF THE STATE OF ALASKA

In the Matter of)
W. CLARK STUMP,)
)
Respondent.)
)

File No. 4998
OPINION
[No. 2237 - December 5, 1980]

From the Disciplinary Board of the Alaska Bar Association.

Appearances: Charles L. Cloudy, Ziegler, Cloudy, Smith, King & Brown, Ketchikan, for Respondent. William W. Garrison, Bar Counsel, Anchorage, for the Alaska Bar Association.

Before: Rabinowitz, Chief Justice, Connor, Burke and Matthews, Justices, and Buckalew, Superior Court Judge. [Boochever, Justice, not participating.]

RABINOWITZ, Chief Justice.
CONNOR, Justice, concurring in part
BURKE, Justice, dissenting in part

The issue before us concerns determination of the appropriate disciplinary sanction to be imposed against W. Clark Stump.[1]

In proceedings before the Area Hearing Committee and the Disciplinary Board of the Alaska Bar Association, respondent W. Clark Stump admitted to all of the alleged acts of professional misconduct with which he was charged. More particularly, Stump admitted to violating the following provisions of Disciplinary Rule 1-102 of the Code of Professional Responsibility:

(A) A lawyer shall not:

....

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.[2]

The uncontested facts clearly reveal that W. Clark Stump violated each of these subdivisions of Disciplinary Rule 1-102.[3] More particularly, the record shows that Stump falsified an item of documentary evidence for use on his own behalf in civil litigation pending before the superior court in which he was named as a party defendant. Thereafter, in the course of that litigation, W. Clark Stump, while under oath, on three separate occasions falsely affirmed the authenticity of the document he had fabricated.

The Area Hearing Committee unanimously recommended that respondent W. Clark Stump be suspended from the practice of law in the State of Alaska for a period of one (1) year.[4] The Disciplinary Board of the Alaska Bar Association in turn unanimously recommended that W. Clark Stump be suspended from the practice of law for a period of five years commencing from the date of its recommendation (October 31, 1979).[5] The basis for the Disciplinary Board's recommendation is articulated in the following findings of fact which were formulated by the Disciplinary Board.

12. The falsification of evidence is one of the most serious acts of misconduct that an attorney can commit because it is an attack on the integrity of the adversary system which depends on full and truthful disclosure of facts to the decision maker.

13. When false evidence is presented not only the judicial system but also the legal profession, the client and the public suffer harm to varying degrees.

14. While respondent apparently believed he did not represent the client and while he was presumably under stress because of his involvement in a hotly contested custody action, nevertheless it is at just such times that the exercise of good judgment on the part of a lawyer is most critical.

15. While the Disciplinary Board recognized that attorneys are capable of judgmental error, in this case the preparation of the false document while under stress, the later false swearing as to its authenticity is inexcusable.

16. Nevertheless, because Respondent has reimbursed the expenses to the client and has demonstrated deep remorse, the ultimate sanction mandated by the type of conduct herein demonstrated, namely disbarment, should not in this case be exacted.

17. By reason of the foregoing, the Disciplinary Board unanimously finds that the recommendation of the Hearing Committee is inadequate....

Before this court, respondent has argued that there are two issues to be decided: first, whether the Disciplinary Board was justified in finding the Area Hearing Committee's recommendation inadequate, and second, whether the recommendation of the Disciplinary Board was "appropriately reflective of the character of the offenses and the attendant circumstances surrounding the offenses admitted by Stump." As indicated at the outset, each of these issues is subsumed under the more general question of the determination of the appropriate sanction to be imposed.

In arguing against adoption of the Disciplinary Board's recommendation, and in turn urging the imposition of less than five years' suspension, respondent contends that the Disciplinary Board failed to properly apply the following principle of the Code of Professional Responsibility:

The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances.[6]

In regard to his contention that the Board failed to properly weigh the attendant circumstances, respondent advances numerous mitigating factors. Respondent argues that the underlying civil litigation (the *Lewis* litigation) which led to this disciplinary proceeding was not instituted until four years after he had allegedly engaged in a conspiracy against Lewis; that at the time service of the *Lewis* complaint was effected upon him, respondent was engaged as counsel in a bitter and hotly contested custody dispute; that at that time respondent was emotionally disturbed over his wife's health and the demands of his law practice which were magnified by the retirement of his father, who was respondent's law partner; that respondent, on his own motion, notified Bar Counsel of his violations of the Disciplinary Rules; that the superior court ordered respondent to pay $25,000 to Lewis as costs relating to the former's falsifications in the *Lewis* litigation, which sum has been paid by respondent; that respondent has been indicted for violation of AS 11.30.290 (offering false evidence) and does not intend to contest this criminal charge; and that respondent was admitted to the Alaska Bar in 1968 and has had no prior or subsequent record of misconduct.

Concerning the character of the offenses committed by Stump, it is argued that it is of some significance that these acts were carried out by respondent in his private capacity as a private party litigant, rather than in his capacity as lawyer representing a client. Further, it is argued that the facts disclose that the content of the fabricated document "was essentially and substantially true, and that the falsification was limited to the dated existence of the Note-o-Gram and of its mailing by Stump to Lewis."[8]

Bar Counsel counters, in part, by arguing that the fact that respondent's misconduct was committed in his private capacity rather than in his capacity as an attorney is "of little merit" because "[i]n point of fact, Respondent was attempting to establish through the falsely dated Note-o-gram and the subsequent corroborating acts, that he had acted competently as an attorney." Concerning respondent's truthfulness argument, Bar Counsel points out that this overlooks the fact that, regardless of the truthfulness of the information contained in the document, the Note-o-gram was prepared to indicate that it was sent on a date when it was not. Bar Counsel further argues: "The Note-o-gram itself was a lie; a falsification prepared for the purpose of conclusively establishing a defense to an allegation contained in plaintiff's complaint."[9]

Regarding the attendant mitigating circumstances, Bar Counsel's position is that the Disciplinary Board did consider them in fashioning its suspension recommendation, and that respondent's claimed elements of emotional stress flowed from his initial misconduct and were subsequently exacerbated by respondent's continued misconduct.

In reaching a decision as to an appropriate disciplinary sanction in this case, we have considered the underlying violations of the Disciplinary Rules involved and the relevant surrounding circumstances.[10] The facts alluded to previously[11] convincingly demonstrate that W. Clark Stump is guilty of serious violations of provisions of the Disciplinary Rules, which violations directly reflect upon his professional ability and competency to serve clients. Further, such conduct on the part of respondent reflects adversely on the legal profession, calls into question the public trust accorded respondent as an officer of the court, and is prejudicial to the administration of justice in the state of Alaska.

Thus, based upon our consideration of the facts pertaining to Stump's misconduct and all of the relevant surrounding mitigating circumstances, we have concluded that respondent's conduct warrants imposition of a disciplinary sanction. Concerning the appropriate sanction, we have given serious consideration to the recommendations of the Area Hearing Committee and the Disciplinary Board of the Alaska Bar Association and have determined that protection of the interests of society and the legal profession are best served by adoption of the recommendation of the Disciplinary Board.

It is therefore ordered that Stump's license to engage in the practice of law in Alaska shall be suspended for five years commencing from October 31, 1979.

1. The range of disciplinary sanctions available to this court is found in Alaska Bar R. II-12, which provides:

Misconduct shall be grounds for:

(a) Disbarment by the Court; or

(b) Suspension by the Court for a period not exceeding five years; or

(c) Public censure by the Court; or

(d) Private reprimand by the Disciplinary Board; or

(e) Private informal admonition by the Administrator.

2. Alaska Bar R. II-9 provides, in part:

The license to practice law in Alaska is, among other things, a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and counselor, and as an officer of the courts. It is the duty of every member of the bar of this State to act at all times in conformity with standards imposed upon members of the Bar as conditions for the privilege to practice law. These standards include, but are not limited to, the code of professional responsibility, and the code of judicial conduct, that have been, and any that may be from time to time hereafter, adopted or recognized by the Supreme Court of Alaska.

....

Any attorney admitted to practice law in Alaska or any other attorney who appears, participates, or otherwise engages in the practice of law in this State is subject to the supervision of the Supreme Court of Alaska...and the Disciplinary Board hereinafter established.

3. The relevant facts appear in full in the "Southeastern Grievance Committee Conclusions and Recommendations" which are found in Appendix "A" to this opinion.

4. The Area Hearing Committee articulated two goals in making its recommendation, namely:

1. To protect the public and promote faith and confidence in our profession by strict adherence to our ethical canons, and

2. To tailor a penalty in a fashion which upholds those standards while recognizming the ability of an individual attorney to reform and make worthwhile contributions to our society and our profession after admitted transgressions.

5. At oral argument Bar Counsel recommended that respondent be disbarred from the practice of law in Alaska.

6. Preliminary Statement, Code of Professional Responsibility. *See also* § 7.1 ABA Standards for Lawyer Discipline and Disability Proceedings (Approved Draft 1979).

7. At the time of oral argument, this court was advised that sentencing had not taken place in the criminal case.

8. In this regard, it is further argued that Stump's falsification had only a cumulative, rather than a material, relationship to the issues involved in the *Lewis* suit.

9. Bar Counsel notes that respondent "felt it was necessary to maintain the dissimulation by continued false statements over a period of approximately two and one-half years."

10. The discipline to be imposed should depend upon the specific facts and circumstances of the case, should be fashioned in light of the purpose of lawyer discipline, and may take into account aggravating or mitigating circumstances.

ABA Standards for Lawyer Discipline and Disability Proceedings § 7-1 (Approved Draft 1979).

11. See appendix "A" in particular.

DISCIPLINARY BOARD ALASKA BAR ASSOCIATION AREA I

In the Disciplinary Matter)
Involving)
)
W. CLARK STUMP,)
)
Respondent-Attorney.)

No. 78-20

Southeastern Grievance Committee Conclusions and Recommendations

This matter was heard before the Area I, First Judicial District Disciplinary Hearing Committee on June 12, 1979, pursuant to a petition for formal hearing filed by Bar Counsel, against the Respondent **W. Clark Stump.**

The Hearing Committee was composed of **Gordon Evans** (attorney member and chairman), **Merle Bottge** (lay member), and **William Royce** (attorney member).

The Petitioner was represented by **William W. Garrison.** The Respondent was present and represented by **Charles L. Cloudy.**

The Hearing Committee reviewed the pleadings and exhibits and heard the testimony of W. Clark Stump, together with the comments of counsel for Petitioner and Respondent. Upon such review of the entire written record and analysis of the testimony, the Hearing Committee makes the following Findings of Fact and Proposed Order:

Findings of Fact

1. This Hearing Committee has jurisdiction to make these Findings of Fact and Proposed Order.

2. W. Clark Stump, Respondent, is now and was at all times mentioned herein, an attorney, subject to the disciplinary rules in effect in this State. Mr. Stump was duly admitted by the Supreme Court of the State of Alaska on November 11, 1968. (Transcript, page 11, line 21) He has continuously engaged in the private practice of law since that date in a firm having its office and place of business in Ketchikan, First Judicial District, State of Alaska. (Transcript, page 11, line 21-25)

3. Mr. Stump's firm was originally composed of his father, Wilford C. Stump, and his uncle, Earnest Bailey, together with Respondent. This firm during the times relevant hereto changed with the retirement of Mr. Bailey in 1969, and the retirement of Wilford Stump in 1975. (Transcript, page 11, lines 23-24; page 13, lines 10-11)

4. On November 28, 1975, Civil Action No. 75-758 was filed in Superior Court in Ketchikan. (Exhibit 1) Said complaint, as it related to W. Clark Stump, alleged:

[continued on page 14]

STUMP OPINION

[continued from page 13]

a) That prior to entering into a contract on December 3, 1971, for the purchase of the stock of Marine View Apartment Building, purchaser (the plaintiff) retained and employed defendant W. Clark Stump as his attorney (Exhibit 1, paragraph V).

b) That defendant W. Clark Stump was negligent in the performance of his duties for plaintiff in not opening an escrow account (Exhibit 1, paragraph VIII), not attending to the proration of taxes (Exhibit 1, paragraph X), not dissolving the corporation in a timely fashion (Exhibit 1, paragraph XI), and in not rendering tax advice (Exhibit 1, paragraph XII).

c) That W. Clark Stump participated in a civil conspiracy in concert with the Sellers and the escrow holder. The alleged object of this conspiracy was to deprive the plaintiff of certain tax advantages and thus:

"...render plaintiff unable to meet his financial obligations as set forth in the Stock Purchase Agreement between the parties, thereby enabling defendant Moran and the other Sellers to declare plaintiff in default and thereby retain the stock and ownership of the corporation and the Marine View Apartment Building, as well as all payments made by plaintiff prior to said default." (Exhibit 1, paragraph XXVII)

d) Plaintiff demanded judgment against Respondent in excess of Seventy-five Thousand ($75,000.00) Dollars as damages related to increased tax liabilities, plus One Hundred Thousand ($100,000.00) Dollars for mental anguish and hardship occasioned by the alleged conspiracy (Exhibit 1, paragraph XXVIII)

5. Said complaint was served upon Respondent during a recess in a bitterly contested custody trial; Respondent had received no earlier communication from plaintiff regarding the alleged conspiracy and negligence (Transcript, pages 13, 14 and 20). After notifying his insurance carrier of the suit, Respondent in early 1976 manufactured a Note-o-Gram (Exhibit A to the petition) which bore an October 15, 1971, date and which recited that plaintiff was not represented by Respondent, W. Clark Stump (Transcript, page 15, lines 1-7). Said Note-o-Gram was given to Respondent's counsel and was produced together with other documents to plaintiff in the course of discovery.

6. On July 14, 1976, W. Clark Stump at his deposition testified under oath that said Note-o-Gram was typed and sent by Respondent to plaintiff on or about October 15, 1971. In fact and truth, said Note-o-Gram was not typed until 1976, after the above described litigation had commenced. Count I of the petition alleges, the Respondent admits, and your Hearing Committee finds that such conduct by Respondent is in violation of Disciplinary Rule I-102(a)(4).

7. On or about May 12, 1978, Respondent W. Clark Stump signed an affidavit which was filed in the Superior Court in the above described Civil Action, 78-758, in which Respondent states that said Note-o-Gram was sent on or about October 15, 1971. Count II of the petition alleges, the Respondent admits, and your Hearing Committee finds that such conduct by Respondent is in violation of Disciplinary Rule 1-102 (a)(5).

8. On or about June 26, 1978, at a subsequent deposition, Respondent W. Clark Stump, testified under oath that said Note-o-Gram was typed and sent to plaintiff on or about October 15, 1971. Count III of the petition alleges, the Respondent admits, and your Hearing Committee finds that such conduct by Respondent is in violation of Disciplinary Rule 1-102(a)(4).

9. The petition alleges in Count IV, that the conduct of Respondent in Counts I, II, and III in the aggregate constitutes a violation of Disciplinary Rule 1-102(a)(3). Respondent admits this allegation and your Hearing Committee so finds.

10. At the hearing, Mr. Garrison moved to amend the petition by striking the word "principal" in paragraph IV of said petition. This motion was unopposed and granted by the Hearing Committee chairman. Thereafter Respondent admitted the modified petition in its entirety. The facts as set out in said petition are conclusively established.

11. At the conclusion of the June 26, 1978, deposition, Respondent W. Clark Stump contacted Charles L. Cloudy and requested that Mr. Cloudy place the facts before the Alaska Bar Association so that the Bar could take appropriate action (Transcript, page 15, lines 18-22). Mr. Cloudy compiled all relevant records, and at Mr. Stump's request contacted the Bar counsel William Garrison, which contact resulted in the institution of these proceedings. (Exhibit A, affidavit of C. L. Cloudy, page 2)

12. Mr. Stump is remoseful regarding his conduct and offers no excuses:

"I am sorry for what I've done, I am sorry for the shame that I have brought upon my profession and significantly for the shame that I have brought upon my family, my friends, and those who had confidence in me...I made a costly mistake and I am ready to pay the penalty for it." (Transcript, page 16, lines 24 through page 17, line 6). (See also Transcript, page 23, line 10 through page 24, line 2)

Mr. Stump has been indicted and is presently facing charges of passing a forged document, which charges he indicates he will not contest. (Transcript, page 16, lines 21-24)

13. Respondent was required by Superior Court Judge **Thomas Schulz** to pay the sum of Twenty-two Thousand Five Hundred Eighty-two and 43/100ths ($22,582.43) as plaintiff's costs in developing the disclosure of the facts relating to the Note-o-Gram. (Exhibit D) This sum was increased to Twenty-five Thousand ($25,000.00) Dollars at the time of settlement of the litigation (Exhibit D). This amount has been paid (Transcript, page 16, lines 11-16). Restitution has been held relevant to the nature and extent of discipline; see *In re MacKay*, 416 P.2d 823 (Alaska, 1965).

14. The Note-o-Gram is viewed by your Hearing Committee as one transaction having component parts. The initial misconduct and fabricated Note-o-Gram was motivated by Respondent's desire as a party defendant to document falsely that which he believed to be the fact: namely that he in fact was not representing plaintiff in the sales transaction. The deposition testimony of plaintiff (Exhibit F, page 32, lines 6-15) and the deposition testimony of William Moran (Exhibit E, page 37, lines 5-7) tend to support Respondent's contention that in fact he did not represent plaintiff. Said fact does not excuse Respondent's conduct but is relevant on the issue of mitigation (see *Mosesian vs. State Bar of California*, 500 P.2d 1115).

15. The harm occasioned to date by the misconduct of Respondent has been chiefly born by Respondent himself. Mr. Stump was at the time of the original fabrication, under significant emotional and mental stress. (Transcript, page 13 and 14). This factor while not controlling, is considered relevant by your Hearing Committee (see *In re Jones*, 487 P.2d 1016). Mr. Stump has apparently practiced responsibly with the exception of the misconduct giving rise to these proceedings. No evidence has been brought to the Bar or to the Hearing Committee of prior or subsequent misconduct.

16. W. Clark Stump makes no request for a particular kind or duration of discipline and indicated that the evidence offered by him was by way of mitigation, and in no fashion was intended to justify or excuse Respondent's misconduct.

Proposed Order

Your Hearing Committee having examined the testimony and written record before it, has two (2) goals in mind in fashioning a Proposed Order:

1. To protect the public and promote faith and confidence in our profession by strict adherence to our ethical canons, and

2. To tailor a penalty in a fashion which upholds those standards while recognizing the ability of an individual attorney to reform and make worthwhile contributions to our society and our profession after admitted transgressions.

The unanimous recommendation of your Hearing Committee is that Respondent W. Clark Stump be suspended from the practice of law in the State of Alaska for a period of one (1) year.

Gordon Evans
Chairman
Merle Bottge
William G. Royce

CONNOR, Justice, concurring in part.

In disciplining attorneys it is possible, in demonstrating the zeal with which misconduct is condemned, to err on the side of undue severity.

In the case before us it should be kept in mind that punishments in addition to suspension from the practice of law have been and will be visited upon the respondent. Among other things, he will be found guilty of a criminal offense. He has already made civil reparation by paying $25,000 to the person wronged by his misconduct. Additionally it must be recognized that suspending a lawyer from the practice of law stigmatizes him in the community. Even if he regains the privilege of practicing law, it may take many years before his misdeeds are expiated in the eyes of the community. In this sense the mere act of suspending an attorney, for any length of time, can amount to a substantial punishment. It is well known that after a long period of suspension the likelihood of an attorney re-entering the practice of law is greatly diminished.

In the case at bar I am impressed by the recommendation of the Area Hearing Committee that respondent should be suspended for a period of one year. As that committee concluded, such a suspension amounts to a substantial punishment, and demonstrates that the ethical standards of the profession will be enforced. But such a period of suspension also holds out hope for rehabilitation of an erring attorney so that someday, when the period of suspension is served, he can take steps to re-enter the profession and make worthy contributions to the wellbeing of the community, and the legal profession as well. It is conceivable that after this chastening experience respondent may, if he re-enters the profession, adhere to ethical standards of a very high order. I fear, however, that an unduly long suspension can have such a demoralizing effect that any chance of rehabilitation may be lost.

Therefore, I agree with the recommendation of the Area Hearing Committee, and would impose a one-year suspension upon respondent.

BURKE, Justice, dissenting in part.

I respectfully dissent.

"Repeatedly it has been said that, by admitting an attorney to practice, a court endorses him to the public as worthy of their confidence in professional matters." *Matter of Goldman*, 588 P.2d 964, 983 (Montana 1978) (Harrison, J., dissenting). Thus,

The license to practice law in Alaska is, among other things, a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and counselor, and as an officer of the courts.

Rule 9, Alaska Bar Rules. "[I]f he becomes unworthy, it is the *duty* of the court to withdraw the endorsement." 588 P.2d at 983 (emphasis in original).

To be admitted to the practice of law in this state, one must demonstrate that he is "of good moral character." Rule 2(1)(d), Alaska Bar Rules. If Mr. Stump were applying for admission to the bar at this time, his admitted falsification of documentary evidence and acts of perjury would undoubtedly cause this court to reject his application out of hand, on the ground that he lacks that essential quality. I know of no instance, at least, where a person known to be guilty of such conduct has been admitted to practice by this court, nor can I imagine such a case.

Once admitted, the requirement of good character does not cease. It continues to be one of the requisites of bar membership. As one court has described this requirement,

No matter how learned in the law a man may be, nor how skillful he might be in the conduct of suits at law, or equity, he can never be admitted to the bar until he can satisfy the court that he possesses that first requisite for admission to the bar, *a good moral character*. Such character he must have when he knocks at the door of the profession for admission, and such character he must have while enjoying the privilege and right to remain within the fold. When he ceases to be a man of good repute, he forfeits his right to continue as a member of the bar.

588 P.2d at 985, *quoting Ex Parte Thompson*, 152 So. 229, 238 (Alabama 1933) (emphasis in original).

The purpose of this proceeding is not to punish Mr. Stump. It is to protect "the public, the courts and the legal profession itself." *Matter of Preston*, 616 P.2d 1, 6 (Alaska, 1980), *quoting In Re Kreamer*, 535 P.2d 728, 733 (Cal. 1975). As stated by Justice Harrison of the Supreme Court of Montana, "Unless we keep clean our own house...we cannot expect the public to have confidence in the integrity of the bar and in our system of justice." 588 P.2d at 985.

ALL MY TRIALS

[continued from page 5]

course, the girl had left her new boyfriend and was safely back in the arms of a rival motorcycle gang.

My point is, that although the above examples are familiar enough to members of our profession—we may face a certain resistance from a public that has been schooled to take a more simplistic view of justice and morality. We know the rules—or should—and we also know why they exist. How we're going to get the public to accept it, without making lawyers out of them also, I am at a loss to say.

So far as having civilians direct our destinies, and understand our problems, consider what happened to a detective friend of mine who was asked to explain his work, and law enforcement in general, to a group of second graders—sort of an "Officer Bill" program. He did so, in great detail, talking about the various roles of the police in the community, the justice system in general, and the function of the police, prosecution and courts in protecting society. There was even a good word for defense counsel. He then called for questions, and one little girl asked him, "Where do babies come from?" I'm not denigrating in any way the intelligence or good will of non-lawyers, it's just that they haven't been trained to be as crazy as we are. This is bound to be productive of misunderstanding.

A Gift of the Magi

Of course, no amount of public relations is a substitute for those simple human gestures which can do so much to improve the public image of policemen and lawyers alike. At this most joyful of seasons, one is reminded of the incomparable Col. **James "Pat" Wellington**, former Commissioner of Public Safety—a man widely admired for his humanistic approach to police problems. Some years ago, as Chief of Police in Juneau, Pat reportedly introduced a homosexual into the drunk tank on Christmas Eve on the grounds that, "Everyone should get something for Christmas." Fade out to the strains of "Hark, the Herald Angels Sing" (or, if you prefer, "Oh, Come, All Ye Faithful").

Minutes of the October 17, 1980 Meeting of the Tanana Valley Bar Association

There were strange things done 'neath the noon-time sun by lawyers who toil for their gold. The Polaris trails have their secret tales, and this one should never be told.

Twas a holiday of sorts, for most reports. You could tell when the meeting began; that the public boys, who make all the noise, were missing to the very last man.

Dave Call made a speech; it was a real peach. He shuddered at things done by the Supremes. The liquor license men were being hit again, when their customers would crash amid screams.

"Oh, wary I are, that the T.V. Bar, should be liable for something like this. When at parties and such, we chance to drink much, and drive home all filled with bliss."

"A proposal," he said, "we're not in the red, so let's do something that's really first-rate. We'll find us a lad, whose law's not too bad, and our Bar group will incorporate."

Paul Barrett gave second, but then nobody reckoned, **Andy Kleinfeld** would open our eyes. From a pocket his papers, producing by long labors, and several years ago discarded with sighs.

Oh, the cynics did abound; insurance was bandied 'round. **Barry Donnellan** said 'twas obvious to go dry. This stopped us all cold, with terrors untold of sobriety with no reason why.

Back to the main motion, we went for a wet solution hellbent. It passing by a rousing three to naught. Our organization secure, we all felt more pure, and a grand less had again been taught.

The Kiddie Rules Committee met, but had done nothing yet, **Dick Madson** so stoutly declared. Then everyone fled; they went home—back to bed. The thought of a dry Bar had left them all scared.

By executive fiat,

King Arthur

Minutes of the October 24, 1980 Meeting of the Tanana Valley Bar Association

President **Jon Link**, being in Anchorage building up his courage for a Bar meeting, and Vice President **Bob Groseclose** having received guidance from on high that directed him to be elsewhere, Treasurer **Jim DeWitt** called an unusually large meeting to order at 12:30 p.m. Guests introduced were **Jim McGowan**, a member of the public defender's office from Southeastern; **Bill Bixby**, likewise an imported member of the public defender's office; and **Jerry LaParal**, who is newly admitted to someone's Bar. It appears that Jim McGowan has some connection with **Tom Finley** from Juneau. The connection produces a lot of laughs, which means (a) that it's an in-joke, and (b) that some people understand it. The secretary neither laughed nor understood it. The minutes of the last two meetings were marginal, and the treasurer indicated that we were solvent, but that our financial health was marginal. Jim DeWitt announced vacancies on the Judicial Qualifications Commission and the Ninth Circuit Advisory Committee. The interest in same being nonexistent, Judge **Clayton** took advantage of the situation to thank the members of the Bar Association for his retirement banquet and read a letter replying to **Tom Keever**'s "roast" of him at said banquet. A copy of said letter is attached hereto, marked Exhibit A and made a part hereof by reference.

It appearing that President Jon had requested guidance on how to vote on a possible settlement of our lawsuit with the legislature which would give members of the legislative staff the opportunity to look at ten percent of our discipline files without having the names of the individuals who were prospectively the object of discipline obliterated, providing the legislative audit team promised to keep the information confidential; it was moved by Andy Kleinfeld, seconded by about 30 other members, and passed by about 42 to 3, that we invite the legislature to look if the names can be obscured in some manner, but that we not let the legislatures look if the names cannot be obscured. Moved by Judge **Connelly**, seconded by **Art Robson**, that the above resolution take effect only if we are to be a Bar Association, integrated as such under Alaska statutes enacted by the Alaska State Legislature. This also passed, at which point the debate produced a consent by Andy Kleinfeld to have his resolution reinterpreted to say not just the name of the prospective disciplinee be obscured but that all reference which would identify such person be removed. Four or five of the seconds agreed with this, and because everyone was kind of bored with this debate, anyway, we went on to the principal event.

In one corner, weighing 160 pounds, wearing red trunks, the present holder of the State Senate title, **Glenn Hackney**. In the other corner, weighing 150 pounds and wearing white trunks, the challenger for the title, **Charlie Parr**. Glenn Hackney led off with a remark about ants in a honey jar. Charlie Parr countered with a "don't hit me too hard" joke. There were questions, and at the end there was a lot of applause. If it was a debate, no apparent winner emerged. If it wasn't a debate, we did learn that it takes at least three to tango if you're concerned with women's rights and are in the State Senate. (One might suspect that **Barbara Schuhmann** had a different opinion.) Having descended so far into the depths of politeness and conventionality, the group lost its sense of identity and scattered the four winds.

By executive fiat,

King Arthur

October 20, 1980

Hon. Jay A. Rabinowitz
Chairman Ex-Officio
Alaska Judicial Council
420 L Street
Anchorage, Alaska 99501

RE: Thomas F. Keever

Dear Mr. Chief Justice:

I'm pleased that **Tom Keever** *has named me as a personal reference regarding his candidacy for my Fairbanks district court judgeship vacancy.*

As you already know I met this bastard about 16 years ago. I'm surprised that he has expressed an interest in a judgeship because his interests have consistently been directed towards booze and broads. Although he has regularly posed as a trial lawyer for many years I'm certain that this charade has not fooled you.

Tom has many good attributes for the bench. He can hold his liquor. In fact I've seen him outperformed on only one occasion at a bar function when **George Boney** *surpassed him.*

On two specific occasions he was actually present for trial on the day it was scheduled. Once he was in court on the very morning that trial was to commence. But you can't hold that against him because he doesn't do this too often.

He dresses neatly even though his bank account is usually overdrawn. He doesn't wear his hair too long. There is always a ready smile behind his shitty disposition.

It is quite obvious that he is of great legal intellect because his pleadings and briefs are often well supported by cases from the Texas appellate courts, decided during the reconstruction days.

Tom is persistent. He may not make it to the bench but you'll have to admit that with his qualifications it takes guts to apply again.

Most of Tom's so-called "friends" have tried to dissuade his application but I truly believe this son-of-a-bitch rightfully deserves this fucking job.

Sincerely,
Monroe J. Clayton

Minutes of the October 31, 1980 Meeting of the Tanana Valley Bar Association

The meeting was called to order by President **Jon Link** at 12:20, and Samurai **Savell** attempted to introduce a table of guests consisting of **Penny Cornelius, Flora**, the Samurai's secretary, **Arlene Reilly** and **John Powell**. None of the group were recognizable due to the all Hallows eve attire. Minutes were approved, and under announcements President Jon gave a short report on the Board of Governor's meeting indicating that the Board agreed to offer to settle the lawsuit with the Legislature by agreeing to have the Supreme Court adopt a rule, should the Supreme Court so wish, which would permit the Supreme Court to select a C.P.A. who would on behalf of the Legislature, review ten percent of the Bar's disciplinary files and prepare a report for Legislative affairs, which report will be reviewed by the Supreme Court and the Bar to make sure that the identities of the individuals involved are not revealed. Apparently, Anchorage and Juneau seem to favor this. Ketchikan is preparing to sue the State Bar to enjoin them from doing it, and the upshot seemed to be that the President should see what the Ketchikan Bar is up to, so that we can join them in some form of insurrection.

Dave Backstrom announced that he had finally paid for Judge Miller's robe. There was, however, skepticism due to the lack of a receipt or cancelled check, both of which Dave insisted he had but just forgot.

Moved by **Dave Call**, seconded by **Paul Canarsky**, to contribute $5,000 (by consent, amended to $10,000) to **Fred Brown**'s campaign. The motion failed five to two, or something like that. Moved by Judge **Blair**, seconded by **Chris Zimmerman**, that we advise Fred that the TVBA was willing to buy a full-page ad indicating that both the Bar Association and each of its individual members supported Fred wholeheartedly. Judge Connelly underlined that this was a motion to advise and not a motion to spend. **Dick Madson** proposed an amendment which was acceptable to both the maker and second, that we include in the ad that we sincerely appreciate the support which **Fred Brown** has given us in the past and that we would welcome his support in the future. All this seems to have passed unanimously. **Jim DeWitt** moved, and **Dick Burke**, or someone sitting near him, seconded, that a committee be appointed to investigate the indicated practice of law by Transamerica Title Insurance Co. **Barry Donnellan** proposed an amendment which was agreeable to all that we include all title companies and banks in the committee's investigation. The motion passed three to two. Jim DeWitt was named chairman of the committee. **Gary Vancil, Andy Kleinfeld** and **Doris Loenning** were members.

Halloween party announcements were read, **Don Logan**'s involving crossing the railroad tracks on College Road, going down three doors and reciting a 12-wood password. Dick Savell's involving gathering at his office and invading Merdes, Schaible, Staley & Delisio.

Judge **Crutchfield** announced that he was overwhelmed that he was now a judge. **Jim Blair** pointed out that the Bar was overwhelmed too. After a brief thank you speech, Jim DeWitt moved, and about 40 people seconded, that **Ed Crutchfield** be made a full member rather than associate member, that that his designation be changed from "fast Eddie" to "steady "Eddie." Blushing with modesty, Crutchfield left the room, and the rest of the members followed for fear of his new-found contempt powers.

The meeting was never adjourned.

By executive fiat,

King Arthur

Minutes of the November 7, 1980 Meeting of the Tanana Valley Bar Association

The meeting was called to order by President **Link** at about 12:30, with the participants spread over about a quarter of an acre of the top of the Polaris Hotel. Someone from Seattle who had been in the Anchorage public defender's office was introduced as a guest or as a something, but he or she was on the south 40 and the secretary was on the north 40. After the minutes, the secretary gave a C.L.E. report, and then the question of **David Backstrom**'s delinquency with respect to the robe of retired Judge **Mary Allice Miller** was raised. It seems to be the consensus of the body that nobody believes Backstrom, and Backstrom is hoping he doesn't believe the body not believing him.

The attorney general's office announced the departure at the beginning of December of **Bill Shatterberg**, who will spend a year defending malpractice cases in Saipan. Another opening in the A.G.'s office will be posted soon. President Link announced that nobody had paid him back the $300 he spent on the reception for semijustice **Bob Coats**, and with a new Bar admission ceremony plus the swearing in of Judge **Crutchfield** on the horizon, Jim DeWitt moved that we save money by throwing one party for both ceremonies. This fell on deaf ears, so **Art Robson** moved that Judge Crutchfield's inauguration be celebrated with a party comparable to that given for semijustice Coats and that, as in the Coats party, we decide later if we wish to pay the president back. This passed with a vote of approximately 73 to 1. There was a giant laugh over the fortune cookies, with Judge **Blair** having received one that indicated that he was a kindhearted and hospitable and well-liked person. Note: when printed in the Bar Rag, this should be set in Gothic type. President Jon being disgusted over the lack of happenings, adjourned the meeting, and **Gary Vancil** made an announcement calculated to rise above the roar of the crowd. **Bill Satterberg**, not having really understood the announcement, asked to have it repeated, and the repetition, heard by all, was that repeated self abuse causes a person to be hard of hearing.

By executive fiat,

King Arthur

Holiday greetings

Minutes of the November 14, 1980 Meeting of the Tanana Valley Bar Association

The meeting was called to order at 12:20 by V.P. **Bob Groseclose.** Guests were **Ken Jacobus** of Anchorage, **Fred Brown** (who insisted his dues were paid), **Jamie Fisher**, who'd spent the week trying to get things to grow in Fairbanks, and **Tom Fenton**'s cousin, Tom.

The minutes were boring, and since there was no treasurer's report, **Jim Blair**'s order to disburse $2,000 from the slush fund the TVBA was read. Wherever we were, we are now solvent and Blair is trying to live up to his fortune cookie. Imitation President Groseclose also read the formal announcement of the appointment, coronation or what have you of Judge **Crutchfield** set for the day before Thanksgiving, November 26th, at 3:30 p.m., and he appointed **Pat Aloia, Dick Madson**, and **Art Robson** as a committee to assist and thereby disrupt the affair. Announcements were becoming the order of the day when the court system's Christmas party was announced for 7:00 p.m. on December 13th (Friday the 13th comes on Saturday then), at Fairbanks Feed and Fuel, $13.50 each, which presumptively covers meal, all drinks and a massage at

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TVBA MINUTES

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the massage parlor kitty-corner across the street. **Niesje Steinkruger** started something by mentioning that it was time for our July 4th picnic, and then moved that we have our July 4th picnic at the court system's office party. This was seconded by **Harry Davis. Dave Call** said we should add both color and odor to the party, but this motion lost amidst arguments that at least Niesje should have voted for it. **Dick Madson** moved, **Jim Blair** seconded, that we have a July 4th picnic, that it be prior to December 20th, and that somebody do something. **Gary Foster, Ralph Beistline, Valerie Therrien,** Dave Call and **Mike Lessmeier** were appointed chairman. A fantastic if befuddling report on CLE was given by Art Robson and Bob Groseclose. Judge **Van Hoomissen** reported for the Juvenile Rules Committee that some sort of rebellion had resulted in him being voted out of being chairman, that the official committee who's working on this has divided the rules into juvenile rules for delinquents and children's rules for those in need of supervision. The committee meets Wednesday in Judge Van's chambers for lunch, which judicial generousity does not provide. The now ex-chairman reported that the suggested rules were less than a model of common sense.

There being no old business or new business, acting Pres. Groseclose called for monkey business. **Terry Thorgaard** moved that acting Pres. Groseclose be prohibited from ever using the word monkey business again. Nobody seconded the motion, and everybody started to leave. The secretary was instructed to send a sympathy message to the family of Court Reporter **Nancy Williams** who was killed in a hunting accident on Monday.

King Arthur

Minutes of the November 21, 1980 Meeting of the Tanana Valley Bar Association

President **Jon Link** called the meeting to order at 12:30 p.m. **Mary Nordale** introduced **John Franich,** a new member of the Bar and new associate in her office. **Hugh Connelly** introduced **Skip Slater,** the Magistrate from Galena, Nenana and Lord only knows where else. Minutes were read and **Judge Crutchfield's** coronation was announced amid traditional singing of angels and heralds descending from the Heavens on golden stairs. President Jon announced that a departed member of the Bar had left an estate he was handling only semihandled, and **Barry Donnellan** volunteered to complete it amid speculation as to whether he would ever get paid. Judge Connelly announced that on the Thursday following Thanksgiving at noon in his chambers the first meeting of the Legislative Committee would commence. **Will Schendel** announced that Alaska Legal Services has a new executive director, **Ralph Newheissen,** and that there is a vacancy on the board for the Fairbanks area. **Mike Lessmeier** reported for the Fourth of July Picnic Committee on available dates in December for the Switzerland, the Fairbanks Inn, the Travelers, the Sunset Strip and Fairbanks Feed and Fuel. **Dave Baxter** moved and some other rabble rouser seconded that we postpone Fourth of July until late in January or early February. **Ralph Beistline** pointed out that this meant we would have two Fourths of July in 1981 and one in 1980. **Tom Fenton** suggested Ground Hog Day as a good day for everything, and the motion passed. **Dick Burke** announced that process servers were being sent to the president instead of to the Process Servers Committee. The members were shocked! Pursuant to request from **Mike Lessmeier,** moved by Groseclose and seconded by Blair, that Friday, February 13th be selected as honorary July 4th to be celebrated by our more-or-less annual picnic. This passed unanimously. Mike Lessmeier then moved, and Dick Burke seconded, that the picnic grounds be preferably Ivory Jacks. At this point there were so many suggestions that whether the motion passed or not was lost in the hubbub. However, Judge Connelly did move and **Valerie Therrien** seconded that any alternate site was up to the committee and that they should have absolute totalitarian, autocratic and chicken control. This passed. After a brief CLE report, Judge Blair gave a plug for the CLE trip to China which sent **Dave Backstrom** into spasms of asphyxiation (he calls it laughter) when the legal objective was defined as meeting some prisoners.

In regard to the sunset of the State Bar and/or any revolution related thereto, Judge Blair wanted to know when the two turkeys would be off the board. **Turkey Link** indicated that he was in the process of expiring, but that **Turkey Savell** had gone and run for another term. After much hubbub, it was determined that there would be no meeting next week, but on December 5th we would invite **Randall Burns,** executive director of the Bar, and maybe the League of Women Voters to address us on the subject, so that we could come up with an outrageous resolution. This caused Valerie Therrien to give a plug for the League of Women Voters, but since said league had declared **Jesse Carr** re-elected as foremost deity in the Teamster organization members began to leave. As the group approached the President, he thought about all the talk of resolution, declared the meeting adjourned and fled.

By executive fiat,

King Arthur

COMING
NEXT ISSUE:

Poetry Contest Winners

Minutes of the December 5, 1980 Meeting of the Tanana Valley Bar Association

The meeting was called to order at 12:15 by President **Jon Link.** The minutes were read. **Dennis Bump** with the Process Servers Committee reported that **Edgar Tierback** had applied for permission to serve process. He had been interviewed and passed his test. Moved by Bump and seconded by **Dick Burke** that Mr. Tierback be approved and recommended to Judge **Blair** with a letter to be written by Dennis Bump. The motion passed.

At this point, **Randall Burns,** the Executive Director of the Bar Association, was introduced, and he spoke on the Bar's sunset problem with the Legislature, the suit between the Bar and the Legislature, the possibility of integrating pursuant to Rule of the Supreme Court, and forgetting the Legislature and the probabilities of all of the above. Since some of the remarks with respect to legislators were true, they shouldn't be included in the minutes for fear we will get sued. An offer of settlement sent to the Supreme Court in the suit was distributed. It was made clear that the Bar's Board of Governors feels the time has come to accept lay persons on the board. Of interest was the fact that there are 1,580 members of the Bar Association paying $310.00 each per year, and approximately 87 inquiries a week come in to the lawyer reference service. The multifaceted dilemma having been explained, the group emulated the legislature's goals for the State Bar and disintegrated.

King Arthur

POSITION ANNOUNCEMENT

The Barrow office of Alaska Legal Services has an immediate opening for a newly-admitted attorney. This VISTA-type position is funded by ALSC. The salary is subsistence-level. Relocation travel to and from Barrow will be provided.

This office is the most northerly law office in the U.S. The legal practice is exciting, involving everything from a general civil case load to impact litigation involving the Indian Child Welfare Act, caribou hunting, and offshore oil drilling in the Arctic Ocean. Travel to several remote Arctic villages is part of the work experience.

For the person who is interested in an intense cross-cultural experience in one of the world's most northerly locations, this job is ideal. The position requires an independent, mature, and sensitive personality. A one-year minimum commitment is required. The person selected must be willing to work unconventional hours and meet an unscheduled intake procedure.

FOR FURTHER INFORMATION, please send resumes and the date of your availability to come to Barrow, to

Michael I. Jeffery or
John Holmes, Attorneys
Alaska Legal Services Corporation
P.O. Box 309
Barrow, Alaska 99723
(907) 852-2311
CLOSING DATE: When filled.

JOB VACANCY ANNOUNCEMENT

Alaska Legal Services is recruiting for an attorney-director for its Statewide Community Food & Nutrition Program. Major responsibilities of the Director include preparing grant reports, monitoring state food stamp and nutritional programs, implementing class action litigation, and conducting administrative fair hearings. As immediate litigation is required, applicants must now be qualified to practice law in Alaska. Preference will be given to those applicants experienced in welfare litigation and federal grant program administration.

Position is to be located in Anchorage. Starting date: ASAP. Salary: $22,400. Send resume's, writing samples, and references to CFNP, Alaska Legal Services, 615 H Street, Suite 100, Anchorage, AK 99501. ALSC is an EEOC employer.

Season's Greetings