

Lawyers Unite!

When two lawyers agree about an issue, you may have a settlement. When more than two see eye-to-eye, you have a rare and wondrous event. Such an event took place recently when an ad hoc committee of Anchorage trial attorneys addressed the backlog in civil cases awaiting trial and the present means by which the Court System in the Third Judicial District handles this problem.

Their efforts culminated in several proposals for reform hammered out between the plaintiff's and defense bar who put their traditional rivalries aside in order to arrive at workable solutions including: (1) new streamlined pretrial procedures with early settlement conferences, meeting of counsel for discovery schedules and more exact trial time estimates; (2) the identification of "major case" litigation with individual case assignment for trials so designated, mandatory early settlement conferences and a trial date certain; and (3) pro tem adjudicators drawn from a list of trial attorneys.

These proposals were presented to Superior Court judges in Anchorage for their consideration. Subsequently, the ad hoc committee met with the Court Calendaring committee to urge the adoption of these proposals. The calendaring committee had before it the trial attorneys proposals and another plan advanced by Richard Emmerman, a lay court system planner. Emmerman's proposals involved a hybrid system including some of the Fairbanks calendaring system methodology, some of the ad hoc committee's proposals and ideas and the concept of early individual cases assignment.

A Strike of the Pen

At the meeting, several of the trial attorneys who spoke urged the calendaring committee to enlarge the committee to include two trial attorneys, one from the plaintiff's bar and one from the defense bar as voting members. The attorneys expressed their frustration with the trailing calendaring and urged reassignment after five days. One attorney suggested that the court system could eliminate the trailing calendar tomorrow by the stroke of the pen. Others expressed doubt that cases were actually in a ready status after they had been trailing for any significant period of time and that the court's estimate of trailing ready to go cases was inaccurate.

Committee Commended

Speaking for the calendaring committee, acting chairman Arthur Snowden, commended the positive action taken by the ad hoc committee. He noted "trial calendaring is not working and that's why we're here." He agreed in principle with [continued on page 12]

Reservations Due for Hawaii CLE Program

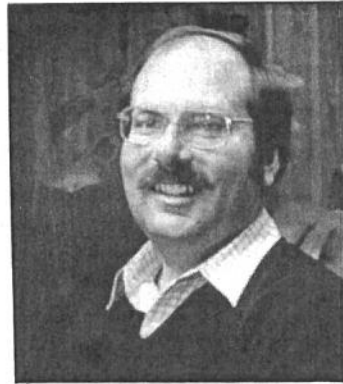
On January 17, 18, 19, 1980, the CLE Committee will be conducting a Real Estate Seminar at the Kona Surf Hotel, Kona, Hawaii. The program will be conducted between 9-12:00 Noon on each of the three mornings and will present a basic understanding of the practice of Real Estate Law, together with forms utilized in the practice.

Following is a listing of the participants and their topics:

January 17

9:00-9:40 - Introduction: Real Estate for the 80's, National Trends and Pending Legislation Affecting Real Estate - **Hayden Green.**

9:40-10:20 - Alaska Statutes Affecting Real Estate, Recent Alaska Decisions, **Ted Locke.**



Randall Burns

New Bar Executive Offers First Impressions

Randall Burns, newest Executive Director of the Alaska Bar Association, started work on November 15. After two weeks on the job, Mr. Burns offered the Bar Rag his impressions and comments.

Mr. Burns is pleased with the potential of his position but listed a number of areas that need administrative reorganization and review. He stated that he is impressed by the amount of time attorneys put in on Association matters, and also by their willingness to assist. On the other hand, an obvious problem confronts the Board of Governors in that it is difficult to set deadlines—and put pressure on people to meet those deadlines—when the majority of the work of the Association is done through volunteered services. He says that the best solution to this problem is not really a solution, but a compromise. Obviously, the Association's staff does not have the expertise or available time to do all the Bar's committee work, but if the Bar office's recently initiated efforts to more effectively handle its workload succeed, it may be possible for the staff to offer the Association's staff does not have the expertise or available time to do all the Bar's committee work, but if the Bar office's recently initiated efforts to more effectively handle its workload succeed, it may be possible for the staff to offer the Association's committees and members more on-going support. Burns concedes, however, that this is predicated on a more formalized approach to the Association and its work, as well as time to systematically review current procedures. He applauds the work of the Board and the Association's staff in keeping its head above water throughout the constant personnel changes of the last two years, but does see a real need to reorganize and update even basic office procedures.

NOTICE!

THE GREAT DEBATE

Should the Integrated Alaska Bar Be Disintegrated?

Debate to be held at the Anchorage Bar Association Luncheon
12:00 o'clock noon
January 7, 1980
Anchorage Westward Hilton
(Speakers to be Announced)

DON'T MISS IT!

10:20-10:35 - Coffee Break.
10:35-11:20 - Conveyancing, Types of Tenancies, Notes & Deeds and other Instruments of Conveyance, Easements, **George Dickson.**
11:20-12:00 - Earnest Money Escrows, Closing the Transaction, **Pete Lekisch.**

Banquet Speaker, **Mike Stepovich.**

January 18

9:00-9:30 - Title Insurance, **J.L. McCarry III.**
9:30-10:15 - Commercial Leases, **Reginald J. Christie, Jr.**

10:15-10:30 - Coffee Break
10:30-11:00 - Landlord-Tenant Evictions, **Michele Minor.**

11:00-12:00 - Foreclosures, Conducting a Judicial Foreclosure, Conducting a Non-Judicial Foreclosure, **Brian Brundin.**

January 19

9:00-10:00 - Taxation, Like Kind Exchanges of Real Estate, Installment Sales of Real Estate, Tax aspects of Divorce, **Bernie Dougherty.**

10:00-10:15 - Coffee Break
10:15-11:00 - Corporate Ownership of Real Estate, Tax Problems of Individuals, **Bernie Dougherty.**

11:00-12:00 - Consumer Concerns in Purchasing Real Estate and Sophisticated Real Estate Syndications and Partnerships, **Hayden Green.**

In order that proper planning can be made and, to ensure a suc-

cessful program at the Hawaii session, members of the Bar are urged to submit their reservations as soon as possible. As noted in the recent mail-out to all bar members, the registration fee for this program is \$85.00.



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Referral Service

Previously unaware of the Lawyer Referral Service, Burns is impressed by the number of referrals that are made every day, and wondered that more attorneys did not subscribe.

Humanize Applicants

Mr. Burns stated that he hasn't really focused on the admission process as yet, but does wish, after only a cursory review of the procedures, to somewhat "humanize" the process for applicants.

Approves Discipline

He stressed that he was particularly surprised by the extent and value of the disciplinary wing of the Bar Association. Commenting as

[continued on page 7]

Court System Plans Gala Yuletide Bash

The results of a recent survey indicate that more people than ever before are planning to attend the 5th Annual Court System Christmas Party, to be held Friday, December 14 at 8:30 p.m. at Carpenters Hall, Anchorage at 4th and Denali. Pam McIntyre, the elected chairperson of the P.P.E.C. (Party Planning and Executive Committee), has indicated that tickets have been selling like Wien shareholders and that only a few dozen of the "Celebrity Stubs" (as the uniquely-designed tickets have come to be called) are still available. A ticket entitled its bearer to eat, drink, and be merry to the heart's (or stomach's) content, and the chance to see some well-known courthouse "sober celebs" not so. Although a few tickets are expected to be available at the door, the P.P.E.C. advises that interested parties should contact Pam in the Clerk's Office as soon as possible to avoid the disappointment of not being able to get a ticket. The price is \$11.50.

Grant Callow is New Court System Staff Counsel

On August 6 Grant Callow assumed the position of staff counsel for the Alaska Court System, replacing Susan Burke. Susan has now moved to Juneau, where she is working as the supervising attorney for the revenue and commerce section of the Juneau attorney general's office.

Mr. Callow received his law degree in 1977 from the University of Wisconsin law school and was admitted to the Alaska Bar in August 1978. In 1975 he worked as a summer law clerk to Chief Justice Jay A. Rabinowitz, and in the summer of 1976 he worked for the Alaska Public Defender Agency in Anchorage researching and writing criminal appeals. In 1977-78, after graduating from law school, Grant served as law clerk to Justice Edmond Burke. During the fall and winter of 1978-79, Grant worked for 6 months with the Alaska Public Defender Agency, handling misdemeanor cases. Most recently, he worked for six months as law clerk to Justice Roger Connor to fill a vacancy created by the early resignation of one of Justice Connor's clerks.

ALASKA STATUTES



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Lawyer Referral Service

The Alaska Bar Association Lawyer Referral Service received 994 requests for lawyers in July, August and September, 1979. Since each caller is given the names of three attorneys, almost 3000 names were given through this service. This program has been in existence for little over a year and appears to be a significant help to both lawyers and those looking for lawyers.

Each attorney pays \$25.00 yearly to be enrolled in the referral program. The attorney can list his or her name in a maximum of five areas of law with the referral system. There are a total of twenty different areas in the Lawyer Referral System. The attorneys who enrolled also have agreed to carry a minimum amount of Errors and Omissions Insurance coverage.

The Alaska Bar Association has sought to make the public aware of this service through newspaper advertisements. Approximately \$400.00 per month has been spent in Anchorage and Fairbanks newspaper advertising.

John Havelock Resigns as Justice Center Director

Former Attorney-General John Havelock has resigned as Director of the Criminal Justice Center at the University of Alaska, Anchorage, a post he has held for the last four and one half years. He will remain on the faculty as Professor and Director of Legal Studies, directing planning responsibilities for legal education at the University. He will also continue to teach at the Center.

The new Justice Center Director is Professor John Angel, whose PhD in criminology is from Michigan State and who has published extensively in such areas as crisis management systems.

Havelock has become the resident partner in the Seattle/Anchorage firm of Roberts, Shefelman, Lawrence, Gay, and Moch, which has recently opened offices at 2600 Denali. Also joining the firm are Roger Hudson, formerly house counsel for the Pacific Rim Corp., a non-profit native corporation; and Bob Mullendore, a former U.S. District law clerk who has practiced in both Seattle and Alaska. The firm is known to Alaskans primarily as bond counsel for several Alaska municipal offerings over the past two decades.

John, as usual, will continue to play a prominent role in public affairs, was recently elected to the Anchorage Bar Association Board of Directors, and is active in the Kennedy campaign.

Tanana Valley Bar Association

Minutes of the November 9, 1979 Meeting

President Beistline called the November 9 meeting of the Bar Association to order. Thirty-six attorneys with nothing better to do were in attendance.

Andy Kleinfeld announced that he would be having an office warming party featuring a couple of cases of Chivas from 3:00 to 5:00. He noted the conflict with the swearing in ceremony for new admittees to the Bar Association.

Under aggressive cross-examination by Bob Groseclose, Ralph Beistline admitted he didn't have the faintest idea who would be speaking on behalf of the Board of Governors at the swearing in ceremony. He was certain that he would be speaking on behalf of the Tanana Valley Bar Association, and that Charlie Cole would be speaking on behalf of real attorneys.

Ralph noted the CLE seminar on the Revised Criminal Code set for the 16th and 17th of this month. He also reported that all of the correspondence this week was telephone calls.

The process servers committee reported on candidate Tim Nowland. Apparently, people keep shooting at him or threatening to shoot at him. The committee had no recommendation for the Association. Dave Call moved that the Association recommend Nowland to the presiding judge. Brett Wood seconded that motion. Speaking in support of the motion, Paul Barrett stated he wanted more aggression in process servers, not less. Dick Burke slandered Chuck Cowles. The Association unanimously recommended Tim Nowland to the presiding judge as a process server, subject to the District Attorney's giggle.

The Fourth of July committee reported on the details of the picnic. Dave Call set threshold standards for visitors to his cabin at Chena Hot Springs; i.e. they have to be able to crawl across the threshold.

Bob Groseclose was again vague about the treasurer's report. The administrative rules committee had no report, but promised for the fifth time to have a definite report at the next meeting.

Niesje Steinkruger moved to send a telegram, changed to a night letter, to Racehorse Haines congratulating him on his victory, and to sign the telegram the Tanana Valley Bar Association. The motion was adopted, but the minutes were to reflect Harry Davis' objection. A motion to have Harry Davis sign the night letter died for lack of a second. There having been no business of any kind to conduct, the meeting was then adjourned.

Respectfully submitted,
James D. DeWitt, Secretary

Bog Meets Three Days in October

The Board of Governors of the Alaska Bar Association met in Anchorage on October 25, 26, 27, 1979. The highlight of the Board agenda was certifying for admission to the practice of law 69 regular applicants and 2 attorney applicants which were sworn in by the Supreme Court on November 9, 1979. A total of 101 applicants took the July, 1979 Bar exam.

In its capacity as the Disciplinary Board, the members conducted a hearing on a disciplinary matter which will be forwarded to the Supreme Court for its final review.

The Board also heard committee reports from Bob Hartig, CLE Committee Chairman, Carolyn Jones, Legal Education Opportunities Committee Chairperson, Mary Patch, Administrative Law Committee Chairperson, Ron Baird, Chairman of the Bar Polls and Elections and Mike Rubenstein, Executive Director of the Judicial Council.

The following actions were taken by the Board. Each member of the Board was directed to research and draft a section of a public information booklet to be prepared for presentation to the Legislature on the issues raised by Sunset review. The Board approved a pro bono activity poll prepared by the Bar Polls and Elections Committee. Mike Rubenstein reported that the Judicial Council has decided it wishes to assume management of a poll of the Bar on Judicial candidates. The Council hopes to work with a liaison from the Bar Association in putting together the poll and if the Legislature does not fund the poll, the Council asks that the Bar Association consider monetary contribution.

The recent amendment by the Board of By-Law III, which requires Alaska residence and/or an office to maintain active membership in the Alaska Bar Association was referred to the Statutes, Rules and By-Laws Committee for preparation of a rule for submission to the Supreme Court by the Board of Governors as a Bar Rule Amendment. The Board approved a personnel evaluation procedure for considering merit raises to bar staff employees.

Bob Hartig, CLE Committee Chairman, announced the CLE Criminal Code Program for November 16th and 17th in Fairbanks, November 29 and 30th in Anchorage and December 7th and 8th in Juneau. Hartig also reported on the Program for the mid-winter CLE meeting in Hawaii. The entire program is to be devoted to an exhaustive review of property law in Alaska. The Board approved ethic's opinion 79-3 which permits a law firm to provide accounting services to its clients with several

[continued on page 3]



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Bog

[continued from page 2]

conditions and restrictions that must be met in the provision of such services.

Bruce Gagnon, Chairperson of the Special Committee to review Bar examinations reported that his committee has gathered substantial data, but has not yet begun its substantive review of the issues. The committee is also tabulating and reviewing the results of the recent poll regarding bar exams. The tax committee reported to the Board that the Association can use for general fund expenditures interest earned from client security fund.

Mike Flanagan, Chairman of the Special Committee to draft a client trust account audit rule, submitted to the Board of Governors a tentative draft. The draft, if submitted to the Supreme Court, will be Bar Rule 64.

Ben Asch, who has been assigned the special task of advising the Board on the issues raised by the recent U.S. Supreme Court decisions regarding solicitation, reported to the Board on his conclusion. He advised that the issue of solicitation and advertising cannot be divided. The Supreme Court decision established an absolute prohibition and an absolute allowance of solicitation at opposite ends of the scale. The Board directed that the local Bar Associations be advised of the Asch memo and encouraged to have local bar association meeting discussion of the issues raised therein.

The Board directed that a proposed by-law change calling for the election of a treasurer as one of the Bar Association officers be published for member comment.

The Board heard a presentation by Sitmar and World Wide Travel advising of the services available and approximate cost for a ten (10) day cruise to Mexico for the 1981 mid-winter, CLE meeting. The cost for air travel to Los Angeles, the boat trip, and registration at the convention is estimated to be approximately \$1650.00 per person. The Board was advised that to make such arrangements, commitment would have to be made on or before January, 1980.

The Board directed that a special committee be appointed to draft recommended regulations for the advertising disciplinary rule. Such draft proposals are to be presented to the Board no later than March, 1980.

The Board reiterated a prior policy, which is that Law Day should be primarily a local Bar Association activity with assistance given by the Alaska Bar Association and the American Bar Association.

Finally, **Steven DeLisio**, Chairman of the Special Alternative Disputes Resolution Committee reported to the Board by presenting a draft for a Center similar to that presented to the Alaska Judicial Council in 1977. DeLisio reported that his committee has determined that the first area of concern for such an alternative disputes resolution center would be consumer products complaints. Such a program would enlist the support of the Anchorage Chamber of Commerce and the business community.

You are cordially invited by the Supreme Court of the State of Alaska to the installation of

Karl S. Johnstone

as Judge of the Superior Court of Alaska on the fourteenth day of December nineteen hundred and seventy-nine at three-thirty o'clock p.m. in the Supreme Courtroom Anchorage, Alaska

The UCLA/Alaska Law Review Seeks Topics

by Kenneth P. Eggers

I was recently appointed as the Alaska Bar Association's liaison to the UCLA/Alaska Law Review. In this capacity, I have been in contact with **Dennis S. Diaz**, the current Editor-in-Chief of the Review. The Review is cognizant of the recent criticism by the Alaska Bar Association of the Review's failure to address topics pertinent to the participating bar. In an attempt to resolve this problem, the Review and the Board of Governors reached a three-point agreement at the Sitka Bar Convention. In essence, the Review and the Board of Governors have agreed:

1. That each issue of the Review include at least one topic approved by the Board of Governors;

2. That both an incoming and an outgoing member of the Review attend the annual state bar convention to address the Board of Governors;

3. That a liaison be established to facilitate communication between the Review and the Bar.

In a further attempt to respond to the criticism, the Review has asked me to solicit topics from the participating Bar. Any member of the Bar Association who would like to write an article for the Review should send an outline of the suggested topic to Mr. Diaz. On the other hand, if anyone has a topic which they believe would be appropriate for a student comment, an outline of the subject area in as much detail as possible should be sent to Mr. Diaz. Mr. Diaz' address is:

UCLA/Alaska Law Review
School of Law
Los Angeles, CA 90024

I believe that with input from the Alaska Bar Association, the Review's value to the practicing Bar can be greatly enhanced.

History Committee Sends Resumes

A resume prepared by the Alaska Bar Association Committee on History and Tradition has been mailed to all members of the Alaska Bar Association. Most of the work on the resume was done by **Norman Banfield, Esq.**, of Juneau. The idea was suggested by **President Donna Willard**. The Coordinator of the Alaska Bar Association Committee on History and Tradition, **James C. Hornaday**, encourages all members to complete and return their resumes. The program is aimed at obtaining and retaining information on members of the Bar who have made substantial contributions. This is an opportunity to write your own biographical note.

Rabinowitz Names Special Court Appointments Committee

Chief Justice of the Alaska Supreme Court, **J.A. Rabinowitz**, has appointed a special committee to study Court appointment of counsel. Appointed to the committee are **Karen Hunt**, Chairperson, **Rick Barrier**, Deputy Administrative Director, Alaska Court System, **Brian Shortell**, Public Defender, **Judge Milton Souter**, Superior Court, **Mel Martin**, Technical Operations Manager, **Don E. Clocksin**, Alaska Legal Services, **Larry R. Weeks**, District Attorney for Anchorage and **Will Condon**, Deputy Attorney General.

The committee has been charged with the task of investiga-

tion, evaluation and recommendation of criteria to establish indigency for purposes of Court appointment of counsel; to recommend procedures for making Court appointment of counsel; and to recommend criteria to determine conflict for purposes of Court appointment of counsel.

The committee has been asked to prepare a written report to be circulated to the Alaska Court System and the Alaska Bar on or before May 15, 1980; to discuss the report at the June 1980 Annual Meeting of the Alaska Bar Association and to discuss the report at the Judiciary Conference in June, 1980.

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by L. Ames Luce
Chairman
Ad Hoc Committee

For many months the constitutional right to a trial by jury has not, for all practical purposes, existed in civil cases for many litigants in the Third Judicial District.

Many cases are not tried because of the uncertainty of when a dispute will be heard. If a civil case can be brought to trial, which is becoming exceedingly rare, it is to be anticipated that on the average of five years will have expired from the time the litigant's attorney has requested the trial setting conference until an appeal has been resolved. We can and must do better, or civil justice will become a myth, to be relegated to the sterile and inhuman ledger of some bureaucratic manual prepared by those who have no experience nor understanding of human joy, suffering and experience.

Courts Bugged Down

Our court administration was changed from rural to metropolitan during the term of Chief Justice Boney. Many imaginative and forward-looking changes were implemented, including, but not limited to, the adoption of a centralized calendaring procedure and the hiring of a full-time trial court administrator. The changes implemented during Chief Justice Boney's term have served the trial court well until approximately two years ago. It was then that the full impact of litigation generated by the pipeline commercial activity reached the court system, which had already been strained to capacity by the lack of new superior court judges. The requirements that criminal trials be disposed of within four months had previously materially impacted the system, and with the attorney general's ban on plea bargaining the dike was finally breached and chaos has resulted. Additionally, there is some evidence to support claims of calendaring inefficiency, attorney unpreparedness, failure to identify and differentiate in the handling of major and minor case litigation, and the poor administrative utilization of trial judges' time.

Inquiry Begun

In the early Spring of this year, the plaintiffs' trial bar held a series of meetings, attempting to analyze the problems that existed in the Anchorage trial court system, and with the appointment of a "committee of inquiry" by the Chief Justice, testimony was presented in mid-summer. Simultaneously, members of the defense bar were meeting and formalizing their own recommendations, and joined forces with the plaintiffs' bar to analyze on a broad scale the problems and to propose sweeping solutions. This Ad-Hoc Committee, chaired by Daniel Moore and myself, now has in excess of 80 participants, representing most of the trial firms within the Anchorage area. The Ad-Hoc committee members have spent in excess of 2,000 man hours attempting to resolve the problem, and after consulting with the trial bench, a com-

prehensive recommendation has been submitted to the "committee of inquiry" appointed by the Chief Justice.

Solutions Proposed

The broad outlines of specific provisions of the bar's proposal deals with many of the administrative deficiencies of the present calendaring system, from the aspects of both bench and bar, and also with the problem of judicial resource. In addressing corrective action for trial administrative procedures, the committee has recommended a new uniform pre-trial procedure to be implemented which will help insure that cases are better prepared at an earlier time; which will result in earlier settlements, more accurate predictions of length of trial, and shorter trials. Different pre-trial treatment will be given to major and minor litigation, recognizing the different needs of each type of case, and attempting to insure that in the former there are trial dates certain, and in the latter, a trial period certain.

It has further been recommended that the trailing calendar be carefully regulated, and that cases be removed for early resetting after the running of a short, specified period of time. The bar has discussed, but has not taken a firm position on whether centralized or a more individualized calendaring system should be adopted. While the studies would indicate that individual calendaring systems may be slightly more efficient, it is questionable whether the gains to be achieved by changing to such a calendaring philosophy would be overshadowed by the confusion that such a change would by necessity generate.

Judges Needed

Additional resource and better administrative utilization of existing judicial resources must be achieved. The expansion of the trial bench in Anchorage by three judges must be avidly sought and supported. At the present time there is somewhere between 8,000 and 10,000 pending civil cases, with the number of filings still increasing. The addition of three new judges, with increased efficiency in the pre-trial procedures, will enable us only to maintain the status quo. The backlog must be attacked by additional judicial resources, albeit that it may be only temporarily needed.

The Chief Justice has agreed, for a period of six months, to make additional superior court judges from without the district available, so that disposition of an additional 250 cases can be achieved. The bar has recommended that part time judges, to be called "Pro-Tem Adjudicators," also be utilized. Such judges would be drawn from the ranks of experienced practicing sitting judges, but would have to be

agreed upon and stipulated to by the attorneys for both parties. Reasonable compensation will be established and such adjudicators would be utilized as needed to reduce case backlog, handle settlement conferences, and resolve discovery disputes. Such a system of Pro-Tem judges is successfully being used at this time in many jurisdictions and in the English Crown Courts such judges are known as "Recorders." In recommending the adoption of Pro-Tem Judges, Lord Goodman stated:

"I believe the Lord Chancellor will make available to himself a very rich human pool which will greatly improve the quality of the judiciary, because it will make available a number of people who are not only learned in law, not only learned in the vocabulary, but people who, on the whole, have much better contact with ordinary human beings, because the nature of barristered activities..."

Further, a careful examination must occur as to the types of activities presently being assigned to trial judges, to determine if some of these activities may not be otherwise administratively performed, to free the judge so that more trial contact time is available.

Bar's Best Thinking

The Ad-Hoc Bar Committee proposals have been characterized by

"Random Potshots"

The Alaskan Law School Study Revisited

by John Havelock

We are all so captivated by, and products of that extraordinary American institution, the Langdell law school, that it is sometimes difficult to perceive that any other model of institution might serve the public need for a center of legal learning as well or better. For the past five years I have counseled against trying to build a Harvard or a University of Washington or, for that matter, a Gonzaga law school, here in Alaska, even while conceding that, under the critical scrutiny of the American Bar Association's committee on legal education, we could produce a law school that would at least pass muster and possibly earn one star.

Law School Feasible

An Alaskan law school is "feasible" in the sense that there would be students in sufficient numbers, scoring on LSATs above 550 to meet the requirements of the Langdell

some as "imaginative and far-reaching" and by others as merely "window-dressing." The proposals do represent the best thinking of the consolidated Anchorage trial bar, which has, as a group within the state, an unparalleled trial court experience in civil litigation. The proposals further have the benefit of the unanimous support of the plaintiffs' and defense trial bar, and the general agreement of the trial bench.

The Ad-Hoc Bar Committee proposals for a change in pre-trial procedures have met, at best, with a "luke warm" reception by the Committee of Inquiry and the Chief Justice. The suggestion of the adoption of Pro-Tem Adjudicators has been met with disfavor and rejection. It is suggested that self-interest, whether it be position, bureaucratic, political or monetary, be set aside and that the trial bar, trial bench and the Supreme Court, as people of intelligence and good will, reach beyond their personal selves and be imaginative and bold enough to adopt procedures that will insure that the quality of justice our clients deserve, is achieved.

The responsibility rests with all of us, but the Chief Justice has the ultimate decision-making authority. Imposed solutions are seldom workable and often resented. Consensus solutions often achieve greatly.

model as approved (perhaps sanctified) by both the ABA and the American Association of Law Schools. AALS advances a slightly more vigorous but still quite attainable standard. That it is "feasible" does not mean that it should be done that way. We need an institution for Alaska anticipating the 21st century not following the 19th.

Coherent Educational Packaging

I would not encourage my child to attend college solely in Alaska. We are parochial enough as it is without further educational inversion. But use of outside institutions does not require that we abandon interest in the educational fate of Alaskan children. In more disciplines than the law, we should acknowledge and formulate "tracks" for Alaskan students that include educational experience beyond the state in a coherent package with that instruction which can best be offered at home.

A Booster Program

The first step in the Alaska track, for many Alaskans and particularly Alaskan Natives, is the accelerator or "prep" course. While I eschew "pre-law" as a full blown undergraduate curriculum, there is merit in providing a half-year of intensive, disciplined, college study for many Alaskan students heading for law school. Instead of treating law school admissions as a subject for a quick fix "a la" "booster" program or CLEO, we should acknowledge the special problems that transition to law school poses for the marginally prepared Alaskan (particularly the rural Alaskan) by providing a half year designed to break the shock.

Paralegal Training

While such a course could well serve those heading for roles as lawyers, we should not forget the need for legal soldiers trained to varying, lesser degrees of proficiency. The largest part of the growth in demand for legal services (and unmet backlog) in this state and, in parts of the nation, over the next two decades, should be met by specific-skilled trained people who need not have suffered the tortures of three years of graduate training. To use the ungainly title, we should develop educational "paralegals" to meet Alaskan needs for lower cost delivery for some of the standard legal services.

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Modern Turkey Hunting

by Wayne Anthony Ross

Harry Branson, Editor of the Bar Rag, wanted an article for Thanksgiving on Turkey Hunting. I was drafted to write it. I've never hunted turkeys, but my wife said I probably got the job because Harry wanted the article from the turkey's point of view. I'm not sure, but I think I was being insulted.

Anyway, I decided to consult with a client who recently arrived here from Texas. Everybody knows they have a lot of turkeys in Texas, which I understand is a bit south of Juneau. My interview with my client went something like this.

Ross: Hi Charlie. Ever get a turkey?

Charlie: Howdy Calhoun. Sure nough did. Many times.

Ross: Tell me how it's done what equipment do you use, you know, the whole thing.

Charlie: Well sure nough son. I've gotten more than my share of turkeys. I've heard the practice of law was a lousy business. You thinking 'bout taking up turkey hunting, son?

Ross: I might. What do I need to know?

Charlie: First thing you need to get is a gun. Some people use a knife but a gun works better.

Ross: Don't you have to get real close to use a knife?

Charlie: Sure nough son. A gun works better. I like to use a shotgun but some of my friends use handguns. I think a shotgun works better though. Much more effective. Then you got to get some camouflage gear. I use an old army green topcoat that I keep in the trunk of my car, a dark hat, gloves, and a camouflage ski mask. The gloves and ski mask are so they can't see you so well, y'know. Man, if those turkeys see your face they get all excited and you got troubles.

Ross: Where do you go turkey hunting?

Charlie: Well, son, I used to do a lot of it in Texas but not so much here.

Havelock

(continued from page 4)

Outside Education: The First Year

For those who are prepared and equipped for the next year degree, we should offer a program which will bring both excellence and diversity to Alaska by subsidizing students and schools outside Alaska who will receive qualified Alaskan students for a period of at least one, but probably two years, then returning those who wish to return to this state to complete their degree requirements.

I remain unashamedly an admirer of the educational effect of the first year of the Langdell model. This is the Parris Island or Camp Pendleton of the profession and, torture as it might be, the beneficial effect cannot be denied.

By the same token, the same medicine has no comparable effect in the subsequent biennium. Accordingly, latitude for experimentation is permissible in the last two years, and particularly the last year of the law school curriculum.

Clinical Programs

Without buying into the unwarranted criticism of Chief Justice Burger and company, we can acknowledge the beneficial effect of third year clinical programs on trial proficiency and a number of other topics. Alaska is well situated to put on such a third year program in state, cooperating especially with law schools that would acknowledge the efficacy of the program by lending their assistance through a supervisory con-

Ross: You go turkey hunting in Alaska?

Charlie: Why sure nough, son but only at night.

Ross: How do you do it?

Charlie: I usually pick a real dark night. If it's raining or snowing so much the better. Then I get my shotgun and my other gear and drive out in the Sticks in my car til I see a likely looking place. Then I park my car a couple of 100 yards down the road, put my gear on, get out of the car and go get me a turkey.

Ross: What do you do?

Charlie: I watch and I wait until things are real quiet. Y'know. Nobody around and then I move in on em.

Ross: What usually happens?

Charlie: Oh, the turkeys usually get scared and give me all the money out of the cash register.

Ross: I didn't mean that kind of turkey hunting.

Charlie: Oh.

Note to Harry

Dear Harry: Here is your article on turkey hunting in Alaska. It would have been longer, but the police came and took my client away. As soon as I can arrange bail for him, I'll probably be talking to Charlie again. I think I'll tell him not to say anything more about the subject of turkey hunting in Alaska, however, at least until after the trial.

TIME IN ETERNITY

A lawyer at the pearly gate
Protested, "Make the record straight,
St. Peter. I'm too young to die."
The old Saint raised a kindly eye
And sighed and put his coffee down,
Reviewed his books with puzzled frown,
Then smiled. "There's no mistake," said he.
"My ledger shows you're eighty-three."
"How can that be?" in outraged tone,
The lawyer cried. "I'm fifty-one!"
The good Saint shrugged and sipped his cup,
"We added all your time sheets up."

Allan J. Parker
New York, New York

sortium and recognizing the course for their own degree granting purposes. The University of Alaska has been doing essentially what I suggest in medicine with the University of Washington medical school in the "WAMI" program, at four times the cost of a law program for half a dozen years without a murmur of professional objection.

Continuing Education

A third year program would also dovetail with the ground-swell of need in the legal profession for post graduate education via CLE, and special preparation in Alaskan topics such as public land law, public resource law and Indian law and the Settlement Act. The same faculty could provide academic supervision to third year students, CLE and produce valuable research and support for the development of Alaskan law and public policy.

These are the essential ingredients of an educational program, which I have been advocating for the past five years with apparently little effect. The constituency for this approach is widening, however, as the circumstances of the state make its logic increasingly obvious.

There are a number of more recent developments which freshen the advantage of this approach and make program movement a larger possibility for action this year.

A New Law Library

Over the past five years pressure on the existing Anchorage law library has increased to intolerable levels. A law center, ministering to the needs outlined, would include in its core a new library available to registered students and subscribing lawyers.

Cross-examination in Alaska

by Russ Arnett

The charge was disorderly conduct, specifically that the accused had called an Anchorage policeman a California p...k. Defense Counsel George Grigby's first question of the police officer on cross-examination was "Well, you are from California, aren't you?". From then on it was downhill all the way for the officer. Prosecutor Bill Renfrew told the jury in final argument that if they really believed the scurrilous insult of the officer that they should acquit. They did.

In the days when able cross-examination was valued as perhaps the highest attainment of a lawyer, Stan McCutcheon and his partner spent hours the night before trial devising strategy. The plaintiff made a mysterious visitor to the hospital so intriguing that even defense Counsel Bill Renfrew became curious and finally asked his identity. The visitor was identified as the insurance adjuster. Renfrew bowed deeply to McCutcheon; then exploded with objections.

Judge Tony Diamond said every trial he presided over was prepared by counsel the day before trial, and there was no reason why any case

could not be. Wendall Kay told the Bar Rag last month he tried nine cases in six weeks in 1963. The technology-induced data explosion prevents doing this today. I judged a national college debate tournament a couple of years ago. Where we might have 30 note cards when I debated, now debaters have 3,500. They talked as fast as they could from the note cards but did not reason on their feet at all. Both debaters and their coaches believed implicitly that the more data presented the more successful the argument. Many of the debaters were pre-law.

Young lawyers today appear to do research by standing three deep at the xerox machine in the library. Many chose law because of the pressure to go to some grad school and enter some profession. Lawyers who lack vocation tend to be weak both in their relations with their clients and as advocates. Many confuse procedural junk filings with the essentials for unsnarling the controversy.

The real tragedy of our present system is that the courts themselves now make it virtually impossible to practice without all this costly and time wasting paper. George Grigby and the great lawyers and judges of Alaska's past would not stand for it. They were right and we are wrong. How do we solve the civil breakdown in Anchorage? TURN BACK THE CLOCK.

Gus Bolts was a gold miner in Nome in the early days. Among other peculiarities he named his sled dogs after local public officials and regularly swore at them by name on Front Street. Whenever a new lawyer arrived in town Gus would bring his cases to him. Eventually all the lawyers would say, "Gus, you're nuts." Gus always replied, "No, you're nuts. I'm Bolts."

Once when no new lawyer had arrived for some time Gus became impatient and had one of his cases set for trial. Having watched all the Nome trials he was convinced he knew as much about trying cases as the lawyers anyway. When the District Judge told him to proceed Gus announced, "Call Gus Bolts." Gus continued "Swear the witness," which was done. He asked himself his name and answered "Gus Bolts." Next he asked himself where he lived. He proceeded to answer, "Oh, about three miles out on the road to..." when Gus reversed roles and snapped, "Never mind 'about.'" Answer the question."

In addition to being better trial lawyers, Alaskan lawyers in days gone by, and perhaps even judges, seemed to have a stronger sense of justice. How would a trial conducted in Alaska thirty years or more ago compare with one conducted today as to the essential fairness of the result? Favorably. Lincoln would travel the circuit and often meet his client less than an hour before trial commenced. The same was true with the "floating court" and other special court terms in Alaska. The cases were well tried without stacks of discovery and pre-trial motions. The quality of the trial lawyers in former years more than compensated for this.

The decline began when this guy coined the phrases "sporting event" and "trial by combat" to describe trials. It has been estimated that these descriptions have burdened litigants with billions in additional litigation expenses. A whole new generation of lawyers and court reporters is being endowed by these phrases. This proves my point that lawyers should value well chosen words above all else.

Alaska Legal Services
The level of support for the Alaska Legal Services Corporation has dropped as the need for services for the poor and near poor has grown. A law center could provide a physical home for ALSC and a setting for a major portion of the clinical program.

Dispute Resolution

Other program of legal services delivery would also fit with a legal center. Congestion in the court system and expanding space requirements suggest that Alaska would be a good site at which to establish a dispute settlement center. Some classes of district court proceedings and a dispute settlement center could utilize a student work force to advantage and provide a setting for learning and critical analysis of litigation functions. The University of Puget Sound Law School, for example, has entered into a number of agreements to provide court room space in Tacoma with a glass-sealed observer space for camera and instruction within the context of the school.

Several other functions, such as the recently physically displaced Alaska Judicial Council, and a legislative research bureau might profitably be joined in the building of a legal institute containing inter-related functions using a shared core of human and physical resources.

Year of Decision

It would appear that for both friend and foe of homegrown legal educational research and service functions, 1980 will be a year of decision. Which side will the Bar be on?

Reincarnation of the Trophy Mouse

by Max F. Gruenberg, Jr.

Fact begets fantasy and, I suppose, vice versa. A case in point involves a tale of the chase somewhat similar to Wayne Ross' dispatch of the "trophy mouse." See

Wayne, as those who know him would attest, is a large, brash, domestic relations specialist, a former master for the superior court trained by the original judge of that office—Harold Butcher. This tale involves another counselor of similar background and build—Bob Frenz, also a family lawyer who was trained by Judge Butcher. Bob and Wayne are much alike, except that Bob is, by all accounts, larger physically (though one might not know it, listening to the two of them debate around the corner and out of sight).

In the Frenz household lived Bob, Sandy (his wife), Bobby Jr., (now two years of age), and Arby their dog (a small West Highland white terrier, who, if anything, is even louder than Wayne). At least those were the only official inhabitants. There were also unofficial residents.

From time to time the Frenz' would be annoyed by the scratching of tiny feet in back of the kitchen cabinets. Food would disappear; droppings would appear. And most importantly, Arby periodically went nuts.

The unanimous verdict was mice. Traps were purchased, set with cheese and placed. Two small beasts were caught, then quickly and humanely dispatched. All would have ended there, were it not for a third trap, mysteriously devoid of food, and, according to Arby anyway, smelling of a mouse.

Bob thought the missing mouse must be smarter (or luckier) than his brethren—anyway he was still alive. Accordingly the traps were re-set and re-placed, but to no avail. The mouse took the bait, but eluded the traps.

The more traps Bob set and placed, the more the mouse ate and escaped. Arby and Bob became increasingly frustrated. Eventually it became more than a game, it became a challenge. The question became, who was to become master—man or mouse.¹

The chase continued with the elusive rodent seemingly always just beyond reach and out of sight. One day, out of frustration, Bob gave up temporarily and sat down in his favorite chair, relaxing his 225 pound frame deep within its padded bulk to engage in his second favorite past-

time, watching football on T.V.²

"The commercial came on and [he] got up to get himself a snack.

"You should have seen what was going on by the time that [he] got back."³

Arby was going wild, barking and yelping by the chair. Bob shooed him away, but the dog just would not keep quiet. Sandy said there must be something in the chair to excite the dog. Ponderously rising, Bob removed the cushion to discover the elusive mouse, squashed flat.

All of which only goes to show that you can't keep a good mouse down—unless you sit on him!

¹With apologies to Lewis Carroll and Roger Connor. See *Pope v. State*, 478 P2d 8d, 809n.12 (Alaska 1971) (Connor, J., dissenting, quoting from *Through the Looking Glass*).

²Bob has assured me that mouse hunting was not his favorite pastime.

³With apologies to the Coasters, "Along Came Jones."

Attorney Specialty Advertising

I am interested in learning whether any Alaska attorneys have advertised a specialty using the disclaimer required by DR 2-100(a)(2). The Bar Association informed me on July 19, 1979 that it had no information regarding such advertising. My suspicion is that the disclaimer ("The Alaska Bar Association does not certify that any attorney possesses specialized training or skill in a particular field of law") has, predictably, restrained the advertising of specialties.

Attorneys who have advertised a specialty or know of other attorneys who have done so are requested to contact me.

Thank you.

Sincerely yours,
William B. Schendel
Attorney at Law

Merry Christmas and Happy New Year from the Bar Rag



Re: Marvin S. Frankel
From: Paul F. Robison

One Monday morning a couple of months ago, Marv called me at home from the office and asked if I was coming in. I told him I would be in a little while and he said, "I want to talk to you about something very important. Stop by my room before you start answering phone calls or seeing people." When I came in he said, "what I am going to tell you may surprise you." I asked him if he could hold it while I got a cup of coffee and sat down. When I did, he said, "I've been thinking I ought to quit the practice of law. I am getting intuitions that if I don't something adverse to my health may occur. I told Candee last night and she agreed that I should quit; therefore, I am quitting. I will be around home for a few weeks until I decide what to do. If any questions come up you can call me."

I guess I called him on a couple occasions, but he wasn't anxious to get into anything.

Marv, and Candee as well, as much as any attorney and wife I ever knew, contributed greatly of time and talent to civic and community affairs, working on Commissions for the underprivileged. Marv was Chairman of the Anchorage Human Relations Commission for 5 years and served 2 years as President of the Association for Retarded Citizens of Anchorage. He is Past President of the Anchorage Chapter Federal Bar Association, Catholic Charities of Alaska (not bad as a Jewish adherent) and Boys' Club of Alaska. He is also a past director of the Anchorage Chapter of National Association for Advancement of Colored People and for the past two years served with the Anchorage Commission for the Handicapped.

I first met him when he was serving as U.S. Attorney for Alaska, Third Judicial Division. It was always a pleasure to contact him, as I served on financial drives for Alaska Methodist University, United Way and the Boy Scout Council. He always received me in his genial way and made a generous contribution.

Marv did have a business-like side to his complex character, always looking for ways to economize in the office and to accelerate slow-paying clients.

He tackled any assignment for a client with vigor and enthusiasm and was not one to carry a load of unfinished cases and matters gathering dust in the files. I felt that he was expert at getting to the core of a problem and finding the quickest satisfactory solution.

Marv once told me that some of his happiest moments in the U.S. Attorney's office were in successfully prosecuting some of Wendell Kay's clients. He recalled particu-

larly the case that Wendell had a client he couldn't get sober during the trial and another one which Wendell wouldn't allow his client to even admit his name for the reason that it might tend to incriminate him.

Marv has also told me that he appreciated the confidence we had in him from his first day with our firm in turning over clients and cases of all types as they came along, for his handling without supervision. He enjoyed a broad spectrum of clients who developed confidence in him: millionaires and paupers, national corporations and labor unions, white and black, Catholic and Jewish, Democrat and Republican, male and female, young and old, homosexual, bisexual and any other varieties that I may not be familiar with.

Marv was an extraordinarily accomplished piano player, had a piano in his home and would play on a request only basis.

When I first knew Marv he lived in an apartment on "L" Street and became totally frightened when the owners announced they were converting to condos or hotel operation (I've forgotten which) and he would have to move. He sought my advice on purchase or rental of another apartment, saying he never wanted to own a home and be responsible for lawns and gardens. He ended up buying a home in College Village Subdivision and with a little encouragement from me had a greenhouse built. Marv and wife Candee became absolute experts in greenhouse growing, starting early in the spring and producing more in a small area than is scientifically possible. They always had tomato vines growing all over the ceiling, producing hundreds of tomatoes along with other vegetables and flowers, and they had started flowers for outdoor summertime hanging baskets which perhaps were the most profuse and colorful of any residence in the City; and Marv prided his lawn which was rich, green, manicured to perfection with no dandelions or other weeds. He did it all himself.

Marv had an inherent belief in psychic ability and metaphysics and had worked with (I can't remember the name) who retrogressed Bridey Murphy in a famous experiment into past lives a number of years ago. He still has the actual tapes of these interviews. Candee, too, has unusual abilities in the psychic-metaphysical areas, has had notable results in healing herself and assisting others and has used her excellent mind and these gifts to advantage at the gaming tables around the world. Recent inquiries indicate that Marv is being considered for employment with the Gaming Control Commission of Nevada. I wonder whether this means that Candee will be disqualified from participation?

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Burns

[continued from page 1]

a former teacher, he stated that he knew of no other profession which placed its members under such stringent professional responsibilities, while subjecting them to such firm disciplinary actions. He felt it spoke well of the profession in Alaska that the Bar Association had full-time counsel to handle complaints from clients. In this regard, he felt more public information regarding 1) the existence of the Lawyer Referral Service, 2) the advantages of utilizing an attorney to avoid certain common legal pitfalls, and 3) the procedures available to clients displeased with their attorney's services, could do much to educate the general public as to the state of the legal profession in Alaska.

Good Staff

Finally, he stated that the Bar Association's staff was excellent and certainly as capable as any with which he has worked.

Burns wanted to thank John Lohff, the Bar's Acting Executive Director since June of this year, for his help in familiarizing Burns with the Association's operations.

He ended by saying he hopes he can serve the Association well.

Summer Law Seminars Abroad

The University of San Diego is accepting applications from lawyers and law students for its summer seminars in Guadalajara, Mexico, July 7-August 6, London, July 7-August 9, and Oxford and Paris, July 1-August 9. Courses vary in length from 10 to 40 days.

Paris focuses on international and comparative law; London on international business problems; Oxford on Anglo-American and Socialist law; and Guadalajara on law of the Americas.

The faculty includes Louis Sohn and Henry Steiner of Harvard, Xavier Blanc-Jouvan and Dominique Carreau of Paris, Richard de Friend of Kent, John Hazard of Columbia, John Kozyris of Ohio State, Clive Schmitthoff of King's College London, Charles Gordon and Warren Schwartz of Georgetown, Thomas Dienes of American and George Washington, Eleanor Fox, Norman Dorsen, and Andreas Lownefeld of NYU, Page Keeton of Texas, Melville Nimmer of UCLA, Al Rubin of Fletcher School of Law & Diplomacy, Joseph Sax and Philip Soper of Michigan, Grant Morris, Lou Kerig, Charles Wiggins, Herbert Lazerow, Ron Maudsley, and Paul Wohlmut of USD.

Courses include Comparative Law, Immigration Law, Comparative Copyright, International Business Transactions, Comparative Antitrust, International Commercial Arbitration, International Estate Planning, Tax on International Transactions, Comparative Labor Law, Public International Law, Comparative Civil Liberties, Comparative Products Liability, International Trade and Investment, Comparative Environmental Law, Comparative Criminal Justice, Comparative Mental Health, Law of the Sea, Selected Transnational Legal Problems, and International Economic Relations.

For further information, write: Professor Ralph Folsom, Law School, U. of San Diego, Alcalá Park, San Diego, CA 92110 U.S.A.

Order No. 344

Adding Alaska Bar Rule 43.1, Relating to Waivers to Practice Law for Members of the United States Armed Forces.

IT IS ORDERED:

The Alaska Bar Rules are amended by adding Rule 43.1 to read:

Rule 43.1. Waivers to Practice Law under a United States Armed Forces Expanded Legal Assistance Program.

Section 1. Eligibility. A person not admitted to the practice of law in this state may receive permission to practice law in the state for a period of not more than two years if such person meets all of the following conditions:

(a) The person is a graduate of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when he entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory or the District of Columbia.

(b) The person is an active duty member of the United States Armed Forces assigned to the Judge Advocate General's Corps or the United States Coast Guard; and

(c) The person has not failed the bar exam of this state.

Section 2. Application. Application for such permission shall be made as follows:

(a) The Staff Judge Advocate of the Military Installation to which the applicant is assigned shall apply to the Board of Governors on behalf of a person eligible under Section 1;

(b) Application shall be made on forms approved by the Board of Governors; and

(c) Proof shall be submitted with the application that the applicant is a graduate of an accredited Law School as provided in Section 1 of this rule and is an Attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to practice upon taking the oath of the state, territory or the District of Columbia.

Section 3. Approval. The Board of Governors shall consider the application as soon as practicable after it has been submitted. If the Board finds that the applicant meets the requirements of Section 1 above, it shall grant the application and issue a waiver to

applicant to practice law before all courts of the state of Alaska. The Board of Governors may delegate the power to the executive director of the Bar Association to approve such applications and issue waivers, but the Board shall review all wai-

vers so issued at its regularly scheduled meetings.

Section 4. Conditions. A person granted such permission may practice law only as required in the course of representing military clients under an approved Expanded Legal Assistance Program and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission shall cease to be effective upon the failure of the person to pass the Alaska Bar examination.

Section 5. Advisory Council. An advisory council composed of one representative from each participating United States military service and one representative of the Alaska Bar Association shall establish rules and regulations for conducting the Expanded Legal Assistance Program in Alaska.

Dated: December 18, 1978

Effective Date: December 18, 1978

ORDER

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

(1) ADMISSION FEES. Each applicant for admission, at the time of filing the application, shall tender to the Clerk a fee of \$20.00, of which \$10.00 shall be deposited into the Treasury of the United States and \$10.00 shall be deposited into the Court fund.

This amendment is effective as of October 1, 1979.

DATED at Anchorage, Alaska, this 1st day of October, 1979.

James A. Von der Heydt
Chief Judge

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Collier Bankruptcy Manual, Second Edition 9 Vols. (Supplements to 1977)
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Taxation Committee Reports

Suggestions for Formation, Operation and Termination of an Attorneys' Professional Corporation

by David G. Shaftel

After reading part I of this two-part series, published in last month's edition of the *Bar Rag*, and after reviewing your last year's tax return, you may have decided that now is the time to incorporate your law practice. You may have concluded that you want the corporate retirement plan benefits provided by practicing in the corporate form. As discussed by Robert Doss, in last month's article, these benefits constitute a very substantial tax shelter which is not only approved, but is encouraged by the federal government. You may have also been enticed by the additional tax benefits, discussed last month, available through the use of group term life insurance and the adoption of a medical reimbursement plan.

If you are still undecided about whether to incorporate, this month's article begins with a discussion of several additional advantages of a professional corporation. Then, the article assumes that you have decided to fish, rather than cut bait, and discusses a number of problems and suggestions relating to the formation, operation and termination of an attorneys' professional corporation.

Additional Advantages of Incorporation

There is a significant non-tax reason which has influenced a substantial number of professionals to incorporate: limited liability. You may have always thought that

&

Inc. incorporated for tax reasons, because they were making so much money. You were wrong. They were scared to death of each other. Do you stay awake nights worrying about your "good old boy" partner down the hall who really brings the clients in, but doesn't keep a calendar, never thinks of sophisticated points like a statute of limitations, and promises every client the moon (in writing)? AS 10.45.140 provides, in effect, that a professional operating through the corporate form is only liable for his own negligence and the negligence of those under his supervision, but is not personally liable for the negligence of his fellow professional shareholders. This is a substantial improvement over the shared professional liability that the partnership form provides. Consequently, this non-tax benefit deserves your careful study, and may in itself justify incorporation.

A significant, basic, and often overlooked tax advantage of a professional corporation is the use of the corporate taxable entity as a tax shelter. A corporation may accumulate \$150,000.00 without being subject to the special accumulated earnings tax. If this accumulation occurs in amounts less than \$50,000.00 per year, then the corporation tax rate will be 20% or less. Assuming that the attorney-shareholders are in the 50% individual tax bracket, this means that the corporation may accumulate funds at a 20% tax cost as compared to the 50% tax cost if these funds were immediately paid out as salary and bonuses. Since the Professional Corporation Act allows professional corporations freedom to enter into any kind of investments which they wish, the corporation may turn around and invest the accumulated funds in many of the same ventures which the individual attorneys would have chosen. However, it should be emphasized that the "tax shelter" advantage of this

approach is one of deferral, rather than avoidance, of taxes. An additional tax will eventually have to be paid in order to transfer these corporate investments, or their proceeds, to the individual shareholder-attorneys in the future.

Formation

The Alaska Business Corporations Act applies, in general, to professional corporations. However, there is a specific statutory scheme, the Alaska Professional Corporation Act, which takes precedence, if applicable. Certain requirements stated in the latter Act may provide traps for the unwary. Each incorporator and shareholder must be a professional. Further, all directors and officers must be shareholders, and therefore they must also be professionals. If there are only one or two shareholders, then they can fill all corporate offices. This becomes important to the individual practitioner or very small firm that desires to incorporate. At the time of incorporation, certificates from the applicable regulatory board must be filed establishing that each person in the above categories is licensed to practice in the profession. The professional corporation's name must include the name of one or more shareholders, and must end with "Corporation" or "Incorporated," or their abbreviations, or alternatively, with the phrase "a professional corporation."

Buy-Out

A professional corporation, like a general business corporation or a partnership, should have contractual agreements concerning the buy-out of a shareholder who desires to terminate his interest, retires, becomes disabled, becomes legally disqualified to practice, or dies. The Act requires a buy-out within a limited period of time in the latter two situations, but states that its provisions will be superseded by an appropriate express agreement of the parties, which should be authorized in the articles of incorporation. The Act's buy-out arrangements set the buy-out price at book value, which may turn out to be inequitable in a law practice, due to the existence of special types of property interests such as contingent fee cases or matters which will probably produce large fees over a long period of time. Therefore, serious consideration should be given to drafting a thorough buy-out agreement which applies to the particular type of law practice in question, rather than relying upon the provisions of the Act.

Contributions to Capital

One of the basic questions which immediately confronts attorneys who are forming a professional corporation is the determination of which assets to transfer to the new corporation, and which assets to retain in either partnership or individual ownership. As a general rule, the professional corporation should not be overcapitalized. Therefore, do not transfer valuable property to the corporation which it does not need to own outright in order to operate the law firm business. An overcapitalized professional corporation makes it difficult for the corporation or remaining shareholders to buy-out a terminating or deceased shareholder's interest, and also makes it expensive and difficult for

an associate to become a shareholder. Therefore, buildings, or substantial equipment, often should be retained by the professionals and leased to the corporation. The professionals can take advantage of the depreciation deductions and investment tax credits on their own individual tax returns. However, low value assets which will be used in the business should be transferred to the corporation for simplicity purposes. In general, the transfer of assets to the professional corporation in exchange for stock will not be a taxable event.

Accounts Receivable and Accounts Payable

What about fees owed by clients to the attorneys for services which they performed prior to incorporation? Should these accounts receivable be transferred to the new corporation? Often these fees are needed by the corporation as working capital in order to pay the bills and salaries which accrue soon after incorporation. Further, sometimes an attorney will choose to incorporate in anticipation of receipt of a large fee, in order to take advantage of the pension plan tax shelter benefits which were discussed in Part I of this article. The theoretical problem with transferring such accounts receivable to the corporation is that it may constitute an assignment of income, i.e., the income was earned by the attorneys as individuals, and now they are attempting to have this income reported by a different taxable entity, the corporation. However, public statements made by policy-making IRS officials, and experience as reported by experts in this field, indicate that the IRS generally has not pushed the assignment of income attack in this area as long as there is not a substantial exaggeration or distortion of the income of the parties involved. Therefore, many authorities conclude that, generally, accounts receivable may be transferred to the new professional corporation without assignment of income consequences.

What about liabilities incurred by the attorneys prior to incorporation, such as amounts owed for secretaries' salaries, rent, stationary, etc.? May these debts be transferred to the new corporation, which will subsequently pay them and then deduct such payments as business expenses? Again, there is a theoretical problem. The individual practitioner or law partnership incurred these debts, and therefore only these prior taxable entities should be allowed to deduct the payment of these amounts. For this reason, the authorities advise that the safest approach is to have the prior partnership or sole practitioner pay off as many liabilities as possible prior to incorporation. Then any remaining liabilities may be transferred to the corporation, along with the accounts receivable, and absent a substantial distorting effect, the IRS has indicated that it will not challenge the payment and deduction of these expenses by the corporation.

The 1978 Revenue Act has largely resolved another problem area involving transfer of liabilities to the professional corporation. Under Section 357 of the Internal Revenue Code, if liabilities transferred to the corporation exceed the basis of assets transferred, then the difference is taxable income. In the past, this has presented a significant problem if the primary assets to be transferred to the new corporation were accounts receivable (which have a basis of zero for cash basis taxpayers) and already depreciated (therefore, low basis) property. In such a situation, it would not be at all uncommon for the amounts of the accounts payable (liabilities) to exceed the basis of the above assets, with the result that the

incorporating professionals would have to recognize taxable income. Congress realized the inequity of this situation for the small business, and amended the applicable statute in 1978 so that most accounts payable are excluded from its operation. However, the type of accounts payable still needs to be carefully reviewed to make sure that this exclusion applies.

Fiscal Year

The choice of the fiscal year for the new corporation, and the existing fiscal year of a prior law partnership, deserve analysis prior to incorporation. The new corporation may have a fiscal year which ends on the last day of any month. This flexibility, which does not exist for an individual and under recent provisions only exists to a very limited extent for a partnership, allows the corporation's taxable year to end at a time which will be convenient for the corporation's accountant and also may provide some tax deferral advantages. For example, if the corporation's year ends on January 31, then salary and bonuses paid in the last month of the corporation's year (January) will not be reported as income by the attorneys until April 15 of the following year. However, this deferral advantage is eliminated to the extent that adequate taxes are required to be withheld in regard to these compensation payments.

A substantial disadvantage, through "income bunching" may arise if a law firm partnership is incorporating, and the partnership is an older one with grandfather rights to a fiscal year different from the partners' calendar year. For example, if the partnership has a January 31 fiscal year and the corporation begins on February 1, then the partners will have one full year's income in that year with respect to the partnership (partnership income is taxed to the partners on the last day of the partnership year), and also will have eleven months' salary from the corporation. Therefore, each attorney will have twenty-three months of income bunched into one calendar taxable year. The incorporating attorneys should be alert for the existence of this type of situation, for there are some (complex) solutions that may resolve or reduce this problem.

Operation

The operation of a professional corporation is a somewhat more complicated method of doing business than operation as a partnership or sole practitioner. As a sole practitioner, the attorney often mixes his business and personal affairs and takes "draws" from his business checking account for payment of personal expenses. He reports his taxes using the estimated tax procedure. As a partner in a partnership, again, the attorney takes "draws" from the partnership proceeds, and similarly reports his taxes pursuant to the estimated tax procedure. However, once incorporated, the attorney becomes an employee of the corporation, which is a separate taxable entity. It is no longer appropriate, and indeed it is quite dangerous, for him to take "draws" from the proceeds of the corporate business. Rather, as an employee, he is paid a salary, with bonuses, throughout the year. This compensation must be determined pursuant to the reasonable compensation principles of the tax law. He will no longer use the estimated tax reporting procedure, but rather, as an employee, his federal and state income tax, FICA (social security), FUTA and state unemployment taxes must all be withheld and/or paid by

[continued on next page]

[continued from preceding page] the corporation. Further, he is subject to state workmen's compensation requirements.

Proper determination and payment of "reasonable compensation," paid in the form of salary and bonuses by the corporation to the professionals, is one of the primary prerequisites of a well-functioning professional corporation. The corporation obtains a deduction for the payment of such reasonable compensation, and as a result, taxation at the corporate level is reduced or eliminated. The determination of "reasonable compensation" can be somewhat complicated. The case law has set out numerous factors which the courts consider. However, as a very rough rule of thumb, it is often stated that the compensation which the professional could have earned as a sole practitioner probably qualifies as reasonable compensation when paid by the corporation. The pension plan benefits, discussed in Part I of these articles, must also be considered as part of the reasonable compensation of the employees. Usually, in order to establish a sound foundation for a possible future IRS audit, written employment contracts are drafted which establish the employment relationship and the reasonable compensation of the professional employees of the corporation.

Doing Business as a Corporation

As with general business corporations, it is crucial that the professional corporation carefully follow the formalities of doing business in the corporate form. This is important in order to maintain the limited liability benefit, and also to justify the existence and use of the pension plan tax shelters. It would be disastrous if the IRS was able to persuasively argue, as it has in a significant number of cases, that the professionals really did not do business as a corporation and therefore the special tax benefits which they are claiming should be completely disallowed. Therefore, annual shareholders' and directors' meetings must be held, more frequent directors' meetings should be held in order to consider and approve all significant corporate transactions and events, written minutes should be kept of all of the above meetings, corporate taxes should be paid and annual reports filed when due, the corporate name should be used on all letterheads, cards, shingles, telephone and other professional listings, the corporation should enter into all contracts, leases, loans, insurance policies and bank accounts. In summary, all of the business of the law practice must be conducted through the corporation, and no longer through the individual attorneys.

The above-described corporate formalities are especially important when an individual practitioner incorporates. Theoretically, this type of professional corporation is the most vulnerable to challenge. The reason is that a one-man professional corporation appears to lack any significant limited liability advantage, which is one of the basic characteristics used to distinguish a corporation from a partnership. Therefore, it is very important that the one-man professional corporation diligently and thoroughly maintains the corporate formalities described above.

Accumulated Earnings Tax

Professional corporations are subject to the corporate taxation provisions of the Internal Revenue Code. This immediately raises concern about whether the attorneys' new professional corporation will be subject to special corporation taxation schemes with their sometimes horrendous tax consequences, such as the accumulated earnings

tax and the personal holding company tax. The accumulated earnings tax is designed to force corporations to distribute their income to their shareholders, rather than retain the income and therefore only incur the lower corporate tax rate. This additional tax, which can be as high as 38½%, applies to unreasonable accumulations of income over \$150,000.00. Generally, the professional corporation will be paying out all of its income as salary or as pension plan contributions, and therefore the special tax will not be relevant. However, if the corporation is using the corporate entity for tax shelter purposes, as described at the beginning of this Part II, then the corporation should be sure that it stays within the \$150,000.00 "safe harbor," or that it can justify accumulations over that amount.

Personal Holding Company Status

The personal holding company tax has the same purpose as the accumulated earnings tax—forcing distributions of corporate income. However, the personal holding company tax, a 70% tax, focuses upon certain types of income. For the attorneys' professional corporation, the relevant type of personal holding company income is income which the personal holding company has earned pursuant to a personal services contract. If some person other than the corporation has the right to designate who is to perform the professional services, then the income is personal holding company income, and if certain conditions are met, the tax will apply. The issue which has arisen is whether, when a client chooses an attorney for legal services, such a choice falls within the above paraphrased statutory language. Fortunately, in a series of revenue rulings, the Internal Revenue Service has held that the "custom of the industry" of most

professions (including attorneys) allows the professional to substitute the services of another professional (e.g., a partner or associate or referral outside the firm) for his own services. As long as this custom has not been changed by an express written agreement between the client and the attorney, the income earned from the usual attorney-client relationship does not come within the statutory definition of personal holding company income, and therefore the special tax does not apply. This reasoning applies even to a one-man corporation, since the individual practitioner could hire a temporary associate or refer the work out to another attorney. These rulings establish that the attorney, practicing in the corporate form, should carefully review his attorney's fees agreements to make sure that they do not require that a specific attorney perform the services and therefore prohibit the above-described right of substitution.

Termination

A frequent client's comment about professional corporations is that while they are relatively easy to get into, they are difficult to terminate. There is some truth to this observation, since the professional corporation is subject to all of the complex corporate tax provisions of the Internal Revenue Code. These provisions allow for a number of different approaches for terminating a corporation, with varying tax results. Therefore, if the attorneys decide to terminate their professional corporation, some careful study and planning is necessary in order to minimize the tax consequences of this termination event.

While a detailed analysis of these alternative approaches is beyond the scope of this article, some general observations concerning termination, with emphasis on several problem-

prone areas, is appropriate. Usually, liabilities of the corporation should be paid by the corporation prior to termination, in order to insure the deductibility of these items. Upon termination of the professional corporation, the main tax significant event is the distribution of the corporation's assets to its attorney-shareholders. The general rule is that such a distribution will produce capital gain treatment for the shareholders, and the corporation may recognize ordinary income produced by depreciation recapture, and may experience recapture of previously claimed investment credits. There may be a significant advantage in spreading the liquidation distributions over several years in order to minimize the tax consequences at the shareholder level.

The treatment of accounts receivable existing at the time of termination is somewhat unpredictable, with the shareholder-attorneys and the IRS frequently arguing for substantially different results. The attorneys would like to have these accounts receivable distributed to them, in liquidation, at capital gains rates. The attorneys' basis for the accounts receivable would be equal to their value, and therefore the attorneys would not recognize any further income on the collection of these accounts. Consequently, these generally ordinary income items would have only produced capital gains. Some authorities advise that prompt termination of the existing corporation will maximize the chances for success of this approach.

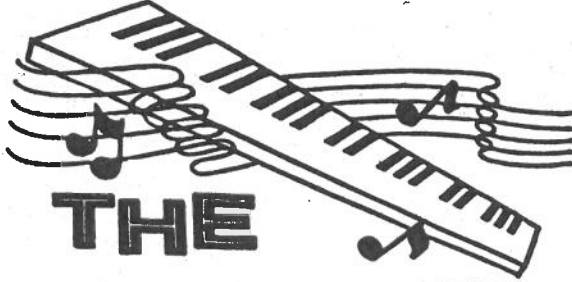
However, the IRS has various doctrines available which it can use to attempt to have these remaining accounts receivable taxed to the corporation. (E.g., the collapsible corporations provisions, assignment of income principle, §482, among others). If this occurs, then the corporation could reduce this final ordinary income to the extent that the corporation could justify paying further salary and bonuses to the attorneys (which would generate deductions for the corporation). The attorneys' salary and bonuses would, of course, be ordinary income to them. Otherwise, the corporation will have to report this final collection of the accounts receivable as ordinary income, and the attorneys will recognize these amounts as capital gains when these amounts are distributed to the attorneys in liquidation.

The worst possible result can be produced by a "backfiring" of a corporate "workout" of these final accounts receivable. This occurs when the corporation continues an existence for the period of time necessary to collect the accounts receivable and then the corporation tries to deduct these amounts by paying them as salary and bonuses to the attorneys. The problem arises from the fact that the attorneys have probably ceased practicing through the corporate entity and therefore these salaries and bonuses cannot be justified as reasonable compensation. Therefore, the corporation's deductions are disallowed and the payments are treated as dividends to the attorneys. The "bottom line" is that both the corporation and the attorneys are forced to recognize the full amount of the accounts receivable as ordinary income.

One extremely sensitive area, upon termination of the professional corporation, is how to handle the existing profit sharing and pension plans. Care and planning are required in order to avoid loss of accrued tax benefits, penalties for improper handling of the trust funds, and to provide the terminating attorney-shareholders with the best choices for continuing these retirement plan benefits in the same or another form.

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CLE Guidelines

Following are the proposed CLE guidelines for approval of Continuing Legal Education programs as prepared by the CLE Committee. The Board of Governors, at its October meeting, requested the publication of the guidelines in order to provide opportunities for comments from Bar members. Please address any written comments to Robert L. Hartig, of Cole, Hartig, Rhodes, Norman & Mahoney, 717 K Street, Suite 201, Anchorage, AK 99501.

Approval of Continuing Legal Education Programs

Regulation 101. Definitions

As used in these Regulations, the following definitions shall apply:

(a) An "approved" legal education activity shall mean an individual seminar, course or other continuing legal education activity approved by the Alaska Bar Association.

(b) An "accredited sponsor" shall mean an organization whose entire continuing legal education program has been accredited by the Alaska Bar Association pursuant to the Regulations herein. A specific, individual continuing legal education activity presented by such a sponsor constitutes an "approved" legal education activity.

(c) The "Board" shall mean the Alaska Bar Association Board of Governors.

(d) The "Committee" shall mean the Continuing Legal Education Committee of the Alaska Bar Association.

(e) "Teaching" in an approved continuing legal education activity shall mean and encompass the delivery of a prepared talk, lecture or address at such activity.

(f) "Participating" in an approved continuing legal education activity shall mean and encompass (1) acting as the planning and organizing chairperson of such activity or (2) taking part in such activity as a member of a panel discussion, without the preparation of written materials or the delivery of a prepared talk, lecture or address.

REGULATION 102. Credits; Computation

(a) Credit shall be awarded on the basis of one (1) hour for each fifty (50) minutes actually spent in attendance at an approved activity.

(b) Credit will not be given for time spent in luncheon breaks. Credit will not be given for speeches presented at, and attendance at, luncheons and banquets.

(c) Credit shall not be given for any course attended in preparation for admission to practice law in Alaska.

(d) Credit may be earned through teaching or participating in an approved continuing legal education activity on the following basis:

(1) Teaching in an approved activity shall entitle one to credit on the basis of one credit for each fifty (50) minutes actually spent in preparation for teaching up to a total of six (6) hours per seminar.

(2) Participating in an approved activity, such as being a panel member, shall entitle one to receive credit of one hour for each hour of preparation for such participation up to a total of three (3) hours per seminar.

REGULATION 103. Standards for Approval

The following standards shall be met by any course or activity for which approval is sought:

(a) The course shall have significant intellectual or practical content and its primary objection shall be to increase the attendee's professional competence as a lawyer.

(b) The course shall constitute an organized program of learning dealing with subject matter directly relating to the practice of law, law office management, and/or to the professional responsibility or ethical obligations of a lawyer.

(c) Each faculty member shall be qualified by practical or academic experience to teach the subject he or she covers.

(d) Thorough, high quality, readable and carefully prepared written materials should be distributed to all attendees at least two weeks prior to the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials for distribution should, however, be the exception and not the rule.

(e) Courses should be given in a setting physically suitable to the educational activity of the program. A suitable writing surface should be provided where feasible.

(f) Video, motion picture or sound tape presentations may be approved.

(g) Activities which involve the crossing of disciplinary lines, such as a medicolegal symposium or an accounting-tax law seminar, may be approved.

REGULATION 104. Procedure for Approval of Continuing Legal Education Activities

(a) A sponsoring agency desiring approval of a continuing legal education activity shall submit to the Board all information called for by Form No. 1.

(b) Approval shall be granted or denied in accordance with the provisions herein.

(c) As to a course that has been approved, the sponsoring agency may announce, in informational brochures and/or registration materials: "This course has been approved by the Alaska Bar Association for _____ hours of continuing legal education credit."

REGULATION 105. Accreditation of Sponsoring Agencies

(a) The Board may extend approval to a sponsoring agency for all of the continuing legal education activities sponsored by such agency which conforms to Regulation 103. A sponsoring agency to which such general approval has been extended shall be known as an "accredited sponsor."

(b) A sponsoring agency desiring to apply for status as an accredited sponsor shall submit to the Board all information called for by Form No. 2. Accreditation shall be granted or denied in accordance with the

provisions herein. A primary consideration in the evaluation of such a request for status as an accredited sponsor shall be the previous experience of the agency in sponsoring and presenting continuing legal education activities.

(c) Once a sponsoring agency has been granted the status of an accredited sponsor, it shall be exempt from the requirement of Regulation 104(a) concerning the submission of Form No. 1, provided, however, that the number of hours of credit to be awarded for any individual continuing legal education activity sponsored by such agency shall continue to be determined by the Board. Submission of information relative to the determination of the number of such hours of credit shall be in and on such form as the Board shall prescribe.

(d) A sponsoring agency which has been granted the status of an accredited sponsor shall, except as otherwise provided in this Regulation, continue to be subject to and governed by all provisions of these Regulations.

(e) The Board may at any time re-evaluate and revoke the status of an accredited sponsor.

REGULATION 107. Delegation

(a) To facilitate the orderly and prompt administration of these Regulations, and to expedite the processes of course approval, sponsor accreditation and the interpretation of these Regulations, the Board may delegate the administration of these rules to the Committee. Any adverse determinations and all questions of interpretation of these Regulations by the Committee shall be subject to review by the Board, upon written application by the person adversely affected.

REGULATION 107. Committee's Determinations and Review

(a) Pursuant to these guidelines established by the Board, the Committee shall, in response to written request for approval of courses or credit or accreditation of sponsors and interpretations of these Regulations, make a written response describing the action taken. The Committee may seek a determination of the Board before making such response.

(b) The Board shall review any adverse determination of the Committee. The sponsoring agency affected may present information to the Board in writing or in person or both. If the Board finds that the Committee has incorrectly interpreted the facts, or the provisions of these Regulations, it may take such action as may be appropriate. The Board shall advise the sponsoring agency affected of its findings and any action taken.

ELAP in Alaska

1. **Purpose of the Program.** The purpose of the ELAP is to provide in-court representation for qualified active duty members of the participating Armed Services in certain criminal and civil cases. This Program is in addition to the present Legal Assistance Program under which active and retired members of all services and their dependents are receiving consultation and legal advice concerning their problems. The goal is to assist those service members in dire need of legal assistance, but for whom, for one reason or another, no legal representation is reasonably available in the local community.

2. **Eligibility.** Only active duty members of the Armed Services will be eligible for ELAP representation. In addition, the following restrictions will apply:

a. Those active duty Army personnel serving in the pay grades of E-1 through E-3 will be presumed to qualify for ELAP.

b. All Army personnel serving in pay grades of E-4 and above and those personnel serving in the pay grades of E-1 through E-3 who receive income in addition to the Basic Service Pay must meet the following financial criteria:

(1) A family of one must have earned income less than \$4,400.00.

(2) A family of two must have earned income less than \$5,800.00.

(3) A family of three must have earned income less than \$7,200.00.

(4) A family of four must have earned income less than \$8,600.00.

(5) A family of five must have earned income less than \$10,000.00.

(6) A family of six or more must have earned income less than \$11,400.00.

c. Notwithstanding the above financial eligibility criteria, those applicants who demonstrate sufficient net worth to enable them to retain a private attorney may not be eligible for representation. The determination of the Senior Legal Officer in Alaska of the Armed Service concerned shall be final.

d. The financial eligibility criteria may be subject to change in accordance with such changes approved for use by Alaska Legal Services.

e. "Earned Income" is defined for purposes of LAP as gross income from all sources decreased by the following:

(1) Federal income tax withholding.

(2) State income tax withholding.

(3) Social Security tax withholding (FICA).

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Taxation Committee Reports

[continued from page 9]

Conclusion

The professional corporation has some very substantial tax advantages, and should be one of the first "tax shelters" which attorneys consider. However, these advantages must be paid for through diligent adherence to the more complex requirements of doing business as a corporation. Careless use of the professional corporation has the potential of not only losing the advantages for which it was created, but also placing the attorneys in a significantly worse tax position than they would have been in if they had maintained their individual practitioner or partnership status quo.

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265-9985 (beeper)



Department of Commerce and Economic Development: Schedule of Recording Fees
Approved by Charles R. Webber, Commissioner
October 9, 1979
Effective January 1, 1980

EEOG

Private Bar in Employment Discrimination Cases

In July, 1979, the federal Equal Employment Opportunity Commission (EEOC) awarded five contracts to four public interest law groups as part of a national effort to encourage private attorneys to take employment discrimination cases and to assist attorneys already working in the field of employment discrimination. The EEOC program that issued these contracts is known as the ABAR project. "ABAR" stands for Area Bar Assistance and Referral.

As a result of the EEOC's national ABAR program, Alaska attorneys may now call on the Mexical American Legal Defense and Educational Fund (MALDEF) in San Francisco, California for training and technical assistance in employment discrimination cases. MALDEF's ABAR staff is comprised of Ann Hill, an experienced Title VII attorney; Ercardo Lopez, a paralegal who graduated from Antioch Law School's first Farmworker Paralegal Training Program; and Toni Gross, project secretary.

The ABAR staff may provide technical assistance to attorneys filing employment discrimination cases not only under Title VII of the Civil Rights Act of 1964, as amended, but also under the Equal Pay Act and the Age Discrimination in Employment Act (ADEA), since the EEOC took over employment powers from the U.S. Labor Department for the latter two statutes. Cases that affect a large number of employees and that protect or expand the law of equal employment opportunity are of primary interest to the ABAR project.

As Attorney Hill outlined the project to the Bar Association, its thrust is twofold: 1) the ABAR staff will respond to requests for technical assistance from Alaska attorneys who have employment discrimination cases in the administrative process or in court. The types of technical assistance vary according to individual requests, but Hill and her staff have a pleadings bank and other resource materials to share with attorneys, and in certain instances, Hill is available to help prepare a case for trial or settlement; 2) the ABAR staff will conduct training, basic and advanced, in the law of employment discrimination for Alaska attorneys.

The ABAR project of MALDEF in San Francisco serves not only Alaska, but also Northern California, Oregon, Washington, Idaho, Hawaii and some Pacific islands. Thus, when an Alaska attorney calls for help from ABAR, he or she will tie in with a large network of employment discrimination attorneys who, through ABAR's coordination, can help each other.

While the travel budget of the ABAR project is limited, Attorney Hill has tentatively scheduled a technical assistance trip to Anchorage, Alaska for the second week of December should a sufficient number of Alaskan attorneys call on her for help. If you want further information about ABAR or if you have a need for technical assistance, contact Ann C. Hill, ABAR Project Attorney, Mexican American Legal Defense and Educational Fund, 28 Geary Street, 6th Floor, San Francisco, California 94108. (Telephone: 415-981-5800)

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Committee on Legal Education Opportunities Ready for Business

The Committee on Legal Education Opportunities (CLEO) is ready for business within less than a year since it was initially created as an ad hoc committee. CLEO, the Bar's newest standing committee, is looking for scholarship applicants and donors. At the Board of Governor's October 1979 meeting, the Board formally approved CLEO's proposed scholarship program. The program is designed to provide scholarship awards to Alaskan residents who are admitted to an accredited law school and, at the time of application, have a present intent to practice law in Alaska upon graduating from law school. The size of the scholarships awarded shall depend upon the amount of money in the scholarship fund and the number and need of the applicants. Additional information is available upon request from the Bar office and the offices of the clerks of court throughout the State. The application deadline is February 1st; awards will be made by May 1st.

By the end of this year, the members of CLEO will have sought financial support of the scholarship program from local bar associations, individual members of the bar, private corporations and Outside law firms doing business within the State. The annual dues statement will also contain a request for a voluntary contribution. Contributions are tax deductible and should be made payable to the Alaska Bar Foundation.

In addition to administering the Bar's scholarship program, CLEO also

(1) maintains an information file on other scholarships available to Alaskans who are interested in or presently studying law, e.g., the Joe Rudd Scholarship for the study of natural resources law; the John Manders Scholarship for Alaskans studying law;

(2) maintains a list of law schools with a high minority enrollment;

(3) Monitors the bar exam for evidence of racial or cultural bias;

(4) Offers unsuccessful bar candidates assistance in evaluating weaknesses on their individual exams;

(5) Monitors the WICHE program for a proportionate number of Alaskans who intend to study law;

(6) Seeks ways to increase minority interest in the study and practice of law.

For additional information on CLEO's activities, see:

Carolyn Jones, Chairman, Anchorage

Pat Anderson, Vice-Chairman, Anchorage

Chief Justice Jay Rabinowitz, Fairbanks

Robert Erwin, Anchorage
John Hedland, Anchorage
Denis Lazarus, Anchorage
John Peterson, Ketchikan
Frederick Pettyjohn, Anchorage
Norman Staton, Juneau

Recording Fees:

1. For recording all documents:
*First page or fraction thereof. . 8.00
Each additional page or fraction thereof. 3.00

2. For filing Tax Liens and any other instrument left for filing, (excluding filings covered under the Uniform Commercial Code), for each document. 8.00
for filing Partial Releases of Tax Liens. 8.00
For filing Releases of Tax Liens. . NC

3. For indexing each name over six except Tax Liens. 1.00

4. For recording and indexing under mining laws Location Notice, Notice of Intention to Hold, or Affidavit of Annual Labor:
*First page or fraction thereof. . 8.00
Each additional page or fraction thereof. 3.00
For indexing each name or location over six. 1.00

5. For filing Plats:
First sheet. 10.00
Each additional sheet of plat. . . 2.00
(Affidavits, tax status etc. with initial filing of plat, no extra charge)

Miscellaneous Fees:
1. (a) For certifying a copy of any recorded or filed instrument where copy is furnished. 1.00
(b) For conforming a copy of any recorded instrument. 1.00
(c) For conforming more than one copy of any filed instrument. . . 1.00

2. For copying any document by photocopy process or other means except Nos. 3, 4 & 5:
*First page or fraction thereof. . 1.25
Each additional page or fraction thereof.25
(When more than one copy of a document is requested, the "First page" fee applies only to the first copy; the "Each additional page" fee applies to all pages of the additional copies.)

3. Copy of plats made on 200 or 201 machines, each sheet. 1.25

4. Dupe of fiche, each. 1.00

5. If unable to reproduce a legible copy of recorded documents by any other means, for typed document per page or fraction thereof. 10.00

6. If the public request a document be returned by certified mail. 2.00

C. Uniform Commercial Code Filing Fees:

1. Financing statements (or security agreement, chattel mortgage, conditional sales contract, etc.). 6.00

2. Financing statement or security agreement indicating name and address of assignee on the face or back thereof or an assignment itself attached thereto. 6.00

3. Amendments to financing statements. 6.00

4. Assignments. 6.00

5. Continuation statements. . 6.00

6. Termination statements. . . 3.00

(Whenever a termination statement is filed with an assignment, the fee shall be the same as if each had been filed separately.)

7. Release of collateral. 3.00

8. Furnishing information:

a. Certification of data on file. 5.00

b. Certifying a copy of an instrument. 1.00

c. Copies of filed papers: For each copy registered regardless of number of pages. 2.00

d. Records search including certification of data on file. 5.00

Note: No recording, filing, copying or certifying fee shall be charged any agency of the State of Alaska.

* Reference to page means one side of sheet.

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ELAP

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(4) Soldier's Group Life Insurance premiums.

(5) Child support payments made pursuant to judicial decree.

(6) Other involuntary deductions made pursuant to judicial decree or service-related administrative action.

f. Applicants for expanded legal assistance will be required to complete a financial statement (Appendix A) producing copies of current Leave and Earnings Statements (LES) and of any court decrees or other official orders affecting the applicant's current financial status.

3. **Types of Cases.** Both civil and criminal matters will be handled by the ELAP Officer with the following qualifications:

a. No felonies will be handled. For purposes of this program a felony is defined as an offense which could result upon conviction in confinement for one year or more.

b. No representation will normally be undertaken at the appellate level. Any exception to this policy will require consultation with the Senior Legal Officer in Alaska of the Armed Service concerned.

c. No representation will be provided in cases in which the United States is a party.

d. No state traffic court cases will be handled.

e. No matters will be handled which would normally involve a contingent fee. However, an ELAP Officer may accept a case which a civilian attorney might decline because the recovery upon judgment would be insufficient in relation to the professional services rendered, provided that all other eligibility criteria are met.

f. ELAP Officers are not required to accept a case simply because of the financial condition of

the client; they are expected to use their best legal judgment in the matter. Any otherwise qualified servicemember may be denied ELAP representation with the concurrence of the Senior Legal Officer in Alaska of the Armed Service concerned or his deputy upon good cause. Examples of good cause would be lack of expertise, severe personality conflict with the client, or lack of a valid cause of action or meritorious defense.

g. No matters concerning non-service sources of income or commercial ventures by the applicant will be handled.

h. If an applicant would normally qualify for existing civilian public legal assistance or a civilian public defender, his case will not be accepted until such time as the appropriate agency declines his case [Appendix B].

i. A full time ELAP Officer with twenty-five (25) active cases will not accept further cases without prior approval of his service's Senior Legal Officer in Alaska, or his deputy.

j. A part-time ELAP Officer with fifteen (15) active cases will not accept further cases without prior approval of his service's Senior Legal Officer in Alaska, or his deputy.

k. Failure of the applicant to complete the required financial statement will constitute sufficient grounds for denying acceptance of the case.

l. The required financial statement (Appendix A) shall not constitute an official statement for UCMJ purposes; however, fraudulent completion of the financial statement shall be sufficient grounds to deny further representation in the case.

m. No case will be accepted if attorney fees are statutorily mandated for the successful party, except for those cases in which attorney's fees are provided under Alaska Civil Rule of Procedure 82.

4. Other Considerations.

a. The Senior Legal Officer in Alaska of the Armed Service con-

cerned will develop local procedures pertaining to the appropriate disposition of cases in which the duty status of either the ELAP Officer or the client changes. If the client is discharged, the attorney-client relationship with him must be terminated. Every reasonable effort will be made to transfer the case to another attorney.

b. If the client becomes the subject of a discharge proceeding or the subject of actions under the Uniform Code of Military Justice, the ELAP Officer will continue to represent the client only in his civilian matters. All military actions will be referred to the appropriate Military Defense Counsel.

c. ELAP Officers are prohibited from personally accepting fees or gratuities from anyone involved in the cases in which they act as counsel. Representation inconsistent with appropriate Service Regulations, to include appointment as referee, curator, administrator, executor, guardian, etc., is not authorized.

d. In criminal proceedings involving a pre-trial release from civilian confinement, release should be made to the appropriate commander or one of his subordinates, not to the ELAP Officer.

e. ELAP Officers appearing in local courts will be subject to the disciplinary rules of the local courts.

f. The client shall pay all filing fees, other fixed court costs, and any costs in connection with statutory notice requirements with a certified check or U.S. Postal Money Order. The ELAP Officer shall not act as a trustee for any property of the client.

g. The ELAP Officer shall not post bail bond personally or in the name of the appropriate Armed Service for any client in civilian confinement.

5. **Admission to the Bar.** The ELAP Officer so designated by the Senior Legal Officer in Alaska of the Armed Service concerned will be

admitted to practice before Alaska courts under the provisions of Alaska Bar Rule 43.1 (Appendix C).

Appendices:

- A-Privacy Act Notification
- B-Denial of Representation
- C-Alaska Bar Rule 43.1
- D-Application for Waiver to Practice Law for Armed Services ELAP
- E-Waiver to Practice

Lawyers Unite!

[continued from page 1]

the Bar proposal in general and indicated that he thought the Supreme Court would implement some of the proposals. He said that the committee is studying the Fairbanks system and others to find ways to move cases faster. As an immediate solution, he indicated that extra judicial manpower would be used from January to July, adding two full time judges through the use of part-time commitments from judges in other judicial districts. Snowden thought that the end result would be a hybrid system combining individual assignment of judges and central calendaring with early assignment of judges a likely reform. He asked for the continuing cooperation and support of the Bar in order to come up with a more efficient system. He indicated that the committee would be putting its recommendations before the Supreme Court in the very near future and that he expected the Supreme Court to act on them.

**Merry Christmas
and Happy New Year
from the Bar Rag**

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