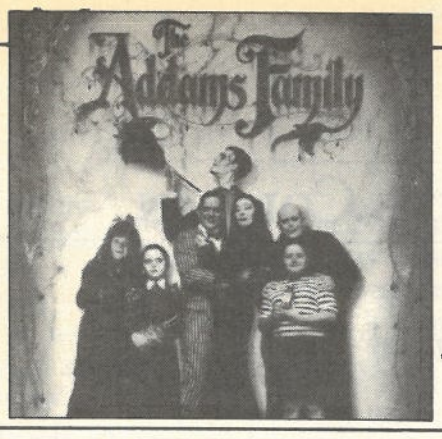
SERIOUS MATTERS INSIDE

Convention news. ALPS pays dividend. Bar benefit plans doing well. New twists on torts & indigents. CLE honors 161. New judge assigned to Valdez.



COLUMNS

Probate, bankruptcy, IOLTA, estate planning, people, movies, judo negotiating, and the TVBA

VOLUME 16, NO. 1

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The Alaska BAR RAG

JANUARY-FEBRUARY, 1992

Dignitas, semper dignitas

Strange things done in the midnight sun

Southeastern judge ponders canine custody in a howling good case

There once was a bird dog so sad
Because his owners were mad.
To court the parents did go,
So they could know,
Whether their Chessie bunked with mom,
or dad.

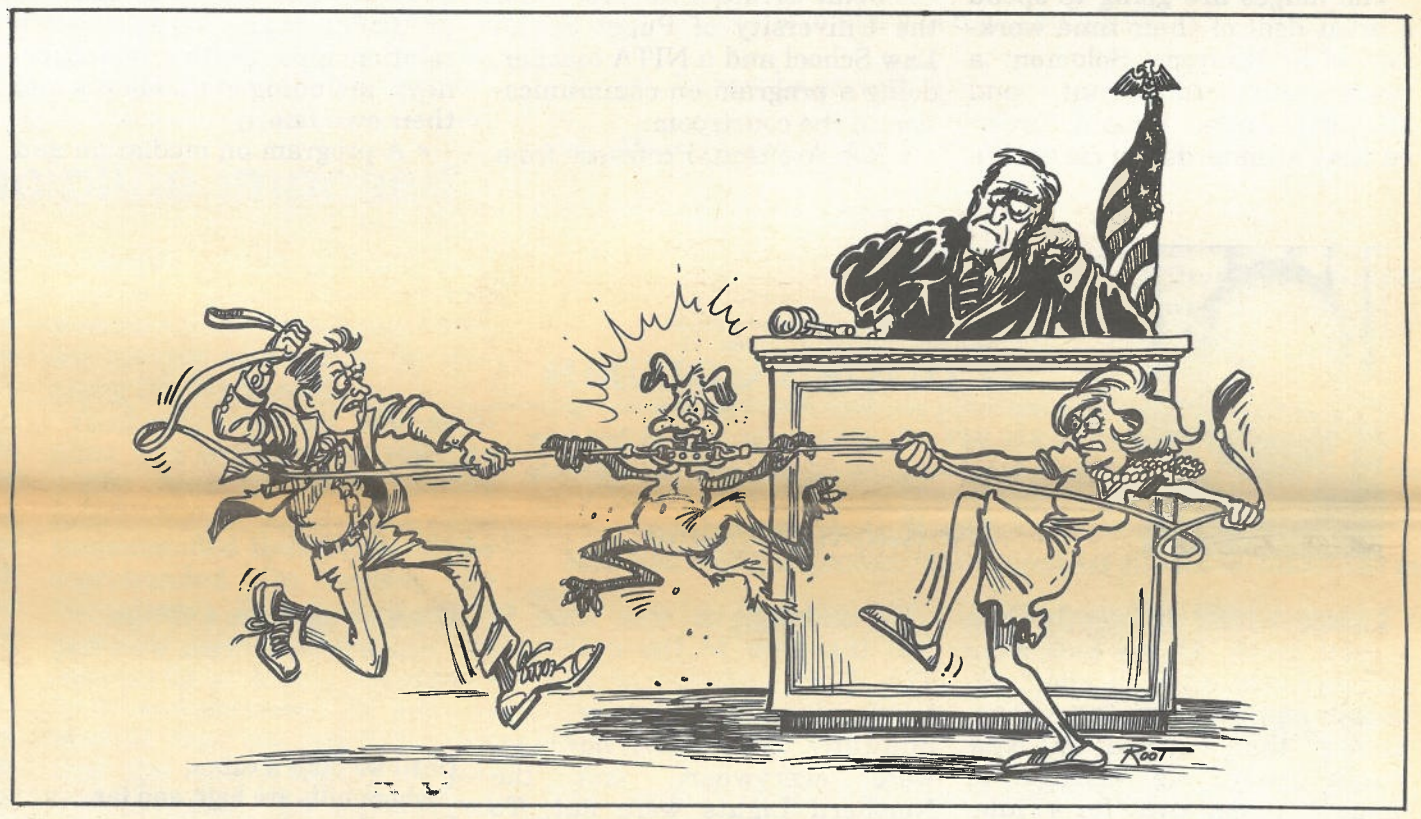
--Dan Branch

Lawyers and judges are accustomed to strange proceedings in Alaska's courts, and the following case might certainly stand as one of those.

Ketchikan attorney Dan Branch procured the decision and provided it to the Bar Rag.

The case was brought before the First Judicial District at Wrangell, with Judge Thomas M. Jahnke presiding. It began as a routine divorce proceeding, until the issue of property was raised. Or was it an issue of custody??? Is a dog really a man's best friend???

The following is a Memorandum of Decision and Order on the question, issued by Judge Jahnke on Oct. 3, 1991.



The matter before the court is a breed of custody dispute unseen heretofore. The bone of contention is Woody, the parties' Chesapeake retriever. Elizabeth seeks Woody's custody (and, dogs being dogs, his companionship) while James opposes, unintentionally evoking chauvinistic images of "a male and his dog," and arguing by the by that Woody is a chattel to be divided along with other assets.

Sometimes law is like science, and while physicists seek a Unified Field Theory to explain both gravity and electromagnetism, lawyers and jurists, in this case at least, are in search of the true relationship between dogs and people. Serendipity reigns. Justice Neely has written eloquently to advance the primary caretaker custody rule. *See* R. Neely, *The Primary Caretaker Parent Rule: Child Custody and the Dynamics of Greed*, 3 Yale L. & Pol'y Rev. 168 (1985). In Justice Neely's analysis is the kernel from which a common theory of mammalian custody might evolve.

Our judiciary, though lectured by Justice Neely at the Alaska Judicial Conference in 1985 on the primary caretaker custody rule, has not heeled. However, that distemper is not inconsistent with the common law process, which is "a system of elementary principles and of general judicial truths which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce and the mechanic arts and the exigencies and usages of the country..." *In re Burkell,* 2 Alaska 108, 117 (D. Alaska 1903.) There has, to this point in the tenth decade of the twentieth century, been sufficient "progress of society," *id.,* to support judicial adoption and application of Justice Neely's analysis, at least to dogs.

Much of this progress has come in the last six years. For it was as recently as 1985 that the Alaska Supreme Court hounded a wrongful death claimant out of court with the observation that the "subjective estimation

Continued on page 14

Alaska Bar Association
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President's Column

By Pat Kennedy

Things have been fairly quiet around the Bar office for once, although Deborah Ricker, our discipline paralegal, has given us her notice to move on to another job. The staff is gearing up for another bar exam and another board meeting. I am gearing up for the June convention by putting the final touches on the schedule.

As some of you are aware, we will be overlapping the judge's conference for two days. The judge's conference will run June 2-5, and our convention will run June 4-6.

The judges are going to spend a great deal of their time working with Maureen Solomon, a noted court consultant, and Michigan Judge Ronald Taylor on time standards for cases. We are going to take part in one of their training sessions so we can help in the development of "tracks" for all different kinds of cases.

In addition, one other session will be held jointly for those interested in recent decisions of the United States Supreme Court.

The rest of the program is my responsibility, with the able help of Barbara Armstrong. Having heard nothing from the Bar after my last request for input, I have put together the following potential programs:

• John Strait, Professor from the University of Puget Sound Law School and a NITA teacher, doing a program on communication in the courtroom.

• Rob Aronson, Professor from the University of Washington Law School, doing a program of ethics for public attorneys.

• Deborah Aaron, author of "Running from the Law," doing a program on reasons lawyers are dissatisfied with their profession and what makes a happy lawyer.

• A program of demonstrations of ways to present evidence, being developed by Judge Hunt, Val Van Brocklin, and Gary Foster.

• Lynne Curry Swann, doing a program on the development of memory skills, and a session on how lawyers, with their skills in argument, can have win-win relationships with non-attorneys, including staff, clients and their own family.

• A program on mediation and arbitration by the Alternate Dispute Resolution Section.

• Lunch with Chief Judge Holland and Chief Justice Rabinowitz on the state of the judiciaries.

• A golf tournament, being organized by Mark Ashburn and sponsored by ALPS, and the Women's Run.

• Section meetings.

• An annual business meeting which will take up the issues of budgets, dues, income and expenses.

• The usual hospitality suite, banquet and receptions.

I am still open for any suggestions on any or all of the above. Until Barbara sends out final letters, nothing is written in stone.

Editor's Column

By Ralph Beistline

I started 1992 differently than in past years. All my kids were occupied and my wife and I actually had an evening alone. Rather than attend a New Year's party, we decided to rough it, to get away for awhile, and to commune with nature.

We packed the truck and headed north to our partly finished cabin, located about 130 miles south of the Arctic Circle. We were able to drive most of the way, but snowdrifts finally stopped us and we walked the last quarter of a mile. The cabin was cold, but we got the barrel stove going quickly. My wife turned on the propane, started the lanterns, and began dinner. I shoveled a path to the outhouse. Within 30 minutes it was warm inside, despite the absence of ceiling insulation. We had a wonderful candlelight dinner, accompanied by music from a tape I found, entitled "Mellow 60s."

By midnight it was time to test the path to the outhouse. The clouds had cleared and the temperature had dropped significantly. The stars, however, were everywhere and the Northern Lights were out. To say the least, it was a memorable setting and certainly a great place to start the New Year.

Although the cold night air did not allow me to dwell too long, either on the path or in the outhouse, the setting did remind me of a poem that I like. It is entitled "Until We Built A Cabin" and was written in 1979 by Aileen Fisher, who was commenting on her observations upon moving away from the big city. It reads as follows:

When we lived in a city,
(3 flights up and down),
I never dreamed how many stars
could show above a town.

When we moved to a village,
where lighted streets were few,
I thought I could see All the stars,
But, oh, I never knew —

Until we built a cabin,
where hills are high and far,
I never knew how many
many
stars there really are!

With each passing year, I become more impressed with how fortunate we are to be able to live and practice our profession in Alaska. This year, though, my New Year's Eve experience led directly to two New Year's Resolutions.

First, I resolved to be more appreciative of the great blessings we enjoy in this land; and

Second, I resolved to either invent, or otherwise acquire, a heated toilet seat for the outhouse.

HAPPY NEW YEAR!!

Dangerous band plays Anchorage

When they're not practicing law, Anchorage attorneys Jeff Feldman, Mike Mitchell and Mark Wittow make music as members of *Alaska's Most Dangerous Band.* Though their clients may actually be more dangerous than the band, you have to wonder about a band that consists of three lawyers, a fifth-grade school teacher, and a very patient professional drummer.

Originally formed two years ago to play for the AkPIRG Follies production of *Grease,* the band has continued to perform primarily for benefits, including Alpine Alternatives, various political campaigns, the Clean Air Coalition, and the 1991 AkPIRG Follies.

The next performance of *Alaska's Most Dangerous Band* will be at The Alternative Ball on February 15 at Grand Central Station, Anchorage. The ball is for those who weren't willing to get up early and stand in line in the cold and dark to buy tickets to the Fur Rendezvous Miners and Trappers Ball. It is sponsored by the Coalition of Alaskans for Choice.

The band will also unplug their instruments and play a set of acoustic music during the upcoming Anchorage Folk Festival at the end of January.

The Alaska BAR RAG

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The *Alaska Bar Rag* is published in January, March, May, July, September, and November.

Letters

Donley replies

The last issue of the *Bar Rag* had two articles about legislation that I authored, the Victims' Rights Act of 1991. I developed the legislation to increase victim access to the criminal justice process, and to make it easier for victims to recover civil damages from those who cause them injury. In so doing, the Victims' Rights Act readjusts the balance of our criminal justice system in favor of victims, and in a manner that does not infringe on the rights of criminals.

In addition to helping victims by making the experience of being involved in a crime less burdensome, the Victims' Rights Act will reduce the number of criminal cases lost or dismissed as a result of poor victim cooperation and will provide an increased incentive for reporting crimes. Studies have shown that one of the primary reasons criminal cases are lost, and dangerous offenders not incarcerated, is lack of cooperation from crime victims and witnesses.

In one of the articles, there was implied criticism of the section of the Victims' Rights Act that requires the address and phone numbers of victims and witnesses to be kept confidential. These provisions were based on model legislation that was written by the Department of Justice in cooperation with the National Association of Attorneys General and the American Bar Association Criminal Justice Section, and was recommended for adoption in all states by president Reagan's Task Force on Victims of Crime. Alaska is one of 23 states that has enacted similar privacy protections for personal information about victims.

Although I have received a great deal of support for my efforts in passing the Victims' Rights Act from individual victims, victims' advocacy groups, and law enforcement agencies, there has been resistance to the legislation from the press and certain members of the bar. I'm confident, however, that when people fully understand the law and its narrow application, the resistance and the difficulties that some people have experienced will fade away.

Representative Dave Donley

Secretaries thank bar

Thank you for printing the article on Linda O'Bannon, Anchorage Legal Secretaries' Association's 1991 "Boss of the Year." Through inadvertence, however, I failed to include the name of one of our sponsors, Heller, Ehrman, White & McAuliffe. When the idea of having our Bosses' Lunch sponsored by Anchorage law firms and businesses was conceived, we had no idea what reception it might receive. Heller, Ehrman, White & McAuliffe was the first law firm to contribute to sponsorship of our annual luncheon honoring the attorneys of Anchorage. This encouraged our belief that other firms would join in sponsorship.

Anchorage Legal Secretaries is a professional association composed entirely of volunteers. We very much appreciate the encouragement and support our association receives from the members of the Bar, not only in sponsorship of the Bosses' Lunch this year, but in other programs we offer, such as Professional Legal Secretary certification and continuing legal education. Without this support and encouragement, those members of our profession who work so diligently on behalf of our association, and those who continually strive to make themselves more valuable to their employers through education and certification, would find it far more difficult to devote their time and efforts to these worthwhile endeavors.

To the attorneys of Anchorage, we thank you for your support. It is greatly appreciated.

Edwina Klemm, Certified PLS
Chairman, Bosses' Lunch and
"Boss of the Year" Committee

Library confusion

Some policy changes have been made recently at the US District Court library. From the calls I've been receiving, apparently there is confusion and misinformation floating around on these changes.

The U.S. District Court now has an open door policy. The library is unlocked and staffed Mon-Fri between 8 a.m. and 5 p.m. On occasion, if the librarian is traveling or attending mandatory meetings, or if there is staff illness, hours may be affected. A notice will be posted on the library door, in advance, if hours need to be adjusted. In case of staff illness, a notice will be posted on the door that day.

The library door has been rekeyed. Only Court personnel will now have keys to enter the library after hours, or when locked and unstaffed.

The library will be undergoing expansion construction in January 1992. At the present time, it is expected the library will be closed starting in mid to late January for a period of 2-3 weeks. Library staff will be temporarily relocated to other quarters and will not be available to assist patrons. During the remainder of the construction, the library may periodically be closed for hours or days. Notices will be posted on the library door. It is hoped the construction will be over and regular hours back in effect by mid-March.

Catherine A. Davidson
US District Court Librarian
Anchorage

Cloudy steps in

C.L. Cloudy and Bob Ziegler (right) share a moment of levity in Ketchikan.

For the information of the fellow attorneys around the State, the Ketchikan Bar Association has a new President to replace the deceased Robert H. Ziegler, Sr. I am enclosing for your publication, if you wish, a photo of Mr. Ziegler and our new President, the famous (in his own mind) C.L. Cloudy. You are free to publish the photo if you wish. Mr. Cloudy has given his consent and I am sure that our good friend, Bob, would appreciate having himself published in a serious pose.

Clifford H. Smith
Secretary-Treasurer
Ketchikan Bar Association
620 Dock St.
Ketchikan, AK 99901

As in the past, all queries to the Ketchikan Bar should be addressed to the above rather than disturbing Mr. Cloudy or his predecessors.

Law Jokes

How many attorneys does it take to eat an armadillo?

Four, two to eat and two to watch for cars.

Notices

Ninth Circuit makes changes

Please be advised that The Office of the Circuit Executive for the United States Courts for the Ninth Circuit has relocated to: Office of the Circuit Executive, 121 Spear Street, Suite 204, P.O. Box 193846, San Francisco, CA 94119-3846.

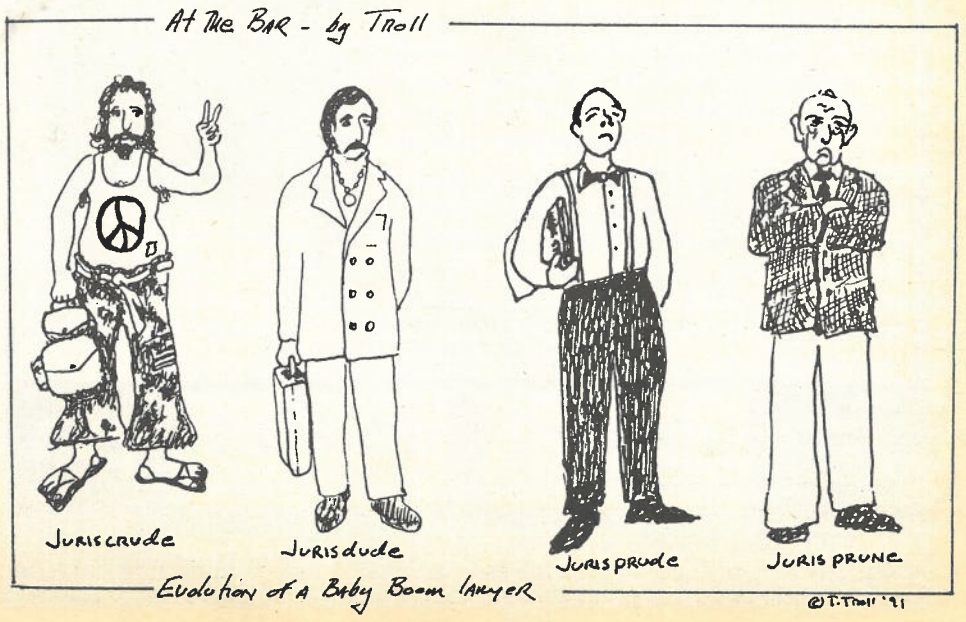
The telephone numbers will remain the same: FTS 484-6150, 415-744-6150.

The Office of the Clerk and the Office of the Staff Attorneys of the United States Court of Appeals for the Ninth Circuit have relocated to new offices, effective Tuesday, November 12, 1991.

While the court of appeals prefers lawyers and litigants to file papers with it by mail, the Office of the Clerk will accept walk-in filings at the new address (on the 6th floor). The new address is: United States Court of Appeals for the Ninth Circuit, 121 Spear Street, PO Box 193939, San Francisco, CA 94119-3939.

Clerk's Office: (414) 744-9800; FTS 484-9800.

Staff Attorneys Office: (414) 744-9860; FTS 484-9800.



Anderson appointed to Valdez bench

BY MICKALE CARTER

On January 10, 1992, Judge Glen C. Anderson began his tenure as Superior Court Judge in Valdez, concluding nearly 14 years as a District Court Judge in Anchorage.

After graduating from Colorado State University, Judge Anderson taught high school history and social studies in Cheyenne, Wyoming. A year later he moved to Richland, Washington, in the Tri-City area, and taught social studies. He then decided to go to law school, assuring himself that he could view the world from a lawyer's perspective and yet not lose his personal perception of the world. He believes that professionals are trained to look at the world in a certain way. For example, an engineer sees the world through different eyes than does a social worker.

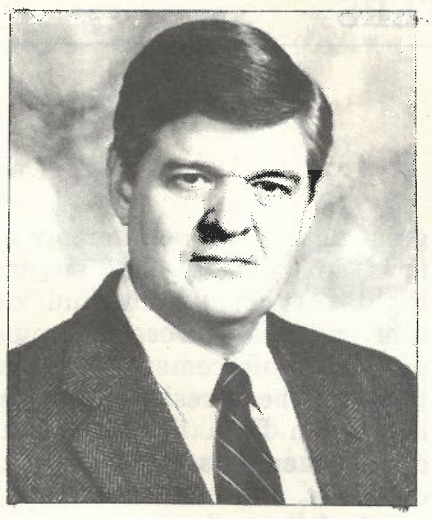
Judge Anderson's exposure to the legal profession came while he was chairing the teachers' collective bargaining negotiating committee at the school district in Richland. He says he became aware that laws were a very important aspect of our life, which we all have to deal with. As a practical matter, he decided that he might just as well learn how to interpret the laws.

Anderson moved to Alaska in 1974, after graduating from law school at Willamette College of Law in Salem, Oregon. His interest in Alaska was sparked by his parents' stories of their time in Alaska during the late 30's and early 40's. Married in Fairbanks over 50 years ago, the senior Andersons moved from Anchorage to California just before their son, Glen was born.

Glen Anderson's job was a law clerk position for Alaska Supreme Court Justice Robert Erwin.

After a year of clerkship, he went to work at the DA's office in Anchorage in 1975. At that time, Steve Branchflower was there and Joe Balfe was the District Attorney, says Anderson, and soon thereafter, the Office of Special Prosecutions and Appeals was created. Peter A. Michalski, now a judge, was head of the office, and Anderson transferred there, serving from 1977 until his appointment to the District Court bench in 1978 by Governor Jay Hammond.

There has been more variety in the District Court than Judge Anderson expected when he began his judgeship, he says. Many "interesting things happened" and "people raised new issues." In addition, for the past several years he has been involved with the magistrate training program. Every magistrate in Alaska has a designated training judge who answers questions and provides guidance. The judges are assigned to geographic locations; Judge Anderson was assigned to St. Paul, Unalaska, Sand Point, Seward, and Whittier. Until last year, his geographic area also included Dillingham and Naknek. There are three Judges involved in the magistrate training program in the Third Judicial District. In addition to Judge Anderson these judges are Peter G. Ashman of Palmer, and Dana Fabe of Anchorage.

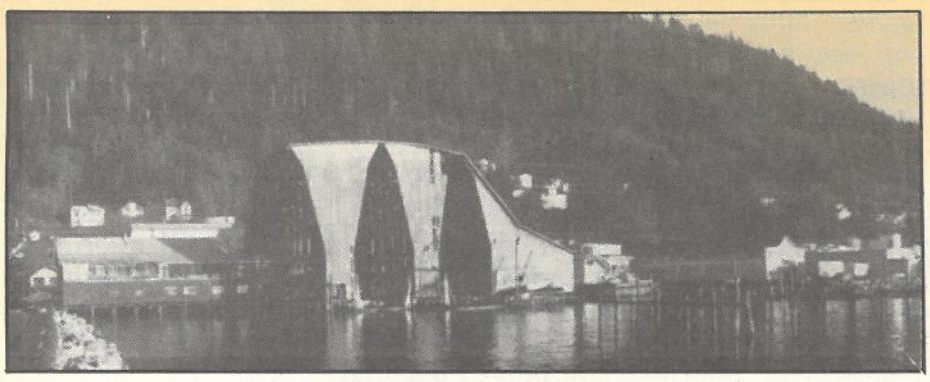


Glen C. Anderson

Judge Anderson feels that the training program has been educational for magistrates and "trainees" alike. Magistrate trainees have raised new issues, some of which are unique to the bush and simply don't come up in Anchorage.

When Anderson applied for the Valdez judge position, he assumed that he would be moving to Valdez and intends to do so as soon as he can. In his new position he will be handling the calendars of Valdez, Cordova, and Glennallen. He understands that there is a backlog of cases, some of them being major.

Judge Anderson looks forward to the challenges of his new job, coming to it with an open mind and with no preconceived notions about what needs to be done or changes that must be made.



Ketchikan's boatways offer shelter from the seas.

Professional society discusses natural law

BY LARRY ALBERT

The St. Thomas More Society of Anchorage, a lay organization of Catholic attorneys dedicated to promoting the spiritual welfare and professional ideals of its members, recently hosted a luncheon lecture at Elevation 92 on natural law by Dr. Ralph Keen, professor of Catholic Theology at Alaska Pacific University.

Up until the controversy involving law professor Anita Hill came to the fore, the issue of natural law dominated Supreme Court Justice Clarence Thomas' nomination process.

Justice Thomas had attracted attention as a supposed natural law theorist, causing his critics to express concern that future Supreme Court decisions on issues like abortion might reflect a narrow theological perspective.

Natural law, in essence, constitutes the human codification of what people think God's law should be. However, while natural law has theological underpinnings associated with Catholicism, natural law, according to Professor Keen, is not an ideology and should not restrain judicial reasoning. "At its best," he says, "it's a principle, with limits, for thinking about law."

Keen, who critiqued Thomas' 1989 article on "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment" at the October 10 lecture, noted that natural law can be used to support ideologies. However, he does not consider Justice Thomas a natural law theorist.

Professor Keen does consider natural law a "vital force in the way we think as citizens," and concludes that "most Americans would agree with it in some form or another. Making judgments which reflect the people's conception of justice depends on large ideas." Keen says the natural law tradition lies at the foundation of our American system, which renders the current debate over Thomas' views more than a little ironic.

Professor Keen occupies the recently established Cardinal Newman Chair in Catholic theology at APU. He obtained his undergraduate degree in classics at Columbia University, and earned an M.A. at Yale University in classics and philosophy. In addition to working as editor on the Yale edition of the works of St. Thomas More, Keen also completed his doctorate in the history of Christianity at the University of Chicago.

The Saint Thomas More Society is named for the 16th century lawyer, judge and diplomat who became the first layman to serve as Lord Chancellor of England, then the crown's chief minister as well as the country's highest judicial officer.

A recognized scholar, the young More lectured on St. Augustine. In early middle age, he wrote *Utopia*, the classic vision of political and social perfection. More resigned the chancellorship and eventually went to his death rather than submit to the Oath of Supremacy demanded by Henry VIII.

For further information about upcoming Society activities, contact Larry Albert at 786-6383.

Solid Foundations

By Mary Hughes

The Federal Deposit Insurance Corporation promulgated new rules on July 29, 1990. Certain of the rules apply to attorney trust accounts. A recent issue of IOLTA UPDATE highlighted the regulations which apply to *all* attorney trust accounts — IOLTA or non-IOLTA:

> The following text has been excerpted from Part 330 (Deposit Insurance Coverage) of Title 12, Code of Federal Regulations as revised July 29, 1990, in 655 Federal Register 201114, May 15, 1990. These excerpts are the portions of the new FDIC regulations that most apply to ISOLATE accounts.
>
> **Section 330.4 Recognition of deposit ownership and recordkeeping requirements.**
>
> (a) Recognitions of deposit ownership—(1) Evidence of deposit ownership. In determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution . . .
>
> (2) Recognition of deposit ownership in custodial accounts. In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in such a deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share or the total commingled funds.
>
> (b) Recordkeeping requirements — (1) Disclosure of fiduciary relationships. The deposit account records of an insured depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor, or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution.
>
> **Section 330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.**
>
> (a) Agency or nominee accounts. Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, other than an insured depository institution, shall be insured to the same extent as if deposited in the name of the principal(s) . . .
>
> (c) Accounts held by fiduciary on behalf of two or more persons. Funds held by an agent, nominee, guardian, conservator or loan service, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of Section 330.7 . . .
>
> **Section 330.9 Accounts of a corporation, partnership, or unincorporated association.**
>
> (a) Corporate accounts. (1) The deposit accounts of a corporation engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those division or units shall be added to any other deposit account of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of Section 330.6 . . .

The former regulations had provided a safeguard for client funds held in trust by attorneys and commingled in a general client trust account.

Each client's funds were considered separated from the funds with which they were commingled and were protected up to the $100,000 insurance limit, provided the client had no other funds at the same financial institution. If other funds were held, the sum of that client's trust funds and his other accounts were protected up to the $100,000 maximum.

The same safeguards appear to be still available. However, Congress is currently reviewing FDIC coverage. The regulations may, especially in light of continual bank failures, change.

"Tort reform" issues remain in question

BY KEN GUTSCH

On November 8, 1988, the "Tort Reform Ballot Initiative" was approved by 71.8 percent of the Alaskan voters. As amended, AS 09.17.080(d) became effective on March 5, 1989 and provides that "the court shall enter judgment against each party liable on the basis of several liability in accordance with that party's percentage of fault." The ballot initiative also abolished contribution. The ballot initiative raises the question of whether a named defendant may be held liable for the fault of non-parties.

Some argue that the jury should only be allowed to assess the fault of the named parties to the action because amended AS 09.17.080(d) provides that the "court shall enter judgment against each *party* liable on the basis of several liability in accordance with that *party's* percentage of fault."

Further, AS 09.17.080(a), which was not amended by the tort reform ballot initiative, provides that the "jury shall make findings indicating the percentage of the total fault of all of the *parties* to each claim that is allocated to each claimant, defendant, third-party defendant and person who has been released from liability under AS 09.16.040."

However, AS 09.17.080(a) does not say whether the percentages of fault allocated to the named parties must add up to 100 percent of the fault of all actors to the transaction. Alaska Statute 09.17.080(b) provides that, in determining the percentages of fault, the trier of fact *shall consider the conduct of each party at fault and the extent of the causal relation* between the conduct and the damages claimed. Alaska Statute 09.17.080(c) further provides that "the court shall also determine and state in the judgment each party's *equitable share* of the obligation to each claimant in accordance with the respective percentages of fault."

Thus, while the jury is to determine each party's percentage of fault, the statute is not clear as to whether a "party's percentage of fault" may include the fault of entities not named in the lawsuit.

•

Two Superior Court Judges have construed AS 09.17.080(d).

On July 25, 1991, Judge Dana Fabe held in *Dunaway v. The Alaskan Village, Inc.* that AS 09.17.080 does not allow the allocation of fault to non-parties, but that defendants are free to implead third-party defendants based on equitable indemnity.

On September 27, 1991, Judge Steven Zervos held in *Owens v. Robbins* that fault may be allocated among non-parties. Judge Zervos based his opinion in part on the fact that contribution had been repealed and that the supreme court had expressly rejected equitable indemnity, which prevented defendants from impleading persons at fault. Neither Judge Fabe nor Judge Zervos referred to the legislative history behind the ballot initiative. This article will examine the legislative history to discern the voters' intent.

The Alaska Supreme Court has not articulated an approach to construing a ballot initiative. However, in construing the voters' ratification of a constitutional amendment, the supreme court looked to information given to the voters. *See, State v. Lewis,* 559 P.2d 630 (Alaska 1977).

Other jurisdictions have applied the general rules of statutory construction to ballot initiatives, and have looked to election pamphlets to discern the purpose of ballot initiatives. *See, e.g. city of Spokane v. Taxpayers of City of Spokane,* 758 P.2d 480 (Wash. 1988); *People v. Markham,* 224 Cal. Rptr. 262 (Cal. App. 1986). Thus the Alaska Supreme Court will probably look to the election pamphlet in discerning the voters' intent.

•

Thirty days prior to the general election, the Division of Elections mailed an election pamphlet to every registered Alaskan voter. This election pamphlet contained the full text of the proposed ballot initiative, a summary of the proposition prepared by the Director of the Division of Elections or by the Lieutenant Governor, a neutral summary prepared by the Legislative Affairs Agency, and statements submitted by supporters and opponents. *See,* AS 15.58.020(6).

The Ballot Language indicated that each party would only be liable for his or her share of the fault:

> this initiative changes the way damages can be collected from parties to lawsuits who share fault for injury to persons or property. The law now says that a party more than half responsible could be liable for the total judgment. Parties may collect from each other amounts paid over their share. Parties less than half responsible pay only up to twice their fault.
>
> The initiative would make each party liable only for damages equal to *his or her share of fault,* and repeal the law concerning reimbursement from other parties. (Emphasis Added)

The neutral "Legislative Affairs Agency Summary" also contemplated that a person would only be liable for his share of the fault:

> This measure will affect lawsuits in which two or more persons are at fault.
>
> The new law would tell the court to enter judgment against each person at fault, but only in an amount that represents *that person's share of the fault.*
>
> Existing law now tells the court to enter judgment against each person t fault in an amount equal to the total liability of all persons at fault. Those at fault are required to share the total cost of the fault. The measure repeals that law.
>
> The measure applies to suits based on acts occurring after its effective date. (Emphasis Added)

The "Statement in Support" of the ballot initiative, submitted by the Citizens Coalition for Tort Reform, reflects the purpose that defendants not be forced to pay for someone else's fault:

> Supporters of this ballot measure believe *it isn't fair to hold people responsible for things that aren't their fault.* Yet, under current law, defendants found liable in a civil suit can be forced to pay damages equal to twice the amount of their fault. In other words, if you are 50 percent responsible for an injury you could be forced to pay 100 percent of the damages.
>
> The current law — called joint and several liability — is simply unfair. It forces people to pay for damages caused by somebody else, and it contributes to inflated damage awards and encourages lawsuits based on who has money instead of who's at fault.
>
> If ballot Measure No. 2 is passed and you do something wrong, you pay for it. *But you would not be forced to pay for something you didn't do* — which would happen under present law.
>
> This initiative will make the civil justice system more fair by assessing damages on the basis of a person's degree of fault, instead of on how much money or insurance he/she has. Thus, if you are found to be 20 percent responsible for someone's injury or property damage, you pay only 20 percent of the award.
>
> Ballot Measure No. 2 will make the civil justice system more fair, while ensuring that people are held accountable for injuries or damage they cause. (Emphasis Added)

Even the "Statement in Opposition: submitted by the Citizens for Fairness, contemplated that, upon the voters' approval, defendants would only be liable for their share of the loss and that plaintiffs would bear the risk of insolvent tortfeasors:

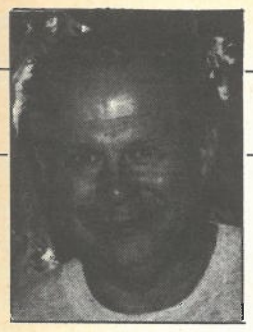
> The insurance companies pushing Ballot Measure No. 2 are telling us *wrongdoers should only pay their own share of the loss.* That sounds good. But the insurance companies are not telling us what happens when one of the wrongdoers cannot pay anything. This is a common problem. Under Ballot Measure No. 2, the insurance company wins, and the victim loses . . . (Emphasis Added)

Thus the legislative history behind the ballot initiative indicates that the purpose of the ballot initiative was to ensure that a party not be made to pay for someone else's fault. This explains why the ballot initiative repealed contribution - it would no longer be needed.

It is very likely that this issue will be appealed to the Alaska Supreme Court. Until it is resolved by the supreme court, counsel will have to contest this fundamental issue in most cases involving multiple tortfeasors. As it stands, plaintiffs will abstain from suing insolvent defendants, regardless of their degree of fault, and then attempt to have the court impute the fault of the insolvent non-party to the named solvent party.

Defense counsel will have to move for a ruling by the courts that, as a matter of law, a named defendant may not be held responsible for the fault of non-parties, and in the alternative, that the named defendant be allowed to join other non-parties based on indemnity principles.

Plaintiff's counsel would then have to implead non-parties to recover against them for their share of the fault.



Movie Mouthpiece

By Ed Reasor

Morticia Addams (Angelica Huston) prunes the roses to savor the thorny stems, while husband Gomez (Raul Julia) enjoys a game of chess with Thing (Christopher Hart) in "The Addams Family."

Gene Siskel and Roger Ebert, those delightful movie critics, have both suggested that you pass on "The Addams Family."

They found it a ghoulish cartoon that gave him a smile or two, but a film that really didn't take off. Siskel and Ebert liked the tone and the look of the film, but they didn't see any chemistry between Raul Julia and Anjelica Huston playing Mr. and Mrs. Addams. They also found the one-liners difficult to follow and the sequence involving the Addams children at a school play distasteful.

All I can say is that sometimes critics watch films in the quiet solitude of a secluded booth without yelling, screaming preteenagers, and they miss the point when it comes to films created, designed, and produced with the young in mind.

I recommend you see "The Addams Family," but only if you can do so with a child, whether seven or 70.

From the very beginning, a low-angle shot of a Gothic home surrounded by Christmas carolers, with the Addams Family perched on the roof pouring hot liquid on the songsters, "The Addams Family" is unusual, different and fun.

Like the popular 60's sitcom, "The Addams Family" is idiotic. The family takes rebellion aggressively with acts of sadism against the everyday life of mere mortals followed by disasters and horrors upon people who deserve it, sometimes verbal and sometimes by overt action against conventional behavior.

Pugsley (Jimmy Workman) and Wednesday, (Christina Ricky), strange Addams' children, would certainly cause you to sell your home and move up on the hillside if they were your next door neighbors.

Julia and Anjelica, however, as Gomez and Morticia Addams, coupled with their live-in Uncle Fester (Christopher Lloyd), are grown-ups that one would enjoy seeing at least twice a year and certainly on Halloween. The film also has a new twist in that a single, movable living hand ("Thing") wanders in and out of the landscape aiding the family and wreaking havoc with visiting guests.

I thought both Anjelica Huston and Raul Julia played their parts to perfection. It's obvious to me they had a good time and that they like each other. I don't know what Siskel and Ebert mean by "lack of chemistry" because every time they had a chance, the stars kissed, hugged, or made sensual promises especially when titillated by some ghoulish remark. Both are remarkably handsome people, even though the cinematography has a cloistered, dark, Gothic graveyard look and the makeup was done with tongue in cheek. Some examples of why "The Addams Family" is better than what the critics say:

• The conversation and acts between Huston and Julia are beautifully executed. She says: "Last night, Darling, you were like some desperate, demented howling animal — do it again!" He says: "I could die for her. I would kill for her — either way, what bliss." How many in-love couples do you know that show such devotion? Also every time Morticia speaks French, which she does often, Mr. Addams becomes extremely sexually excited. He can't resist hugging or kissing her with passion.

• "The Addams Family" has many sight gags that are funny because they are different. The whole concept of a single hand ("Thing") running around is unusual. It becomes hilarious in the third act when the Addams Family all try to seek employment somewhere because they have lost their home to a crooked lawyer. "Thing" ends up as a big shot for the Federal Express. He certainly can move the packages faster than anyone on the assembly line. Morticia, incidentally, finds a job as a kindergarten school teacher, but she doesn't last. She reads the children the story of Hansel and Gretel, but from a witch's viewpoint. The story is so sad that the children sympathize with the witch and cry. Mr. Addams, like most unfortunate middle-income Americans who are layed off, becomes a couch potato. He watches talk shows every afternoon because he is over-qualified for any other job.

Other site gags are "Thing" holding a golf ball on top of the roof, which Mr. Addams tees off for a good drive that lands and breaks a neighboring judge's window (get used to it; we are going to see more movies bashing attorneys in the near future). The "Thing" cheating at chess, coupled with a polar bear that actually growls and bites are predictable, but still funny when seen on film.

Even Pugsley, removing a stop sign so that a resulting accident is heard throughout the house, and Pugsley cutting heads off dolls with a guillotine are close enough to the average pre-teen house to be scary, themselves.

As for the blood scene that upset Mr. Siskel and Mr. Ebert, please be advised that with the help of Christoher Lloyd, (Uncle Fester), the two kids at the annual Christmas skit use stage-prop blood for a sword sequence that sprays red over themselves and the audience. In the back of the room, the grateful and delightful Addams parents clap and yell "BRAVO"!

I read Charles Addams' deeply bizarre cartoons in the *New Yorker* when I was an English major in undergraduate school. I think the movie captured his sense of humor and some of the actual sequences (hot liquid on carolers) are direct steals from Addams' original famous drawings. It's worth your time.

"Cape Fear," the second film I recommend, is without doubt the best-directed film of 1991. If Martin Scorsese does not win as best director this year, then the rumor that a New York director faces bias and prejudice at Oscar time in California is true.

The best way to see "Cape Fear," frankly, is to go to your neighbor-hood video store and check out the original "Cape Fear," a 1962 film which starred Robert Mitchum as Max Cady, a vengeful convict, with Gregory Peck as the upright lawyer Sam Bowden. Polly Bergen is the devoted wife, and Laurie Martin is their typically teen daughter.

In the 1962 version, the lawyer was only a witness to a rape, but his testimony convicted Cady.

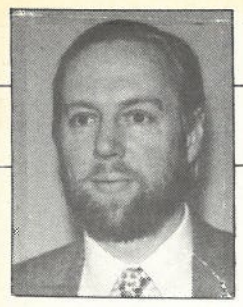
In the Scorsese film, lawyers are taken down a peg or two. Max Cady, this time, is Nick Nolte, who deliberately withholds evidence (acquired during the normal pre-trial discovery procedure) that shows that Cady's victim was a promiscuous woman. Nolte thinks rape and beating are so brutal that the jury should not hear about the victim's past. The recurring theme throughout this film is: Did Nolte do the rapist Cady a grave injustice and did he violate his lawyer obligation and oath to defend Cady to the best of his ability?

In a nutshell, "Cape Fear" is a movie about a lawyer and his wife and daughter, who find that their combined weaknesses and insecurities, when exposed, cause them to resort to brutal violence themselves to restore order into their lives.

Both good-guy Gregory Peck, and the evil Robert Mitchum are in this "Cape Fear" too, but only in cameo roles.

This idea of Scorsese and screenwriter Wesley Strick causes the viewer to realize that

Continued on page 16



GETTING TOGETHER

By Drew Peterson

How often have we had to deal with dirty tricks in the negotiation process? How about the hard bargainer, looking to run us over like a tank if we yield an inch in the negotiation process?

Worse still is the unethical bargainer. What do we do when confronted with such techniques?

In the last issue of the *Bar Rag,* I set forth the basic process of the innovative new field of collaborative negotiations, as described in the book *Getting to Yes* (Roger Fisher and William Ury, Penguin Books, 1981). The collaborative negotiation process described in *Getting To Yes* (also called principled negotiations or win-win negotiating) consists in a nutshell of four steps: 1.) separate the people from the problem; 2.) focus on interests, not positions; 3.) invent options for mutual gain; and 4.) use objective criteria.

The simple techniques of collaborative negotiations can work wonders in helping the parties to a dispute find a solution whereby both sides can win a substantial if not a total victory.

True win-win solutions are available to virtually every dispute, although not always to the same degree. A basic flaw in collaborative negotiations theory and practice, however, is that it takes the deliberate action of both sides to arrive at a collaborative solution.

But what if one side to the dispute will not play the collaboration game? What if they are so powerful that they see no advantage to negotiating at all? What if they prefer to play by the long established rules of win-lose negotiations?

Or worse still, what if they use dirty tricks? What can you do to tame the hard and possibly unethical bargainer?

A basic concept of collaborative negotiations theory which is used to deal with such contingencies is the BATNA. BATNA is an acronym standing for "Best Alternative To a Negotiated Agreement." While a seemingly common-sense concept, having a clear understanding of one's BATNA can create a tremendous advantage in the negotiating process.

Understanding your BATNA is more than just establishing your bottom line in the bargaining process. It is a concept that takes into account what you have learned from the other through the negotiating process as well as the information which you bring into the negotiation. BATNA is a flexible concept, changing with time and circumstances. Instead of using it to eliminate solutions that do not meet your bottom line, a BATNA is a standard with which to compare proposals, to see whether they better serve your interests.

If you have not thought carefully about your BATNA, you could find yourself in deep trouble. You may for instance be looking at your alternatives through rose colored glasses. Litigation is a good example of an alternative which often looks better than it truly is after close inspection. The other side of the BATNA coin can be equally disastrous. If you have not thought about and developed a realistic BATNA, you may be unduly pessimistic about what would happen if negotiations break off. You could end up making a deal that is worse than what you could have achieved without an agreement. The better your BATNA is, the more power you have in the negotiating process.

Once you have a realistic BATNA, you are ready to start seeking a truly collaborative solution to the dispute.

But what if the other side won't join you in an effort to look beyond the negotiating positions for areas allowing mutual gain? You can then use one of the most intriguing techniques of the Collaborative Negotiation process, called Negotiation Judo. Like the martial art of Judo, Negotiation Judo uses the force of the other side's arguments for your own advantage. Some examples include:

- When the other side attacks, don't attack their position, look behind it. Treat their position as one possible option and look at the interests underlying it.
- Don't defend your ideas, invite criticism and advice. Instead of asking them to accept your idea, ask them what is wrong with it.
- Recast an attack on you as an attack on the problem. Allow them to let off steam, show that you understand what they are saying, and then ask how you can help them to reach a mutually satisfactory solution.
- Ask questions and then pause. Use silence as one of your most potent weapons.

Negotiation Judo techniques reframe a positional negotiation technique as an opportunity for collaboration. If you can remain consistent in using such techniques, eventually the other side will wear down and will join with you in the search for collaborative solutions.

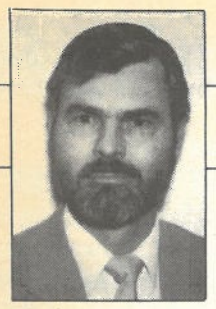
A final problem comes in dealing with dirty tricks. Many such tactics and tricks exist. Many books have been written about how to recognize dirty tricks and how to use them for one's own advantage. Such strategies by the other side may be illegal, unethical, or simply unpleasant. Their purpose is to win an advantage for their user in a contest of wills.

There are three steps used in the collaborative negotiations process for dealing with dirty tricks. The first is to simply recognize such a tactic for what it is. The second step is to bring the tactic out into the open by discussing it. The final step is to then negotiate about the rules of the game, in light of the tactics that have been used. Such negotiations return directly to the starting point of the collaborative negotiations process, namely to separate the people from the problem; focus on interests, not positions; invent options for mutual gain; and insist on using objective criteria.

The final point to keep in mind concerning dirty tricks is to not be a victim. Be prepared to recognize dirty tactics whenever you see them and fight against them. It is much easier to defend principle that an illegitimate tactic. Don't allow yourself to become a victim.

Following such techniques will allow you to reach win-win solutions in many more negotiations than you may have ever thought possible.

As long as you have confidence in your own principles and are careful to not allow yourself to become a victim, you can achieve results that will benefit both sides and also lead to a strengthened long term relationship.



BANKRUPTCY BRIEFS

By Thomas Yerbich

In *Johnson v. Home State Bank* [500 U. S. ___, 111 S. Ct. 2150 (1991)], the U.S. Supreme Court unanimously held that serial filings under chapter 7 and chapter 13, the so-called "chapter 20" case, are not prohibited by the Bankruptcy Code. The *Johnson* ruling eliminated the conflict between the circuits and removed all doubt that a "chapter 20" was a viable arrow in the quiver of the bankruptcy practitioner. Although "chapter 20" filings have been permissible in the Ninth Circuit for several years [*In re Metz,* 820 F.2d 1495 (9th Cir. 1987)], because of the heightened and renewed interest in "chapter 20," it is appropriate to re-examine the whys and wherefores of "chapter 20."

In a "chapter 20" a debtor files a chapter 7 followed by a chapter 13 filing. Personal liability on all dischargeable debts is discharged in the chapter 7. However, although the debtor no longer has any *personal* liability for the discharged obligation, to the extent debt was secured by property of the debtor and such property passes through the bankruptcy and back to the debtor, the rights of the creditor to satisfy the secured portion of the debt from the collateral survives the bankruptcy and remains intact. [*Owen v. Owen,* 500 U.S. ____, 111 S. Ct. 1833 (1991); *Farrey v. Sanderfoot,* 500 U.S. ____, 111 S.Ct. 1825 (1991)] Thus, if the debtor wants to keep the property, the debtor must satisfy the creditor's secured interest. This sounds simple in concept but can get complicated in practice.

A chapter 7 debtor may reaffirm the obligation and keep the property securing the reaffirmed debt. However, unless the creditor agrees otherwise, the debtor must (1) cure any arrearage owed the creditor and (2) thereafter keep payments current. In addition, by reaffirming the debt, the debtor "waives" discharge of personal liability on the debt and the creditor may, if the collateral is of insufficient value to satisfy the unpaid obligation, resort to other assets of the debtor as in the case of any other recourse debt. Alternatively, a debtor may redeem property by paying to the creditor the fair market value of the collateral. Again unless the creditor agrees otherwise, redemption can only be accomplished by a lump-sum payment of the full fair market value of the collateral.

Accordingly, in a chapter 7, a debtor has a choice of reaffirming the entire debt, obligating the debtor to repay the full amount and subjecting the debtor to continued personal liability, or paying the full fair market value of the property in a lump sum. Under the present state of the law in this District [*In re Larson,* 99 B.R. 1 (Bkrtcy.Alaska 1989)], a chapter 7 debtor may not "strip-down" the debt under § 506 of the Code. This presents a serious deficiency in the reaffirmation/redemption process where the fair market value of the collateral has fallen substantially below the remaining indebtedness. If the debtor reaffirms, the entire debt is reaffirmed and the present value of the collateral is irrelevant. On the other hand, if the debtor wishes to retain the property, but not pay more than the property is worth, the alternative is to pay the full amount in cash immediately. Unfortunately, most, if not all, bankruptcy debtors are generally cash-poor making redemption an illusory remedy. Moreover, it is frequently the "higher than present value" debt situation with its frequently attendant excessive payment schedule that leads most consumer debtors into bankruptcy, making reaffirmation of questionable viability. The second deficiency in the reaffirmation/redemption scheme is the limitation of applicability to debts secured by so-called "consumer goods" - those items intended for the personal use of the debtor or debtor's dependents. Thus, if the collateral does not fall within the "consumer goods" category, neither reaffirmation nor redemption are available to the debtor. As a consequence without reaching an accommodation agreement with the creditor, the debtor can not retain the asset even if the debtor wants and is willing and able to pay the creditor the value of the collateral.

Chapter 13, on the other hand, provides a form of debt adjustment remedy for consumers and small proprietorships. A chapter 13 debtor may submit for bankruptcy court confirmation a plan that modifies the rights of the holders of secured claims as well as unsecured claims and provide for the payment of all or any part of allowed claims. [11 US § 1322(b)] In addition, in chapter 13, a debtor may invoke the stripdown feature of § 506 to reduce the secured debt on property to the present value of the property. There are limitations on the debtor's abilities to discount debts and certain minimum payments that must be made to holders of secured claims and certain obligations entitled to priority. However, on the whole, chapter 13 provides a vehicle for a debtor to retain property and pay for it over a period of time. In short, chapter 13 blends the best features of reaffirmation and redemption - reduction to present value and payment over time instead of a lump-sum payment.

The question is then, why not file a chapter 13 in the first instance? Only too frequently the reason is that when the unsecured "stripped-down" portion of secured debt is aggregated with the already existing unsecured debt, the debtor does not meet the unsecured debt $100,000 limitation of 11 US § 109(e). This is the *raison d'etre* for a "chapter 20": File chapter 7 to discharge personal liability on dischargeable debts (reducing unsecured debt to zero), followed immediately by a chapter 13 to deal with the remaining secured debts (and, to the extent they may exist, undischarged unsecured debts) over a period of time when reaffirmation or redemption are either unavailable, not particularly attractive to or, perhaps, economically unfeasible for the particular debtor.

When should a "chapter 20" be considered?

First, the debtor must, except for the excessive unsecured debt, meet the eligibility requirements of § 109(e) for a chapter 13, *i.e.,* be an individual with a regular source of income with noncontingent, liquidat-ed, secured debts of not more than $350,000. This means the fair market value of the collateral must not exceed $350,000. [Note: It is possible, but extremely tricky, to "shed" unwanted secured debt in chapter 7 by "abandoning" any interest in collateral to the secured creditor. If this method is to be attempted it has to be preceded by careful planning and aforethought, or it can lead to disastrous results.]

Second, the debtor must have sufficient disposable income to fund a proposed plan that meets the confirmation standards of 11 US § 1325.

Third, the debtor should not qualify in the first instance for chapter 13 relief. If a debtor would qualify for chapter 13 without having first undergone a chapter 7, the subsequent chapter 13 in a "chapter 20" is very possibly a bad faith filing subject to dismissal. This is particularly true if, after provision is made for payment of the undischarged secured or unsecured debt, excess disposable income exists that would otherwise have been applied to the now discharged unsecured claims. This situation presents a somewhat opaque attempt to circumvent the spirit and intent, if not letter, of the Bankruptcy Code. If, on the other hand, discharged unsecured claims would have received nothing in the way of payment if a "straight" chapter 13 were used, use of "chapter 20" does not result in prejudice to any creditor. [If past history is any indicator, practitioners should be aware that the Office of the U.S. Trustee will no doubt follow "chapter 20" filings closely to detect any signs of abuse.]

Finally, the situation should lend itself to a "chapter 20." A couple of illustrations exemplify the scope of the usefulness of "chapter 20."

1. A large otherwise dischargeable Federal tax liability with a Federal tax lien on file. While a debtor may obtain discharge of the unsecured portion of tax liability in a chapter 7, the tax lien, which attaches to all property and interests in property (including property exempt under 11 US § 522) of the debtor, will survive the bankruptcy and the debtor must still deal with the Internal Revenue Service post-discharge. "Chapter 20" can be the vehicle to resolve an impasse with the Service.

2. Where because of multiple judgments not avoidable under § 522(f), or various guaranties and cross-collateralization agreements (*e.g.*, SBA guaranteed loans and institutional loans to closely held businesses), significant debt encumbering personal assets exists, but the assets are worth considerably less than the aggregate of the debts. A "chapter 20," using § 506 in the chapter 13 phase to stripdown (or, in many cases where there are multiple liens, eliminate) the interests of the secured creditors eliminates the uncertainty that may otherwise result at the conclusion of a chapter 7 where the holder of the senior lienholder is (or may be) satisfied and the junior lien holders are unwilling to foreclose because of the manifest lack of equity. The debtor may be faced with a Hobson's choice: (1) retain the property by making the payments to the senior lienholder (which the debtor can afford to do, but not service the remaining debt) and run the risk that as the collateral increases in value and the senior debt is retired, a junior creditor may foreclose before the limitations period on enforcing the security interest expires, literally leaving the debtor out in the cold; or (2) simply abandon the property letting the holder of the senior encumbrance to foreclose. "Chapter 20" eliminates the risk in the first alternative by permitting a debtor to stripdown debt and, thus, generally eliminates the Hobson's choice.

"Chapter 20" has a multiplicity of potential applications where it is desired to keep property without retaining all the debt. Perhaps the best rule-of-thumb is to ask, would a chapter 13 be feasible and desirable in this case if only the unsecured debt were less than $100,000. If the answer is affirmative, one has a prime "chapter 20" candidate. If the answer is negative, a "chapter 20" is most likely not indicated. However, circumstances may change in the future and it may be that in 2 or 3 years a chapter 13 would be desirable and feasible; thus, in appropriate circumstances, counsel should advise clients of the availability of "chapter 20" and provide the client some guidance as to when filing a chapter 13 may be beneficial so the client may have some benchmark for future reference.

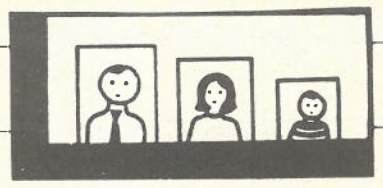
REMEMBER TO RENEW YOUR SECTION MEMBERSHIP!

Be sure to renew your section membership(s) on the back of your Bar Dues Notice. THERE IS NO AUTOMATIC SECTION MEMBERSHIP RENEWAL.

Membership in your first section is included in your Bar dues. Membership in subsequent sections is $10 ser section.

Associate Section members will receive a renewal notice in January 1992.

Please call Barbara Armstrong or Carol Woodstock at the Bar Office, 272-7469, if you have questions concerning your section membership.



People

Daniel Patrick O'Tierney and **Caren Mathis** had twin girls on December 8, 1991, Bryce Mathis and Maris Maeve.....**Bill Bonner** has closed his private practice and is now the section chief of the Oil, Gas & Mining section of the A.G.'s office.....**Jeri Bidinger** is now in Stirling, Scotland.....**Bob Casey** has relocated from Oregon to Juneau, where he is with the Division of Legal Services, Legislative Affairs Agency.....

Mark Davis, former Assistant U.S. Attorney, is now with Condon, Partnow & Sharrock.....**David Stewart** and **Dan Hickey** have formed the firm of Hickey & Stewart.....**Suzanne Ishii-Kegan** is now an associate with Hartig, Rhodes, et. al.....**Paula Jacobson**, formerly with Lane Powell, is now associated with the Law Offices of Luce E. Hensley.....

Victor Krumm is Of Counsel to Hickey & Stewart.....**Dwayne McConnell** is now living in Alamo, Texas . . . . . **James Nordale** has relocated from Fairbanks to Soldotna.....**James Ottinger** has returned from Kotzebue to Anchorage.....**Sean Parnell** has left Hartig, Rhodes, et.al. to start his own solo practice.....

Bryan Schulz, formerly with Ellis Law Offices, is now employed by Keene & Curall.....**Marie Sansone** is now with the Natural Resources Section of the A.G.'s office in Juneau.....**Sandra Wicks** is now the Deputy Director of the AK Dept. of Community & Regional Affairs.....**Jacqueline Bressers** is no longer with the Public Defender Agency. She has opened a limited family law practice in Anchorage.

Marvin Hamilton writes: In August of this year, I left the Alaska Public Defender Agency. My duty station had been Barrow. As the summer was ending, and the ice pack hinted its return, I was offered a two-year contract as the Public Defender, for the State of Yap, in Micronesia. Looking down the barrel of my fifth Alaskan winter, the little Pacific island shined like a jewel. Unable to resist its siren song, I threw my parka and Sorels into storage, and I headed south.

And **Laura L. Davis** writes: I'm an active member of the Colorado Bar but have closed my office and am mainly mothering my two boys, Erik and Scott Peterson (4 yrs. and 1-1/2). I've also just been nominated by the governor for appointment to the Colorado Water Quality Control Commission. I enjoy reading the *Bar Rag*.

Stewart to probe Cordova road

Attorney General Charles Cole has appointed Anchorage attorney David Stewart as a special counsel to investigate whether violations of state law may have occurred in connection with maintenance work done on the Copper River road this summer.

If violations are found to have occurred, Stewart is authorized to file appropriate charges, and prosecute them to their conclusion. Even if no violations are found, Stewart may still make recommendations as to administrative or disciplinary actions to be pursued.

"I feel comfortable with this appointment," Cole said. "Mr. Stewart's investigatory capabilities are strong and he is thorough. I expect him to exercise his professional judgment —to file charges if they are warranted."

This appointment is the second as a special counsel for Stewart, who most recently investigated charges against Bob Breeze, another Anchorage attorney, who had been accused of theft, forgery, misappropriation of property, and related charges in connection with this representation of a village corporation.

—Office of the Governor, Nov. 27, 1991

Cole appoints 3 at Law

Attorney General Charles Cole has appointed five new section supervisors for the state Department of Law. Three of the appointments are promotions from within the department, two are new hires. All five of the positions are in Anchorage.

Cole appointed James Forbes head of the Fair Business Practices section, Nancy Gordon head of Governmental Affairs and Craig Tillery supervisor of Environmental Litigation. Gordon has been with the department since 1984, Forbes since 1987 and Tillery since 1988.

The two new hires are William Bonner, named head of the Oil, Gas and Mining section, and Thomas Dahl, appointed head of the Transportation section. Bonner was the senior attorney for ARCO Alaska from 1983 to 1987, and has had his own practice in Anchorage since 1987. Dahl has been an attorney in private practice in Anchorage since 1977.

Soviet joins firm

Nikolai Shcherbina

Nikolai Shcherbina arrived in Anchorage from Vladivostok, Russia, on January 5, 1992, to do a three-month internship with the Hughes, Thorsness law firm.

Mr. Shcherbina is a lawyer and scientist, and a recognized expert in the field of ocean development. Most recently he has worked with the U.S.S.R. Academy of Science, and as a manager of a private law firm in Vladivostok.

During his stay in Alaska, Mr. Shcherbina will receive training in various areas of U.S. law, and provide instruction to his American counterparts on problems unique to representing clients doing business with the Republic of Russia. As part of his internship, Mr Shcherbina will spend time in all three of the firm's offices located in Anchorage, Fairbanks and Juneau.

Both Mr. Shcherbina and the lawyers at Hughes, Thorsness are excited about this opportunity to enhance their respective firms' abilities to serve clients, and intend to explore the possibility of a long-term relationship between the two firms.

--Ron Noel

Ripley completes course

Judge J. Justin Ripley, of the Superior Court in Anchorage, has completed "Judicial Writing," as well as an advanced judicial education course designed to reduce court backlogs by promoting early settlement of cases.

"Dispute Resolution" and the writing course were presented by The National Judicial College, October 27 - November 8. Judges participated in simulated settlement negotiations and were introduced to systems for handling cases outside the courtroom.

Hickel fills Valdez judgeship

Governor Walter J. Hickel named Anchorage District Court Judge Glen C. Anderson to fill a vacancy on the Valdez Superior Court for the Third Judicial District. Anderson has been a district court judge since 1978.

"Judge Anderson has a distinguished record as a jurist in Anchorage," Hickel said, "I am pleased to be able to appoint him to the Valdez position. He recognizes the separation of powers in state government, and believes each person is personally accountable for personal actions. I think Judge Anderson will serve the people of Alaska well at Valdez."

Anderson, 46 is married with one child. He is a graduate of Colorado State University, and holds a Juris Doctorate from Willamette University College of Law. He has lived in Alaska for 17 years.

Anderson replaces Judge John Bosshard III, who retired in February after 15 years.

—Office of the Governor, Nov. 27, 1991

Bar's benefit plans are performing well

BY BOB HAGEN

All three of the Bar Association's benefit plans for members are growing rapidly:

Life Insurance: The Bar's term life insurance plan, through Safeco Life, now has over 750 participants. Although death benefits totalling $300,000 have been paid through it in the past eighteen months, the overall ratio of premium to claims for the past five years is still favorable.

The plan was marketed to Safeco under the premise that Alaska attorneys are a hardier breed than most—there being no law school in the state, members of the Alaska Bar are healthy enough to make the conscious decision to practice in our somewhat rigorous climate. We still don't know if this assertion has a basis in fact, but it did enable Safeco to deliver what may be the best association-sponsored benefit plan in the country.

Health Insurance: Our group health plan through Blue Cross has grown by almost 20 per cent in the past four months and now insures over 500 employees. Larger law firms are finding it their most economical group health choice. For smaller firms, it is often the only avenue to a true group plan with dental, maternity, and vision coverage.

Since June 1, claims under the plan have been running at only about 60 per cent of premium. This is quite low and should be an indication, at last, of some long-term premium stability. If the plan has a cumulative surplus of premiums over costs, the funds would be used against the remainder of past deficits. The rest would be used to off-set future premiums.

Disability Insurance: After a year and a half, our disability insurance program through Unum finally is getting the attention it deserves. Thirty policies have been written through the program. Our agreement with Unum requires them to provide guarantee-issue once 35 policies are written, so we are close to this important milestone.

Unlike the Bar's life and health plans, which are under group contracts, the disability program consists of individual policies and no overall premium and claims statistics are kept.

After examining the policies and rates of a number of disability insurers, the Bar Association agreed to sponsor Unum in return for a fifteen percent premium discount for its membership. Unum writes more noncancellable disability insurance on attorneys than any other carrier.

The Bar's high levels of participation in our group insurance programs has helped make quality coverage available for all our members.

Civil and Criminal Pattern Jury Instructions and Supplements Available from the Alaska Bar Office

Civil Instruction: $120
Supplements: $20
1988
1991

Criminal Instructions: $100
Supplements: $20
1985
1988
1989

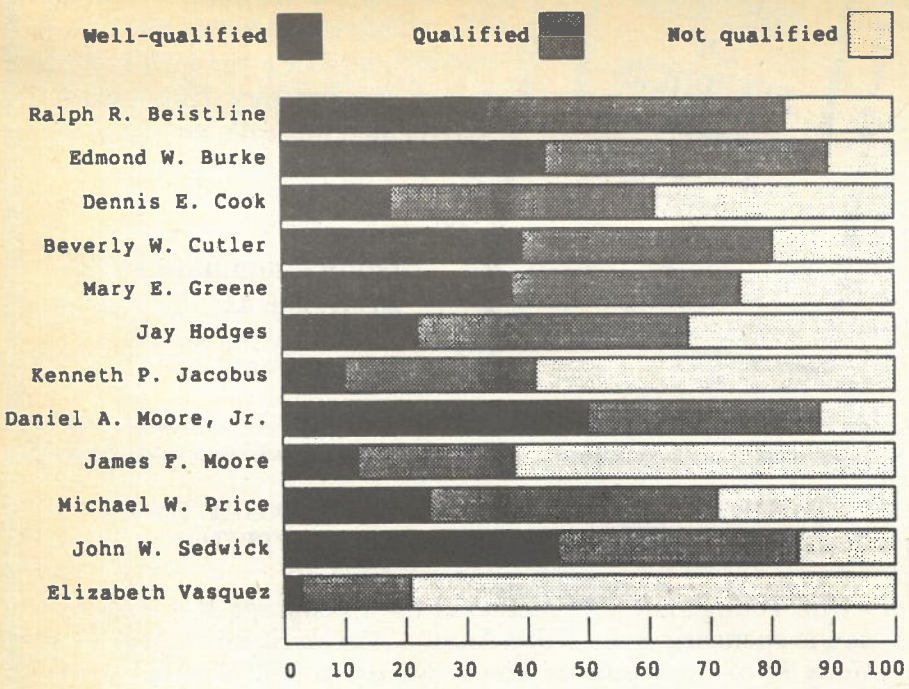
If you need a complete set of instructions, or any of the supplements, contact the Bar office at 272-7469.

BUSINESS IN NORTH DAKOTA?

North Dakota law requires every secured party to REFILE between January 1, 1992 and June 30, 1992 all UCC financing statements filed in North Dakota. Any financing statement not refiled in the filing office where the original was filed by June 30, 1992, WILL LAPSE at midnight on June 30, 1992. N.D.C.C. section 41-09-28.1.

Complete instructions for refiling are contained in Bulletin #1 "UCC/CNS Central Indexing System Re-Filing Procedures" available free from the North Dakota Secretary of State, 600 East Boulevard Avenue, Bismarck, ND 58505-0500. Telephone: 701-224-3662, Fax: 701-224-2992.

Alaska Bar Association Ratings of the Qualifications of Candidates for the U.S. District Court, December 1991



	Well-qualified		Qualified		Not qualified		Total
	N	%	N	%	N	%	N
Ralph R. Beistline	143	33.4	210	49.1	75	17.5	428
Edmond W. Burke	380	43.2	404	46.0	95	10.8	879
Dennis E. Cook	48	17.9	116	43.3	104	38.8	368
Beverly W. Cutler	304	39.3	317	41.0	152	19.7	773
Mary E. Greene	274	37.4	276	37.7	182	24.9	732
Jay Hodges	145	22.2	288	44.2	219	33.6	652
Kenneth P. Jacobus	85	9.9	272	31.6	505	58.6	862
Daniel A. Moore, Jr.	448	49.9	341	38.0	109	12.1	898
James F. Moore	6	12.0	13	26.0	31	62.0	50
Michael W. Price	96	23.9	189	47.1	116	28.9	401
John W. Sedwick	219	44.9	192	39.3	77	15.8	488
Elizabeth Vasquez	12	2.9	73	17.9	322	79.1	407

Row percentages.
All ratings of all respondents.

Want to settle a wage case? Ask the judge

BY BARBARA KISSNER

From the relatively minor disputes that are found in the small claims courts to the billion-dollar claims arising from the Exxon Valdez oil spill, courts generally encourage the parties to settle. In fact, even some attorneys and their clients prefer settlement over lengthy, expensive trials.

While this attitude is often beneficial to those involved, the Alaska Supreme Court has made it clear that not all cases can be settled by the parties.

In November, Alaska's highest court held that, under the Alaska Wage and Hour Act (AWHA), employers and employees may NOT privately settle claims for liquidated damages; judicial approval must be sought. *McKeown et.al. v. Kinney Shoe Corp,* (Op. No. 3774, Nov, 15, 1991).

The dispute arose a few years ago when some employees decided to pursue wage claims against the Kinney Corporation and its affiliates Footlocker and Lady Footlocker. To strengthen their case, the employees found others, both present and past employees, with similar complaints and moved for class certification.

At this point, Kinney proposed settlement offers tailored to each individual's claims. About 70 of the 300 employees accepted Kinney's offer. The remaining sought not only the class certification, but also to challenge the settlement offers. The trial court certified the classes, but did not find anything inherently wrong with the settlements as a whole.

The court ruled, however, that the offers could be challenged individually for reasons such as duress or coercion.

The class of employees and former employees were not satisfied, so again they challenged the validity of the settlements, this time on appeal to the Alaska Supreme Court.

The court first noted the policy behind the AWHA: to protect the health, efficiency and well being of workers. To effectuate this purpose, the AWHA contains many remedies, including a provision for liquidated damages in an amount equal to an employee's actual unpaid overtime. Thus, an employee is entitled to more than just his or her due compensation. The liquidated damages provision is just one of the means contained in the AWHA to promote the policy of protecting the employees by punishing a violating employer.

The court reasoned that, if an employee sets out to prove such violations and the employer then entices the employee to settle, the employer may escape without liability or sanctions. This countermands the purpose of the liquidated damages provision, which is not to compensate the employee, but to punish the violating employer. Thus, the employee's capacity to settle for a lesser amount should be restricted, reasoned the court. The court supported its holding for judicial approval of AWHA claims with federal court interpretations of the Fair Labor Standards Act. While wage disputes arise all the time, the resolution of these claims changes when the case involves unpaid overtime issues. The Alaska Supreme Court has made it clear that private settlements of unpaid overtime and the accompanying liquidated damages must first receive judicial approval.

This may be news for some large employers. According to John Casperson, counsel for plaintiffs, some large, national employers have wage and hour plans that work in other states, but may not work under Alaska's AWHA. Casperson described the situation as a "trap for the unwary" to the extent these employers think they can simply settle the claims.

David Grashin, lead counsel for plaintiffs, agreed that most large out of state employers do not realize that Alaska laws have strict requirements for the payment of overtime wages. As shown by this case, when disputes arise over these requirements, a private settlement, not judicially approved, is not the answer. The precise answer, however, is yet to be determined, as the Alaska Supreme Court did not provide any guidelines on the settlement formalities.

JUDGES NEEDED FOR THIRD ANNUAL HIGH SCHOOL MOCK TRIAL COMPETITION

The Young Lawyer's section of the Anchorage Bar Association is sponsoring the Third Annual Alaska State High School Mock Trial Competition. The competition will be held in Anchorage on March 6 and 7, 1992. The competition will consist of teams from High Schools around the state who will either defend or prosecute a hypothetical civil law suit dealing with educational malpractice.

The winner of the competition qualifies for the National High School Mock Trial Competition in Madison, Wisconsin in May, 1992.

Attorneys are needed to act as competition judges. Competition judges may serve as the "trial judge" as well as scoring the competitors. Judges are needed for both Friday, March 6, and Saturday, March 7. Donations are also needed to help subsidize the State champion's trip to the national competition.

Anyone interested in serving as a competition judge or providing a donation should contact:

Michael D. White
Hartig, Rhodes, Norman, Mahoney & Edwards,
717 "K" Street
Anchorage, Alaska 99501-3397
276-1592 (ph)
277-4352 (fax)

Court appointments due for 1992 review

BY SCOTT A. BRANDT-ERICHSEN

The State Supreme Court has been considering Changes to Administrative Rule 12, Appellate Rule 209 and Criminal Rule 39 for some time. The proposed changes affect the appointment of, and payment for, court-appointed attorneys.

While the court has not officially adopted the rule changes, final action on the rules was expected on Jan. 20, 1992.

The rule changes will apply to all criminal appointments as well as civil appointments under Rule 12, such as for children in matters where the parent or guardian is financially able but refuses to employ counsel.

The main thrust of the rule changes provides for assignment of permanent fund dividend checks to cover the cost of court-appointed counsel, and automatic entry of judgment against the defendant, or in the case of a child, against the parent, guardian or custodian, in an amount determined by the court depending upon type of proceeding and the extent of attorney representation.

The court appointed attorney would have an affirmative duty to inform the court if he or she learns of a change in the financial status of the client which would render the client ineligible for appointed counsel. The attorney further would be required to move to withdraw if he or she reasonably believes that the person has made a material misrepresentation of the financial status.

Materiality for this purpose is evaluated as such information as would render the client ineligible for court appointed counsel. Generally, but not in all cases, the attorney would not be required to disclose the nature of the misrepresentation.

The court would be able to review the defendant's financial condition at any time to examine continuing indigence or the correctness of the prior indigence determination. If the indigent classification were removed, a judgment for actual costs or discontinuation of appointment could occur. For each of the criminal matters, the costs would only be imposed upon conviction. After conviction, the court would issue a notice of costs and fees. If no objection is filed within 10 days, the clerk would enter the judgment. If such objection were made, it would not preclude entry of the judgment, but would require the court to determine whether to enter the judgment.

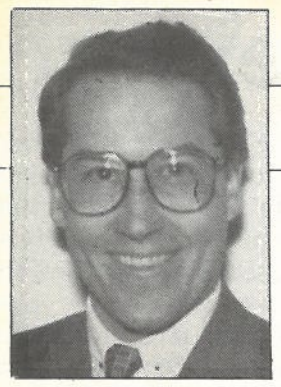
In the case of attorneys appointed to represent children, the judgment against the parent, guardian or custodian would be for the representation cost to the state up to $500. For criminal cases two separate cost schedules would apply, one for appeals and one for trial court disposition. The proposed rule sets standard amounts but allows court discretion, in appropriate circumstances, to fix the amount of the judgment at a higher or lower level.

The guidelines for appeal fees range from $2,000 for a combined merit and sentence appeal of a felony case, to $250 for a misdemeanor sentence appeal. For representation on the trial level the guidelines call for assessment of up to $5,000 for a trial on first or second degree murder charges, with a lower guideline of $200 for a change of plea in a misdemeanor matter. Post conviction relief proceedings are also included at the suggested rate of $250 for misdemeanors and up to $750 for some felonies. The presumptive fees for other types of proceedings fall in between the high and low for each of the two schedules, appeals and trial court proceedings.

In collection on the judgment the state, in the case of children's matters, or the prosecuting authority, in the case of criminal matters, could obtain, by assignment, permanent fund dividends of the party against whom the judgment is entered. These assignments, like other executions in criminal matters, would be used to collect on the judgment beginning three years after release of a criminal defendant unless the court finds good delay requirement.

The assignment or permanent fund dividend checks would take place through execution in blank of an assignment of sufficient permanent fund dividend checks to satisfy the judgment. The assignment would take place at sentencing. If a convicted defendant refuses assignment, the court would execute the assignment on behalf of the defendant under Civil Rule 70. Defendants would also execute a general waiver authorizing release of income information at the time of receiving court appointed counsel.

The rule changes, if adopted, are not scheduled to become effective until July 1, 1992. The court should complete action on the proposed changes prior to publication of this article. This article is intended to describe the general terms and defers to the court's final action for specific requirements.



Estate Planning Corner

By Steven T. O'Hara

Is there such a thing as a simple Will? Most would agree there is, although I prefer the term "basic Will."

For purposes of this discussion, however, I submit there is no such thing as a simple Will in the following sense: Our clients' lives are not simple, but very complex, so the drafting of their Wills is a complex process.

For example, a major complexity is determining the assets and liabilities of a client. Clients often resist this part of the process, thinking that a Will is a standard document that does not need to be tailored to the client's particular circumstances. We all continuously hear the question/comment: "Don't you just have a form for that?"

A client's request to sign a "form Will" is like his calling a clothing store and asking for a suit. The clothing store may prepare and send the right size, but chances are it will not. Just as the clothing store must measure a client, so we must in order to fit the right Will to a client's circumstances.

The measurements that should be taken include not only property and tax considerations, but also non-financial considerations. For example, the most important issue in the drafting process is often the client's question: "Who will get our child?" The answer to this question can be simple, if all interested parties happen to be in agreement, but the question of guardianship can be as complex as the clients' lives.

For our part, we lawyers are sometimes tempted to try to fit our clients into forms, especially for cost considerations. Cost is an important factor. Not every measurement of the client can or should be taken. We should ignore, however, the apparent security a form suggests and recognize it merely as a starting point.

If, after tailoring a Will form to our clients'circumstances, the Will turns out to be basic, that is great. But, for this writer, the document should still not be described as simple.

Lawyer carves out diversions in Ketchikan

BY DAN BRANCH

Like most lawyers, I experience my share of stress. Friends living in cities tell me that they work off stress in health clubs or out on bike paths or the golf course. Folks in Ketchikan are not so lucky.

The only private gym in Ketchikan lacks shower facilities and First City golfers have to meet inside the Sons of Norway Hall to play their game. Bike-riding on the South Tongass Highway in winter is considered foolhardy.

This leaves bowling and bridge in winter and outdoor activities in the summer. Since I can't throw strikes or bid trump I chase away the wintertime blues by carving things out of wood.

I first started wood carving on a sunny spring day in Aniak. A week earlier, the Kuskokwim River ice broke up and then jammed just east of Upper Kalskag. I lived across the slough from town at the time and the ice jam kept me homebound.

The ice also severed the power line delivering electricity to our cabin. When I called Aniak Light and Power to see when they would fix the problem, the owner asked me if I had enough candles and camp stove fuel to last until freezeup in November. Out of frustration I grabbed a birch round from the wood pile and tore into it with my carpenter chisel. Somehow, a preening snow goose emerged from the tortured wood. I have been trying to understand the process ever since.

After we moved to Ketchikan I checked out the Totem Heritage Center. The center provides a place for people to learn carving from some of the best teachers in the Pacific Northwest.

Classes are usually centered around a particular project. For example, students may learn how to steam a bent wood box or carve a frontlet mask. Since the emphasis is on technique, few students have the time to design and carve their project. Most of us end up borrowing designs from museum pieces.

Last summer, during the dead time between the king and pink salmon runs I decided to carve something that I had designed on my own, using a nice alder log I had thrown into the pond behind our house the previous spring.

I started by fishing my alder log out of the pond and splitting it in half with a maul. This left two half-rounds 10 inches across and two feet long. Tossing one of the pieces back into the pond, I hauled the other one over to the front deck, grabbed my adze and waited for artistic inspiration. To my surprise, an idea surfaced. There was, I could see, a bowl inside the cream-colored wood. Hopefully, when people saw the finished finished product, they would think of the swells that tossed boats around the Tongass Narrows.

Placing the wood onto a yellow cedar chopping block, I hammered away with the adze until the log was reduced to a rough rectangle. A large pile of tree bark and wood chips lay on the deck. After cutting the rectangle to length with a hand saw, I drew a rough outline of the bowl on to the block and picked up the adze.

Adze strikes rounded the sides and shaped the top of the bowl. I felt like a spectator watching the adze work and wondered if I was experiencing artistic inspiration. I was about to run out and buy a beret when my wife returned home from a shopping trip. Looking at the roughed-out bowl, she said, "Oh, it looks like that Tupperware bowl we used to water the dogs in Aniak." So it did, I thought after she carried the groceries into our home.

I pushed ahead with the project and ended up with a serviceable little bowl with a clean design that allows folks to enjoy the patterns formed by the grain of the alder. My friends who don't spend a lot of time reading the Sears catalog think it is nifty.

I never did buy the beret.

• Whining over Woody dogs Ketchikan judge

Continued from page 1

of [a dog's] value as a Pet was not a valid basis for compensation." *Richardson v. Fairbanks North Star Borough,* 705 P.2d 454, 456 (Alaska 1985). The opinion implies a notion fetching to James, that Woody is merely property to be divided like old shoes. "Howl, howl, howl, howl! O, you are men of stones...," *King Lear*, Act V, Scene III, and this court holds that the warp and woof of *Richardson* is inapposite in these sensitive times.

The primary caretaker custody rule takes a number of factors into account in establishing which natural or adoptive parent is the primary caretaker. The court determines which parent has taken primary responsibility for the following caring and nurturing duties:

> (1) preparing and planning of meals; (2) housing, bathing, grooming, and dressing (3) purchasing, cleaning, and care of clothes; (4) medical care, including nursing and trips to physicians; (5) arranging for social interaction among peers after school, i.e. transportation to friends' houses or, for example, to girl or boy scout meetings; (6) arranging alternative care, i.e. babysitting, day-care, etc.; (7) putting child to bed at night, attending to child in the middle of the night, waking child in the morning; (8) disciplining, i.e. teaching general manners and toilet training; (9) educating, i.e. religious, cultural, social, etc.; and (10) teaching elementary skills, i.e. reading, writing, and arithmetic.
>
> ...Where the primary caretaker parent achieves the minimum, objective standard of behavior which qualifies him or her as a fit parent, the trial court must award the child to the primary caretaker parent.
>
> ...Where a child is old enough to formulate an opinion about his or her own custody the trial court is entitled to receive such opinion and accord it such weight as he [sic] feels appropriate. When, in the opinion of the trial court, a child old enough to formulate an opinion but under the age of 14 has indicated a justified desire to live with the parent who is not the primary caretaker, the court may award the child to such parent.

Garska v. McCoy, 278 S.E.2d 357, 363 (W. Va. 1981). *See J.B. v. A.B.,* 242 S.E.2d 248 (W. Va. 1978) (discussion of primary caretaker rule in terms of maternal preference.)

Obviously, some of the factors above are irrelevant here. Woody is not a child; he is not dressed, clothed, and has not and probably will not receive religious, reading, writing, and arithmetic training. All other factors appear relevant. Applying the facts, as presented to the court by affidavits submitted by the parties, shows the following are beyond genuine dispute:

(1) Elizabeth and James are the adoptive parents of Woody; they obtained him in 1986.

Continued on page 15

• Jim bites the bullet

Continued from page 14

(2) Elizabeth is now preparing and planning Woody's meals.

(3) Elizabeth is accessible to Woody's veterinarian.

(4) Elizabeth arranges for Woody's social interaction, i.e. providing him with the company of one "Lady."

(5) Elizabeth arranges for alternative care by leaving Woody with a friend while she works.

(6) Elizabeth presently puts Woody to bed and rises with him.

(7) Elizabeth and James both trained Woody to hunt.

(8) Elizabeth avers, and James does not dispute, that she is a positive influence on Woody.

Arguably, Woody has a preference for his custody. But, that cannot be known without an evidentiary hearing replete with quibbles and bits signifying little. "A dog hath a day," Proverbs I, ch. 11, but not in this court. On balance, the court is convinced that Elizabeth is the primary caretaker of Woody. As such, she is awarded his custody. Accordingly, his value shall be attributed to her in the parties' subsequent property division.

IT IS SO ORDERED.

Dated in Ketchikan, Alaska this 3rd day of October, 1991, *nunc pro tunc* to August 18, 1988.

THOMAS M. JAHNKE
Superior Court Judge

Verdicts and Settlements

Thomas Michel v. FMC Corp. Plaintiff was severely injured when a crane impacted a high voltage wire. He was holding the craneload at the time of impact. He sued the product manufacturer.

Injuries: Amputation of right arm at shoulder; amputation of both legs just below knees.

Special damages awarded: $3 million plus.

Edward Mitchell v. Susan Humphrey Barnett (Dept. of Health & Social Services). Prisoner slipped and fell on greasy kitchen floor and alleged head injury. He later fell on steps and alleged ankle injury.

Verdict: $0.

ALPS declares dividend

At a special meeting of the Board of Directors, a dividend of five percent was declared for 1988 (its first year of operation) ALPS policyholders. The dividend will be presented to policyholders renewing with ALPS during 1992. Policyholders may choose to have the dividend reduce their 1992 premium or assign it to their respective Bar Association Foundation to help make legal services more accessible to all segments of their community.

In making the announcement, Robert W. Minto, Jr., President of ALPS said, "We are delighted to be able to keep the faith with those lawyers of vision who accepted the ALPS concept early on and supported our company. Our ability to declare this dividend is the direct result of an excellent 1988 claims history, the professionalism of our insureds and the continued support of our reinsurers."

"Our experience continues to be excellent," he continued, "and while our final numbers are not in for 1991, both the growth in our written premium and surplus (which should exceed $46 million and $4 million respectively) and a stability in both the frequency and severity of our claims, bode well for the future of this company."

The full text ot the ALPS Board of Directors Resolution reads as follows:

DECLARATION OF DIVIDEND WITH RESPECT TO 1988 POLICYHOLDERS RENEWING IN 1992

WHEREAS, the 1988 reinsurance year tentatively settled with payment of $344,725.98 in additional profit commission; and,

WHEREAS, Management believes that the few remaining 1988 claims will close without effecting final settlement; and,

WHEREAS, the Board of Directors want to return a portion of that profit to those 1988 policyholders who renew their ALPS policies in 1992;

NOW THEREFORE BE IT RESOLVED that ATTORNEYS LIABILITY PROTECTION SOCIETY, A Mutual Risk Retention Group declare a dividend to those 1988 policyholders who have remained continuously insured with the company and renew their policies in 1992, in an amount equal to five percent of the premiums paid in 1988;

BE IT FURTHER RESOLVED that such a dividend be payable at the time of renewal of coverage in 1992, as a reduction of the insureds 1992 premium, or at the insured's election, by assignment to their respective State Bar Association Foundation or other similar entity in accordance with a uniform plan established by management and the various State Bar Associations.

New sales rep joins ALPS

Robert W. Minto Jr., ALPS president and CEO, announced that Curtis J. Antonson joined the company as a marketing/sales representative, as of Jan. 1.

ALPS is a mutual insurance company providing professional liability insurance to attorneys and firms located in the states of Alaska, Delaware, Idaho, Kansas, Montana, Nevada, North Dakota, South Dakota, Vermont, West Virginia, and Wyoming.

Antonson's responsibilities will be the servicing of existing insured accounts in all 11 ALPS states; and devising and executing marketing and promotional programs directed at new customers. In addition he will have extensive responsibility in the area of professional education and loss prevention.

Antonson, 47, received a Bachelor of Science in Business Administration (marketing) from the University of Montana in 1966.

ALPS

BONNIE HENKEL
Vice President, Claims Manager

TIP OF THE MONTH

A Guide to Survival in the Practice of Law

PAPER TRAILS OF PROTECTION:

✓ The latest ploy in legal malpractice actions is an allegation borrowed from the medical malpractice arena: lack of informed consent. When a client claims you didn't provide him with adequate information to make an informed decision, or that you didn't divulge material facts he needed, you'll be one of the contestants in the old swearing match if you didn't document your file.

✓ Put all important advice to your client in writing, and keep file memos, handwritten notes and telephone messages that will thoroughly document the history of your client's case. Don't rely upon your memory, practice defensive documentation. Your recollection and an empty file folder won't hold up to scrutiny very well when a claim is made against you.

In real life, the bureaucracy falls behind

The motion

Put him in jail

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
MAURICE PETERS)
aka CHESTER)
DOB: 04-13-37)
AK/ID: 157821)
SSN: 007-34-3112)
)
Defendant.)
)

Case No. 3AN-S91-3578 Cr.

PETITION TO IMPOSE SENTENCE FOR FAILURE TO SATISFY COMMUNITY WORK SERVICE OBLIGATIONS

The State of Alaska petitions this court to impose the suspended sentence in the case entitled above. In the above case, on July 15, 1991, the defendant was convicted by the Honorable Judge Beckwith of the crime of Misconduct Involving Weapons in the third degree and the defendant received a sentence of: 45 days to serve in jail with 45 days suspended and a $250 fine. The defendant is on probation until July 15, 1992.

The conditions of probation include, among other things, that the defendant was to complete 24 hours of community work service within 45 days.

It is alleged that on or about 18th day of September, 1991, the defendant did violate the conditions of probation by not completing assigned work.

An "Affidavit of Noncompliance" is attached hereto as Attachment 1 and is made a part of this petition.

Wherefore, the State of Alaska petitions this court to impose the sentence in the above-entitled case. The State requests the issuance of a Summons.

DATED at Anchorage, Alaska this 19th day of November, 1991.

CHARLES E. COLE
ATTORNEY GENERAL

EDWARD E. MCNALLY
DISTRICT ATTORNEY

By: Susan Wibker
Assistant District Attorney

The answer

Ross kills the case

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
Plaintiff,)
)
v.)
)
MAURICE PETERS)
aka CHESTER)
DOB: 04-13-37)
AK/ID: 157821)
SSN: 007-34-3112)
)
Defendant.)
)

Case No. 3AN-S91-3578 Cr.

RESPONSE TO PETITION TO IMPOSE SENTENCE FOR FAILURE TO SATISFY COMMUNITY WORK SERVICE OBLIGATIONS

Comes now Wayne Anthony Ross, attorney for the Defendant, Maurice Peters, a/k/a Chester Peters and responds to the State's Petition to Impose Sentence For Failure To Satisfy Community Work Service Obligations as follows:

1. The Defendant has performed all of the community service work he will ever perform.

2. The Defendant is not going to do any more community service work than he has already performed.

3. The State of Alaska cannot force the Defendant to do any more community service work.

4. This Court cannot force the Defendant to do any more community service work than he has already done.

5.The Defendant is not going to report to jail, no matter what the State of Alaska says.

6.The Defendant is not going to report to jail, no matter what this Court says.

7. The Defendant is not going to respond to any Summons issued by the State.

8. The Defendant is not going to respond to any Summons issued by this Court.

9.The Defendant has left the confines of the State of Alaska.

10. The Defendant has left the jurisdiction of this Court.

11. Even the Defendant's attorney, miracle-worker that he sometimes is, cannot get the Defendant to return here.

12. Someday, the Defendant's attorney may see the Defendant again, but Defendant's attorney hopes that won't be for quite a while yet.

13. Someday the Assistant District Attorney handling this case may see the Defendant again, but Defendant's attorney, a charitable man, hopes that the Assistant District Attorney on this case won't see the Defendant for quite a while yet either.

14. The Defendant's attorney assures the Assistant District Attorney that the next time she sees the Defendant, all will be forgiven, and she will have no desire to prosecute the Defendant in ay way.

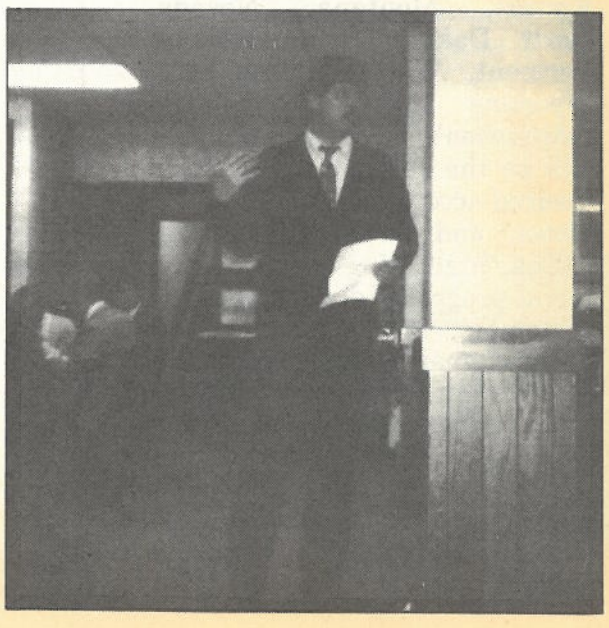
15. The Defendant's attorney believes that the Defendant had no intention of being contemptuous of this Court although Defendant's attorney believes Defendant may be smiling at all of us right now.

16. Defendant was summoned by a higher Court, responded promptly, and thus cannot appear here.

17. The Defendant died on August 27, 1991.

Dated this 3rd day of December, 1991.

ROSS, GINGRAS & MINER
A Professional Corporation
By: Wayne Anthony Ross
Attorney for Defendant



Bob Noreen talks to the post at the TVBA meeting in Fairbanks as fellow TVBA diners think about their food.

TANANA VALLEY BAR

The TVBA met on October 25 in sufficient numbers to have a good time. Gail officiated, and Dan Winfree's rendition of the minutes were read, with several corrections.

First, Pat Kennedy is President of Alaska Bar Association not the Anchorage Bar Association — clearly a translation gaff on my part as the idea of a true Bar Association in Anchorage remains an unlikely concept.

The second correction was Mr. Winfree's remark that a jury had the gall to call me away from my duties as TVBA secretary. That should read, a group of 6 outstanding jurors sought advice before rendering the appropriate verdict of Not Guilty upon Mr. Noreen's client.

After the introduction of guests, District Court hopeful Ralph Beistline announced a publication of attorneys jokes was imminent. He said the delay was primarily due to the censoring required.

Our Ninth Circuit Judge announced he had invited the presiding Circuit Chief Judge to our next luncheon who would be visiting from Pasadena. We agreed to give him a warm welcome, but suggested he be informed our luncheons generally didn't qualify as Rotary make-ups. Special entertainment was suggested, however, treasurer Chris Zimmerman indicated considering the United Way contribution, anticipated funding of the Christmas shopping trip for poor kids, and Andy's recent reception (not necessarily in that order) our resources had shrunk so we better plan small.

Therefore, the committee on small planning unanimously decided U.S. District court hopeful Ralph Beistline could tell some of the censored attorney's jokes. Ralph opted to be out of town.

These had been difficult weeks — talk centered on the Senate hearings and the Braves and Twins, and we all saw Jane Fonda sitting next to our favorite ANWR fly fisherman, Jimmy Carter.

Fortunately, the TVBA has medicine for these types of ills — we tell Fred Crane stories and that we had done the week before. Attached is a brief excerpt.

Robert S. Noreen
Secretary, TVBA

FRED IS DEAD
A poem by Robert Sterling Noreen

This tale should be told when it is very cold
For it is about a colleague now deceased.
Once well gassed, the statute of limitations having passed,
The truth about Fred Crane can be released.

Fred arrived in this land, sanctions in hand,
Banished from Idaho in 1920.
Statehood arrived and Fred had survived,
Inspiring Northern Admirers a plenty.

Fred lobbied for years and brought many to tears
For a bar convention located in Nome.
His verbal skill and considerable strong will
Caused the bar to travel to Nome.

Delegates from afar met at the Board of Trade bar,
Awaiting Fred Crane Esquire.
Soon some became mad, some thought they had been had,
For dear Fred had chosen to expire.

Stored in Nome's vault, not necessarily his fault,
Fred's face was a frozen grin.
Business proceeded, another vote needed,
For a quorum was needed to win.

Even a stiff would suffice was the inebriated advice,
And a raid on the vault should be noted.
Thus motions were made, legal precedent laid,
for from the Bar's corner Fred had voted.

The grave was prepared, the coffin ensnared
By ropes and pallbearers of good will.
Alas, one soon tripped; the coffin was flipped,
The clumsiness of one Bangkok Bill.

Fred landed face down his nose in the ground,
A position for eternity thought best.
'Twas known far and near, this posture was dear
Fitting for Fred, laid to rest.

For Nome buries its dead like cordwood instead
Where burial fees are disputed.
Those present know that the coffin below
Housed a madam quite ill reputed.

Humor on the record

COURT AND DEPOSITION TRANSCRIPTS

A Well, it was just a tight chest; you know, having a hard time, you know, catching air.

Q Okay. And did this come on suddenly?

A Yeah. It was the first time I've experienced it.

Q Where were you when it came on?

A In bed.

Q Okay. Sleeping, or were you —

A You really want to know?

Q Well, I just want to know about if it was activity-induced.

A I was having sex.

Q I'm so glad I asked.

ATTORNEY 1: I think you could say it was activity-induced.

Q And had you had a cigarette any time around this time?

THE WITNESS: Off the record?

ATTORNEY 2: No.

ATTORNEY 1: No.

THE WITNESS: No, of course I was not smoking during sex. My wife asked me once, do you smoke after sex. I said, I've never looked down there to see.

ATTORNEY 1: You asked.

(Midnight Sun Court Reporters)

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New legal organization seeks nonprofit assistance

The passage of the Americans with Disabilities Act (ADA) P.L. 101-366 has opened new legal avenues for deaf and hard of hearing people nationwide. A group of attorneys, including deaf, hard of hearing, and hearing attorneys wishing to serve the hearing impaired are setting up a new national legal nonprofit organization.

Some of the initial goals of this new organization include,

• Providing information relating to deaf issues of ADA and related fields for attorneys and judges wishing to know more about these areas.

• Providing a national referral list of attorneys able to serve the deaf and hard of hearing populace.

• Meeting at least annually to learn how to better serve the deaf and hard of hearing community.

Deaf and hard of hearing attorneys (i.e., government, private law firms, corporations or law students, etc.) are wanted. Hearing attorneys with the ability to communicate with deaf or hard of hearing persons and those attorneys whose offices are accessible to deaf and hard of hearing clients are also strongly encouraged to join this organization.

A national meeting is tentatively being planned for Denver, Colorado for late June, 1992. Please contact Leonard Hall for more information. His phone is (913) 782-2600 V/TDD. A survey is being done to determine the needs of the organization. Please write to Leonard Hall c/o the organization's postal address: P.O. Box 106, Olathe, Kansas 66061-0106 for a copy of the survey and more information on the proposed organization.

PROBATE NEWS

By Robert Manley

Wealth and people do not stay put any more. It is common for Alaskans to move Outside and establish a new domicile after retirement. Such emigrants often retain ownership of both real and personal property located in Alaska.

When such people die, the issue of ancillary probate comes up. Many states require a complete probate proceeding including appointment of a personal representative, publication of notice to creditors and estate administration with regard to all assets in the ancillary jurisdiction despite a complete probate proceeding in the domiciliary jurisdiction. The Uniform Probate Code as adopted in Alaska provides several concurrent or alternative procedures to simplify the administration of an estate with multi-state contacts. In most situations, no ancillary probate or administration are necessary.

Provided no probate proceedings are pending in Alaska, a domiciliary foreign personal representative (the personal representative appointed at decedent's domicile) may file authenticated copies of the order or letters of appointment and any bond with the Superior Court in a judicial district in which property belonging to the decedent is located. AS 13.21.030. Once that filing is accomplished, the domiciliary foreign personal representative may exercise all powers of a local personal representative with regard to assets located in Alaska. AS 13.21.035. This procedure is generally known as "qualification by filing." It is important to note that the copies filed must be authenticated instead of simply certified.

The authority of a domiciliary foreign personal representative is terminated by an application for local administration. AS 13.21.040. This sometimes occurs when local creditors are concerned about the removal of assets from the jurisdiction or where a branch of the family residing in Alaska desires to participate in or monitor administration more closely.

With the powers granted under AS 13.21.035, the domiciliary personal representative can sell real or personal property and issue deeds or bills of sale to the purchasers all without seeking court approval. AS 13.16.355 and .410. Persons purchasing property in good faith and for value from a domiciliary personal representative who has qualified by filing are protected as if the personal representative properly exercised his or her powers. AS 13.16.405.

A domiciliary personal representative who has qualified by filing may also issue deeds of distribution or other transfer documents to the appropriate heirs or devisees. AS 13.16.355 and .410(27). Where such distribution is ultimately found to be improper, the distributee is liable to return the property, proceeds and related income. AS 13.16.575. This potential liability expires at the later of three years after the decedent's death or one year after the time of the distribution unless the claim is otherwise barred. AS 13.16.645. A will contest based on a late discovered will is usually barred three years after the decedent's death under the general presumption of intestacy. AS 13.16.040.

Purchasers for value from distributees take title free from the rights of interested persons in the estate whether or not the distribution was proper. AS 13.16.580. Alaskan title companies will generally issue owner's policies based on a deed from a domiciliary foreign personal representative who has qualified by filing or based on a deed from the distributee who has acquired title from such a personal representative.

In the ordinary course, once the qualification by filing has occurred no additional pleadings are submitted to the court in Alaska and any administration issues are handled in the domiciliary probate. The regular Superior Court filing fee of $100 must be submitted along with the pleadings for qualification by filing.

Qualification by filing will cover the vast majority of ancillary probate situations. Any personal representative who makes distributions or sells assets without specific court approval is exposed to some risk of liability. In most ancillary situations the personal representative will deem the exposure to be insignificant either because

Continued on page 19

• Probate notes

Continued from page 18

of the family situation or the small size of the Alaska estate.

As noted above, local creditors sometimes initiate ancillary administration because they are concerned about a disposition of assets by the domiciliary foreign personal representative. Published notice to creditors in the domiciliary jurisdiction will generally bar unpresented claims in the ancillary jurisdiction. *See, e. g.,* AS 13.16.460 (a) and 1 R. Wellman, *Uniform Probate Code Practice Manual* 423 (2d ed. 1977). This is subject to the limitations of *Tulsa Professional Services, Inc. v. Pope,* 485 U.S. 478 (1988) which held that due process considerations make notice by publication alone insufficient to bar known or reasonably ascertainable creditors. Where the estate is insolvent, the Uniform Probate Code as adopted in Alaska establishes a system of marshalling, priorities and distribution of assets. AS 13.16.520 and .525 and AS 13.21.045.

In order to be effective to prove title to property, a will must be declared valid by an order of informal probate or a formal adjudication by the court. AS 13.16.010. Thus, if a personal representative is unwilling to issue a deed of distribution, it is necessary to undertake at least an informal probate of the will in Alaska. Such a probate does not require the separate appointment of a personal representative. AS 13.16.035 and .080.

To avoid the risk of an Alaskan will contest without undertaking an Alaskan probate a personal representative can obtain an appropriate formal court order in the domiciliary jurisdiction. An Alaska court is obligated to respect orders entered in formal proceedings at the domicile regarding the validity and effectiveness of wills. Such proceedings must involve notice to and an opportunity for contest by all interested persons. AS 13.16.175. A will is valid in Alaska if executed in compliance with the law of decedent's domicile. AS 13.11.175.

The Uniform Probate Code as adopted in Alaska provides for flexible handling of ancillary probate situations. In most cases assets can be sold or distributed with little or no legal expense by means of qualification by filing.

For additional information on ancillary probate, see 1 R. Wellman, *Uniform Probate Code Practice Manual* ch.16 (2d ed. 1977); Lerner, *The Need for Reform in Multistate Estate Administration,* 55 Tex. L. Rev. 303 (1977); Vestal, Multiple-State Estates Under the *Uniform Probate Code,* 27 Washington & Lee L. Rev. 70 (1970).

Summary of discipline imposed

The Alaska Supreme Court affirmed a decision to publicly reprimand attorney Patrick Conheady of Juneau for engaging in conduct prejudicial to the administration of justice.

Conheady represented the wife in a divorce. The court ordered the pro per husband to pay a $75 sanction directly to Conheady. The husband's check bounced. Conheady did not seek relief from the court or meet with the husband in private. Instead, he went to the husband's workplace and, in front of coworkers and customers, confronted him with the NSF check. In a loud voice, Conheady called the husband a "son of a bitch" and demanded payment.

Bar Counsel found that Conheady's conduct undermined public confidence in lawyers and the legal system, but that the misconduct was isolated and relatively minor. Bar Counsel therefore issued Conheady written private admonition for violating DR 1-102(A)(5).

Conheady rejected the discipline and invoked his right to public hearing. The hearing panel found misconduct and recommended that Conheady be reprimanded. On review, the Disciplinary Board of the Bar approved the reprimand. Conheady appealed to the Alaska Supreme Court, arguing that his conduct was not improper and that the unavailability of private discipline after he exercised his right to a hearing violated due process. The court rejected these arguments and affirmed the public reprimand in a memorandum opinion and judgment of November 20, 1991.

PROGRESS REPORT

By the shores of the Mediterranean Sea,
A scant twenty to ten thousand years ago,
Lived a most unusual strain of humanity,
Whose importance we're just beginning to know.

Our recent, well-financed excavations have failed
To find among their bones, the implements of war.
What is more, no altars or shrines were revealed.
No images of gods were discovered, either.

With painstaking care, we've uncovered villages
Where we expected to find the usual signs,
Among the buildings, of wealth and privilege:
e.g. raised platforms and intricate designs.

Each dwelling was the same! "What sense," we ask,
"Does this make? How could they have done without
Gods, arms and leaders? And how could they pass
Through their lives with no plan to kill doubt?"

Right now, the sum of what we can say about them is
Only that they lived ten thousand years in peace,
These most fortunate, deprived, peculiar primitives,
Whose special knowledge we have yet to release.
Harry Branson

Humor on the record

Cross-Examination of Witness

Q Did you believe him when he said that?

A No, I knew he was lying.

Q How did you know that?

A His lips were moving.

(Haugh & Associates)

****

Q When he went, had you gone and had asked and had she, if she wanted to and were able, for the time being excluding all the restraints on her not to go, gone also, would he have brought you, meaning you and she, with him to the station?

MR. BROOKS: Objection. That question should be taken out and shot.

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Crime has humorous cases

The state's Media Support Center, which gathers and reports news from state agencies, periodically digs out "bizarre news from Alaska's Law Department," some of which is excerpted here.

Assistant D.A. Terry Fikes prosecuted a jury trial in which a man was charged with two counts of third-degree assault for pointing a firearm at his neighbor in a trailer park in Mountain View. After he pointed the weapon, he barricaded himself in his trailer and police were called. Ten hours later, they tear-gassed the trailer and arrested the man without injury.

Although Fikes objected, Judge Rene Gonzalez disallowed as evidence all the defendant's prior bad acts associated with firearms. The judge also suppressed the fact that the defendant had in his possession four other firearms and fake booby traps, and had dug a bunker six feet deep under the floor of his living room.

The jury convicted him, anyway.

•

New D.A. Ken Goldman entered his first jury trial facing a recanting assault victim, who claimed that her boyfriend had a knife in his hands only because he was cutting chicken. She told the court it was an unfortunate accident that he fell and punctured her foot. She blamed the charges on the "fast-talking" D.A. who never gave her a chance to tell the truth to the grand jury. Goldman won the case, anyway.

•

In Bethel, a local defendant (who represented himself in court), was convicted of first-degree misconduct involving weapons.

The defendant's former girlfriend testified that she had seen him with a handgun on two occasions, target practicing and hunting. On cross examination, the defendant asked her if she had seen him with a handgun on any other occasions, and she recalled the time he got ripped off in a cocaine deal.

Another girlfriend also testified that she had seen him on a specific date with a handgun. On cross examination, the defendant asked how she could possibly recall the date so accurately. She said she remembered because it was exactly two weeks after the defendant had beaten her up and choked her with a telephone cord.

Bar thanks 161 participants

CLE Honor Roll 1991

We want to acknowledge the contribution of and participation by the following Bar members as faculty, program coordinators, Planning committee members and/or video replay coordinators for our 1991 CLE programs. Without their hours of volunteer assistance, the Bar CLE programs would not be possible.

Abbott, John
Anderson, Robert
Bankston, William
Bell, Keith
Berkowitz, Herbert
Billingslea, Sidney
Block, Richard
Blumstein, Philip
Bortnick, Alexander
Bottini, Joseph
Branson, Kevin
Brecht, Julius
Brelsford, Gregg
Brena, Robin
Brink, Robert
Bundy, David
Burgess, Timothy
Caldwell, William
Callahan, Daniel
Carlson, Craig
Case, David
Caufield, Barbara
Cowan, Robert
Cox, Susan
Clover, Joan
Crandall, Krissell
Cravez, Glenn
Crosby, Peter
Damrau, Mason
Daniel, Thomas
Davis, Mark
DeYoung, R.R.
DiPietro, Susanne
DuBrock, Roger
Duerre, Ralph
Dunsmore, Dean
Eggers, Kenneth
Ennis, Dee
Faghin, Nichole
Feldman, Jeffrey
Feuer, Wendy
Foster, Gary
Franklin, Barbara
Friedman, Richard
Funk, Ray
Gleason, Sharon
Grace, Joanne
Greer, Steve
Grover, Parry
Holen, Lee
Holland, Marcia
Hood, Barbara
Ingram, David
Jamin, Matthew
Johannsen, Richard
Johnson, Christine
LeRoy, Erik
Leyba, Kenneth
Lindemann, Mike
Linton, Bob
Linxwiler, Jamie
Lucas, Thomas
Luke, Jacquelyn
Lyle, George
Manley, Robert
McCarrey, J.L.
McNall, William
Mersereau, David
Mestas, Dennis
Miller, Lloyd
Noreen, Bob
O'Hara, Steve
Orlansky, Susan
Parker, Douglas
Perkins, Joseph
Peterson, Drew
Peterson, John
Phillips, Elizabeth
Platt, Janet
Price, Michael
Reges, Mala
Reichlin, Jerald
SanBers, Esic
Schadt, Gordon
Schendel, William
Schneider, Michael
Shaftel, David
Sharp, Gerald
Shea, Wevley Wm.
Smith, Michael
Stanley, James
Steiner, John
Tatka, Thomas
Turner, Terrance
Vallentine, Diane
VanBrocklin, Valerie
VanGoor, Stephen
Wickersham, Kirk
Wicks, Sandra
Wilcox, Paul
Winfree, Dan
Winner, Russell
Yerbich, Thomas
Zalewski, Mary Ellen

Gucker, George (Judge)
Hitchcock, William (Master)
Hodges, Jay (Judge)
Hunt, Karen (Judge)
Jahnke, Thomas (Judge)
Kleinfeld, Andrew (Judge)
Link, Jonathan (Judge)
MacDonald, Donald (Judge)
Schulz, Thomas (Judge)
Sivertsen, John (Magistrate)
Souter, Milton (Judge)
Steinkruger, Niesje (Judge)
Weeks, Larry (Judge)
Wolverton, Mike (Judge)
Zervos, Larry (Judge)

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Block, Richard L.
Bonner, William J.
Brink, Robert C.
Bundy, David H.
Burgess, Timothy, M.
Carter, Mickale C.
Christian, William
Cravez, Glenn
Daniel, Thomas M.
Davis, Mark
Foley, Maryann E.
Gleason, Sharon L.
Holen, Lee
Holland, Marcia E.
Ingram, David A.
Kirk, Kenneth C.
LeRoy Erik
Linxwiler, James D.
Lucas, Thomas R.
Miller, Lloyd B.
O'Hara, Steven T.
Schadt, Gordon F.
Shea, Wev
Steiner, John L.
Tindall, John H,
Witt, Marshall
Yerbich, Thomas J.

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Damrau, Mason
Fabe, Dana (Judge)
Felix, Sarah
Funk, Raymond M. (Chair)
Hanson, Brian E.
Hensley, Dan A.
Ingram, David A.
Leyba, Kenneth P.
Loescher, Joseph R. D.
Olson, Paul
Peterson, John W.
Pinkel, Mary B.
Reeves, James
Vance, Leon T.

All Bar Section Executive Committees and CLE Planning Committees. We regret any omissions or errors.

• Movies

Continued from page 7

the basic plot and key characters of the original "Cape Fear" are intact. It's just that Scorsese has seen enough films in his time to know how to make one entirely different.

Scorsese has the ability to show on screen — almost by sleight of hand — things that become shocking and unpredictable.

Robert De Niro is absolutely perfect as a smiling, small-eyed, mean ex-convict who has spent the last 12 years of his life planning a brutal and sadistic revenge, not only on the attorney who did not represent him properly, but on his wife and daughter. His body is decorated with numerous tattoos he acquired during his imprisonment. The Biblical quotations are especially apt, and on his back is a huge black cross from which dangles the scales of justice. Cady is a crazy man, who poisons the family dog, brutally rapes and savagely beats Nick Nolte's paralegal paramour, nearly seduces the uncertain daughter Daniele (Juliette Lewis) on a high school thespian stage, finally kidnapping and imprisoning the entire family aboard a houseboat on the river.

Jessica Lange, as Mrs. Bowden, is angry, resentful and jealous.

All-in-all the Bowden family parallels the lives of many professionals in small-town America. This, of course, is what makes it easier for psychopath Cady to work his sadistic revenge.

Every serious reviewer has given this "Cape Fear" and Martin Scorsese four stars. It's not a film for the squeamish. "Cape Fear" is a suspenseful, shocking, replay of guilt and obsession, a wonderfully crafted, technically superb film that hits like a powerhouse.

So powerful, in fact, that it woke me up out of a deep sleep on two separate evenings — not unpleasantly, but not on purpose, either. I'm going to go see it again. Why don't you let yourself be shocked at least once yourself?