The Light Side

Rodents, Russians, and Rag Reform

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The Alaska BAR RAG

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LAWYERS IN SPORTS BRIEFS —PAGE 13

A tribute to a great prosecutor

Editor's note: Municipal Prosecutor Jim Wolf was shot and killed on December 9, 1994, at his home in Wasilla. His colleague and friend Allen Bailey delivered the following eulogy at the memorial service on December 16.

Jim Wolf was a legal intern in the Anchorage D.A.'s office when I first met him; it was in 1974, I think. I was the last Anchorage borough prosecutor then. Jim finished law school and returned. I had been struck by his

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Carlson may be retired, but he's working

By Joyce Weaver Johnson

Resigning his Superior Court judgeship didn't mean retiring to a life of idleness for Vic Carlson.

One recent Thursday morning, he could be found doing repairs at a house he rents out, baking pastry for a dinner party, drafting a position paper on village justice, and fielding phone calls -- roughly one every 10 minutes--in connection with his extensive volunteer activities.

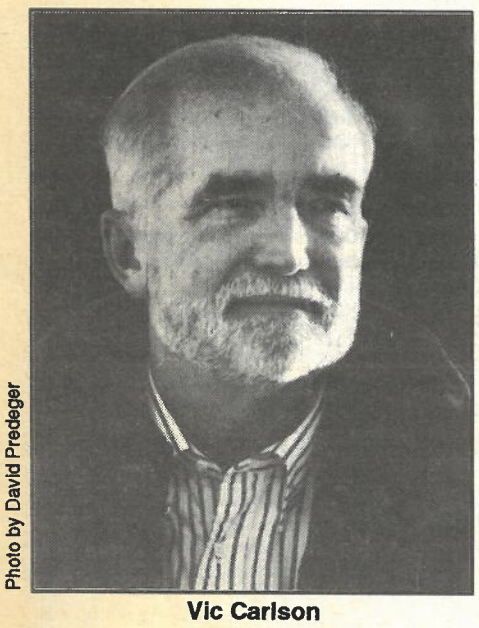

Photo by David Predeger

Vic Carlson

The overall impression he gives now, as during his two decades on the bench, is one of intensity, energy, and seriousness of purpose. What is he serious about these days?

- The need for a village justice system to handle misdemeanors, child-in-need-of-aid, and delinquency cases. "It's the only way I can see that we're going to get people to 'buy in' to governing themselves. I want them to take responsibility," to have the sense that they "own the system."
- The need to shelter, feed, comfort and counsel Alaskans with HIV or AIDS.
- The need to keep Alaska the kind of open, welcoming place that so many of us were pleased to find when we first came.
- The need to provide positive role models for gay and lesbian teenagers. As sons and daughters of straights, seeing only straight adults around them, gay teens often feel defective, which may lead them to do crazy things, take undue risks, even commit suicide. If their only concept of how gay people live is to hang out on a downtown street corner waiting for a pickup, then they will be exposing themselves to danger. They need to see examples of "successful professionals and just successful people" who are gay, Carlson said.

In his own case, the lack of role models may have been painful but he survived. Carlson's way of coping was to run away from himself--to Alaska. He said he has only recently figured out that's the answer to the question, "Why did you come to Alaska?" With its varied ethnic Native population and Cheechakos from all over the nation and the world, Alaska offered breathing room, freedom from the expectations of folks back home. For away from family, one develops friendships; friends here really depend upon each other, he said.

With bachelor's and law degrees from the University of Michigan in Ann Arbor, ROTC and active Navy service (mostly on Adak) behind him, Carlson was working in Chicago when he had an interview with then-assistant attorney general Avrum Gross at Ann Arbor. Carlson ended up accepting a job offer and came to Alaska to work as an assistant AG in Juneau for Ralph Moody, Gov. Bill Egan's attorney general. The year was 1962.

Next, Carlson served as an assistant district attorney in Fairbanks; assistant city attorney in Anchorage; borough attorney for the Greater Anchorage Area Borough, holding that post from 1966 to 1969; and public defender for the State of Alaska. In 1970 he was appointed to the Superior Court bench, serving in Sitka, Juneau and Anchorage until he resigned in 1991.

For about eight years of that, during the 1980s, his caseload was primarily family and children's matters, including child-in-need-of-aid; delinquency; and divorce, custody, support and domestic violence. He volunteered for it. Why? Because of all areas of the law, this one was "challenging." It's "where people live," or perhaps where they are "the most real," Carlson suggested. "When you're dealing with your kids, that's when [you] show who [you] really are."

What he has found most satisfying throughout his career, Carlson said, is "where I could help show

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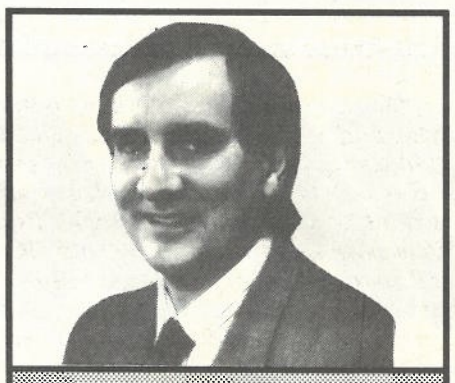
President's Column

I'm glad you asked that question



Daniel Winfree

I'm glad you asked that question #1: No, despite what it said in my last column, I do not scald the associates at our firm, even when they should be in hot water. I scold, not scald. On the other hand, if the *Bar Rag* editor can't do a better job of proofreading, we might scald him.

I'm glad you asked that question #2: No, the Board of Governors has not secretly created and is not about to spring on you a rule requiring malpractice insurance coverage as a condition to practicing law. As I have indicated in previous columns, we are investigating many of the issues that relate to this matter. Here's where we are:

How many Alaska lawyers are in private practice without malpractice insurance? Our present guess is 30 percent-40 percent, but we do not know for certain. What are the ramifications of a significant percentage of uninsured attorneys? There are significant risks that clients may not be able to obtain appropriate compensation in the event of malpractice. On the flip side of the coin, uninsured attorneys run a significant risk of personal financial catastrophe in the event of malpractice, which can lead to serious problems for other clients and the public.

Some jurisdictions are moving to alleviate these risks. You all probably know that Oregon has a mandatory insurance program based on member assessments to a self-governed fund. The assessments are a part of a private practitioner's annual dues, and the program includes liability coverage in the amount of $300,000/$300,000, a full scale loss-prevention program tied into existing CLE programs, and a program specifically tied into the prevention, evaluation and management of substance abuse problems. Virginia has a court rule titled "Financial Responsibility" which requires an annual certification to the Bar about insurance coverage and the existence of unpaid judgments, and that information is made available to the public. California has embarked on a rule framework requiring disclosure of insurance information to clients in every fee agreement. Another option not currently being utilized by any jurisdiction is to simply require certification of insurance coverage as a condition of active practice.

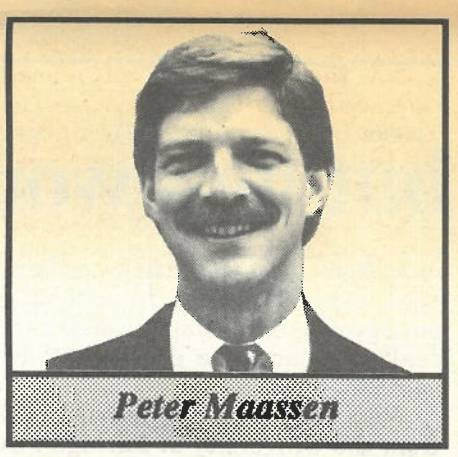
All of these models are available *for consideration* in Alaska. However, the fundamental question to be answered is whether there is a need for minimum financial responsibility rules for the practice of law in Alaska. In the abstract, I think most of us would agree that a minimum level of financial responsibility to clients (and to self) would be a good thing. In reality, we all should recognize that the answer to the question is inextricably linked to the practicality of any proposed solution. But to allay any fears of precipitous action, we are not yet in a position to answer the question. We are still asking the question. We won't do anything without you.

You can expect to receive informational requests from us in the near future, probably backed by a Supreme Court order mandating a response. We will be looking to determine the existing level of coverage amongst private practitioners, to determine your philosophical perspectives about minimum levels of financial responsibility, and to obtain your reaction to certain hypothetical frameworks to provide minimum levels of financial responsibility in Alaska. I'll bet you can't wait.

I'm glad you asked that question #3: Yes, my term expires in five long months. Why did you ask, anyway?

Editor's Column

GOP contract with America is model for *Bar Rag* reform



Peter Maassen

In light of the angry mood of the electorate, and specifically in light of several complaints we've received lately about the *Bar Rag* editor's proofreading skills (*see*, for instance, the Presidential Admonition From Above, *supra*), the *Bar Rag* staff has decided that it is time to look into sweeping institutional reforms here at your Bar Association newspaper.

In these turgid times, what better model for reform than the Congressional Republicans' Contract With America? To quote loosely from that noble document, the time has come for us "[t]o restore accountability to [the *Bar Rag*] ... [and] end its cycle of scandal and disgrace."

With that end in mind, here are our proposals for bettering the *Bar Rag,* which we submit to you, our public, for approval, along with our recommendations as to how you should vote.

Equal application of laws. Should all laws that apply to the rest of the country apply equally to the staff of the *Bar Rag*? Frankly, we don't think so. How can our reporters cover hot-breaking courthouse news without immunity from parking tickets? How can we continue our long tradition of investigative journalism without being able to pack protective hardware in all public places, courtrooms included? Why should I have to obey the speed limit on my way to writers' meetings, knowing that the turkey sandwiches are always the first to go? This one's easy: Vote "No."

Line-item veto. Should the editor have the authority to analyze each line of text and strike out verbosity and bad writing? Again, frankly, we don't think so, as it would implicitly require him to *read* the entire paper, which wasn't in his job description.

Cut staff by one-third. There is a suspicion out there that a newspaper of this caliber could not be created on a regular basis without an enormous staff of faceless, unelected people operating in the shadows, totally unaccountable to anyone. This may or may not be true. Should we cut the staff by a third? Perhaps, but see below for potential ramifications.

Three-fifths majority for price hikes. Do you want to make it more difficult for us to increase the price of this newspaper? Are you a few bricks shy of a load? Realistically, however, you have nothing to lose by voting "Yes" on this one, since once we've cut a third of our staff, three-fifths of the two-thirds remaining is either too complicated for us to figure out or somewhat less than a whole person.

No more proxy writing. Do you want to know who is really hiding behind those fancy Hollywood-style pen names like "Winfree" and "Branch?" I sure do. Vote "Yes" on this one.

No more unfunded mandates. It seems that at least once in every issue, perhaps even in this very space, some well-intentioned but thoughtless writer (a liberal, no doubt) beseeches you to write the *Bar Rag* and express an opinion on some issue of the day — *without even thinking that in order to do so, you'll have to go out and buy a stamp.* To redress this unfunded-mandate problem in the future, should every issue of the *Bar Rag* come with a pre-addressed, stamped envelope for letters to the editor? This provision of our Contract could require a substantial increase in the subscription price, funded by your Bar dues, but that, in turn, will require a three-fifths majority vote of the editorial staff, and you know how that goes. So why not vote "Yes?"

Personal Responsibility Act. Should the Bar Association pay the *Bar Rag* writers a premium for every child they have, in or out of wedlock? Far be it from me to try to influence you on this one, but Johnny, Freda, Billy, Gretchen, Doug, and the triplets all say, "Tell them how sad our Christmas was, Daddy, with no presents and nothing to eat but uncooked barley."

Bar Rag Security Restoration Act. Should the staff of this paper be prohibited from serving under editors appointed by the United Nations or any other foreign-born puppets of the New World Order whose editorial skills have not been honed to their sharpest in the matchless crucible of American democracy? We think not. It's always nice to meet new people, especially those from other neighborhoods. Vote "Nyet."

The Citizen Editor Act (term limits). It's been proposed that the *Bar Rag* editor be allowed to serve no longer than the most senior member of Alaska's Congressional delegation, lest he totally lose touch with the Bar membership and allow the perks of the position to go to his head. But tell me, am I out of touch? Don't I always write on topics of professional concern and use this space to give valuable, practical advice on how to make yourself a better lawyer?

You needn't bother voting on this one -- I think I know your answer. So when Dan Winfree retires from the presidency, let's make *him* the editor.

The Alaska BAR RAG

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Letters from the Bar

Domestic violence response

Here are some facts for Marvin Clark to include in a follow-up to his "opinion" on domestic violence. I am the Deputy Chief Prosecutor for the Anchorage Municipal Prosecutor's Office. After reading his article, I pulled the 21 domestic violence assault cases submitted for out-of-custody intake on November 21, 22, and 23, 1994 (the week before the *Bar Rag* appeared) as a random, representative sample. Thus the intake decisions on those cases were made before I read Mr. Clark's article.

Of the 21 cases submitted in those three days, seven, or 33 percent, involved women arrested by the Anchorage Police Department for domestic violence assault. Of those six were arrested for assaulting men. The other was arrested for assaulting her teenage daughter. Only one case was declined. This is not an anomaly: Women as well as men are regularly prosecuted in Anchorage.

The Municipal Prosecutor's Office has had a "no-drop" policy on domestic violence cases for over a decade. In fact, the Municipality had the first "no-drop" policy in Alaska, adopted at a time when the approach was extremely controversial. The Prosecutor's Office has a Domestic Violence Unit of three attorneys and one investigator. These resources are important and necessary.

Anchorage shows a 37% per capita increase in reported domestic violence between 1991 and 1992; this percentage represents almost a doubling of reported cases per capita from 1989. Anchorage's reported rate of domestic violence is 11.7 cases per 1,000 inhabitants as compared to the national rate of 6.2 cases per 1,000 inhabitants as estimated by the Uniform Crime Report.

I agree with Mr. Clark's thesis that society's response to domestic violence should be gender blind. The Municipal Prosecutor's Office works hard to make sure it is. I also agree with his subthesis that the current system of domestic violence restraining orders can be manipulated—by both parties.

What I do disagree with, and violently, is Mr. Clark's belittling of a serious problem by resorting to crude stereotypes of Southern stupidity; his hostile, obvious attempt to worsen the situation by negating any improvements that have been made and further divide people into alienated groups of "us" and "them"; his condescending attitude that men should enjoy some preferences because they "cleared the land" and "willingly shed" sacrificial blood (all without the benefit of any help by those lazy pioneer women and overlooking the fact that men barred women from military service); and his extrapolation of his personal experience elsewhere with the realities of prosecution and social resource expenditure in Alaska.

I hope all members of the bar will continue to search for ways to make justice equitable and accessible to all, but the solution is not to "put our pants on" only for ourselves, but to button each other's coats and make sure we are each dressed warmly for the cruel world that may confront us.

And in case any of you are wondering, this letter is **my** personal opinion, and does not necessarily reflect the current or any administration's position.

—Carmen E. ClarkWeeks

Observe the oath

My daughter, Michaela, and other attorneys were recently admitted to practice in Alaska.

Prior to being sworn in, she was required to read and swear to the "Oath of Attorney." The Oath read as follows:

> *I will support the Constitution of the United States and the State of Alaska.*
>
> *I will maintain the respect due to courts of justice and judicial officers;*
>
> *I will not counsel or maintain any proceeding which shall appear to me to be taken in bad faith, nor any defense except such as I believe to be honestly debatable under the law of the land;*
>
> *I will employ for the purpose of maintaining the causes confided in me such means only as are consistent with truth and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;*
>
> *I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval;*
>
> *I will be candid, fair, and courteous before the court and with other attorneys, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;*
>
> *I will strive to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.*

For those of us who still practice law, these words are still applicable, but sometimes ring hollow. It would not seem inappropriate that licensed attorneys take this Oath every 5 years. It could not hurt and it would remind all of us of why we became attorneys in the first place and would reinforce the collegiality between the members of the bar.

—Leonard T. Kelley

Half right

I was pleased to see my name pop up in the Bar People column. However, the information is only 50 percent correct. It is true I now office principally in Norwich, Vermont. I continue to practice as a Heller Ehrman White & McAuliffe partner, and I spend some time in San Francisco. The reason for my Northeast situs is that I am one-half time with the faculty at Dartmouth College. I work on a collaborative project with one of the Russian Institutes concerning Russia's legal business and political systems. I am most fortunate my Heller Ehrman White & McAuliffe partners were wise enough to permit this joint activity on my part.

Thank you very much.

—Weyman I. Lundquist

Security access protest

Please count myself and Doug Burke as in favor of a system that gives attorneys direct access to the court house upon presentation of our Bar Associations cards. That to us seems secure enough and balances safety and practicality.

—Jerry Markham
—Doug Burke

Open Letter to the Courts and the Bar

Do away with court security system

(Editor's note: The following letter was addressed to the appellate court judges, the presiding judges of the trial courts, and the president and executive director of the Alaska Bar Association. Mr. Weidner's cover letter to the Bar concludes that "while I trust that the judiciary will respond in an appropriate fashion, in the absence of same, I would suggest that litigation on behalf of members of the Bar be considered.")

As reflected by recent correspondence in the *Bar Rag,* and further, as has been reported to me by a number of fellow members of the Bar, there is considerable dissatisfaction with the fact that members of the Bar are being subjected to mandatory searches upon entering the courthouse.

While the merits of the security system that is in place as to the general public may be the subject of differing opinions and in fact raise major constitutional implications,[1] the question of subjecting officers of the court to repeated daily searches when attempting to enter the courthouse to represent their clients presents even more sensitive issues.

In particular, it would appear to be impossible to justify such activity in the face of constitutional challenges since there is no factual basis for any claim of "reasonable suspicion" or "probable cause" to feel that such officers of the court present any type of threat or require any such security measures.

That is, obviously as members of the Bar and officers of the court, there is no reason to feel or basis to suspect that they would participate in any type of activity that would constitute any type of danger to court personnel or others.

Thus, it appears that requiring members of the Bar to routinely submit to such searches as a condition of practicing law is a *fortiori* unconstitutional activity and is in violation of their rights to privacy, due process, equal protection, and rights against unreasonable search and seizure under both the United States and Alaska Constitutions.[2]

As noted, unlike situations presented by "border searches" or "airport screening," the courthouse is a public courthouse, and the judiciary has a corresponding obligation to allow members of the Bar access to same to practice their professions without routinely encountering a "roadblock" and a "warrantless search" without even reasonable suspicion, let alone probable cause, said search invading one's pockets, briefcases, purses, and other areas in which there is a reasonable expectation of privacy.[3]

Irrespective of the unconstitutional implications of such practice, it is quite simply an insult to the profession.

At the same time I recognize, of course, that certain considerations may have existed with regard to the timing of the implementation of the system and the desire to avoid any complications that might impinge on the efficiency of same.

Accordingly, it would seem that a simple solution that would alleviate the problem for attorneys and still maintain the concerns of the Bench and the court administration would be simply to instruct security personnel by way of a standing order

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Bemused view??

One of several reasons I resigned from your organization some years ago was illustrated on the front page of the November-December issue.

How the bar can take a bemused view of the decrease in funding for Alaska Legal Services is beyond me.

I believe that one of the more important jobs of the bar is to use its great power, in every community in which there are lawyers, to argue the importance of law for all; that there is no justice unless poor people have access.

And I do not mean just the family law, domestic violence service now accorded a few communities. I mean the major reforms of Alaska law brought about by Alaska Legal Services over the years, over the strong objections of the establishment. And of course, now, even the family law-domestic violence service is only available on a limited basis.

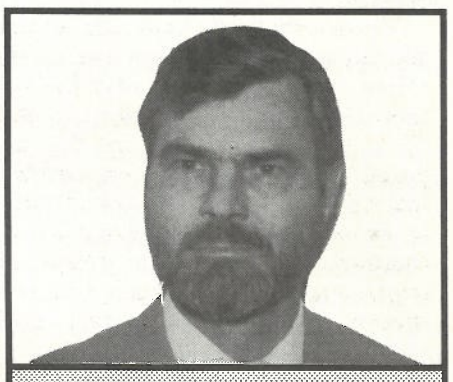
The advent of oil and "big time law" sidetracked Alaska's efforts to bring justice to Alaska's poor. And I feel there is little hope that the your organization will ever pull its head out of its anus to look at the needs of those other than lawyers.

—Richard Whittaker

(Editor's note: The Bar Rag did not intend the article's perspective to be "bemused," and neither the writer nor editorial staff can understand how it could have been read that way.)

Bankruptcy Briefs

Discharge of property settlements



Thomas Yerbich

HR 5116, the Bankruptcy Amendments of 1994 [PL 103-394], includes several provisions of particular import and concern to family law practitioners. One provision, § 304 (e), amended § 523 (a) to except from discharge certain property settlement obligations incurred in connection with a separation or divorce by adding thereto a new subsection (15) as follows:

> (15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless--
>
> (A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or
>
> (B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;
>
> * * * *

The Committee Report accompanying *HR 5116 [H.R.Rep. 103-835]* explains the underlying purpose of the amendment to § 523 (a):

"Subsection (e) adds a new exception to discharge for some debts arising out of a divorce or separation agreement that are not in the nature of alimony, maintenance or support. In some instances, divorcing spouses have agreed to make payments of marital debts, holding the other spouse harmless from those debts, in exchange for a reduction in alimony payments. In other cases, spouses have agreed to lower alimony based on a larger property settlement. If such `hold harmless' and property settlement obligations are not found to be in the nature of alimony, maintenance or support, they may be dischargeable under current law. The nondebtor spouse may be saddled with substantial debt and little or no alimony or support. This subsection will make such obligations nondischargeable in cases where the debtor has the ability to pay them and the detriment to the nondebtor spouse from their nonpayment outweighs the benefit to the debtor of discharging such debts. In other words, the debt will remain dischargeable if paying the debt would reduce the debtor's income below that necessary for the support of the debtor and the debtor's dependents. The Committee believes that payment of support needs must take precedence over property settlement debts. The debt will also be discharged if the benefit to the debtor outweighs the harm to the obligee. For example, if a nondebtor spouse will suffer little detriment from the debtor's nonpayment of an obligation required to be paid under a hold harmless agreement (perhaps because it could not be collected from the nondebtor spouse or because the nondebtor spouse could easily pay it) the obligation would be discharged. The benefits of the debtor's discharge should be sacrificed only if there would be substantial detriment to the nondebtor spouse that outweighs the debtor's need for a fresh start.

"The new exception to discharge, like the exceptions under Bankruptcy Code section 523 (a) (2), (4), and (6) must be raised in an adversary proceeding during the bankruptcy case within the time permitted by the Federal Rules of Bankruptcy Procedure. Otherwise the debt in question will be discharged. The exception applies only to debts incurred in a divorce or separation that are owed to a spouse or former spouse, and can be asserted only by the other party to the divorce or separation. If the debtor agrees to pay marital debts that were owed to third parties, those third parties do not have standing to assert this exception, since the obligations to them were incurred prior to the divorce or separation agreement. It is only the obligation owed to the spouse or former spouse-an obligation to hold the spouse or former spouse harmless--which is within the scope of this section."

Unfortunately, H.R.Rep. 103-835 provides little guidance in applying § 523 (a) (15). What standards are applied in making the determination of whether or not a property settlement obligation arising out of a divorce or separation is discharged? Section 523 (a) (15) contains a "bilateral" test requiring examination of the financial circumstances of both the debtor and the nondebtor spouse or ex-spouse.

The first element, debtor's "ability to pay," essentially mirrors "disposable income" in § 1325 (b) (2). Thus, case law interpreting § 1325 (b) is useful, if not controlling, in applying the "ability to pay" element. [For a further discussion of "ability to pay," *see generally* 5 King, Collier on Bankruptcy, ¶ 1325.08 (15th ed)]

The second element of § 523 (a) (15) ("substantial detriment") has no existing counterpart; however, it is sufficiently analogous to § 523 (a) (7) ("undue hardship") that student loan cases may, with modification, guide the court in making a decision. A test similar to the three-prong Brunner test adopted in this district [*Alaska Commission on Postsecondary Education v. Jester,* 1 ABR 503 (D.Ak 1991)] may be appropriately applied to determine if discharging the debt will result in substantial detriment to the other party. A two-prong test is suggested: (1) the party cannot maintain, based upon current income and expenses, a "minimal" standard of living for himself/herself and the party's dependents; and (2) additional circumstances beyond the control of the party exist indicating that this state of affairs is likely to persist for a significant period of time.

To satisfy the first prong, the party has a duty to use the party's best efforts to maximize income. To satisfy this condition the party must demonstrate that the party is making a strenuous effort to maximize personal income within the practical limitations of the party's vocational profile (education, training, and experience) [*See e.g., In re Healey,* 161 BR 389 (ED.Mich 1993); *North Dakota State Board of Higher Education v. Frech,* 62 BR 235 (Bkrtcy.Minn 1986)] Moreover, conditions of diminished income should not be "self-imposed" or "self-created." [Cf. *In re Boston,* 119 BR 162 (Bkrtcy.WD.Ark. 1990); *In re Comer,* 89 BR 744 (Bkrtcy.ND.I11 1988)] Although a question of federal law, state court decisions in this area may be persuasive: e.g., *Zimin v. Zimin,* 837 P2d 921 (Ak 1992) (income averaging); *Coghill v. Coghill,* 836 P2d 921 (Ak 1992) (current income not representative); *Kowalski v. Kowalski,* 806 P2d 1368 (Ak 1991) (voluntary unemployment)

The "minimal" standard of living aspect is somewhat more troublesome. Unquestionably § 523 (a) (15) requires the party to make some sacrifices before discharge will be excepted. While the party obviously should not be permitted to live in the lap of luxury, it does not appear that Congress intended one's standard of living necessarily be reduced to a penurious existence. Perhaps the most equitable test is to set a threshold of "lower middle class" (whatever that is) with the proviso, in keeping with the balancing of equities approach mandated, that the party's standard of living should not be reduced below that the debtor will enjoy postbankruptcy. If the parties are placed in economic parity, the benefit to the debtor would not outweigh the detrimental consequences to the other party.

The second prong requires the party to demonstrate that unique or exceptional circumstances beyond the control of the party, such as illness, lack of job skills, large numbers of dependents, or a combination of these, exist that preclude the party from earning greater income or reducing expenses. [*See e.g., In re Mathews,* 166 BR 940 (Bkrtcy.Kan 1994)]

Bankruptcy courts have adopted nine factors to be considered in determining whether "undue hardship" exists that will allow discharge of student loan debt. [*See e.g., In re Ford,* 151 BR 135 (Bkrtcy.MD.Tenn 1993)1 At least six of these factors are relevant to the "substantial detriment" element. Paraphrased, these factors include: (1) total capacity now and in future to pay debts for reasons not within the party's control; (2) whether a good-faith effort to negotiate deferment or forbearance of payment has been made; (3) whether the substantial detriment will be long-term; (4) whether there is permanent or long-term disability; (5) ability to obtain gainful employment in either the vocational field of the party's choice or for which the party is qualified by reason of education, training or experience; and (6) whether a good-faith effort to maximize income and minimize expenses has been made. To this should also be added a seventh factor: the extent, if any, to which the obligations of the party are capable of satisfaction from other sources, including income of the current spouse, *i.e.,* consideration of "household income." [*See e.g., In re Epsen,* 149 BR 583 (Bkrtcy.WD.Mo. 1992)]

Another question is whether the outcome must be "all-or-nothing." That is, may the court, under its broad equitable powers pursuant to § 105 (a) fashion such relief as may be appropriate under all the facts and circumstances presented. For example, may the court: (1) defer payments for a specified period [*see e.g., Matter of Roberson,* 999 F2d 1132 (CA7 1993)]; (2) defer final determination, retaining jurisdiction, for a specified period of time [*see, e.g. In re Cheesman,* 25 F3d 356 (CA6 1994)]; or (3) discharge the obligation in part [*see e.g. In re Woyame,* 161 BR 198 (Bkrtcy.ND.Ohio 1993)]. It seems to this author that Congress is compelling bankruptcy courts to balance the equities, or, if you will, hardships, between the parties. In many cases it could be manifestly unfair and inequitable to shift the total burden onto one party or the other. Moreover, the language of § 523 (a) (15) itself, referring to "any debt" and "such debt" indicates that the court may discharge some but not necessarily all debts incurred in connection with a divorce or separation.

Section 523 (a) (15) cases may prove to be difficult for practitioners and judges alike. A new dimension--the financial condition of the creditor-has been added. Also, only too frequently divorces or separations involve a significant degree of personal acrimony making rational settlement difficult, if not impossible. There are likely to be more cases requiring bankruptcy judges to make "Solomonesque" decisions--cleaving the debts, not the children.

'No Problem' is a well-known Russian psychic message

By William Satterberg

For the past several months, I have been developing a business in Russia. In law school, I studied international law, and actually succeeded in earning the coveted (but unknown) L.F.E. Goldie Certificate in International Law, which rests proudly in a black tin frame in my lower left desk drawer. After all, the only real exposure that most Fairbanksans have with international law is when they are stopped, bleary eyed, at Canadian customs after a weekend of gambling and carousing in Dawson City, Y.T.

You can well imagine my excitement, therefore, when I became embroiled in an ambitious project of international dimension, dealing with Alaskan/Russian operations. Time to dust the rust off of the good old L.F.E. Goldie Certificate. Mom would have been proud.

Originally, the agreement to begin the project was to be completed in 30 days. It took more like 60 to 90 days to conclude, but ultimately a contract was reached. Somewhere, in the process, I missed the psychic message. No problem.[1]

Following signatures, the start date of the project continually migrated from October, to November, to December, to January, to February, to March, to April, to May, to June, to whenever. Again, no problem.

As part of the project, it became necessary to submit an application to the United States Government. Initially, it appeared that the application, although complex, would be reasonably able to be accomplished. Again, no problem. Following a rather extensive drafting exercise for several weeks, the application was quite near to execution.

Previously, I had traveled to Russia, and had already encountered the renown efficiency of the Russian system (*see Mioge Death March, '94*). Given this experience, I was also prepared for various exercises in ambivalence. At one point, I had been briefed to expect delays, confusion, delays, communication problems, delays, intrigue, and delays. As such, I figured that there should be no problem. Still, in an abundance of caution, and to verify that I would be met at the airport when my jet arrived in Moscow, I called my Russian counterpart.

"Yuri," I asked, "How is the application coming?"

"Bill," he responded, "Is that you?" (static, crackle, click, click)."

"Da-Da," I rejoined, (Da-Da is Russian for "yes-yes." English for Daddy).

"My son!," he exclaimed.

"No Yuri, its me, Satterberg!," I countered.

"You meant yes, not daddy,?" he queried. "Speak English, Bill. It will be better."

"Okay (Okay is also a Russian word), Yuri. Is everything ready to go with the business plan, accountants statements, and final application?," I asked.

"No problem," came the reply (this time in Russian).

"Okay," I answered, "I will see you at the airport."

"No problem," he again responded. (This time in Russian/English)

I began to worry. Regardless, I embarked on my trip, flying on a Swiss Balair Airbus 300, as opposed to a Russian Aeroflot Ilushin-62, which was the flying platform for my last eventful trip. Although the last two major

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Do away with court security system

continued from page 3

that they are to admit members of the Bar into the courthouse without requiring them to undergo the screening process upon the display of a valid Bar Association card.

The Bar Association in turn might consider issuing Bar cards with photographic identification incorporated in same.

It would appear in the interests of all concerned to implement such reasonable alternative procedures on an amicable basis to avoid litigation since such litigation of the underlying constitutional issues would of necessity be time consuming, expensive and difficult, would require the participation of judicial officers not directly involved in the matter, and might well be misunderstood by the public and press.

Accordingly, I would respectfully urge that such action be taken as soon as possible.

An additional reason I would urge you to take such action is that one of the aspects of practicing law in Alaska for over twenty years that I have especially enjoyed is the realization and appreciation of the fact that we have been able to maintain some genuine mutual respect and camaraderie between attorneys and between attorneys and members of the Bench, unlike the unfortunate atmosphere one encounters in other jurisdictions "Outside." The practice of requiring attorneys to submit to such searches speaks against such Alaska tradition.

In closing, simply let me respectfully reiterate that my views are shared by many members of the Bar, and this is a serious matter.

I would appreciate an appropriate response.

—Phillip Paul Weidner

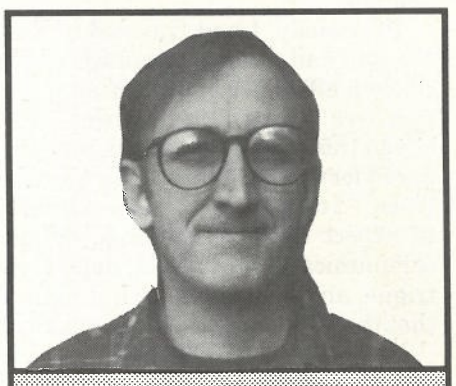
1Note that under the present system, every citizen who is required by necessity to enter the courthouse, be it for filing pleadings, obtaining information concerning court procedures, or observing or attending same, including such necessary and routine matters as obtaining a copy of a birth certificate or marriage certificate or otherwise, is routinely required to undergo such a search. Obviously, this has serious constitutional implications since the public has a vested right to access to the courthouse and to observe the judicial system at work and to participate in same. The judiciary as elected public servants have a corresponding duty to afford reasonable access to the judicial system. Accordingly, such blanket "road blocks" and searches of the person and personal items are suspect since the situation is different than the "border search" scenario or "airport security" exceptions, which have been afforded grudging approval by the courts in the face of constitutional challenges due to the special nature of same (i.e. "customs" exceptions and or "private commerce" exceptions). It would seem any permissible activity would include a requirement for the use of "least restrictive means" to implement security considerations, including perhaps limited use of magnetic screening with regard to particular cases and courtrooms where there is a demonstrated reason to believe there is some genuine concern for safety, as opposed to a general search of the public.

2This is especially apparent in that certain court personnel and/or judges are granted access to the building without undergoing such procedures or allowed entry via special access cards. Note in this regard that it is curious that the "folklore" of the Alaska legal community contains instances of references to judges carrying guns under their robes, but in my memory, no such references to attorneys carrying guns into the courthouse.

3Under the present system, attorneys must be searched to even enter the law library during normal business house, and then searched again if proceeding from the law library to the courthouse. Obviously such a procedure is onerous and uncalled for. Moreover, query as to whether the background checks on court personnel are as extensive as those required for admission to the Bar?

Eclectic Blues

A tourist's reflections on Iberia



Dan Branch

The South of Spain is very hot in July, a fact that led me to overlook health warnings and suck down all the ice cold gazpacho soup I could find. Driving through the Costa Del Sol with my nuclear family and in-laws toward the famous caves of Nerja, I spotted happy Spaniards enjoying pink color gazpacho on the veranda of a seafood restaurant. It was time for lunch.

Allen, my wife's cousin, agreed with my suggestion and began cruising the streets of the white-wash town in search of parking. Four blocks later he squeezed our rented Mazda between a Deux Chevaux and Morris Mini so we could start the long walk to the restaurant.

Heavy, erratic traffic forced us onto a little park strip filed with teenage Flamenco dancers. We had stumbled into some sort of fair or contest. Since no one in our party spoke Spanish, walking through the scene was like watching a foreign film with the sound turned off. We were free to rewrite the story.

I like to think it was some sort of dance off. Every 75 feet we passed a stage blaring out impossibly loud Flamenco music. Teenage girls in colorful bell dresses practiced their steps. Some wore sashes--the kind given American beauty queens.

We stopped from time to time to puzzle things through. One stage was surrounded with men slapping their left palms with rhythm instruments fashioned from split bamboo. I couldn't return to Ketchikan without one, so I paid my 500 Pesetas and selected a small reed. The salesman wouldn't take my money until I underwent noise-maker training.

After a couple of rounds of hand music, we retreated down the strip towards the restaurant. Our waiter seated us outside in the shade. Pink gazpacho arrived in tall thin glasses which sweated in the heat. Out of the corner of my eye a tall African man approached. He carried a handmade leather stool in one hand. A family of wooden elephants rode on the stool while a smallish bag hung from his other hand.

I smiled but shook my head to show lack of interest in the wooden pachyderms. Unfazed, the man pulled one item after another out of his bag. Each was presented with great grace and rejected with less. No one but Mary Poppins could pull so much stuff from a bag,

The sun glinted on the shiny black sculptures presented us. As he neared the bottom, the man's carvings grew in quality. When he removed a heavy male figure carved from ebony, I asked for a look. Even then, he did not smile. Alien pulled out his dictionary and read the Spanish phrase for "How much?" The man asked for a pen with his hands and slowly wrote a figure on my napkin. When we suggested the price was too high, he asked for the pen again.

Alien, who had taken out his pocket calculator to do some currency translation, handed it to the salesman. Holding the thing like a dangerous insect, the street entrepreneur punched in a new price. The pocket calculator made many passes between us before we struck a deal. When he handed back the calculator this time, I noticed the lateral scars of a carver on his hands.

Alien asked, via the phrase book, if he carved the ebony sculpture. In answer he pantomimed the movements of a shaping adze being used to trim stock.

Leaving the restaurant, we returned to the car. The Flamenco dancers were still forming a moving mosaic on the park strip. After a few half-hearted goes with my new bamboo noise maker, we returned to the Mazda, cranked up the air conditioning, and hit the road. Two days later I had another solemn encounter with a Spanish business man. This one was also linked with the gazpacho restaurant.

I had come down with a nasty case of the flu which brought me to the door of a pharmacy. I needed help with a symptom difficult to discuss with strangers. "Do you speak English?" I asked an attractive young woman when I entered the Farmica. To my relief she did not. A serious looking man came forth to offer assistance.

I told him my problem. He produced, for $3 and some change, an electrolyte powder and some pills that when taken later would instantly produce a cure. After memorizing the directions, I thanked the grave man and rejoined my family.

Soon after the Spanish medicine solved my problem, Alien, who was also indulging in gazpacho, fell to the flu. He, too, began to praise the Iberian medical profession. One after another the rest of the party succumbed to the mystery illness. Only my wife, Susan, resisted. This is probably because she doesn't like vegetables.

Long before our visit, the dictator Franco had turned Spain's Costa Del Sol from a land to inspire Picasso, into a cement laden nightmare. Tourists from Northern Europe now gather there on sections of beach owned by fellow countrymen. There they may enjoy the sun and drink beer from their home town. Even so, this hot traveler's destination is still capable of producing wonder be it by Mediterranean dancers, patient craftsmen or miracle cures.

ATHENA award nominations due

The Anchorage Chamber of Commerce and the U.S. Small Business Administration's Anchorage office are jointly sponsoring the ATHENA Award in Anchorage. Nominations are now being accepted for the prestigious award which recognizes an exceptional professional business woman who has achieved excellence in her business or profession, has served the community in a meaningful way, and has assisted women in reaching their full potential.

The mission of the ATHENA Foundation is to promote excellence in leadership and service in business and the professions, create an awareness of contributions of women in their communities, their states, and their nations and educate the public, and recognize unselfish assistance to women in business and the professions.

The ATHENA Award was first given by the Chamber of Commerce in Lansing, Michigan in 1982 and has expanded to over 300 U.S. cities. The Anchorage recipient, who will be recognized at a special Chamber Forum on March 27, 1995 in Anchorage, will be invited to join the 1,600 others nationally as a member of the ATHENA National Society to promote leadership opportunities for women.

The underwriter for the Anchorage event is EERO Volkswagen of Anchorage. Other sponsors include ALASCOM, National Bank of Alaska, Key Bank of Alaska, First National Bank of Anchorage, Alpine Veterinary Clinic, Alaska Animal Eye Clinic, Linford and Associates, Duane Heyman of Wedbush Morgan Securities, Inc., the UAA Small Business Development Center, Business and Professional Women of Alaska, and the American Society of Women Accountants.

Nomination forms may be obtained from the Anchorage Chamber of Commerce at 441 W. 5th Avenue, Anchorage, Alaska 99501-2365, or call Nancy Gilbertson at the SBA office, 271-4028. The deadline for submitting nominations is February 17, 1995.

Rainmaking is more fun, and lucrative, than practicing law

Down in California, a group of anonymous lawyers publishes underground commentary on the practice of law. The irreverent Rodent Review *newsletter circulates across the country, and the Rodent's columns appear in California newspapers. The following column is reprinted from the L.A. Daily Journal. Reach the Rodent at 2531 Sawtelle Blvd. #30, Los Angeles, CA 90064-3163, or at 213-871-3163.*

One of the many curious things one observes at The Firm is that while some lawyers slave away, put in the long hours and devote themselves to the law, other lawyers are rarely in the office, don't seem to know much about the law or anything else and rarely touch legal documents that bury other lawyers. Even harder to understand is why the latter type of attorney does far better both financially and in terms of advancement at The Firm. The explanation for this can usually be found in the rain.

In today's legal marketplace, the importance of an attorney's legal skills pales in comparison to proficiency in developing business (also referred to as "rainmaking," but please, never refer to it as "ambulance chasing"). Having as few as two or three loyal blue-chip clients can enable any attorney, no matter how incompetent or underqualified, to skate through a prosperous legal career while less fortunate lawyers waste their lives trying to become effective advocates.

It has always been a plus for lawyers when they bring clients to The Firm. In healthier economic times, however, The Firm had an abundance of clients and placed far greater emphasis on producing quality work product. This changed dramatically during the recent economic recession when most clients scaled back their activities and many went out of business. This downturn in business has led to fierce competition among lawyers for clients, The Firm's lifeblood. For those who succeed in landing clients, their stock at The Firm soars. More importantly, so does their compensation as they gradually give up practicing law to make a career out of developing business for The Firm.

Despite the increased significance of business development, lawyers receive virtually no rainmaking training. Law schools continue to teach courses such as contracts, torts, civil procedure and evidence, none of which are nearly as lucrative as rainmaking.

To help fill the academic void, The Rodent has decided to share a few helpful hints collected from the profession's best client producers.

Through our research, we learned

RODEN PUBLICATIONS

that a few lawyers still concentrate on providing quality representation to their clients and hope to get additional referrals based on their performance and professional reputation. For the most part, however today's rainmakers use far more sophisticated and refined techniques to bring clients to The Firm. Primary among these, and the key to successful business development, is joining groups and organizations that will facilitate making the contacts necessary to get referrals. The more organizations the lawyer becomes affiliated with, the better the chances of coming into contact with individuals in need of legal counsel. The Rodent suggests joining each of the following.

• *Well-Connected Family.* Make every effort to be born into a family with strong connections to the business community. If you screw up on this, be sure to marry well.

• *Exclusionary Downtown Clubs.* There's nothing better for establishing a relationship with a potential client than a game of squash or billiards at an exclusive downtown club. After the game, lay around naked in the sauna with the CEO of a major corporation. This provides the perfect opportunity to convince your future client what a fine attorney you are. The Club is also a great place to start rumors about the collapse of rival firms or the imminent disbarment of the lawyer your saunamate is currently using.

• *Open to All, Egalitarian Athletic Clubs.* Join one of these clubs if you aspire to be on the U.S. Supreme Court someday and don't want to be associated with a club with a history of discrimination. While you won't pick up the heavy hitter here, small and midsize clients can often be found. These clubs also serve as excellent training grounds for young lawyers.

• *Bar Associations.* Any organizations related to the state or county bar are business development fronts organized primarily by and for those who can't get into the Club. Unless you're seeking legal malpractice clients, you're wasting time that can be better spent in the sauna. You might as well put an ad in the yellow pages. Worst of all, you'll be associating with a bunch of other lawyers.

• *Religious Groups.* Share your faith with people who will put their faith in The Firm. In the legal world, "born again" is synonymous with learning that one's spirituality (sincere or otherwise) can help build a book of business. Avoid making the common mistake of limiting yours to one religion. Be a Jew on Saturday, a gentile on Sunday! Add a new faith each month. Also remember that fees collected from fringe religious sects are just as good as those collected from more mainstream religions.

• *Charitable Organizations.* Determine the worthiness of a cause based on which potential clients are active in its organizations. Research what the charity du jour is where you live and always be ready to quickly switch your devotion to a new organizations when a hotter and more profitable cause comes along.

• *Group Therapy.* Many successful rainmakers have landed clients they met at group therapy sessions. Clients are often most vulnerable and open to sales pitches in this environment.

• *State Legislature.* While federal law limits the amount of outside income that can be earned by members of Congress and the U.S. Senate, most state legislatures allow office holders unlimited income from other sources. One can therefore keep his or her position with The Firm and work part-time in the state capitol. Have those business cards ready when representatives of major corporations come seeking your support. You'll be surprised how willing they'll be to retain The Firm in return for your vote. Most attorneys consider this type of rainmaking to be the most noble because it enables one to simultaneously provide a public service.

Of course, if you're not a joiner or just don't like the idea of rainmaking, you can continue spending all your waking hours researching esoteric legal issues and doing the other drudgery that is the law. Who knows, you might be an exception to the rule and actually succeed on the basis of hard work and legal expertise. If, however, you like the idea of getting out of the office, onto the golf course and making more money at the same time, join up and get ready to wine and dine your way to a flourishing legal career.

See you at the Club!

Job openings - new positions
staff attorney, national headquarters

Lambda Legal Defense and Education Fund, the country's oldest and largest lesbian and gay legal organization, is adding two Staff Attorney positions based in its national headquarters in New York City. Lambda is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, and people with HIV/AIDS, through impact litigation, education, and public policy work. Lambda's docket includes cases in a wide range of areas, including equal employment rights and benefits; discrimination in housing, public benefits, tax and insurance; access to healthcare and AIDS-related treatments; child custody and visitation; sodomy law reform. Lambda plays a key role in challenges to the ban on military service by lesbians and gay men as well as to anti-gay ballot initiatives across the country.

Responsibilities: Staff attorneys are responsible for all stages of litigation in Lambda's precedent-setting cases. This includes direct litigation, writing *amicus* briefs, organizing *amicus* strategies, and providing support and back-up to Lambda's network of cooperating attorneys. Staff attorneys also consult with lawyers throughout the country who are handling lesbian/gay related cases.

Qualifications: All applicants must have a minimum of five years legal experience, including extensive litigation experience, significant leadership skills, excellent speaking and writing abilities, a demonstrated awareness of and commitment to the concerns of lesbians, gay men, and people with HIV/AIDS, and a firm commitment to multiculturalism. Experience working in communities of color and/or more than five years of litigation experience preferred.

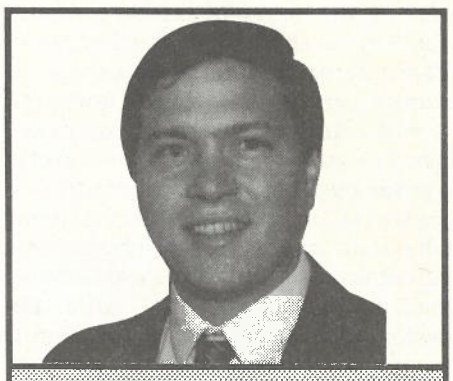
Salary: $40,000 - $50,000 per year, plus excellent benefits.

Application: Send resume and writing sample by January 30, 1995 to:
Beatrice Dohrn, Legal Director
Lambda Legal Defense and Education Fund 666 Broadway, Suite 1200
New York, NY 10012

People of color and people with disabilities are especially encouraged to apply.

The Public Laws

The new 800-pound gorilla in the constitution



Scott Brandt-Erichsen

The O.J. Simpson trial may be doing more to educate the general public about the intricacies of criminal law and procedure than any other trial in the last 20 years. However, the fine balance between the rights of the accused and the protection of society is one which has more twists and turns, rules and exceptions than nearly any other single area of the law. It also is probably the largest single area of the law in terms of number of cases litigated.

With certification of Ballot Measure 2 amending Article I, Sections 12 and 24 of the Alaska Constitution, the playing field in this area of the law has tilted decidedly.

This amendment represents a shift in the focus and, thus, a revision of the philosophy underlying our current penal system. We have shifted from a focus on "the principle of reformation and upon the need for protecting the public" to "in the order provided: The need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation."

The methods used for maintaining order in various societies usually consists of a combination of punishment and reformation/rehabilitation. Those that concentrate on reformation take a more optimistic view of the individual and seek to correct anti-social behavior through a change in attitude. Those that concentrate on punishment seek either to correct the behavior through fear of harsh consequences (such as Singapore's caning) or to protect society from the bad actor by removing that individual.

We in Alaska have now officially downgraded reformation from being on equal footing with protection of the public. Instead, we have determined that reformation is inferior to the public interest of condemning the wrongdoer, giving the victim solace, and extracting from the offenders compensation for the damages caused by their actions.

Seen another way, our Constitution now says that it is more important to tell an offender how bad society thinks his or her conduct is than to attempt to reform the behavior to prevent future occurrences.

Along these lines, publishing names and facts in the paper and erecting stocks in the town square are officially more important than reformation, This is a legitimate choice we have made collectively as a society. Some may say that it is mean-spirited, spiteful, or lacking in compassion. But others would say that if you coddle children you produce spoiled brats, and the same goes for adults. In fact, the debate is not dissimilar to the debate over corporal punishment for children. The important difference here is that the Constitution now comes squarely down on the side of allowing—nay, requiring—such punishment.

Can it really be that long before we see a line of cases challenging statutes that create reformatory programs and allocate scarce state budget resources to reformation of offenders as not sufficiently protective of the rights of victims, the right to restitution from the offender, or the right to community condemnation of the offender? Maybe we won't see such arguments, but I wouldn't put money on it.

The companion change creating specific rights for victims may also create administrative difficulties. Along with numerous rights to notification at various stages of the offender's contact with the system, the new Article I, Section 24 of the Constitution gives a victim the right to timely disposition of a case following the arrest of the accused. Criminal Rule 45 now protects a defendant's right to a speedy trial, but is often waived by the defense. Will the victim now need to consent to any waiver under Rule 45? Or will the provision merely give the courts an additional basis upon which to deny a motion for waiver of Rule 45?

Another hidden trap for prosecutors, defense attorneys and the courts is the right of the victim to be "treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process." Will this preclude defense tactics of making an issue of the character of the victim? What duties will it place on the prosecution? Prosecutors also may be tripped up by the victim's right to confer with the prosecution in cases (such as those domestic violence assaults) where the victim is recalcitrant and forced to testify as an unwilling participant in the criminal justice process. The potential for *faux pas* or claims of infringement of rights in these areas is particularly high in the early stages where these rights are undefined by statute or case law.

These companion constitutional amendments may prove to be benign minor adjustments to the current methods for meting out justice, or they may be the proverbial 800-pound gorilla who sits wherever he wants.

Which occurs will depend largely on the statutory changes that are adopted to implement these new rights and the force given to each component of the new constitutional sections by the courts.

Senate CS for CS for house joint resolution no.43(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE
OFFERED: 5/4/94
REFERRED: FINANCE
SPONSOR(S) **REPRESENTATIVES** PORTER, Phillips, Barnes, Bunde, Green, Sitton, Nordlund
SENATORS Donley, Leman

A RESOLUTION

Proposing amendments to the Constitution of the State of Alaska relating to the rights of victims of crimes and to criminal administration.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** Article I, sec. 12, Constitution of the State of Alaska, is amended to read:

SECTION 12. ***CRIMINAL ADMINISTRATION*** [EXCESSIVE PUNISHMENT]. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. ***Criminal*** [PENAL] administration shall be based [ON THE PRINCIPLE OF REFORMATION AND] upon ***the following in the order provided:*** the need for protecting the public, ***community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.***

*** Sec. 2.** Article I, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 24. RIGHTS OF CRIME VICTIMS. Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

*** Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of 12 the state at the next general election in conformity with art, XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Bar People

Dorothea Goddard Aguero has left Green Law Offices and has opened her own practice in Anchorage.....**Elizabeth Brennan** has transferred from the P.D. Agency in Bethel to the Anchorage office.....**Roger Conner** is residing in Reno, Nevada.....**Paul Cronin** has relocated from Juneau to Honolulu.....**Marcus Clapp** and **David Leonard,** and legal assistant Judy Holder announce the formation of the Law Offices of Marcus R. Clapp.....**Brent Cole,** formerly with Brena, McLaughlin & Cole, and Erin Marston, formerly with Koval & Featherly, have formed the Law Offices of Marston & Cole.....**Hedland, Fleisher, Friedman, Brennan & Cooke** is pleased to announce the association of **Amy Vaudreuil** and **Eric Croft** in the Anchorage office, and **Cecilia LaCara** in the Bethel office.....**Jonathon Cooper** is now with the Public Defender Agency in Palmer.....**Roseanne Jacobson,** formerly with ARCO, is now with Eide & Miller.....**Patrick McCabe,** formerly with Middleton, Timme & Luke, is now with Owens & Turner.....**Julia Metzger,** formerly with Richmond & Quinn, is now with Heller, Ehrman, et.al.....**Louise Ma** is with the Legal Strategies Group, in Emeryville, C A **Steven Oliver** has relocated from Anchorage to Las Vegas.....**Andrew Sorensen,** formerly with ARCO, is now with Alyeska Pipeline.

Simpson, Tillinghast, Sorensen & Lorensen has been formed in Juneau. **Edward B. Simpson, III, Jonathan K. Tillinghast, Stephen J. Sorensen, Ronald Lorensen, Leslie Longenbaugh, L. Merrill Lowden,** are members of the new firm - all formerly associated with Birch Horton. They will remain in the same office. Their new phone number will be: 566-1400.

Everett H. Billingslea has joined the Seattle office of Oceantrawl Inc. as senior attorney where he will work in the legal department under the direction of Oceantrawl Vice President and General Counsel Jeffrey R. Masi. Oceantrawl is a fishing company operating three surimi factory trawlers in the Bering Sea and elsewhere. Prior to joining Oceantrawl, Billingslea practiced general business law for approximately five years with Bogle & Gates, first in Anchorage, Alaska and most recently in Seattle. He is a native of Soldotna. He has an AB in Chemistry from Bowdoin College in Brunswick, Maine, and JD and MBA degrees from Santa Clara University in Santa Clara, California. After law school, Billingslea was a law clerk for Anchorage Superior Court Judge Rene J. Gonzalez.

Paralegals

Exempt from overtime pay?

By Dorene Ridgway

Finally, a court has set a precedent for an issue that's been plaguing paralegals for years—should paralegals be exempt or non-exempt from overtime pay? Or is it a precedent? Here's what happened.

Litigation

On September 22, 1994, the United States Department of Labor (DOL) abandoned its appeal with prejudice from *DOL v. Page & Addison, P.C.,* U.S. District Court, Northern District of Texas, Dallas Division, No. 3:91-CV-3655-P (*Page & Addison*). There will be no written decision in the Fifth Circuit Court of Appeals Case No. 94-10435 affirming or overturning the district court's jury finding that 23 paralegals at the ten-lawyer firm are exempt from the overtime requirements of the Fair Labor Standards Act enacted in 1938 (FLSA). The jury's decision, entered on March 10, 1994, is binding. Its decision is based upon the administrative exemption as set forth in 29 CRF § 541.1 and §§ 541.101 through 541.119. Exempt status applies to *Page & Addison's* paralegals because each one was found to exercise independent judgment and discretion when she performed her duties and fulfilled her responsibilities, even though a supervisory attorney must approve or reject the paralegal's work.

The *Page & Addison* decision is fact-specific. It relates only to paralegals employed by that firm. This decision may trigger additional litigation to exempt paralegals from overtime on a case-ca-case basis because a decision from the United States District Court, Northern District of Texas, may have no effect upon paralegals in other parts of the country. At this time, no opinion letter of the wage-hour administrator exempting paralegals as a class from the Act is forthcoming. The DOL considers paralegals as a class non exempt from the FLSA. If other court cases are decided in the future, the DOL may schedule comment periods or hearings to propose a change to the regulations. The DOL might re-examine the issue to establish clear guidelines for a firm to make a

continued on page 18

Are midsized firms the wave of the future?

Increasingly, large corporations are breaking from tradition and turning to midsized firms for legal services once reserved for the larger law practices. Corporations are finding that the creativity and commitment to client satisfaction favored by many midsized firms cannot be matched by larger rivals.

With this increased demand for service, midsized firms are becoming the litmus test by which new trends can be determined. In response, Commercial Law Affiliates (CLA) recently surveyed attorneys from 101 U.S. midsized firms asking them to identify growing areas of practice and marketing trends in their regions.

Who cares what's happening in mid-size law firms? Besides the attorneys themselves, corporate America does. More major corporations are finding out what smaller businesses have known for years: that the mid-size regional firm can offer all the experience and expertise of the large firm, without the high overhead. (According to the *Wall Street Journal,* Allstate Insurance, for example, experienced a 25% reduction in outside legal fees within one year after shifting to mid-size regional firms.) Moreover, mid-size firms generally provide a more personalized level of service along with their reasonable billing rates.

As many of the "mega- firms" face increasingly troubled times, the mid-size firm is uniquely positioned to meet the needs of today's business community, offering the client more flexibility *and* accountability. And, big business, traditionally the major use of large law firms, is beginning to look to smaller firms for help.

Walter Mercer, executive vice president of Fleet Bank, says his company is taking a much closer look at the regional firm. "We believe that if we can carefully select mid-size firms we can get better service at a higher level of quality, and at a much lower cost," he said at a brainstorming session this June with Commercial Law Affiliates. "Most matters do not require the enormous manpower that only a large firm can provide."

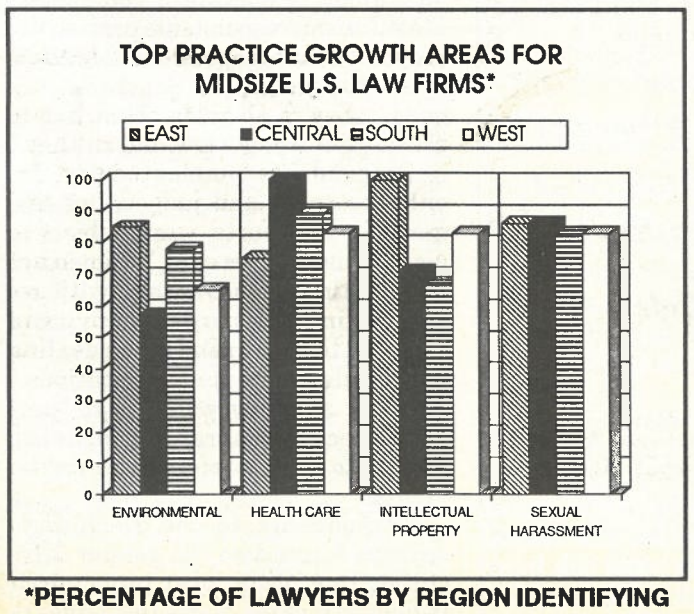
Dan Cronk, general counsel of TGIFridays, agrees, but adds that costs are not his main consideration in selecting the mid-size firm. "I am an important client—I receive a personalized touch, the firm is more responsive to my needs. This gives me a stronger relationship with my local counsel," he says.

Greater accountability and responsiveness were among the advantages cited by representatives of major corporations who discussed their increased use of regional law firms at a CLA roundtable held this year in Houston, Texas. Participants Terrence Ahearn, counsel with Exxon Chemical Company, USA, and Ray Albrecht, general counsel with Panhandle Eastern Corporation, also added the local factor into the benefit equation—saying that a shift to regional firms offered significant advantages in terms of community expertise.

Many large companies are using midsized firms for these reasons:

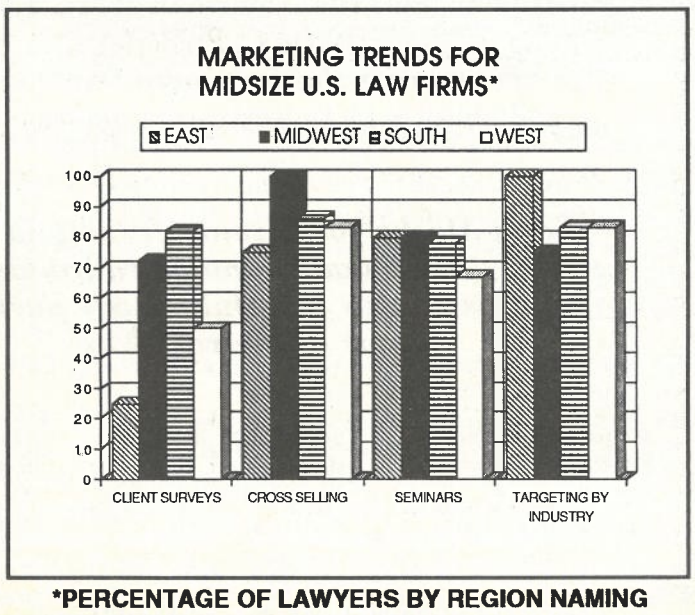
- Market leaders, attracting best regional talent
- Reasonable billing rates, cost of living and overhead is less than larger firms
- Greater efficiencies, less file "overlawyering"
- Greater access to key senior partners
- Not every file needs a "Brand Name"

(CLA is a non-profit organization comprised solely of independent, mid-size firms.)



***PERCENTAGE OF LAWYERS BY REGION IDENTIFYING PRACTICE AREAS AS "HOT" OR "GETTING HOT"**

Source: Commercial Law Affiliates (CLA), 1994 Survey of U.S. Members Firms



***PERCENTAGE OF LAWYERS BY REGION NAMING MARKETING TRENDS AS "HOT" OR "GETTING HOT"**

Source: Commercial Law Affiliates (CLA), 1994 Survey of U.S. Members Firms

Gender Equality in the Courts: A Preliminary Look

Sarah Josephson and Teresa Carns

Now you see it, now you don't—gender bias problems appear obvious to some and nonexistent to others. This was a primary finding of a series of surveys recently conducted by the Joint State-Federal Courts Gender Equality Task Force. Practicing attorneys from Anchorage, Fairbanks, Juneau and Ketchikan commented on gender bias issues in their communities and suggested solutions. The findings, in combination with earlier surveys by the group and with Anchorage surveys of nonattorneys who work in the courts, present an overall picture of gender equality issues. (A similar survey of federal courts and attorneys who practice in them is also being conducted, but its results are not presented here.)

Two of the surveys administered by the task force also analyzed work choices by gender, to see whether men and women differed in their reasons for working in certain environments.

Chief Judge Holland of the U.S. District Court and Chief Justice Moore of the Alaska Supreme Court formed the task force in October 1993 to identify issues of gender bias and recommend solutions. The task force has established subcommittees which include other judges, attorneys, staff people and interested citizens throughout the state. The task force defines gender bias as any action or attitude based on preconceived notions about the nature, roles, and abilities of men and women rather than upon evaluations of individuals.

General Results

Almost equal numbers of men and women responded to the surveys, although the proportions varied greatly by community. (See Table 1.)

The initial round of surveys in Ketchikan, Juneau and Fairbanks went only to attorneys. Anchorage surveys were sent to in-court clerks, legal assistants, guardians ad litem, and CASA volunteers, as well as to attorneys. (During the next year, the other communities plan to work with nonattorneys who appear in, or use, the courts.)

The task force surveyed attorneys at the Alaska Bar Convention in Juneau in 1992 and sent additional detailed surveys to lawyers in Anchorage, Ketchikan, Juneau and Fairbanks during 1993 and 1994. Overall, the survey findings showed that far more female attorneys than male attorneys knew of or had experienced gender bias. The surveys uniformly found that biases prevailed more strongly in attorney interactions than during judge-attorney interactions. Respondents also saw gender-related bias in interactions between lawyers or judges and other persons in the courtroom, including jurors, witnesses, security personnel and other court staff.

> *"The task force defines gender bias as any action or attitude based on preconceived notions about the nature, roles, and abilities of men and women rather than upon evaluations of individuals."*

All surveys included similar questions about experience with, or knowledge of, gender bias. A majority of the female attorneys responding to the three surveys perceived gender bias by judges, lawyers and parties. In contrast, less than half of the men perceived gender bias in any context, including bias against men as defendants or parties in domestic relations cases. The perception of bias was closely related to the gender of respondents and the type of bias observed also appeared closely related. Men mentioned sex-related bias against men (particularly in domestic relations cases) far more often than women mentioned sex related bias against men. Conversely, women appeared most knowledgeable of, and concerned with, bias against women.

More specific findings supported these preliminary overall results. For example, over twice as many female attorneys as male attorneys in Fairbanks said they had seen judges show gender bias. Nearly all female attorneys had seen gender bias by other attorneys (93%), compared to less than half of the male attorneys (40%). Anchorage percentages closely resembled Fairbanks, with 89 per cent of Anchorage female attorneys seeing gender bias by other attorneys, and 23 per cent of the male attorneys. Over half of the female attorneys in Fairbanks had perceived gender bias by parties, compared to 39 per cent of male attorneys. Thirty-eight per cent of the Anchorage male attorneys and 63 per cent of the Anchorage female attorneys had seen bias from lawyers to parties, witnesses or jurors. Of the Anchorage male attorneys, 27 per cent reported bias from parties, witnesses or jurors toward lawyers; 44 percent of the Anchorage female attorneys had seen parties, witnesses or jurors show bias to lawyers. Male and female Fairbanks attorneys saw about the same amount of gender bias by witnesses, court staff and jurors, with less than one-third perceiving this type of bias.

The Anchorage survey included nonattorney professionals and volunteers who appear regularly in the courts. Surveys went to guardians ad litem, CASAs (volunteer advocates in children's proceedings), incourt clerks, and legal assistants. Small numbers responded from each group. In the experience of the members of these groups who were in court, gender bias appeared most frequently between lawyers and parties, witnesses or jurors.

Detailed Comments

All survey respondents were asked to explain gender bias they had observed or experienced. In all communities, women cited specific incidents of gender bias. One Juneau woman lawyer wrote that she still encounters the attitude that only men are "real attorneys," and women are second-rate at best. She added that "sexist humor is making a comeback." Most Juneau respondents praised the judges, but one respondent noted that while the judges in Southeast are good, "they're all male. That has to affect their world view and rulings."

Respondents commented that not only attorneys and judges, but litigants in the courts, were subject to gender biases. One said, "Women are at a distinct disadvantage with respect to financial burdens of civil and criminal litigation and when dealing with male-dominated institutions." Another attorney wrote that "parties, especially insurance companies, appear to offer women lower settlements."

Respondents to the Anchorage surveys focused on the gender difficulties that seem most pronounced in domestic cases. Some respondents believed that people involved in domestic cases often based decisions on stereotypes. One noted that an assumption is made in some settlement conferences that a woman should receive extra because "women make less money." Another commented that some judges and attorneys believe that female lawyers will do better with domestic cases than will men. Both men and women argued that child custody investigations sometimes appeared to rely on sex-related stereotypes and may favor either the mother or father as a result. (Which gender appeared to be favored was associated with the respondent's own gender.)

Table 1. Respondents by City and Sex

City	Female	Male	Total
Anchorage	75	32	107
Fairbanks	29	45	74
Juneau	26	39	65
Ketchikan	3	12	15
Total	**133**	**128**	**261**

Men found gender bias as well. One male attorney stated that "judges seem to fail to recognize a pretty face can hide a malignant heart" and "fail to address attorney misconduct because it is practiced by a woman." A Fairbanks attorney argued that "female judges meet with female lawyers in a bar group designed to advance the position of females, as opposed to males, on the basis of their sex." Another male attorney maintained that "women are the beneficiaries of a bias against men in the criminal system (simple example--a man and a woman own a house-drugs are found in the house--the man is charged, the woman is not--sentencings are far more lenient as to women)." Finally, some men argued that men were disadvantaged in domestic violence and domestic relations cases. One noted, for example, that "Guardians ad litem (GALs) should be appointed that don't see child molester/ abuser dads around every corner. A court decision relying on a biased GAL investigation can't be fair."

> *"Women and men chose the same four factors as most important for their job choices, but weighted some of them differently."*

Another difficulty that survey respondents noted was women who were biased against other women. One attorney wrote that some of the sexism at Tanana Valley Bar Association meetings seemed to come from women lawyers who were copying the male chauvinism against their own sex in order to be "one of the boys." A female Juneau lawyer wrote "I really hate it when I am referred to in court by my first name and male lawyers are referred to as 'Mr.____.' (This has not been by judges but by other counsel including women lawyers!)"

Many women commented that, while a male lawyer might be described as a "zealous advocate," a female attorney behaving similarly was described as being "emotionally involved in this case." Another frequent occurrence noted by women was the use of gender-biased language, such as using "gentlemen" to include a woman. Others noted that attorneys and others refer to women as "sweetie" or "honey." One woman

continued on page 11

Vic Carlson remains active as volunteer

continued from page 1

someone through the legal thicket." Whether it was something simple, or something complicated and fraught with emotion, he has enjoyed "helping people understand the system and navigate their way through the system." An example is a grandmother from the Bush in court with her delinquent grandchild. If necessary to find the facts and determine what options were available for the youth, he might "ask a question three different ways to really find out what's on their minds." Besides, Carlson added, the eventual judgment "sits better if they know you've really heard them." With litigants or witnesses unaccustomed to court formalities, Carlson said he tried to recognize anxiety even when it was expressed in inappropriate ways, as through laughter, and tried to help people see through it and feel more at ease.

What he found must frustrating as a judge, Carlson said, was when he would catch himself jumping to conclusions through misperceiving the facts, and knowing his mistakes were irreversible in the sense that they might wrongly deprive someone of liberty--or set someone free who should have been confined for the safety of others. "It just goes to show . . . how patient we have to be" in the legal system, he said.

One way Carlson felt his judicial work had a wider effect was in "dealing with closed institutions" such as the prison system or Alaska Psychiatric Institute. This occurred on occasions such as when an inmate was accused of beating a fellow inmate or a guard. "If you can subject such an institution to scrutiny" by the court and the public as to due process and reporting practices, it "tends to improve the institution and improve its procedures."

And since leaving the bench, Carlson has continued looking for ways to make a difference. Spreading the word about village justice systems that are being developed in far northern Quebec is one way. The Canadian concept coincides with Carlson's ideas on promoting self-determination--by which he hastens to say he doesn't mean independence. Though his ideas have their roots in his experiences as a prosecutor and public defender in the 1960s working with rural Alaskans, and as a judge, they have been expanded by more recent contact with Canadian activists. Having a system that encourages people to take care of self, family and community, rather than having to call in the Troopers to solve their problems, leaves them with their dignity and pride.

Carlson has also been a leader and a hard-working volunteer with the Alaskan AIDS Assistance Association, including two years as president. At any given time, the 4As may be helping some 150 clients. They have many pressing needs, such as counseling through the 4As' Helpline; home-delivered meals and dealing with paperwork for Medicaid.

Although direct financial assistance is not the 4As' primary mission, they do work to round up money for very specific needs of individuals. For example, someone may have become too ill to work, yet still be eligible for health insurance under the former employer's group plan, thanks to federal COBRA rules. The 4As can sometimes come up with the funds to keep that desperately needed health insurance in place. Other needs may include travel expenses for the family of someone dying of AIDS-related illness, and funds to provide a modest funeral, with the help of local funeral homes, which Carlson said have been very cooperative.

Recently, Carlson said, the 4As succeeded in getting a large federal grant to purchase a building in which to house families affected by AIDS.

Gender Equality in the Courts

continued from page 10

said, "A judge in state court once asked my client where his attorney was when I was sitting right next to him." She added that, "In federal bankruptcy court, it is clear that you get a better result if you are one of the 'old boys.' For example, certain bankruptcy judges will let male attorneys address the motions/petitions, etc. first regardless of whose motion it is."

The most frequently repeated complaint among all the surveys focused on the Tanana Valley Bar Association (TVBA) in Fairbanks. About 23 per cent of the Fairbanks respondents (male and female answers combined) commented about TVBA sexist attitudes and humor. No other professional group in the four communities came under such intense scrutiny.

Differences in Work Choices

The surveys also questioned attorneys in Fairbanks and Juneau about factors influencing their choices of jobs. Respondents ranked the importance of independence, income, work environment, lack of other opportunities, and other variables in their choice of jobs. The analysis compared choices by men and women, taking into account years of practice (1 to 6 years, 7 to 17 years, 18 years and over) and type of work (private practice or government).

Women and men chose the same four factors as most important for their job choices, but weighted some of them differently. Over half the men rated independence as the most important reason for working where they did. The majority of women (55%) named subject area and work environment as the most important factors. An equal percentage (17%) of men and women chose income as important, with this factor ranking second in importance for both. Men listed work environment and subject area as other primary reasons for choosing to work where they did. For women, independence (tied with income) was a fourth important reason for their work choices.

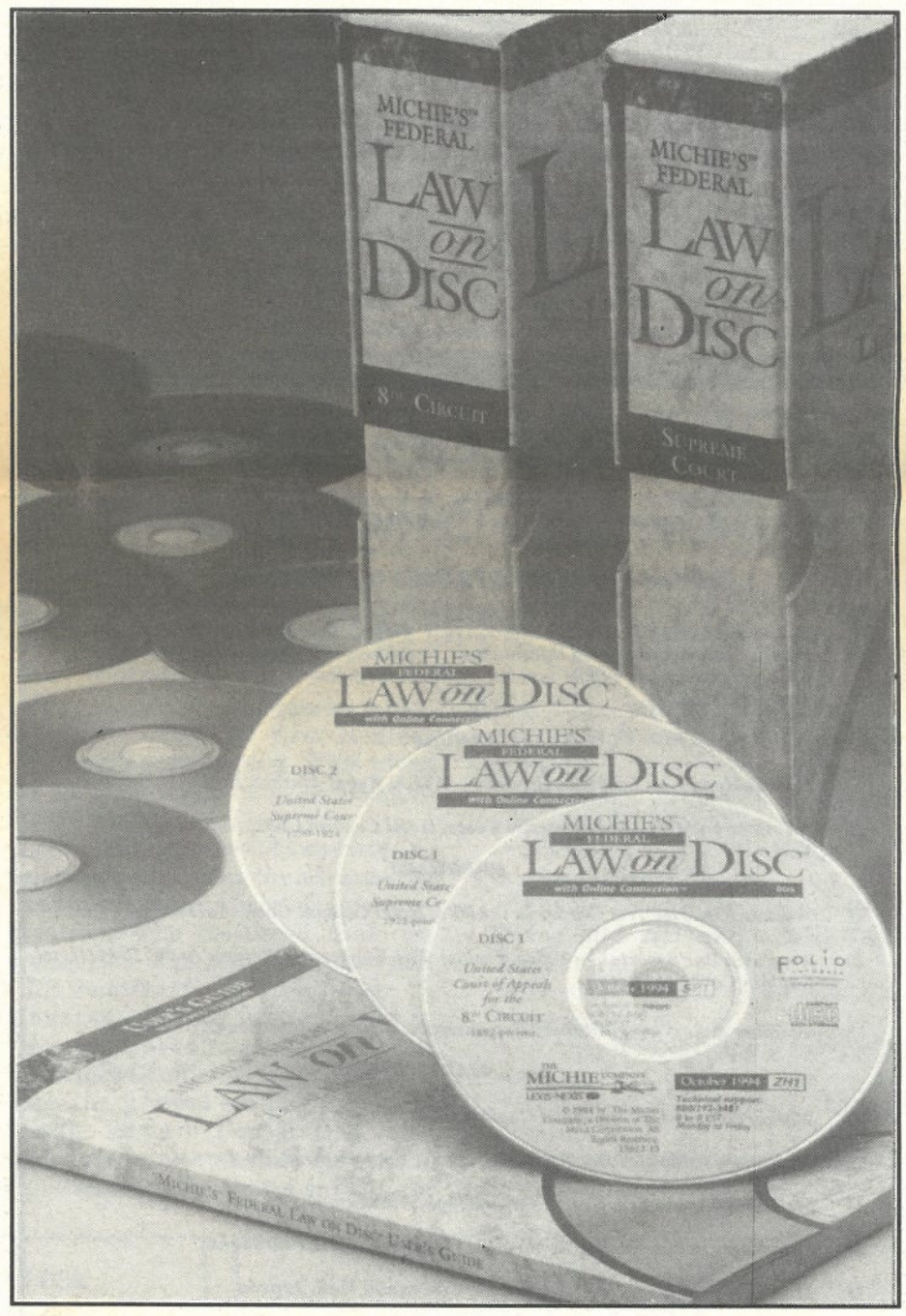
Women chose hours, benefits, flexible time, and lack of other opportunities as a second set of factors in making work choices. Men also noted benefits and flexible time as important. Relatively few men (8%) said that lack of other opportunities was important; an equal percentage of men said that opportunity to advance was an important reason for choosing the job. Only one woman (3%) chose opportunity to advance as one of her top three reasons for taking her job, as compared to six women (20%) who said they worked in a particular job because of lack of other opportunities.

Some of the findings from the Fairbanks survey differ from the Juneau survey. Smaller numbers of women in Juneau named benefits, opportunity to advance, hours and work assignments as the most important factors in their job choices. Some Fairbanks women saw benefits, hours, and flexible time as important. Interestingly, 20 per cent of them saw lack of other opportunities as a reason for working where they did, in contrast to 23 per cent of Juneau women who saw opportunity to advance as important in their job choice. Although the numbers of survey respondents are small in both groups, this suggests that some women in Juneau see their jobs as offering more chance to move ahead than do some women in Fairbanks. The somewhat different proportions of attorneys in each "years of practice" grouping also might contribute to these variations, in addition to the difference in location and actual job opportunities.

Addressing the Issues

The Gender Equality Task Force plans to write recommendations for changes in the courts and legal profession during the next several months. Possible suggestions include promoting the use of gender-neutral language, creating or adapting training programs and materials for judges, attorneys and others, and improving procedures to encourage fairness for all parties. By next fall the task force plans to have designed specific projects addressing gender equality that law firms, nonprofits, agencies or individuals can sponsor.

Sarah Josephson worked as an extern with the Alaska Judicial Council during summer 1994. She is currently a second-year law student at Catholic University. Teresa Carns is the senior staff associate with the Judicial Council.



Michie introduces CD-ROM library

The Michie Company, legal publishers since 1855, and LEXIS/NEXIS, the online legal information service, has released Michie's Federal Law on Disc, a CD-ROM library containing case law from all federal circuit courts and the U.S. supreme court.

The company says it designed Federal Law on Disc specifically with solo practitioners and small firms in mind, allowing legal researchers to choose only the federal case law they need for their practice. Firms can mix and match among the 13 federal circuits and Supreme Court.

The system also offers the option to use Michie's Online Connection software to link Federal Law on Disc directly to a LEXIS update file where researchers can find the latest decisions. As with its other Law on Disc products, Michie offers complimentary training and unlimited telephone support.

Michie's Federal Law on Disc uses the Folio infobase technology created by Michie's sister company, Folio Corporation (available in both DOS, and Windows formats which includes Document Level Searching). According to the company, Folio VIEWS has been used by more than 100 publishers to create over 1,000 commercial titles available on CD-ROM or diskette.

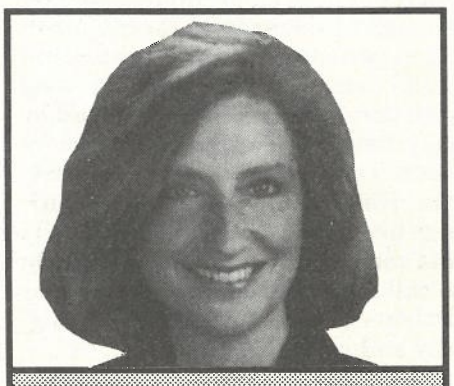
For more information, call the company toll-free at 1-800-356-6548.

Solid Foundations

IOLTA income trends

The decline of IOLTA income nationwide is demonstrated by the chart provided by the American Bar Association Commission on Interest on Lawyers' Trust Accounts. The income of 1991, IOLTA's banner year, decreased by almost 40 percent in 1992 and another 21 percent in 1993. Fortunately, IOLTA income was projected to remain at 1993 levels for 1994, the approximate level of funding that existed in 1989.

IOLTA programs nationwide have supplemented traditional IOLTA income with investment income, filing fees and fund drives. Conversion of voluntary and opt-out IOLTA programs to comprehensive programs also continues to occur. Virginia Law Foundation converted its IOLTA program to comprehensive status thereby increasing its revenue by 170 percent!



Mary Hughes

Alaska's IOLTA funding has seen, since inception, a surge and then a decrease in revenue:

Alaska's IOLTA program suffered less than its counterparts nationwide: revenue decreased approximately 29 from 1991 to 1992 and 11 percent from 1992 to 1993. The IOLTA revenue summary for 1994 will soon be available. Projections, as of November 30, 1994, indicate 1994 IOLTA funding will exceed $200,000!

The increase in interest rates, additional IOLTA lawyers and firms, and the waiver by Bank of America, Denali State Bank, First Bank, and National Bank of Alaska of the bank service fee contributed to the generation of additional revenue in 1994. The Trustees of the Alaska Bar Foundation, on behalf of the IOLTA grant recipients, extend a heartfelt "thank you" to all!

NATIONAL IOLTA INCOME

Year	Number of IOLTA Programs	IOLTA Income	Income from Program Investments	Income from Filing Fees Received by IOLTA Programs	Income from All Other Sources	Total From All Sources
1981	1	$67,552			$2,644	$70,196
1982	2	$793,400	$250		$46,156	$839,806
1983	8	$5,515,602	$58,117		$185,258	$5,758,977
1984	17	$15,069,486	$903,135		$1,483,546	$17,456,167
1985	28	$23,974,734	$1,375,657	$1,568,703	$946,749	$27,865,843
1986	36	$36,389,335	$1,658,008	$2,185,626	$1,085,825	$41,318,794
1987	41	$43,193,004	$1,576,853	$340,339	$1,037,433	$46,147,629
1988	45	$51,933,643	$2,064,413	$408,066	$1,237,355	$55,643,477
1989	47	$94,500,069	$3,571,211	$787,553	$1,530,238	$100,389,071
1990	49	$140,125,237	$6,295,067	$1,535,010	$1,707,656	$149,662,970
1991	50	$151,523,691	$6,969,913	$1,653,761	$2,549,735	$162,697,100
1992	50	$119,328,671	$5,378,056	$1,823,113	$2,755,846	$129,285,686
1993	50	$94,398,459	$3,404,340	$4,981,725	$2,417,414	$105,201,938
	TOTAL	$776,812,884	$33,255,020	$15,283,896	$16,985,855	$842,337,655

ALASKA IOLTA INCOME

Year	IOLTA Income	Investment Interest	Total
1987	$ 20,986	$ 268	$ 21,254
1988	$ 85,321	$ 2,656	$ 87,977
1989	$ 106,912	$ 6,765	$ 113,677
1990	$ 207,211	$13,832	$ 221,043
1991	$ 260,211	$12,619	$ 262,881
1992	$ 182,424	$ 8,353	$ 190,777
1993	$ 159,842	$ 3,749	$ 170,965*
Total	**$1,013,958**	**$48,242**	**$1,068,574**

*includes 7,374 refund from prior grant

CLE CALENDAR

January - May, 1995

Call the Bar at 907-272-7469 for information

This calendar is effective January 9, 1995. Please contact the Bar office at the number below for updated information. Brochures and registration forms of upcoming programs will be sent out approximately four to six weeks prior to the program date.

JANUARY

17 *How to Handle an Employment Case -- ATLA, Regal Alaskan Hotel, Anchorage*

24 *A Primer on Medical Malpractice Cases, Hotel Captain Cook, Anchorage*

FEBRUARY

3 *Working Smarter, Not Harder in the 90's, Hotel Captain Cook, Anchorage*

10 *American Bar Association Video Replay: The Bankruptcy Reform Act of 1994, Hotel Captain Cook, Anchorage*

17 *Avoiding & Surviving Attorney Fee Disputes, Hotel Captain Cook, Anchorage*

MARCH

3 *Workers' Comp Update, Hotel Captain Cook, Anchorage*

21 *Mandatory Ethics for Bar Applicants, Hotel Captain Cook, Anchorage*

23 *Maritime Bankruptcy, Hotel Captain Cook, Anchorage*

24 *Mandatory Ethics for Bar Applicants, Westmark Hotel, Fairbanks*

31 *Mandatory Ethics for Bar Applicants, Centennial Hall, Juneau*

APRIL

7 *Federal/State Discovery Rules, Hotel Captain Cook, Anchorage*

11 *Update on Current Employment Law Issues: ADA & Sexual Harassment, Hotel Captain Cook, Anchorage*

14 *Preserving Family Lands (Kachemak Land Trust), Homer*

19 *Limited Liability Companies: The New Legislation in Alaska, Hotel Captain Cook, Anchorage*

MAY

• *All CLEs will be held at the Fairbanks Princess Hotel.*

10 *Cross Cultural Communication (Bench and Bar Joint Meeting)*

11 *Federal and State Discovery Rules (Bench and Bar Joint Meeting)*
U.S. Supreme Court Opinions Update (Bench and Bar Joint Meeting)

12 *Courtroom Communication (Bench and Bar Joint Meeting)*
Raising Lawyers for Fun & Profit (Bar only)
Too Many Lawyers, Too Little Work (Bar only)

Proposed amendments to Bar Rules and Bylaws

The Board of Governors is proposing amendments to the following Bar Rules and Bylaws of the Bar Association. Please send your comments c/o Deborah O'Regan, Executive Director, Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99510. The Board will consider these amendments at their next meeting on March 17 and 18.

PROPOSED AMENDMENT TO BAR RULE 26(h)
PROVIDING A MEANS FOR APPEALING THE RECOMMENDATIONS OF THE SUBSTANCE ABUSE COMMITTEE

Rule 26. Criminal Conviction; Interim Suspension.

(h) Proceedings Following Conviction of a Crime Relating to Alcohol or Drug Abuse; Interim Suspension For Noncompliance.

(1) Upon receipt of a certificate of conviction of a crime relating to alcohol or drug abuse, other than a crime described in Section (b) of this Rule, the Court may, in its discretion, refer the matter to the Substance Abuse Committee of the Alaska Bar Association.

(2) The convicted attorney shall meet with the Committee and comply with its recommendations for professional evaluation and professionally recommended treatment. *The attorney may appeal the Committee's recommendations by filing a petition for review with the Court pursuant to the Appellate Rules.* In the event that the attorney does not meet with the Committee or comply with the Committee's recommendations, the Committee will mail to the convicted attorney notice of the attorney's failure to meet or comply with its recommendations and require the attorney to cure the deficiency with*in* 10 days after the date of the notice. If the convicted attorney fails to cure the deficiency as required, the Court may, based on a report by the Committee, order the attorney to show cause why the attorney should not be suspended from the practice of law until the attorney demonstrates to the Court that the deficiency is cured.

PROPOSED AMENDMENT TO BAR RULE 47(a)
DELETING REQUIREMENT FOR INITIAL DISTRIBUTION OF LAWYERS' FUND FOR CLIENT PROTECTION APPLICATION FOR REIMBURSEMENT TO BOARD OF GOVERNORS

Rule 47. Filing Applications and Preliminary Consideration.

a) An application for reimbursement shall be filed with the Anchorage office of the Alaska Bar Association and shall forthwith be transmitted by such office to the Chair[MAN] of the Committee [WITH A COPY BEING SIMULTANEOUSLY TRANSMITTED TO EACH MEMBER OF THE BOARD]. The Executive Director of the Alaska Bar Association shall designate a State Bar staff attorney or attorneys or a member of the Committee to assist the Committee and the Board in their consideration thereof.

PROPOSED AMENDMENTS TO BYLAWS
ADDING RULES OF PROFESSIONAL CONDUCT COMMITTEE AND SUBSTANCE ABUSE COMMITTEE

Article VII. COMMITTEES AND SECTIONS

Section 1. Committees.

(a) Standing Cormnittees.

(7)...Bar Association [AND]

(8)...and Fairbanks[.];

(9) the Alaska Rules of Professional Conduct Committee, a 9 member committee responsible for reviewing suggested amendments to the ARPC and making recommendations for amendments to the Board of Governors; and

(10) the Substance Abuse Committee whose members provide services to members of the Bar, their families or business associates when it appears a Bar member is suffering from substance abuse.

Lawyers in Sports Briefs

Anchorage lawyers dominate winter sports scene

Compiled from Wire Service Reports

Tonya Harding, with Pads and an Attitude. There are only so many socially acceptable outlets for the sort of innate aggressiveness that some lawyers carry around with them, which may explain why the Bar dominates the recreational hockey leagues in Anchorage. The Champions Choice team in the women's league stars such legal luminaries as **Barb Brink, Anne Wilkas, Mauri Long,** and **Liz Hickerson,** who with some modicum of help from their non-lawyer teammates scored more goals in their first game this season than they got all last year. According to Wilkas, Champions Choice is in third or fourth place, and, also according to Wilkas, there are more than three or four teams in the league.

Long, Brink, and Wilkas also skate for Sid and Nancy, a coed team in the men's league. Sid and Nancy's other legal talent includes **Barb Malchick, Matt Claman, Scott Taylor, Bill Oberley, Ethan Berkowitz,** and **Cindy Drinkwater.** If your flesh crawled during the movie version, says Wilkas, just wait until you see "Sid and Nancy" on ice.

Time to Update the Wheaties Box. The Bar's answer to Bruce Jenner is Anchorage lawyer **Frank Cahill,** who skied, ran, and swam to victory in December's Sea Wolf Triathlon, a 10-K ski, 10-K run, and 2.5-K swim. Cahill handily won his age group (40-49) and finished 5th overall with a time of 2:21.21. Showing perfect bench-bar deference, Cahill humbly attributes his glory to the fact that **Judge Alex Bryner** didn't show up: "It's depressing to always get beat up by a fifty-year-old," Cahill said. Other Iron Lawyers include **Pam Cravez** and, as members of various relay teams, **Robert Hickerson** (skiing), **Bob Anderson** (running), **Pete Lekisch** (skiing), **Tim Middleton** (skiing), and **Monica Jenicek** (skiing).

Bump, Set, Spike, Oops. The volleyball longevity award goes to a well seasoned city league team whose lineup includes lawyers **Mark Ashburn, John McCarron,** and **Don McClintock,** as well as **Judge John Reese** for resolving those bounds disputes. According to McClintock, "We get better technically every year, but we also get older, and they cancel each other out." McClintock candidly assessed his team's strengths and weaknesses, but libel laws prohibit their repetition here. As for the team's record, McClintock says, "We've won a few games."

Road Warrior Gets His Man. Proving that real men do wear Spandex, Anchorage lawyer and top-flight bicycle racer **Tim Lamb** wrestled a burglar into submission last month at his ski condo in Girdwood. Lamb is using his recovered property to launch a new biathlon series involving biking and butcher knives. Hulk Hogan, move over -- or else.

Didn't Your Mother Tell You to Do That Outside? There being no end to the creativity of humankind, especially when facing a long winter, Assistant A.G. **Rob Royce** is among those who have taken up indoor soccer. Despite bad calls and the sometimes bewildering speed of younger players, Royce notes that the game might be a lot of fun if the Department of Parks and Rec didn't keep forgetting to unlock the gyms at game time. As for how his less inventive colleagues get their kicks, Royce says, "I see a lot of lawyers at Seawolf hockey games."

And Elsewhere in Alaska — As most lawyers in Southcentral Alaska suspected, *Bar Rag* stringers in the First, Second, and Fourth Judicial Districts report that lawyers there have been sitting by their fires, eating bon-bons, and watching T.V. instead of getting their exercise.

Submit leisure activity reports to "Sports" at the Bar office.

Butterworth USA, Michie to join forces

Butterworth Legal Publishers and The Michie Company, two units of Reed Elsevier Inc., today jointly announced plans to combine the two legal publishing companies into a new company called Michie Butterworth.

The new company, with combined 1995 sales projected to exceed $100 million, will be headquartered in Charlottesville, Va., and will be part of LEXIS-NEXIS, acquired by Reed Elsevier on December 2, 1994.

Graham Marshall, President of Butterworth Legal Publishers, said, "Bringing together the two companies will allow us to draw on synergies present in our businesses and to maximize efficiencies of operation. Our customers will be able to access information from both companies in the medium of their choice--books, CD-ROM or online.

David Harriman, President of The Michie Company, said, "We are excited about the combined strength of our two companies. We will now be publishers of 30 annotated codes and extensive lines of secondary research materials in California, Texas and Florida. "

Harriman, named President of Michie Butterworth, said the new company will concentrate publishing activities in primary and secondary law and in new technology to deliver these products in formats that meet customers' needs.

Butterworth began U.S. operations in 1980 as a part of the Legal Division of Reed Elsevier. The company has a presence in more than 30 states and has more than 500 titles in print. It is best known for its regional and state specific loose-leaf practice manuals and primary law sources and is the official code publisher in New Hampshire, Vermont, Alaska, Puerto Rico and the Virgin Islands.

Law publishers since 1855, The Michie Company has been a part of LEXIS-NEXIS since 1988. It publishes annotated state codes for 24 states and the District of Columbia, more than 300 titles covering national, state and law topics, Michie's Law on Disc™ legal research products and the LEXIS® MVP program for small law firms.

LEXIS-NEXIS, headquartered in Dayton, Ohio, is a division of Reed Elsevier Inc., which is part of Reed Elsevier plc, one of the world's leading publishing and information businesses. Reed Elsevier has annual sales in excess of £2.7 billion ($4.2 billion) and 25,700 employees. It is owned equally by Reed International P.L.C. (NYSE: RUK) and Elsevier NV (NYSE: ENL).

Estate Planning Corner

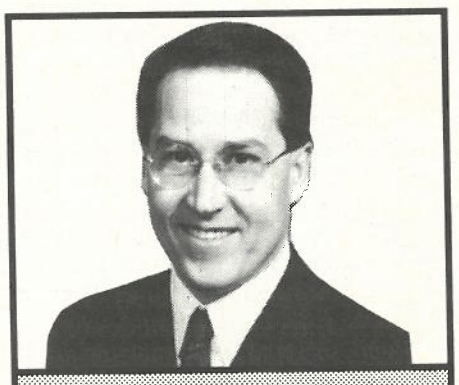
The ascertainable standard

If a trustee is a beneficiary or related to a beneficiary of the trust he is administering, the trustee could be considered the owner of the trust for income, gift, estate, and generation skipping tax purposes. But if the trustee's distribution power is limited by an ascertainable standard, tax consequences adverse to the trustee are less likely to occur.

A common thread running throughout federal tax law is that an ascertainable standard is generally a safe harbor for tax purposes. The ascertainable standard is referenced in the grantor trust rules (IRC §§ 674(b) (5) (A) & 674(d)), in the 2036 and 2038 rules (*Jennings v. Smith,* 161 F.2d 74 (2d Cir. 1947)), in the power of appointment rules (IRC §§ 2041(b) (1) (A) & 2514(c)(1)), in the regulations describing transfers subject to gift tax (Treas. Reg. § 25.2511-1(g) (2)), as well as in the disclaimer regulations (Treas. Reg. § 25.2518-2(e) (2)).

The premise of all these references is that with an ascertainable standard, the trustee's hands are more or less tied. The trustee does not have ultimate control over distributions.

In other words, a trustee's distribution power is limited by an ascertainable standard where a court



Steven T. O'Hara

could determine the circumstances that trigger a duty to make a distribution and then compel compliance by the trustee or restrain threatened action (*Jennings, supra,* at 77). In short, an ascertainable standard is an enforceable standard.

By contrast, where the trustee has been given unfettered discretion in making distributions, such as in the typical discretionary trust, we say that the trustee's distribution power is based on a nonascertainable standard.

We know from the code and the regulations that the terms "support," "maintenance," "education" and "health" are considered ascertainable standards (Treas. Reg. § 20.2041-1(c) (2)). In other words, the trustee is subject to an ascertainable standard if he is required to make distributions for the beneficiary's health, education, or support.

We also know from the same sources that the terms "comfort," "welfare," "happiness," "pleasure," "desire" and the like, such as "best interests," are generally considered nonascertainable standards (*Id.* & Treas. Reg. § 25.2511-1(g) (2)).

But state law — and not the IRS -- determines whether a distribution standard is ascertainable or not (Adams and Abendroth, "The Unexpected Consequences of Powers of Withdrawal," 129 *Trusts & Estates* 41, 42 (August 1990)). So if a trust uses the term "comfort," but it is clear under controlling state law that this distribution standard is restricted to the beneficiary's health, education or support needs, then the term "comfort" is an ascertainable standard for purposes of that trust.

For example, Ohio has a statute that defines the term "comfort" for these purposes as being limited by an ascertainable standard relating to the beneficiary's health, education, and support (Ohio Statute § 1340.22(B)(2)).

Extra care is required in drafting an ascertainable standard. For example, the regulations include the term "support in reasonable comfort" as an example of an ascertainable standard (Treas. Reg. § 20.2041-1(c) (2)). That is *in* reasonable comfort, not *and* reasonable comfort. So if a client intended an ascertainable standard, but signed by mistake a trust that provides for "health, education, support and reasonable comfort," the IRS may argue that the trustee is not subject to an ascertainable standard.

As another example, the power of appointment regulations include "support in his accustomed manner of living" as an example of an ascertainable standard (*Id.*). Also, the regulations describing transfers subject to gift tax include the language "to enable him to maintain his accustomed standard of living" as an example of an ascertainable standard (Treas. Reg. § 25.2511-1(g) (2)). But the IRS has ruled that the language "to continue donee's accustomed standard of living" is not an ascertainable standard, under the power of appointment rules, because the language is not limited to the donee's needs for health, education or support (Rev. Rul. 77-60, 1977-1 C.B. 282).

Indeed, this is an area where we cannot be too careful. So in drafting it may be helpful to restrict ourselves to basically five terms: first, health; second, education; third, support; fourth, best interests; fifth, welfare. Then if the client wants to use an ascertainable standard in a particular case, drop off the terms "best interests" and "welfare" and conform the document accordingly.

"No Problem"

continued from page 5

crashes of 1994 have involved Airbus aircraft, flown by Aeroflot and China Air personnel, I reasoned that the equipment, itself, was probably still safe, as long as they kept the 12-year olds out of the cockpit. Aware of the reputation of the schizophrenic Swiss for punctuality and compulsive behavior, chocolate, cheese, coo-coo clocks, and those crazy warlike yells that bounce off the mountain walls, I figured that my chances of landing in Russia, on schedule and in one piece, were much improved.

Upon landing in Moscow, I was miraculously met by Yuri, who apologized for meeting me. I was somewhat surprised at this comment, since it was Yuri who was supposed to meet me initially. Obviously, I had been slated for a traditional Russian reception; something had gotten fouled up.

I next was notified that there were a few things to do in the next five days. The business plan, accountant statement, and application had yet to be started, for the most part, but..."No problem." (Russian) Rather than have a traditional Russian meal of bread and Vodka (bread is optional), we traveled, instead, to the company offices to begin work on the project.

Things went slowly, but progress still was made. Although the trip originally was slated to be a short, turn around business trip, with only some fine-tuning of the application, it developed, instead into a five days work-a-thon. Because I was scheduled to leave in five days, and could not vary my schedule, we simply had to get the job done. So much for sightseeing; I had no interest in the Lubyanka anyway.

The business plan was the fun part. A true exercise in capitalism, complete with profit, direct overhead, indirect overhead, contingencies, and taxes. At one point, I remarked to Yuri about the frustration I was encountering in trying to teach a converted, lifelong communist about the intricacies of capitalism. Profit was the big sticking point--that someone could actually legally pocket money after paying expenses. Following a discourse on the subject with various examples, a smile of recognition suddenly blossomed on Yuri's face.

"I think I like this profit stuff," he excitedly announced. "Now tell me about this depreciation thing."

"Consider that truck out there," I said, pointing to a large dilapidated tractor-trailer. "Under taxes, after just a few years, that vehicle would be worth nothing. You would be able to include that as an expense, so that you wouldn't have to pay taxes on that money as profit," I lectured.

"But that can't be," he said, "The truck would still be worth a lot of money!"

"Bingo! You've got it Yuri!," I answered,

Like a child in an ice cream parlor, he began to giggle, seeing the vast potentials capitalism had to offer. The discussion went on into the wee hours of the Moscow morning and, in the end, a respectable business plan and total convert to capitalism resulted.

The time passed quickly and, before long, I found myself in the final day. The application, although quite close to completion, was still in need of work. Remarkably, in the process of preparing the application, I had even broken a most solemn oath made to myself several years earlier--that I would never learn to operate a computer. After all, I reasoned, too many attorneys had become hopelessly addicted to the computer. The early '80s battle between two Fairbanks attorneys, "Apple Jim" Dewitt and "Radio Shack" Andy Kleinfeld was legendary. Hundreds of billable hours had been spent in search of the perfect program. This promise was finally broken in Russia, something none of my best office staff could accomplish, when my frustration climaxed in watching Vladimir, a young accountant, struggle with typing English from my scribbled notes. Vladimir, who obviously understood English quite well, but stubbornly elected not to speak the lingo, was delighted when I begged him to teach me word processing, thus freeing him for more enjoyable pursuits, specifically the pursuit of Olga, the pretty blonde secretary from the office next door. I was a dutiful pupil.

Which brings me back to the final day. Despite a request by Yuri to extend my sojourn, I was adamant in my position that I had to return to Alaska, even though my in-laws were scheduled to come up for the summer.

When I arrived at the office that morning, Yuri was nowhere to be seen, even though we were supposed to meet, complete the application, and travel to the United States embassy for signatures. Rather than waste time, I began to finalize the document. Although I had become an accomplished novice at word processing, I could not get the printer to work, documents formatted, or diskettes saved. In short, I still needed Vladimir, who was rapidly falling in love with Olga. I had 5 to 6 hours of time remaining, and expected Yuri at any moment.

About one hour later, Yuri called, and announced that he was across the city and that we should meet at the embassy. I explained that I desperately needed his help in preparing the final draft, whereupon he told me he would call back in 30 minutes with his schedule. I waited and worked.

In fact, I waited for four hours. Eventually, frustration, and then total panic, began to set in. A final draft was necessary, Yuri was still lost, and Vladimir was now madly in love with Olga. I asked Vladimir to print the document, and found that he had lost his command of English. Where was Yuri?!

In frustration, I walked politely from the office. Perhaps a breath of fresh air would help. The embassy was due to close in one hour, Yuri was absent and not in touch, and Vladimir was apparently now proposing marriage, even though Olga wore a wedding ring. (In Russia, the wedding band is worn on the right hand--another paradox which caused me to think for several days that only beautiful single women lived in the country.)

When I returned, I was stunned! My working table had been completely cleared of all papers, including the application, computer diskette (which was never found), and appendices. In place had materialized an assortment of cheeses, fruit, bread, champagne, and a birthday cake. As I entered the room, I saw that numerous people had gathered, including Vladimir and Olga, who was smiling, somewhat sheepishly. Vladimir's English had returned, as he proudly announced, "Today is Olga's birthday! It is a celebration! We must toast with champagneski! You are invited to join us!" They then locked the door to keep out the crowd.

Sensing the inevitable, I sought solace in the Russian bubbly. Soon, everything gained its proper perspective. Vladimir, although smitten with Olga's beauty, which grew with each glass, reluctantly finished my application, perhaps out of sympathy for my tears. And, in a flurry of activity, Yuri arrived at the last minute in a purloined Volga sedan. Even the American embassy, in a moment of bureaucratic compassion, kept its doors open late, prompting Yuri to marvel at the efficiency of our own otherwise inefficient system of government. My mad dash to the airport was also successful. As the jet finally backed out from the terminal, I reminisced on the true cross-cultural meaning of no problem. Despite everything, we had got the job done.

No problem until next time.

[1] "No problem" is a distinctly Russian oxymoron. In Russian, it means "Big problem." In English, it means "no problem."

Protecting client confidences in the electronic age

BY JOSEPH L. KASHI, M.S., J.D.

We all have the responsibility to safeguard client confidences and our work product. In the past, protecting client records meant, in part, that we kept our confidential records in a locked file cabinet and physically denied access to unauthorized persons. While this may have been acceptable in the pencil and paper era, it is no longer adequate as attorneys migrate heavily to networked computer use where client records are far more ephemeral and easy to copy.

In the typical law office, we frequently will have our appointments, calendars and to-do lists stored on a computer in electronic format. Our draft and final pleadings, reports and letters are stored in WordPerfect or some comparable program and litigation support materials and case notes may be in another program. As a result, sensitive material may be too readily available, particularly over a network, to an unauthorized user who might never be seen reading these materials. If we're not careful, our "Chinese Wall" more closely resembles a sponge.

When properly used, computer security of client data is equal to the traditional locked cabinet for paper records.

Unfortunately, many law firms do not implement the security features already available in their hardware and software. You'll need to provide security measures both for the computer network and on each user's own desktop computer.

Don't overlook physical security of each computer, particularly file servers, while you' re at it. Many of the measures discussed below only deter electronic break-ins by slowing down the intruder and increasing the chance of apprehension. Except for encryption, convenient security measures will not stop someone who physically steals your computer or hard disk to extract its data later. As a result, it's best to store all critical data on a network file server that's physically secure and to which unauthorized data access is electronically prevented. (As a side benefit to central data storage, employees are more likely to regularly back up your valuable data when its centrally stored on one network file server rather than scattered on many computers throughout the firm).

Tips about desktop computer security:

• Remember that the keyboard lock on your computer's front panel only shorts out the keyboard so that individual keystrokes are not sent. Although probably useful against a casual snooper, a knowledgeable 13 year-old can defeat the key lock.

• Replace existing main system boards with more advanced ones that contain an AMI or other BIOS that incorporates BIOS level password protection. Once the password is set, an intruder cannot even boot the machine unless and until the proper password is supplied. The machine simply will not operate beyond an initial stage. Assuming that you have chosen at least a six character password (the minimum necessary to prevent reasonable guessing), an intruder cannot defeat security without opening up the computer and either stealing the hard disk or replacing the ROM BIOS with the correct model that does not contain a password, then restarting the computer. This is hardly a task for a casual intruder. You'd better not forget your password, either.

Hide the system board manual because it tells you how to defeat the BIOS password in the event of a problem. Add-in boards are available which will electronically prevent your computer from booting until a password is entered, but a new 486 system board is likely less expensive, faster and a better way to modernize your systems. But note that BIOS password protection does not protect against actual theft of the hard disk and its reinstallation on a different computer. BIOS protection also does not protect data or provide security if the computer is turned on and left unattended.

• Encrypt really sensitive data with a file encryption program such as that shipped with Norton Utilities. Decryption occurs on demand for individual files after you have supplied an appropriate password. DES standard encryption is good enough for most purposes unless you have a really determined snooper.

• Do not leave floppy disks or backup tapes lying around. Lock them up in your safe or file cabinet.

• Remember that backup tapes and floppy disks will be destroyed by a fire's heat passing into a fire-proof safe even though paper is undamaged by the fire. Always take all backup media off-premises for storage in a secure location.

• Make sure than any tape backups are password protected as well. Should you lose a backup tape, another person using comparable tape software could read all your files!

• Use a good, constantly updated anti-virus program, such as IBM, Central Point or Norton Anti-virus to prevent an infection that might destroy your computer data and programs. Be careful about using software that's down-loaded from a bulletin board or not yet tested. Until used extensively and tested with an anti-virus program, I would use such software only on a system that's not connected to any computer network.

• Remember that simply deleting a file from a floppy disk or a hard disk does not in fact erase the data in either DOS or Netware. It is easy to undelete a file using Netware's Salvage command or the Undelete command in DOS or any number of similar undelete programs. This is very well known. If you really wish to erase the file and render it permanently unusable, you need to use a program that writes zeros across the entire file area. Novell has a purge command that permanently erases the "deleted" file and Norton Utilities provides a similar function for DOS hard disks and networks.

• Password protect sensitive data in programs like Lotus Agenda that include a password protection option.

• Remember that the Internet is not very secure and has been the scene of numerous snooping and even espionage attempts. Some have been successful. Until so-called "fire-break" software is clearly validated as providing excellent security against Internet snooping, I would not allow any computer on a network or any computer with sensitive data to be connected to the Internet. I certainly would not set up my office network as an Internet server. Rather, I would connect with the Internet only through dial up public provider modem connections, disconnecting the modem after Internet use.

Network security

• Novell Netware, Windows NT Advanced Server, IBM Lan Server and Banyan all have good security capabilities against all but determined and knowledgeable intruders. DOS-based networks like Lantastic are less secure or at least less flexible in their security arrangements. If you can get to the DOS network file server, you can usually read and copy its files from the server's DOS prompt. I suggest that you use a secure network.

• Make sure that all network users logout whenever they leave their desk for any length of time and that they turn off their computers at night.

• Have your system administrator restrict user login to those times when employees might reasonably be expected in the office. You can preclude late night and weekend logins. You can also restrict specific desktop computers from logging in as anyone other than the employee assigned to that desk.

• Minimize the number of people with system supervisor or administrator privileges. Change the supervisor password often.

• Network password choice is obviously crucial. You should have a different password for each security level and not leave the passwords anywhere where they might be found. This may sound obvious, but it is also obviously breached everyday, particularly by clerical personnel. Passwords themselves should be non-obvious and at least six characters in length. Do not use your name, your spouse's name, a birth date or anything else that might have an obvious connection with you. Change your network passwords fairly regularly and do not give them out to clerical help. Use the encrypted password default in Netware.

• If you are on a computer network, make sure that unauthorized persons do not have any rights to the directories or subdirectories in which your sensitive work, messages, or calendar are stored. This means that they cannot have read, file scan or write privileges for your files. However, if you use an electronic messaging system, then other parties must have "create" rights to your mail program's data directory.

• Remember that most networks use an "inherited rights" concept. Any user with all rights to the main network directory (for example f:\WP6O) will also have full rights to any subdirectory, such as f:\WPGO\SECRET unless you affirmatively delete user rights to that more confidential directory.

• Control user access rights with Netware's Filer and Security programs or comparable features in other network operating systems. You'll need supervisor or administrator level access to use these. With Netware, you can allow a person to read a file but inhibit their copying of that file.

• Double check the security of any dial-in telephone connections. This

continued on page 20

NEWS FROM THE BAR

Ethics opinion 94-3

Representation of Client Under Disability

Bar counsel has requested an opinion giving general guidance to the Bar with respect to lawyers' ethical duties in representing clients with mental disabilities. The Committee has concluded:

a) An attorney representing a client under guardianship for disability has an absolute duty to advocate his or her client's desires even if those desires conflict with client's best interests as viewed by attorney.

b) Counsel for the disabled have the same duty of fidelity owed in any attorney-client relationship which includes a duty to avoid conflicting interests.

The specific request arose out of a disciplinary proceeding. Bar counsel felt that the situation was of general application and was likely to arise in the future. The following hypothetical facts were furnished by Bar counsel.

FACTS

Client is a severely retarded individual subject to the care and control of Guardian. Client was deemed in need of treatment to address "sexually aberrant behavior." Guardian was directed and empowered by the court to seek out and secure a treatment program for such behavior. Client is able, in the broadest terms, to participate in important decisions concerning general objectives relating to his interests. Guardian, however, believes that Client is generally incapable of competently performing the evaluation and assessment necessary for making informed decisions about the *means* for achieving those objectives.

Attorney X works for Non-Profit Agency (hereafter "NPA"), an organization dedicated to advocating the legal rights of developmentally disabled individuals. The organization, among other things, initiates litigation on behalf of developmentally disabled persons, with a particular eye toward "test cases" which might be expected, not only to assist particular individuals, but also to effect broader systemic rights for developmentally disabled person as a group. Attorney X, paid by NPA, represented Client even before the court-imposed guardianship.

Institution is a state-run psychiatric facility in which Client has been placed and at which Client is expected to receive treatment. Institution is represented by attorneys for the state (which attorneys are hereafter collectively referred to as "State").

Client expressed a clear desire to Guardian, Institution, and Attorney X that he be permitted to receive outpatient/community-based treatment which would allow him to leave Institution. Attorney X and Guardian, after evaluation and consultation, concluded that no such placement would be possible unless and until Client was given diagnosis and effective treatment for a specific sexually oriented psychological disorder. Institution was asked to provide such treatment. Institution refused the request, concluding that no diagnosis for the particular disorder had or could be made concerning Client, and that treatment for the condition was therefore neither necessary nor appropriate. Further, Institution maintained that Client's outpatient goal might be reached without such treatment.

Attorney X disagreed, and after consultation with Client and Guardian, filed a Petition for Treatment Order in the guardianship matter in order to compel Institution to initiate the desired treatment program. As part of that petition, it was necessary to seek independent diagnosis of Client's condition. One of the tests required for such diagnosis, while neither painful, permanent, nor involving surgery, did involve potentially embarrassing and physically intrusive procedures. When informed of the required tests, Client became upset and expressed strong desires *not* to go through with the diagnostic tests. Guardian, as well as Attorney X, continued to believe that such testing was absolutely necessary in order to secure needed treatment for Client and to accomplish Client's continually-expressed goal that he be permitted to receive outpatient treatment.

State, perceiving a developing conflict between Client and Guardian, and concluding that Attorney X had failed to independently protect Client's interests, filed a Petition to Review Guardianship independent of the Petition for Treatment Order. This petition, in essence, alleged that Guardian and Attorney X had together embarked on a course of diagnosis and treatment which was contrary to Client's best interests. According to the State this action had been undertaken over Client's expressed or implied objections. State maintained not only that the test was inconsistent with Client's expressed desires, but also that the diagnosis sought by Guardian and Attorney X, if obtained, would label Client with a particular sexual deviance which might carry an extreme stigma and might have permanent negative effects on Client. State questioned whether Client was receiving appropriate independent adversarial representation in the face of the apparent conflict between his own interests and the desires of the Guardian.

Attorney X withdrew as counsel with respect to State's petition to appoint adversary counsel in the Petition to Review Guardianship. The court appointed separate counsel in the guardianship review matter. Attorney X remained counsel of record in the Petition for Treatment Order.

Attorney X continued to maintain that his agency, NPA, was a necessary party to the guardianship review matter, and independently appeared to assert that NPA, through Attorney X, should continue as Client's counsel. Attorney X reasoned that, although it had withdrawn as counsel for Client for purposes of the narrow guardianship review motion, it was nonetheless appropriate for NPA to independently participate in the guardianship motion proceedings on the ground that NPA had independent interests. The asserted interests were: (1) protecting the "reputational interest" of NPA attorneys against charges of unethical conduct and (2) protecting NPA's interests in pursuing "issues concerning the representation of incompetent persons."

State maintained Attorney X, having withdrawn from representation of Client in the Petition to Review Guardianship on conflict grounds, could not, under the conflicts rules, continue to independently appear and participate in the guardianship review matter on NPA's independent behalf.

DISCUSSION

Alaska Rules of Professional Conduct, Rule 1.14 provides the general framework in which both questions may be evaluated. Under subsection (a), a lawyer is required "As far as reasonably possible" to maintain a normal client/lawyer relationship with the client in spite of the client's inability to adequately consider decisions because of mental disability. The "normal" attorney-client relationship includes at the very least a duty of competence (Rule 1.1), a duty to consult and abide by the client's decisions concerning the objectives of representation (Rule 1.2), a duty of diligence (Rule 1.3), a duty to explain and advise (Rule 1.4), a duty of confidentiality (Rule 1.6), and a duty to avoid conflicts of interest (Rule 1.7). The commentary to 1.14 makes clear that even if maintaining the ordinary client lawyer relationship may not be possible, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. The commentary makes plain competency is often a matter of degree and that to the extent of meaningful participation in decision making, the disabled individual must be consulted concerning his or her own well-being. In that respect, the lawyer representing a disabled person is obliged to maintain the ordinary attorney-client relationship.

The difficulties which have arisen in the hypothetical situation would be avoided if the lawyer's obligations to the disabled client are considered in terms of the ordinary attorney-client relationship. The relationship of attorneys representing individuals under disabilities is often replete with conflicts between the individual's expressed desires and the attorney's view of what is in the client's best interest. In this case, however, a guardian had been appointed. The guardian's responsibility is to advocate the client's best interests. If necessary the guardian may appear through counsel. The hypothetical, however, makes plain that lawyer represented the individual rather than the guardian as the attorney-client relationship pre-existed the guardianship proceeding. Therefore, this individual had the right to look to this lawyer as the protector of his interests as he expresses those interests. The "Client" made his position on testing clear. In ordinary attorney-client relationships, lawyers are not free to act contrary to their client's desire merely because the lawyer believes such actions to be the better course. The lawyer in the hypothetical illustration is equally responsible to advocate for the client's expressed desires.

When faced with a course of conduct that the lawyer believes to be in the disabled client's best interest to which the client objects, a lawyer must fulfill the obligations of the attorney-client relationship. Those obligations can only be fulfilled by explaining to the client as carefully as possible the ramifications of the course of treatment sought. The lawyer must disclose both the positive benefits which will come as well as the negative aspects of the treatment. The lawyer must do so to the best of his/her ability given the limitations of the client's understanding. In this hypothetical, the client clearly objected to the treatment. While it is simple to say on a paternalistic level that the client is not competent to know what is in his own best interest, it is equally true that the client may not be able to articulate convincingly the reasons why the client does not wish to undergo the treatment. If the client cannot be persuaded, the lawyer's duty is to represent the interests of the disabled person. If the guardian ad litem persists in undertaking the treatment to which the client objects, it is the lawyer's duty to make his client's wishes known to the court. The disabled client has no one but his attorney to speak for him. Perhaps the client's wishes do not carry the day before the finder of fact. Nevertheless, a disabled individual has the right to be heard through counsel. Counsel has a duty to zealously advocate on behalf of that individual.

Further, counsel has a clear conflict of interest between his client and the interests of NPA which paid the lawyer's fee. Ordinary rules of conflict of interests apply even in cases of disability. In this case, the lawyer was paid by NPA. This arrangement requires consent of the client after meaningful consultation. The lawyer must also determine that there is no interference with the lawyer's independence of professional judgment, or with the client-lawyer relationship. Rule 1.7(b) provides that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, except when the lawyer reasonably believes that the representation will not be adversely effected and the client consents after consultation.

Representation of the disabled is by definition difficult. Nevertheless, the disabled, like all members of society, have an absolute right to look to counsel for independent advocacy of their interests. Fidelity and passionate advocacy of the interests of clients who cannot speak for themselves uphold the highest aspirations of the Bar.

Approved by the Alaska Bar Association Ethics Committee on September 1, 1994.

Adopted by the Board of Governors on October 27, 1994.

Request for Proposals

The Joint State-Federal Court Gender Equality Task Force is issuing a request for proposals for administrative services for the Task Force. For a complete copy of the proposal, contact

Deborah O'Regan, c/o of Alaska Bar Association
510 L Street, Ste. 602, Anchorage, AK 99501
272-7469

NEWS FROM THE BAR

Lawyers disciplined for neglect, failure to return client property

Attorney X received a private reprimand from the Disciplinary Board of the Bar for neglecting his client's criminal case. The attorney was hired to represent Client in a criminal appeal. The attorney then moved to the Lower 48. This contributed to a series of problems, delays and missed deadlines for which Attorney X was sanctioned by the Court of Appeals. Eventually the attorney filed an opening brief, then failed to file a reply brief within the deadline. The court took the case under advisement without the reply brief. The court then removed Attorney X as Client's attorney and referred the matter to Bar Counsel. Attorney X and Bar Counsel entered a stipulation for discipline by private reprimand under Bar rule 16 (b) (1); the Disciplinary Board approved the stipulation and imposed the discipline on Attorney X at its meeting of October 29, 1994.

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Attorney X received a written private admonition for neglecting a client's case. Client had hired the attorney to obtain a qualified domestic relations order (QDRO) from client's former spouse. Attorney X promptly obtained the QDRO and submitted it to the pension fund but, on learning that the QDRO submitted was defective, did nothing for over 20 months to obtain a modified QDRO. Attorney X also ignored client's repeated calls and letters requesting information and action. With the approval of an area division member, Bar Counsel issued a written private admonition for the neglect. More severe discipline was not warranted because no direct prejudice to client occurred as neither client nor spouse was yet eligible to obtain pension proceeds.

•••

Attorney X received a written private admonition for withholding both the disputed portion of a fee and the client's file in an apparent effort to force client to resolve the dispute.

On client's behalf, Attorney X had negotiated a workers' compensation settlement requiring carrier to pay $22,500 to client and $12,700 to X. Privately, Attorney X and client then renegotiated client's fee agreement, the attorney giving up $2500 in fees so client could get a full $25,000.

When client waffled at settlement time, the compensation board rejected the settlement. Client later relented and the board accepted the settlement, but Attorney X then claimed that client's conduct had raised costs and fees and refused to honor the private renegotiated fee agreement. Attorney X paid client the undisputed portion and placed the disputed portion into the attorney's trust account but refused to return client's file.

A fee arbitration panel found for client, reasoning that the renegotiated fee agreement had not made the $2500 refund contingent on settlement at the next hearing. The panel reasoned that Attorney X was familiar with the risks of litigation and client was not and the burden was on the attorney to make the refund contingent on settlement at the next hearing if the contingency was a concern.

Bar Counsel found that withholding the file was improper where Attorney X already was holding the disputed fees themselves as security for the claim. Written private admonition, approved by an area division member, was appropriate where there was little likelihood of recurrence, the attorney had no prior discipline, had cooperated, had placed the funds into a trust account, and where the absence of the file did not prejudice the client.

In the Supreme Court of the State of Alaska
Order No. 1173

Adding Alaska Bar Rule 64 concerning review of Alaska Rules of Professional Conduct.

IT IS ORDERED:

The Alaska Bar rules are amended to add new Rule 64 as follows:

Rule 64. Mandatory Affidavit of Review of Alaska Rules of Professional Conduct; Suspension for Noncompliance.

(a) Every active member of the Alaska Bar Association as of July 15, 1995 shall execute, on a form printed by the Bar Association, an affidavit of review stating that the member has read and is familiar with the Alaska Rules of Professional Conduct. The affidavit of review shall be filed with the Bar Association on or before July 15, 1996.

(b) Persons who become active members of the Alaska Bar Association after July 15, 1995 shall execute, on a form printed by the Bar Association, an affidavit of review stating that the member has read and is familiar with the Alaska Rules of Professional Conduct. The affidavit of review shall be filed with the Bar Association on or before the date on which they become active members.

(c) Any member who without good cause fails to comply with the requirements of this rule shall be notified in writing by certified or registered mail that the Executive Director shall, after 30 days, petition the Supreme Court of Alaska for an order suspending the member for noncompliance. Upon suspension of the member for noncompliance, the member shall not be reinstated until the member has complied with this rule and the Executive Director has certified to the Supreme Court that the member is in compliance.

DATED: November 7, 1994

EFFECTIVE DATE: July 15, 1995

/s/ Chief Justice Moore
/s/ Justice Matthews
s/ Justice Compton
/s/ Justice Eastaugh

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In the Matter of the PROPOSED REVISED LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA	)))))	MISCELLANEOUS GENERAL ORDER NO. 770

In September of this year, Chief Judge Holland circulated Proposed Revised Local Rules for the United States District Court for the District of Alaska for public comment. The proposed rule revisions were developed by a committee of the local bar and the Judiciary. The notice indicated that public comments would be considered, if submitted, on or before Monday, November 28, 1994, and the rules, if approved, would go into effect on Tuesday, January 3, 1995. Thereafter a public hearing at the Federal Courthouse in Anchorage, Alaska, was scheduled for Tuesday, December 20, 1994.

In order to carefully consider the comments submitted and report back to the judges of the District of Alaska, the Committee has requested that the effective date of the rules be postponed until a date in April, 1995.

ITIS THEREFORE ORDERED:

The EFFECTIVE DATE of the Revised Local Rules of the District Court for the District of Alaska is POSTPONED from January 3, 1995, to **April 17, 1995.**

DATED at Anchorage, Alaska, this 19th day of December, 1994.

/s/ H. Russel Holland, Chief Judge District of Alaska
/s/ James K. Singleton, Jr. U.S. District Judge
/s/ John W. Sedwick U.S. District Judge

Alaska Bar Association Ethics Opinion 94-2
Simultaneous use of more than one name for law firm

The Committee has been asked whether an attorney or firm may simultaneously use more than one name for the purpose of marketing legal services offered by the attorney or firm. Under the assumed facts, the attorney or firm proposes to advertise using a trade name employing the phrase "... Law Firm" preceeded by geographical or other references which might connote a practice concentrating in one area of law, while at the same using "Law Office of [Attorneys Name]" to market a domestic relations or a similar practice. Both "entities" would in fact be identical, with the same address and telephone, and providing the same range of legal services. Only the letterhead and advertisements would be different, and the attorney's name would be included in all advertisements for both names.

It is the opinion of the Committee that the simultaneous use of two different names to identify and market a law practice is not inherently false or misleading, and is not prohibited by the Alaska Rules of Professional Conduct.

The subject of "Firm Names and Letterheads," is addressed in Rule 7.5 of the Alaska Rules of Professional Conduct. While that Rule does not specifically address the issue raised, section (a) does provide the basic criteria. That provision states:

> (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

In effect, Rule 7.1 simply requires communications by lawyers to be truthful. To the extent applicable to this opinion, it provides:

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services or any prospective client's need for legal services. A communication is false or misleading if it:
>
> (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Therefore, the issue to be addressed is whether simultaneous use of two different names to market a law firm is false or misleading because the communications would of necessity misrepresent or omit a fact necessary to the correct understanding of the communications.

Assuming neither of the firm names used is false or misleading by itself, and evaluating the issue based solely on the use of more than one name, the question would be whether the simultaneous use of two names for a firm would be misleading if the communication did not also advise the recipient that the firm was known by another name. If one of the names is not being used because of opprobrium or discredit associated with the other name, and if the use of multiple names is solely for the purpose of marketing to different types of clients, there is no apparent reason why a client might want to know that the lawyer is using more than one name to market his practice. In the absence of some facts making it reasonable to assume that the decision of a client to utilize the services of a lawyer practicing under one entity name would be affected by knowledge that the lawyer also uses another entity name to market his practice, that information does not appear to be of a nature requiring disclosure.

The committee has noted that section (b) of Rule 7.5 *permits* a law firm with offices in more than one jurisdiction to use the same name in both jurisdictions, provided the firm indicates the jurisdictional limitations of any lawyers not authorized to practice in both jurisdictions. By implication, that provision authorizes law firms practicing in more than one jurisdiction to use a different name in each jurisdiction, even though the composition of the law firm is the same. While that provision is intended to prohibit misrepresentation regarding a lawyer's authority to practice in a particular jurisdiction, it does lend some support to the Committee's opinion.

Approved by the Alaska Bar Association Ethics Committee on March 7, 1994.

Adopted by the Board of Governors on May 3, 1994.

Exempt from overtime pay

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reasonable determination about the status of its paralegals. Each law firm would have to determine its paralegals' status based upon job descriptions and the duties it delegates to paralegals.

Compensation

Surveys show that about 50 percent of employers pay paralegals for overtime and the other half do not. The surveys also indicate that exempt paralegals are not necessarily delegated more responsible tasks than are non-exempt ones. Attorneys do not distinguish between exempt and non-exempt tasks. Thus, it has not been determined if exemption for paralegals as a class will expand duties in the paralegal profession.

Paralegals favoring overtime pay contend that exempt paralegals are not paid at a higher rate to compensate them for the added hours worked. According to the July 1994, *Law Office Management & Administrator Report,* exempt paralegals average $32,798 per year and non-exempt paralegals average $30,312. Although it appears that the FLSA intended exempt employees to be paid more than an average salary, the regulations requiring a minimum of $250 per week ($13,000 per year) be paid exempt employees have not been changed since 1974 due to political reasons.

Some paralegals are not convinced that they gain the financial rewards, status, and the perceived professional image that goes along with exemption from the Act. The price of giving up overtime pay, mastering the knowledge necessary to perform profitable tasks for their employers, and taking the risks necessary to excel to top-notch levels in this profession may not reward paralegals their expected benefits.

National policy

Because no clear consensus on this issue exists among paralegals and their employers, NFPA delegates have decided to continue monitoring the issue and not to take a formal position on it yet. Paralegals and legal administrators could work with their employers on defining the issue. Unless government regulations are changed, other law firms may find themselves in the same positions as *Page & Addison.* At this point, paralegals and attorneys nationwide must accept the DOL's policy of non-exempt status for paralegals as a class. If a law office or department is not Paying its paralegals overtime, it should review its policies to ensure it complies with federal and state laws. The prudent employer must use not only the *Page & Addison* court decision, but also the regulations or an amendment to statutes as guides to avoid exposing its firm to noncompliance.

With the absence of regulations that apply specifically to the paralegal profession, it is up to the employer to delegate appropriate tasks to its paralegals to allow exemption from the FLSA on a case-by-case basis and to comply with 29 U.S.C. §213 (a)(1). The employer always carries the burden of proving the exemption. An employer who repeatedly and willfully violates the Act could be subject to a fine of $10,000 and imprisonment of up to six months. The employer violating the Act is potentially liable to the employee in the amount of overtime, together with an additional amount as liquidated damages and a reasonable attorney fee.

Dorene Ridgway chairs the National Federation of Paralegal Association's Ad Hoc Committee on Exempt/Non-Exempt Status and has served on various committees with the Washington Slate Paralegal Association since 1980.

New Travel Regulations Change Recoverable Costs

(Editor's note: The following was written by Robert G. Fischer, Manager of Fiscal Operations for the Alaska Court System, and circulated to court personnel).

The following explains the new per diem and meal allowance rates for state employees. This change affects the amount of costs that may be awarded in civil cases for witnesses and attorneys attending depositions and trial in locations other than their residence. (Administrative Rule 7(b).)

•Since the last travel memorandum, there have been several changes in State travel regulations. The following paragraphs reflect the changes and provide further clarification of court system travel policies. The purpose of travel policies is to provide reimbursement for actual and necessary expenses while traveling on court business.

Per Diem

Effective December 1, 1994, short-term per diem (30 days or less) is now a reimbursement of actual lodging expenses plus a meal and incidental expense allowance. Employees must submit actual lodging receipts to be paid for that portion of the per diem, otherwise, only the meal and incidental expense allowance will be paid.

Meal and Incidental Expense Allowance

The meal and incidental expense allowance for travel where overnight lodging is required, has been increased to $42 in Alaska, $36 for high cost continental U.S. and $28 for the rest of the continental U.S. As before, the meal and incidental expense allowance will be prorated for the day of departure and the day of return.

A meal and incidental expense allowance is also allowed when an employee is in travel status less than 24 hours but more than 10 hours and overnight lodging is not required. In other words, you must be in travel status at least 10 hours before the meal and incidental expense allowance is paid for day trips.

The meal and incidental expense allowance rates are:

Meal Period	*Alaska*
Breakfast	$ 9
Lunch	11
Dinner	22
Daily allowance	$42

Transportation

Travel must be by the most direct and efficient means . An employee should always secure the least expensive fare under the circumstances. If an employee travels on official business by an indirect route for their own convenience, any extra expense will be borne by the employee. Transportation expenses in excess of $15 must be supported by invoices. Reimbursement of any expenses under $15, for which receipts are not available, may not exceed a total of $30 per trip.

Mileage Reimbursement

An employee may use a privately-owned vehicle when it is in the best interest of the State. The State reimburses 29 cents a mile for the use of privately-owned automobiles, 45 cents a mile for airplanes and 20 cents per mile for other privately-owned conveyances. When an employee uses a privately-owned conveyance for personal convenience the reimbursement may not exceed the lowest available common carrier fare. Any additional time away from duty as a result of using a privately owned conveyance for personal convenience will be charged to personal leave or leave without pay. A copy of the leave slip must be attached to the travel claim.

Interruption of Travel for Employee Convenience

Any additional time or expense resulting from an interruption of travel for employee convenience shall be borne solely by the employee. Per diem, actual lodging expenses, meal and incidental expense allowances and other reimbursements shall not exceed that which would have been incurred had the employee not interrupted their travel. Any additional time away from duty as a result of an interruption for employee convenience will be charged to personal leave or leave without pay. A copy of the leave slip for the personal time must be attached to the travel claim. If a change in personal plans results in a travel penalty, the additional expense will also be borne solely by the employee.

Other Expenses

Other allowable expenses include business telephone calls, parking and other expenses necessary to conduct court business. The State does not reimburse for traffic violations, parking fines, lost airline tickets, laundry service or similar expenses. Individual expenses in excess of $15 must be supported by invoices. Reimbursement of any expenses under $15, for which receipts are not available, may not exceed a total $30 per trip.

Rental Vehicles

Vehicle rentals must be approved in advance by either the administrative director or the deputy administrative director. Submit a written request for approval prior to renting the vehicle. A copy of the approved vehicle rental request must be attached when submitting the travel claim for payment. State insurance coverage applies to only official business rentals and additional insurance offered by the rental car company should be declined. Rental cars may be used for court business only.

Travel Advances

An advance on per diem costs may be requested. The advance may not exceed 90% of the estimated costs. The request for the advance must be submitted in writing to the Administrative Accounting Office at least two weeks before the commencement of the trip. An advance will not be issued if a prior travel advance is outstanding.

Travel Claims and Required Documentation

Unless otherwise notified, trial court employees , including district and superior court judges, must submit travel claims to their area court administrator for approval prior to payment. Administrative employees must submit their travel claims to the deputy administrative director for approval prior to payment. If travel claims are received in the administrative accounting office without these approvals, the claims will be returned for approval.

Travel claims must be received by the Administrative Accounting Office within five days of the completion of the travel. Copies of the following documents must be attached to the claim: airline tickets; itinerary, lodging receipts (credit card receipts will not substitute for the lodging receipt); receipts for other expenses; leave slips, if the trip is interrupted; and the yellow and pink copies of State Transportation Request.

— Alaska Court System • Office of the Administrative Director • Nov. 29, 1994

Getting Together

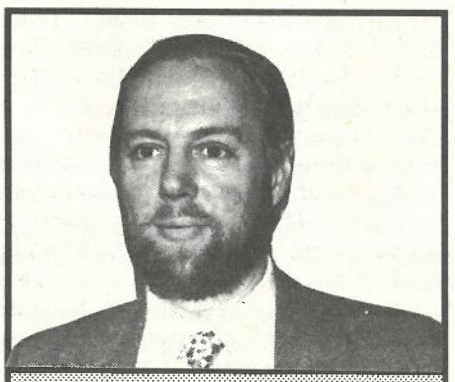
Church mediation

In this season of celebration of peace on earth and good will towards men, we once again find that many of the most intractable conflicts around the world involve religious disputes. Religious disputes are endemic, not only among religions, but also within them. Before organized religion can become the force that it desires to be in fostering peace on earth, it would be well for it to learn how to resolve its own internal conflicts. In such a quest, there has long been a need for a good introductory book about the use of mediation in church settings. Terje C. Hausken's book, *Peacemaking: the Quiet Power - Conflict Resolution for Churches through Mediation* (CRI Publishing, West Concord, Minnesota, 1992) has provided the book needed. I would recommend it as a useful addition to the library of every priest, bishop, minister, pastor, deacon, or committed congregational member looking to resolve church related disputes in a way that is true to the biblical admonition: "Blessed are the Peacemakers."

Terje (Terry) Charles Hausken is a Lutheran minister in Minneapolis Minnesota, and a member of the Academy of Family Mediators. He is co-author of the book *Mediation for Troubled Marriages* (Augsburg Press 1989). In *Peacemaking: the Quiet Power,* Hausken has expanded beyond the confines of family mediation to suggest the use of similar methods and techniques for resolving conflicts within church settings.

Peacemaking: the Quiet Power starts with a quote from the nineteenth century statesman Giuseppe Mazzini, that "the itch of disputing is the scab of the churches." Hausken contends that the church of the late twentieth century is continuing to prove the statement. In church circles everywhere there are horror stories of high conflict. Congregations are being split, and clergy asked to leave their positions. There is mistrust between clergy and laity, staff and staff, and between church and community. Hausken believes that mediation can be used effectively as a tool for peacemaking in such cases, in a way that is fully consistent with Christian theology and ideals.

Hausken begins his book with four vignettes of potential church conflict. The first involves a young paster in a growing church, getting caught in a battle between new versus old members of the congregation. The third involves a dictatorial senior pastor, making the lives of his staff miserable with his paranoid and obsessive behavior. The fourth considers a married couple, long "pillars of the church" community, who are blatantly attacked by another jealous member of the congregation. Finally, the second and most provocative vignette concerns a minister whose



Drew Peterson

attraction for young boys goes untreated as he is shuffled from one congregation to another, thousands of miles apart.

Hausken does not recommend mediation as a panacea. In the case of the sexually deviant paster, he does not suggest that the pastor's behavior not be prosecuted by the law. But such a prosecution is not the end of the matter. Mediation attacks the problem and not just the person. The problem in such an incident includes the children harmed, their families, the pastor's family, and the congregations, as well as the pastor himself. Mediation can address itself to all of the problems, not just those for which a limited remedy exists in the criminal codes.

After discussing the possible use of mediation in the vignettes, *Peacemaking: the Quiet Power,* turns to Christian scripture to discuss scriptural support for the use of mediation. Hausken points to many scriptural admonitions for peacemaking, including a reference to Jesus himself as a mediator in Hebrews 9:15. Hausken asserts that the greatest summary and argument for mediation in the church comes from the Apostle Paul in I Corinthians 6. Jesus himself provides a guide to peacemaking, in Matthew 18. Hausken asserts that mediation and the mission of Christ go hand-in-hand. The process is biblical, future oriented and Christ centered. And it works.

Chapter 10 of *Peacemaking: the Quiet Power* provides a step-by-step description of mediation of conflict in a congregational setting. Hausken emphasizes the use of trained mediators. The mediator should be a committed Christian, he asserts, with no previous knowledge of the particular congregation. As such, the mediator should be adequately compensated as a professional.

Hausken's church mediation model includes a number of different mediation sessions, each of which begins and ends with prayer. The first meeting is informational only, reviewing the rules and guidelines and committing the parties to a formal Agreement to Mediate. Congregational documents will spell out who can sign documents on behalf of the congregation. A time frame for the mediation should be discussed and agreed upon, which Hausken suggests not exceed one week, if possible. Another important issue concerns who will participate in the mediation; Hausken suggests that not over 15-20 people participate. If there are different factions involved in the dispute, each should appoint one or two representatives to participate in the mediation process.

The second meeting is then focused on information gathering, while the third gets down to the process of reviewing the information and inventing creative options to solve the problem. It is important that solutions come from the creativity of the congregation itself and not from the mediator. The mediator's job is to encourage positive communication. Finally the time comes to look for mutually acceptable agreements. This is the time when the mediation has the potential to become the most volatile. The mediator's job becomes that of reminding everyone to attack the problem and not a person.

The final session consists of a review of the agreement made, including completion of a formal "Mediated Agreement" which the congregation itself drafts. Hausken suggests that the mediator actively participate in a formal service of "Reconciliation and Forgiveness", in acknowledgment that there may still be feelings of confusion, anger and resentment in the congregation. These feelings should not be minimized or ignored.

Pacemaking: the Quiet Power ends with a Chapter of Questions and Answers, and two Chapters about how to establish a church wide Ministry of Mediation. Hausken encourages that a mediation ministry be established on the broadest possible scale, and that a corps of trained mediators be developed as a part. Mediation programs can also be started on a congregational level, however, which Hausken also recommends if a broader based program has not yet been developed.

I have some reservations about *Peacemaking: the Quiet Power.* Written from a Lutheran perspective, I believe that the book unduly limits itself to a Protestant Christian environment. The methods which Hausken describes can be used just as well with non-Protestant churches, and indeed even in non-Christian congregational disputes. I do not see why the mediators of such disputes need be members of the same denomination, unless the congregation so demands. And while I appreciate the appropriateness of Hausken's Service of Reconciliation and Forgiveness, do not see why such a service could not be developed within the context of any church dispute, with or without the mediator's direct involvement.

Professional mediators should already be trained to fully respect and honor the traditions of any group with whom they are asked to mediate. Nevertheless, I believe that Terje Hausken has done both the mediation world and the religious community a real service with his balanced and thoughtful approach to the use of mediation for the resolution of church related disputes.

Wolf will be remembered . . . and missed

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enthusiasm and his concern for the victims of crimes, so he was the first prosecutor I hired for the newly formed Anchorage Municipal Prosecutor's Office in 1975.

The system we inherited from the old city and borough days—the days when drunk drivers walked and domestic assaults were largely dismissed—was the pits. I mean *everything* was lousy. Police reports, judges' attitudes, public sentiment, and even the laws we worked with. Jim and I worked together to change it all, and it was a long fight.

The best part of that fight was working with Jim Wolf for nine of my 10 years as a prosecutor. We thought a lot alike. We were mad-dog prosecutors together. We even had a good time when we were arguing with each other over legal points. I was the one who proposed outrageous policies and legal positions that attempted to break new ground in the criminal justice system—and Jim would say "you're gonna lose, Bailey." He was a good influence on me and sometimes got me to change my mind. We yelled at each other a lot in those discussions, and it always sounded like we were having a really big row, but it never got in the way of our personal friendship. I think some of the people on our staff got a big charge out of our noisy debates, like listening to a tape of the Bickersons again.

By the way, Jim was usually right: I usually did lose in the court challenge when we tried something new and different, when I ignored Jim's warning. Like when we took forcible blood samples from drunk drivers who refused to take a breath test. But we would then work to change the law and ended up with the most effective DWI laws in the country.

Jim handled the most important legal case in which our laws were challenged—and won. He represented the municipality in the 9th U.S. Circuit Court of Appeals when the "forces of evil"—the criminal defense bar—attacked our misdemeanor criminal charge for refusing a breath test after a DWI arrest. It started in state district court and went to the Alaska Court of Appeals. They sought review in the Alaska Supreme Court. Then they went to the U.S. District court, and finally to the 9th Circuit. Jim's trip to San Francisco to argue in the 9th Circuit was the only such trip by a misdemeanor prosecutor that I am aware of in state history.

Our refusal ordinance, which I had patterned after the one in Nebraska, was upheld at every level.

Sometime in the late 70s, Jim started talking about his Lionel train collection. Since I had done a lot of train travel as a young boy and had a Lionel train since I was five years old, we had another bond—trains! Jim could talk about trains for hours. Big trains. Little trains. Toy Trains. Train pictures. Train Books. Train tapes. Train calendars. You know what I'm talking about. We talked each other into spending thousands—yes, thousands—of dollars on Lionel trains. We patronized the same train pusher, too, where he had a Pennsylvania Railroad locomotive and boxcar on order; they should arrive next week.

Jim was also on the board of directors of the Anchorage chapter of Mothers Against Drunk Driving with me for several years after I left the prosecutor's office. More loud discussions over how the problem of drunk driving should be handled, but always with that same affections Jim Wolf had for those he worked with.

Jim was an effective advocate and a good trial lawyer. He was concerned for the victims of crime—crime in general and crimes he himself prosecuted.

As the serious attacks on our DWI laws abated, Jim centered his efforts on improving the policies and procedures involving domestic violence cases. Laws were changed, and a municipal stalking ordinance was enacted. An investigator was hired for the prosecutor's office. Cases were not dropped even when the victim did not want to testify if the case could be proven any other way.

A woman who once worked with Jim in the prosecutor's office told me this week that Jim was gruff on the outside, but a teddy bear on the inside. That was Jim—kind, generous and always thoughtful. But I just wish I could get into one more of those loud debates with Jim about something important, or even something unimportant. Or hear that "large mouth bull frog" joke he used to tell just one more time.

We'll miss you, Jim.

Client confidences

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is an often-overlooked area of network vulnerability and is a vulnerable area. Dial-in connections should have only the minimum network access rights that allow necessary functioning and not a bit more. Be particularly careful that any connection to the Internet be made only with computers that are not connected at all to your office network.

• Run at all times a network antivirus program that checks all network activity and every network file transmission for viruses. I personally like the Central Point Anti-Virus for Netware program but this works only with Netware.

By identifying and correcting your network's vulnerabilities before disaster strikes, you can protect your firm's ability to continue working and fulfill your ethical responsibilities to protect client confidences and your own work product.