

# The Alaska BAR RAG

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VOLUME 24, NO. 1

*Dignitas, semper dignitas*

\$3.00 JANUARY - FEBRUARY, 2000

## No major Y2K glitches but issues still remain

It was to bring law firms \$1 trillion dollars of business in the new century. The date rollover to 2000 has come and gone, and new litigation opportunities are up in smoke.

Or are they?

By most accounts, the much-feared Y2K computer problem was the biggest bust of the millennium. No major catastrophic events occurred—in public utilities, financial systems, public safety and civil defense, or big business. But the jury's still out on Y2K's long-term impact. And arising from the ashes are many unknowns.

For one thing, glitches continue to be reported—and rapidly fixed: The failure for three days of U.S. satellites over the New Year weekend. E-mail system failures in Moscow's Kremlin. Odd dates on websites, showing the year as 19100 (even on Al Gore's Internet Town Hall). Cash registers (30,000 of them) failing in Greece. The Philadelphia Stock Exchange website reporting the date as January 1, 1900. The Bureau of Alcohol, Tobacco and Firearms' electronic gun licensing and registration service going offline. Inaccessibility of 100,000 online bank accounts in Sweden. And likely thousands of other unreported failures that analysts believe will continue throughout the first quarter of the year. Reported to date are principally small or easily fixed failures that are expected to offer little opportunity for lawyers.

But rising from the perceived non-event are several potential legal issues, with insurance claims percolating to the top of the list.

The Information Technology Association of America and Law News Network reported the week of Jan. 10 that insurers may expect a rash of lawsuits based on sue-and-labor clauses in business policies. It's an ironic outcome to the estimated \$300 to \$600 billion in preparation costs the U.S. invested to prevent Y2K failure: corporations are expected to file claims to recover their Y2K expenses, while insurers are likely to deny coverage. Tom Brunner, of the Washington, D.C. law firm of Wiley Rein & Fielding, says this cost recovery strategy "is a square peg in a round hole. For the sue and labor clause to come into play, an effort has to be made to avoid a loss covered by a policy." Y2K expenditures were not made to avoid loss, he argues; they were made for business continuity reasons. Brunner's firm defends insurance companies; he serves as counsel to the Insurer's Year 2000 Roundtable in the capital. Law News Network suggests another insurance defense: "With date change having a mostly minor impact on technology, it will be harder for policyholders to prove the necessity of their Year 2000 expenditures." Even so, a number of actions have already been filed seeking cost recovery. Plaintiffs include Xerox, GTE, Unisys, Nike, K-Mart, ITT and the Port of Seattle.

Another area ripe for dispute is breach of warranty claims against software and technology companies. Y2K legislation passed by Congress last year requires plaintiffs to give notice of intended action to defendants, and requires mediation before these actions may proceed to court. Alaska statutes that preceded federal legislation also incorporate this protection for tech companies.

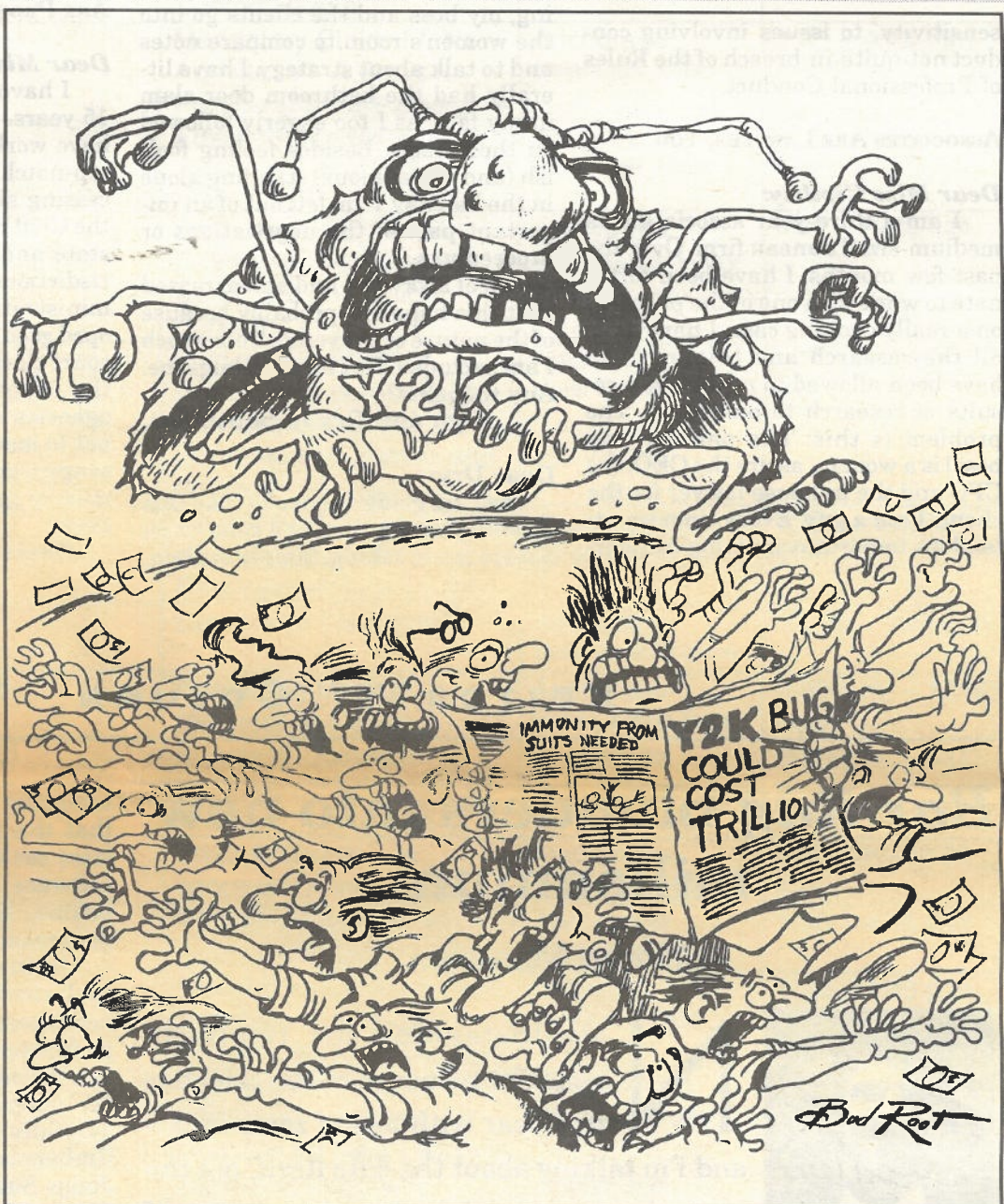
Plaintiffs also are expected to attempt recovery of remediation costs from tech vendors in cash and discounts on future goods and services.

And on Jan. 11, a London newspaper reported that "a leading British electronics company" filed suit against its IT consultant for exaggerating the threat of Y2K.

While Y2K-related law firms are agreeing that

*Continued on page 11*

## NOT!?



## Million dollar gift launches School of Law Alaska Program

Seattle University has received a \$1 million gift to launch a scholarship program for Alaska students desiring to study law at the Seattle University School of Law. George and Mary Sundborg, the parents of Father Stephen V. Sundborg, S.J., president, and former longtime residents of Alaska, contributed the \$1 million. A \$750,000 gift to the School of Law and another \$250,000 to the Oregon Province of the Society of Jesus will assist Alaska students desiring to study law at Seattle University.

The Sundborgs lived in Alaska for 26 years where George was the editor of newspapers at Juneau and Fairbanks. He was also the general manager of the

Alaska Development Board, executive assistant to the Governor, administrative assistant to Senator Ernest Gruening, and an elected delegate to the Alaska Constitutional Convention in 1955-56. Each of the Sundborg's five children was raised in

Alaska and one son, George Sundborg, Jr., lives in Fairbanks, as do four grandchildren and seven great grandchildren.

The Sundborg gift is being used to further the goals

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## Letters ☐ Kirsten Tinglum



These letters are based on real (or nearly real) experiences, one or more of which I suspect that I share in common with my readers (all three of you). Each is intended to address an issue of civility - ranging from issues of increased

sensitivity, to issues involving conduct not-quite-in-breach of the Rules of Professional Conduct.

### ASSOCIATES ARE LAWYERS, TOO

#### Dear Miss Civility:

I am a third-year associate at a medium-sized Juneau firm. Over the past few months, I have been fortunate to work with one of the partners on a really exciting case. I have done all the research and briefing, and have been allowed to present the results of research to our client. The problem is this: The partner (my boss) is a woman, as are the CEO, the CFO and the in-house lawyer for the client. I am a guy. Every time we attend an important meeting or hear-

ing, my boss and the clients go into the women's room to compare notes and to talk about strategy. I have literally had the bathroom door slam in my face, as I too eagerly followed on their heels. Besides feeling foolish (and superfluous) standing alone in the hallway, I am left out of an important part of the negotiations or proceedings.

I feel awkward and embarrassed that this happens, probably because of the nature of the venue from which I am excluded. But it really bugs me. Any thoughts?

#### High and Dry in Southeast.

#### Dear Dry:

You are going to have to take this up with your partner, at a time when nature is not calling. Simply explain,

before the next meeting, that you would really like to be in on all of the discussions of strategy and case development, and that you are missing out on a lot because you don't need to sit down to use the toilet (or words to that effect). It will then be up to your boss, when she is in the powder room, to remember her manners and to say to the clients, "Let's save that until we're out of here, I know Guy would like to be in on this discussion," or better yet (if she's really with it), "Guy may have something to say on this topic, I'd like to include him." Good luck.

### SECRETARIES AND COURT REPORTERS ARE PROFESSIONALS, TOO

#### Dear Miss Civility:

I have been a legal secretary for 15 years. I work for three lawyers. I have worked hard to keep my skills top-notch, including my word processing skills and my knowledge of the Civil Rules and procedure in both state and federal courts (in two jurisdictions), and in at least two administrative agencies. I have developed good working relationships with court clerks, judges' secretaries, and the support staff in the firms and agencies with which we do business, not to mention process servers, messengers and suppliers. My bosses are mostly great, but I have one pet peeve.

Never once has any one of my

bosses introduced me to opposing counsel, co-counsel, or to our clients. I almost always have numerous contacts with each of these people in every case. It seems to me that, while I seldom have problems with any of these communications, it would make things that much easier and more pleasant if I were introduced as a member of the team. (Incidentally, they never introduce the paralegal either, or the court reporter, and sometimes they even skip the associate attorney). Am I being too uppity?

Anonymous Cog

#### Dear Cog:

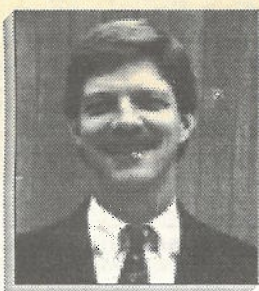
Your suggestion is an excellent one. People who have met face-to-face and expect to meet again are much more likely to be reasonable with, and civil to, one another. The additional ease that would be purchased with formal introductions of support staff could make a significant difference in routine but important matters such as time extensions, schedule changes, discovery, marking and exchanging exhibits, and any number of other matters which, if handled poorly, can cause unnecessary confusion, heartache and expense. It would also have the secondary benefit of increasing the staff person's sense that he or she is a professional and a team member (which has its own significant rewards).

You are going to have to take a deep breath and risk sounding uppity to ask your bosses to introduce you to the clients and other professionals working on a case. Tell them that you think it will improve overall relations and communication. Then,

## EDITOR'S COLUMN

## Bar Rag blunders into new millennium

☐ Peter Maassen



Notwithstanding the relatively peaceful turnover of the calendar to a year with lots of zeros in it - and I'm talking about the date itself, not the upcoming presidential primaries - many of us still have our own little Y2K crises to

contend with. Unlike many of you, the *Bar Rag* did not invest heavily in brown rice, powdered milk, salmon jerky, or ammunition. Instead, recognizing that the crux of a well-functioning society is not its food stores or its fire-power but its laws, we spent all the *Bar Rag* budget for Y2K on law books, which we stockpiled in a warehouse down by Ship Creek.

Now I know that many of you, especially the younger lawyers, are howling, "Warehouse? Why would you need a warehouse to store what can easily fit on a single CD, with room left over for Celine Dion's greatest hits and the director's cut of *American Beauty*?"

Thus was the very nature of our foresight. Over the past few years most law firms, investing heavily in CDs and search engines, have consigned huge piles of books to the landfill: the Supreme Court Reports, the F Supps, the P Seconds, the ALRs, all those dull-spined and ponderous volumes that used to make us think we were a learned (two syllables) profession. All we've held back are those few rows of

books that we need as backdrops to TV ads and press conferences. By the way, here's a useful tip: Martindale-Hubbell's are the best value in inches of shelf-width per dollar, and for that colorful Indian-corn look, throw in at random a few Am.Jur.2ds and Federal Digests. (Thanks to Martha Stewart of East Hampton, N.Y.)

Our hopeful gamble here at the *Bar Rag* was that everybody's computers would go down on the stroke of midnight on December 31, 1999, and lawyers would be lined up at the front door of the *Bar Rag* warehouse, begging a peek at 714 F.Supp. 325 before the reply brief comes due. Which we would, of course, give them, at new millennium prices.

But it didn't happen. So have we got a deal for you. LAW BOOKS. FOUNDATION OF A FREE SOCIETY. WILL TRADE FOR BROWN RICE, SALMON JERKY, OR AMMUNITION, ALL TYPES.

Sad to say, our Y2K backup plan didn't work either. Our secondary hope, absent total collapse of our

computer and everyone else's, was that the millennium bug would at least eat out the rotten parts of our software and leave only the good behind, like a maggot cleansing a gangrenous wound.

In the editor's computer it's the spell-check function that particularly needs purging. It's the spell-as-you-go function that you've probably got too, the one that redlines every word the computer doesn't recognize and helpfully suggests an alternative. Embarrassingly, it prefers to call Judge Souter "Shouter" and Justice Bryner "Brainier." Among the choice lawyer words it doesn't recognize are "tortious" (it prefers "tortuous," not without some justification), "meritless" (it prefers "merciless"), "concededly," "conclusory," "dispositive," and "remediation." More amusing is its confusion over common case-law abbreviations; for example, when I write "Or.App." it reads "Europe," which probably gives those cosmopolite Oregonians a superior chuckle or two. "Wash.App." on the other hand, is "washup." Both "Cal.App." and "Colo.App." are "calliope," "Penn.App." is "pinup," "Ill.App." is "asleep," and "Okla.App." is "oxlip" (which, for you non-botanists, "differs from the cowslip in the flat corolla limb"). "Mass.App." appropriately enough, is "mistype," and "Miss.App." is "misshape." "Fla.App." is "flap," and both "Conn.App." and "Kan.App." are "canape." So despite the new millennium, I, at least, am a few years away from setting my computer free to do the brief-writing on its own.

It did, however, write this column. I'm too busy in the warehouse, shoveling books into the dumpster. (P.S.: The spell-check doesn't like "dumpster" either; it prefers "demister.")

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## The Alaska BAR RAG

The Alaska Bar Rag is published bi-monthly by the Alaska Bar Association, 510 L Street, Suite 602, Anchorage, Alaska 99501 (272-7469).

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Dan Branch  
Drew Peterson  
Leroy Barker  
William Satterberg  
Scott Brandt-Erichsen  
Steven T. O'Hara  
Thomas J. Yerlich  
Steven Pradell

**Contributing Cartoonist:**  
Mark Andrews

**Design & Production:**  
Sue Bybee & Joy Powell

**Advertising Agent:**  
Details, Inc.  
507 E. St., Suite 211-212  
Anchorage, Alaska 99501  
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# Bar Letters

## Column a mockery

In purporting to promote alternative justice, Mr. Peterson manages to make a mockery of us all. Not content to trash the prosecutors for their admitted lack of insight, Mr. Peterson proceeds to trash defense counsel and the justice system as well. The real tragedy is that Mr. Peterson scorns and reviles the offenders even as he insists on alternative responses to their criminal conduct.

Did Mr. Peterson seek to impress the mythical, male Prosecutor to whom his letter is addressed with his hatred for the "heinous", "incorrigible", "stupid", "convicted" criminals? Was this characterization of the offender meant to inspire the prosecutor's trust in his judgment, on the assumption that all prosecutors are motivated by such a brute and mean sense of justice? Why would an attorney, pledged to uphold and defend the constitution, allude to violations of the rights embodied in the constitution as "technicalities"? There is a troubling lack of sophistication and respect for the law reflected in Mr. Peterson's ranting, and in the end he does not promote restorative justice, but rather a more emotionally devastating and punitive model of justice.

I have been a defense attorney since 1983. I have supported many alternative justice efforts — from placing Inuit offenders in spirit camps to participating in the JAS effort in district court. Alternative forums require perceiving the offender as something more than a "heinous criminal." They require us to perceive an offender as a person, a person who has misbehaved and yet still has the ability to take responsibility and perhaps even repair the damage caused by his misconduct.

Mr. Peterson may not get a prosecutor to respond to his letter. But you should be hearing from quite a few defense attorneys.

—Leslie Hiebert

## Bar Rag irresponsible

The *Bar Rag* acted irresponsibly in publishing Drew Peterson's column on restorative justice because it is fraught with errors and falsehoods. When an author characterizes his article as "my rant," and criticizes a segment of the legal profession, the editor should require the author to substantiate the claims contained in the text. Obviously, the editor failed to do so.

Mr. Peterson implies that prosecutors were responsible for keeping Janice Lienhart, one of the co-founders of Victims For Justice, out of the courtroom during the juvenile waiver proceeding of a 14-year-old girl who had murdered Ms. Lienhart's parents. Had Mr. Peterson read *W.M.F. v. Johnstone*, 711 P.2d 1187 (Alaska App. 1986), he would know that Judge Johnstone granted Ms. Lienhart's request to attend the proceedings and that the court of appeals affirmed Judge Johnstone. He would also know that the prosecutors actively supported Ms. Lienhart's request to attend. The reported decision clearly states that prosecutors filed a memorandum in support of Ms. Lienhart's request.

Mr. Peterson is wrong when he states that prosecutors are opposed to involvement by victims. The Department of Law, Criminal Division,

has consistently engaged in efforts to ensure that victims' rights are honored. Every day prosecutors and paralegals throughout the state uphold the constitution and enforce statutes setting forth victims' rights. Prosecutors and paralegals contact victims about hearings that are scheduled, hearings that are cancelled, and sentencings. They meet with victims to discuss their cases and to prepare them for trial. In short, prosecutors and paralegals support the involvement of victims in the criminal justice system. After Alaska's citizens passed the Victim's Rights Amendment giving victims the constitutional right to be present at criminal or juvenile proceedings, prosecutors across the state objected when judges relied on Evidence Rule 612 and ruled that the victim should be excluded at trial until the victim testified. Prosecutors on rules committees then advocated for a change in Evidence Rule 612 to allow victims to exercise their constitutional right to attend the entire trial. When a judge in Valdez sentenced a domestic violence offender at arraignment without notifying the victim, the prosecutor appealed. When a magistrate set on a bail review without sufficient time for the prosecutor to notify the victim, the prosecutor objected and sought discretionary review by both the court of appeals and the supreme court. Although the efforts are not always successful, prosecutors do what they can to ensure that the courts do not infringe on victims' rights.

Prosecutors have actively advocated for legislative changes that protect and enhance victims' rights. For example, prosecutors urged for passage of Governor Knowles' Domestic Violence Act of 1996. This act prohibits defendants, defense attorneys and their agents from surreptitiously recording interviews with sexual assault victims. The Criminal Division also advocated for a statute that placed restrictions on when a judge could order victims to undergo psychiatric examinations, and supported the VINE legislation, which provides for automated notification to victims when perpetrators are released from prison.

Mr. Peterson's claim that prosecutors request, and judges impose, maximum sentences for recidivists is belied by the sentencing provisions found in Title 12 and by case law. Maximum sentences are the exception, not the rule.

Mr. Peterson is correct in one respect. A prosecutor did decline Mr. Peterson's invitation to participate in a panel discussion for lawyers on the topic of restorative justice. But Mr. Peterson neglected to report that prosecutors sit on various rules committees, commissions, councils and task forces where they propose and advocate for victims' rights and the principles of restorative justice. For example, prosecutors proposed a rule that would allow videotaping of a victim's impact statement at sentencing, so the Parole Board would be able to see the victim at a later parole hearing, if the victim were unable to attend in person.

The Attorney General serves as co-chair of the Criminal Justice Assessment Commission, a group that has spent the past three years on ideas and recommendations to improve the criminal justice system, including concepts inherent in restorative justice.

Prosecutors are members of the Commission and of its several subcommittees. When Commission member Janice Lienhart with Victims for Justice talked about the role of restitution in restorative justice, a prosecutor and paralegal spent hours collecting information and putting together materials on what can be done to get more restitution paid to victims. I gave a presentation at the District Attorney/Paralegal conference in October, and the conference binder contained materials on restitution.

Prosecutors participate in task forces and in youth courts. A prosecutor is currently the chair of the seven-member Council on Domestic Violence and Sexual Assault. Prosecutors and paralegals across the state sit on boards of various programs and provide training to victim service organizations. We participate in Victims Rights Week and attend the Tree Ceremony in Anchorage sponsored by victims groups. We attend fund raisers for these programs.

Perhaps some day prosecutors will have the extra time to participate in a panel for attorneys like Mr. Peterson who admit they have little interest in the criminal justice system. But until then, we are devoting our limited time and resources to improving the system. And we're getting things done!

I invite Mr. Peterson to spend a day with a prosecutor and paralegal and observe their interactions and contacts with victims. Then he could write an article based on facts.

Sincerely,

BRUCE BOTELHO  
ATTORNEY GENERAL  
BY: CYNTHIA M. COOPER  
DEPUTY ATTORNEY GENERAL

## Drew Peterson responds

My article in last issue's *Bar Rag* invited a response from Alaska's prosecutorial corps as to why new models of restorative justice - being touted by some as a more humane approach to the current criminal justice system - are actually dangerous and irresponsible, as I was informed by one of their brethren. My article was deliberately provocative, and emotional in tone. One of the points it made was that neither the prosecution nor the criminal defense bar "get it" about restorative justice, which involves a fundamentally different way of looking at the world than the current retributive criminal model.

The article must have struck a tender cord, as witness the response from both the prosecution and defense. While the letters aim a couple of low blows in my direction, they are no more than I invited with my own rhetoric.

I appreciate prosecutor Cynthia M. Cooper and defense attorney Leslie Hiebert devoting some of their limited time and resources to participate in what I believe to be an important debate. I happily accept Ms. Cooper's offer to spend a day with a prosecutor and paralegal to observe their contacts and interactions with victims.

—Drew Peterson

## Pro-bono thanks

On behalf of the Alaska Pro Bono Program/Alaska Legal Services and the Alaska Bar Association I would like to thank the attorneys conducting our January through May 2000 Pro Bono Legal Clinics. The attorneys who volunteer their evenings to conduct the legal clinics are helping Alaska's low-income and moderate-income/disadvantaged and increasing the access to civil justice in their community.

Let us applaud the following individuals:

**Anchorage:** Michael Grisham, Margaret Stock, Marcia Davis, Kenneth Kirk, Sally Hinkley, Rhonda Fehlen, Jane Pettigrew, Paul Paslay, James E. Gorton, Jr., Young Lawyers (Pamela Keeler coordinator), Delaney Wiles Hayes Gerety Ellis & Young (Donna Meyers coordinator of the Tuesday Night Bar), Elmendorf AFB JAG's Office (Capt. Wilde coordinator of the Wasilla Tuesday Night Bar) and Michael Shaffer

**Fairbanks:** Barry Donnellan, Robert Groseclose and H. Van Lawrence

**Juneau:** Keith Levy

**Kodiak:** Matt Jamin

The topics/issues that are discussed at the legal clinics include Landlord/Tenant, Family Law, Wills/Probate, Immigration & Naturalization, Bankruptcy, Small Claims and a Spanish language general legal clinic.

If any attorney wishes to volunteer to conduct a legal clinic, please contact me at 222-4525.

Thank you.

—Maria-Elena Walsh, Alaska  
Pro Bono Coordinator

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## Homer attorney explores both sides of "paradise"

In the spirit of legendary seafaring explorers, Jim Hornaday, of Homer, Alaska, ventured to the Cook Islands of the South Pacific and returned home laden with treasure - a booty of new friendships and international goodwill. Who needs gold doubloons anyway?

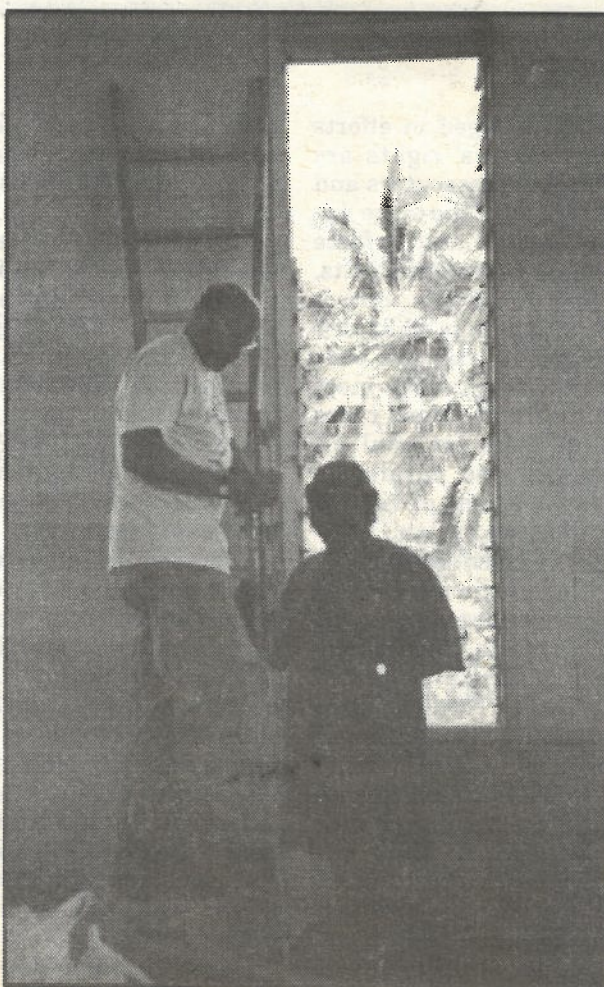
Hornaday was part of a team of North American volunteers who spent three weeks working on a variety of projects - some medical, some maintenance - on the island of Rarotonga. Hornaday devoted most of his time to maintenance and repair at the Rarotonga hospital.

Believe it or not, the volunteers accomplished a lot...even amid the obvious distractions of picturesque palm-shaded beaches, tropical breezes and movie-set panoramas. While the "generalists" on the team did painting and maintenance work, assisted teachers in a local school and visited with the residents of a local senior citizens home, a contingent of medical volunteers examined and treated patients and consulted with local doctors.

Perhaps the most important accomplishment, and one that is surprisingly difficult for "product-oriented" North Americans, was that of simply slowing down, taking the time to talk to local people, to learn about their lives and their culture, and share a bit of our own.

By immersing himself in the community, Hornaday came away with unique, non-tourist insights into the people and culture of the Cook Islands - perspectives rarely possible through the window of a tour bus.

To enhance intercultural understanding, the volunteers had the opportunity to sit in on discussions and lectures by local Cook Islanders. Local professors, doctors, wood carvers, pearl merchants and parliament members augmented the



Homer attorney Jim Hornaday helps replace window louvers at the hospital.

volunteers' understanding of life in "paradise."

During free time, volunteers took in the beauty of this volcanic island with its lush vegetation, interior mountains and tranquil reefs. They snorkeled the expansive coral reef, hiked through wild growths of frangipani and orchids, attended island dance shows and church services with soulful choral singing, visited the island of Aitutaki with its renowned lagoon and shopped local markets for woodcarvings and other crafts. Despite its seemingly idyllic setting and lifestyle, the Cook Islands are not without their problems - namely, economic concerns, a continuing decrease in population and a scarcity of health-care professionals.

This volunteer service program was coordinated by Global Volunteers, a nonprofit, nonsectarian international development organization based in St. Paul, Minn. Founded in 1984, Global Volunteers attempts to build bridges of understanding between people of diverse cultures by involving them in short-term service projects. No special skills or background are required to volunteer, only a desire to experience and learn about life in another culture.

International service program fees range from \$995 to \$2,395, excluding airfare. USA programs are \$450. All service-program expenses, including airfare, are tax-deductible for U.S. taxpayers. Included in the service program fee are all meals, lodging and ground transportation in the host community, volunteer orientation materials, project expenses and the services of an experienced team leader. For more information, contact Global Volunteers at 1-800-487-1074, 375 E. Little Canada Rd., St. Paul, Minnesota 55117 or visit the website at [www.globalvolunteers.org](http://www.globalvolunteers.org).

## Help Light the Way . . .

For many of the million-plus Americans who live with progressive neuromuscular diseases, tomorrow means increasing disability and a shortened life span. But thanks to MDA research — which has yielded more than two dozen major breakthroughs in less than a decade — their future looks brighter than ever.

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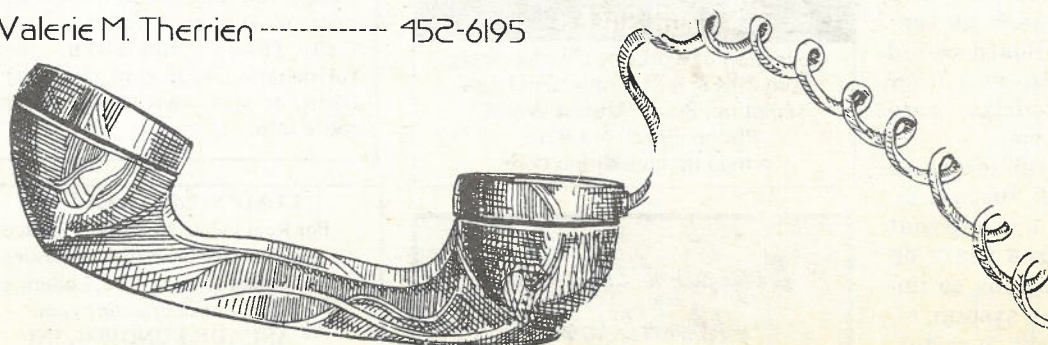
Brant G. McGee ----- 269-3500

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William K. Walker ----- 277-5297

Nancy Shaw ----- 243-7771

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## Judges wanted

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**The Anchorage Bar Association's Young Lawyers Division is looking for volunteer law professionals to serve as judges in the statewide mock trial competition.**

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*--Mock trial participant,  
1997*

**The competition will be held  
March 10-11 in Anchorage.**

**200 high school students will team up in four rounds of competition during the 2 days of mock trials.**

**If you can spare two hours on March 10 or 11 to judge one round of competition, your help will be greatly appreciated.**

**If you can contribute your time for this inspiring event, contact Mike Shaffer, 276-6015 or Krista Stearns, 272-8401.**



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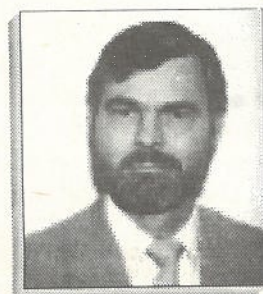
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# Bankruptcy rules amendments

□ Thomas Yerbich



**A**s we enter the first year of the new millennium or the last year of the old, depending on whether one is a populist or a purist, several changes to the rules of bankruptcy procedure, national and local, are in effect. The

following summarizes significant changes of general interest [the full text of the amended rules are available on the internet at the Alaska Legal Resource Center site <http://www.touchngo.com/lglcntr/usdc/bnkruptcy/bnkruptcy.htm>].

## FEDERAL RULES OF BANKRUPTCY PROCEDURE

**Rule 1019:** (1) The holder of a postpetition, preconversion administrative expense claim is required to file a request for payment under BC § 503(b), not a proof of claim form (OF 10); (2) the time for filing postpetition, preconversion administrative expense claims is set by the court; and (3) postpetition, preconversion administrative expense claims of governmental entities are timely if filed by the later of the date set by the court or 180 days after the date of conversion. For those claimants having preconversion administrative expense claims, it is important that the request for payment be filed and noticed to the extent required by rule [See AK LBR 2016-3]. Those creditors are well advised to file the request for payment as soon after conversion as it may be practicable. [Filing a Proof of Claim (OF 10) is *not* the equivalent of making a request for payment under § 503(b).]

**Rules 3020, 3021, 4001, 6004, and 6006:** These rules were amended to provide an automatic ten-day stay of orders: (1) confirming a chapter 9 or 11 plan; (2) granting relief from the automatic stay; (3) authorizing the use, sale or lease of property, other than cash collateral; or (4) authorizing the trustee to assign an executory contract or unexpired lease under BC § 365(f). Prior to these amendments, the automatic stay of enforcement under FRCP 62 did not apply to these orders and an appeal after the order was implemented became moot. The purpose of the

amendments to these rules is to provide parties sufficient time to appeal.

Two important additional factors need to be borne in mind regarding stays after entry of these orders. First, the court may order otherwise. The "otherwise ordered" should not be exercised as a matter of course. The person seeking immediate enforcement of an order otherwise stayed by a ten-day provision will have to show good cause (notwithstanding that the rules do not specifically require such a showing), e.g., immediate and irreparable harm, unless all potentially adversely affected parties stipulate. Second, since the stay expires by its own force after ten-days, if a party files a notice of appeal, further stay of the enforcement of the appeal will have to be sought under FRBP 8005. Although designed to give parties an opportunity to appeal running concurrently with the normal time to appeal, the amended rules do not provide for an automatic extension of the ten days simply because the time to appeal is extended. If the time for appeal is extended under FRBP 8002(b) or (c), a further extension of the stay on enforcement of the order must be obtained to avoid dismissal of the appeal for mootness.

**Rules 4004 and 4007:** Amended to clarify that the time for filing an objection to discharge or dischargeability is 60 days after the first day set for the meeting of creditors, whether or not the meeting is held. Further, as amended, the rule makes clear that a motion to extend the time for filing those complaints must be filed before the 60-day period expires. [Note: The amended rule simply conforms to prior Ninth Circuit decisions in this area.]

**Rule 7001:** Amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief when the relief is provided for in a chapter 9, 11, 12

or 13 plan.

**Rules 7062 and 9014:** Amended to conform to the amendments to FRBP 3020, 3021, 4001, 6004, and 6006. The reference to FRBP 7062 in FRBP 9014 has been deleted. Rule 7062 has been amended to delete the additional exceptions to FRCP 62(a). However, although FRBP 7062 will not apply automatically in contested matters, the court, in its discretion, may order that FRBP 7062 apply in a particular matter. Also, FRBP 8005 gives the court discretion to issue a stay or any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties.

## LOCAL RULES

**LBR 2003-1:** The language related to waiver of personal appearances at the BC § 341 Creditors' Meeting by the U.S. trustee has been deleted. Although the U.S. trustee may authorize telephonic appearances, only the court can waive a personal appearance by the debtor. New subsection (d) provides for waiver of personal appearances by noticed motion supported by affidavit/declaration. In addition, the debtor must suggest alternative means of examination. When examination is by deposition on written questions, the burden on the interrogating party(ies) is reduced by limiting the FRCP Rule 31(a)(3), (4), and (c) requirement of service on parties to those who actually participate, not the entire matrix.

**LBR 2016-1:** A new subdivision (i) has been added requiring professionals to file their applications for payment of fees not later than seven days after the trustee transmits the Final Report before Distribution to the Court.

**LBR 3022-1:** Amended to conform to BC § 1930(a)(6) and, thus, avoid multiple reports. All post confirmation reports will be filed quarterly coinciding with the calendar quarters to facilitate the requirement of paying U.S. trustee fees. LBR 29 has a corresponding revision to include a certification by the debtor of disbursements made.

**LBR 4001-2 [new]:** Establishes procedures governing postpetition financing and cash collateral orders. The movant is required to set forth in the motion the minimum information necessary to permit the court to make an informed decision in the best interests of the estate, as well as provide other interested parties with sufficient information to determine whether or not an objection is warranted.

The required items directly address the decision making process, including: basic information about the debt and collateral involved; debtor's initial expectations regarding operations; and information necessary to measure the necessity for and scope of adequate. In addition, the rule requires the movant to alert the

court to any other creditor directly adversely impacted by the proposed postpetition financing, the nature of that impact and whether or not the creditor consents.

The rule also establishes a procedure for emergency motions providing for short-term, interim relief pending a hearing in the ordinary course. The effect of the order is limited to 20 days after the motion is filed, unless the court otherwise orders (may either lengthen or shorten the time).

The rule differentiates between provisions that protect the creditor but usually have no direct adverse impact on the estate or other creditors. For example, this category includes: termination upon default; monitoring by the creditor; maximum time periods; restrictions on use of the proceeds; and replacement liens in like collateral (postpetition continuation of after-acquired clauses) or on other collateral to preserve the creditor's position.

21 provisions that may, in some circumstances, result in the creditor improving its position to the detriment of the estate and/or other creditors or, to an extent, circumvent a provision of the Bankruptcy Code designed to protect or enhance the position of the estate are specifically enumerated. For example: stipulations as to perfection or priority; priming senior interests; binding on the trustee in a superceding chapter 7; or creating a super-priority status. While not necessarily prohibited *per se*, these provisions are subject to scrutiny by the court, even in the absence of an objection. The rule and its corresponding local forms [new LBF 35 and LBF 36] are designed to alert the court and interested parties whenever it is proposed that any of these provisions be included. It should be noted that the rule applies to stipulated as well as contested motions.

**LBR 4003-1 [new]:** Establishes a procedure for objecting to exemptions. Also added is a new form, LBF 34, for making objections to exemptions under LBR 4003-1. Parties objecting to a claim of exemptions should make note of the fact that the objection must always be served on the debtor, as well as debtor's counsel (if represented by counsel).

**Rule 9013-2:** A new subdivision has been added to provide in motions notice to the respondent of the date by which a response is required. This provision eliminates the concern, particularly with respect to *pro se* parties, that the need for filing a response and the time for filing that response may not otherwise be imparted.

**LBF 5 (Chapter 13 Plan):** As previously drafted, the form chapter 13 plan could have been construed to only apply to the modified secured claims, not all secured claims. The amendment clarifies that all security interests are retained.



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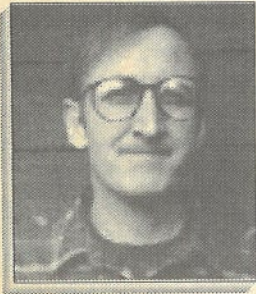
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ECLECTIC BLUES

# The parable of the EBAY victim

□ Dan Branch



(This is a modern parable which means it contains truth but few facts.)

It was too cold for a sidewalk sale. A Taku wind was blowing down Front Street in Juneau, gently rocking the street merchant's sign. In the crisp type of a

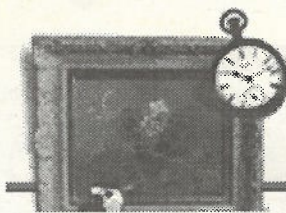
laser printer, the sign advised the passerby that "Your Purchase Helps an Internet Auction Addict Find Hope."

Stopping to examine his humble wares set out before him, I heard him say, "I was a lawyer once, oh yes. But that was before I got wired." After taking a moment to rearrange his Beanie Baby™ display, and straighten out his fly rods, he went on to tell me what happened.

"I came to Alaska with five years experience as a misdemeanor attorney for the San Bernardino Public Defender's Office. Thought I'd move north and live in the land of bears and clean air. Had a couple of offers from Anchorage law firms. Took one with a wired partnership, doing PI work near the new courthouse.

"At the beginning it seemed harmless—my internet auction habit—a little diversion after a hard day's work. Started on fishing gear—a rod here, a reel there—just running searches. Heck, I didn't even bid on anything at first. After a month I placed my first winning bid on a D.A.M. Quick spinning™ reel. My money order to the seller was in the mail the next day and I was hooked.

"I couldn't stop there—no—had to have a matching rod, too. When my



## Collectibles



garage was full of near new angling gear, I discovered the antique flat fish market—there was no turning back then. I was a collector—internet auctions are crack houses for collectors. Soon I moved on to Hardy™ fly reels and bamboo rods.

"It didn't stop with fishing gear. I went after Beanie Babies and then baseball cards. Lost my job over a Roger Maris rookie card. Boss fired me after I skipped a pre-trial conference so I could be at my terminal during the critical final minutes of the auction.

"I wish I could tell you that I came to my senses then. It would be a lie. I kept on bidding—on Pokemon™ stuff, Star Wars™ toys,



and Beanie Babies. Kept on bidding until Chugach Electric turned off the power. The landlord changed the locks and hauled off my PC and I was

in streets with my stuff—a computer age bag guy—carrying my internet trophies through the streets of Anchorage in designer luggage."

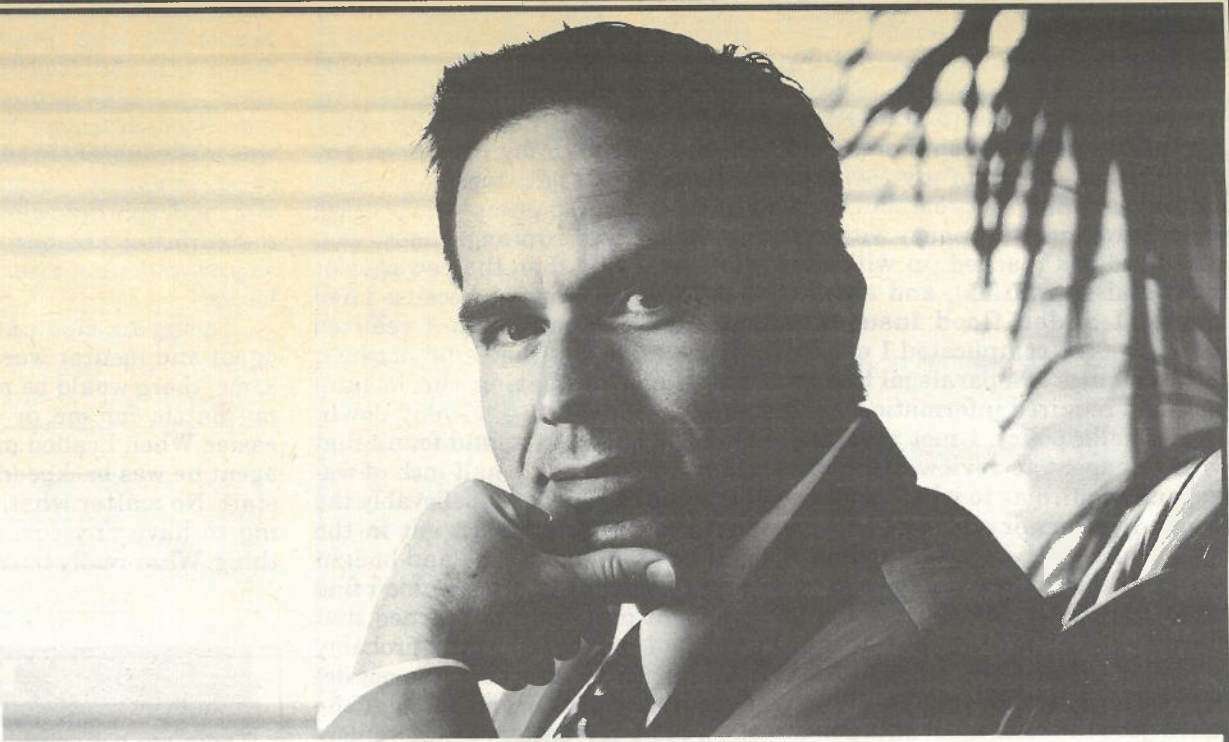
Turning his ashen face toward me for the first time, he asked me to buy enough Pokemon so he could get a hot meal. I was about to offer \$50 for a well used fly rod he had on display and then drive him out to St. Vincent's homeless shelter. Then he darted a quick look at a nearby internet cafe. Through the window we could see someone sipping a fancy coffee drink and cruising EBAY™. My new friend's right hand started moving an invisible mouse over the cold side walk.

The man was gone—an internet addict. I told him that if I gave him money, he'd just waste all of it on computer time. "That's my problem," he screamed. "Just give me \$10 for the rod and walk away. I'd be off the streets before you can turn around. Then I'll stop, right after I bid on a cheap suit."

I walked away, but not before I dropped a twenty on his blanket. That's what we spend for a month of internet access at home.

"One attorney said to me 'I got a great settlement, my client was happy, a month later she sued. Tell me what I did wrong.' It can be very painful because many times the attorney did everything right. Having been an attorney in private practice, I can appreciate these situations. So I go out of my way to make the process as painless as possible."

RICK BECK, ESQ.  
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# When disaster strikes what will your insurance actually cover?

By ELLEN FREEDMAN

Recently all eyes in the nation focused on North Carolina as Hurricane Floyd hit full force, and then barreled up the coast. Although our damage was not as overwhelming as it was in North Carolina, there are very few of us who do not have a "story" about water damage to home, car and/or office. Even a couple of inches of water are enough to disrupt business or make a home space unusable. And of course there were a few isolated neighborhoods where entire streets were wiped out. Those people are still shuffling from one temporary hostel to another, without any assistance to get their life started again. It doesn't matter to them that North Carolina is hit worse. For those who've lost their homes and possessions, there IS no worse. Not surprisingly, many were interviewed on the news and stated they were surprised and angered that they did not have insurance under the circumstances.

Not many people read their insurance policies. I do. At least I do at the office. I can't say I'm as diligent at home. Nonetheless, I thought I had my bases covered. There was an article in Consumer Reports some years ago rating insurance contracts. State Farm got one of the highest ratings. I went to a local agent and

*Not many people read their insurance policies. I do. At least I do at the office. I can't say I'm as diligent at home. Nonetheless, I thought I had my bases covered.*

checked out a specimen policy. I found it to have some very compelling points, and so switched from first-class Crum & Forster to State Farm. My journey did not stop there.

Over the course of my coverage tenure, spanning approximately 10 years, I enhanced my policy with riders, schedules (backed up with pictures and appraisals), and amendments. I added flood insurance (which was so complicated I needed the assistance of a paralegal to complete the required information), and an umbrella policy. I met regularly with the agent to review my coverage and inquire as to whether there were any riders or additional coverages available. I eagerly purchased whatever insurance I could get, even when the agent advised me I was overdoing it.

A few months ago, I decided my business was stable enough to warrant a good business insurance policy. I contacted John Sherlock of Jamison Insurance. I received the royal treatment, as though my small policy were really big business for John. In no time I was on the phone with a vice president who told me, to my surprise, that my personal flood policy did not cover damage to the items in my basement. That just couldn't be, I thought, since the State Farm agent knew my office was in a finished basement location. When she faxed me the specific language of exclusion, I started to worry. I made a mental note to read my personal policy beginning to end. But I never found that slow point in my schedule to do it. Anyway, she suggested I pay a little more and get flood coverage under the business policy, which had no such



Flooding along the Kenai River.

exclusion, so that all my office furniture and equipment would be covered, even though it was in the basement. Of course I followed her advice.

As a good administrator, I also practiced disaster prevention. Knowing full well that the most important use of the sump pump was during a bad storm, and knowing that this was the most likely time for a power failure, I purchased and had installed a battery-powered back-up sump pump some years ago. I was ready for anything. Or so I thought.

Many of you have been to my home and seen the little stream

which runs along the back corner of my property. With Floyd at full steam the stream became a quickly flowing river which totally engulfed my back yard, right up to my back door. The water was up to the tops of the lawn chairs. My sump pump was keeping up, but it was running almost continuously. And then the power went out. I was not worried, because I had my backup sump pump. I realized after 20 minutes that I did not hear the alarm indicating the backup pump was working. I went downstairs to check on it, and found that there was already a half inch of water in the basement. Unbelievably, the battery was dead. I ran out in the middle of the hurricane and bought a replacement battery. I couldn't find the right one, and was warned that the one I purchased would probably only last two hours, as it was not designed to turn on and off like the deep-cycle RV battery I was replacing. I returned within an hour with the battery, to find over 2.5 inches of water in the basement. When I installed the new battery the pump started immediately.

The story of Chanukah relates how the holy lamp in the desecrated temple had only one day of oil, but miraculously stayed lit for seven days until new oil arrived at the synagogue. My experience was similar. My battery lasted the full six-plus hours of the power failure, probably because the flooding was so bad it never had a chance to turn off. Truly one for the small miracle book.

Two-plus inches of water in a finished basement which is fully carpeted and furnished is bad enough. When it is also your office, it is a

major pain. I was fortunate to immediately recruit the assistance of a water restoration company. They had a waiting list, of course, but in my usual style I was able to wheedle to the top. They came out the next day with extractors, blowers and dehumidifiers. For four days I could do no work in my office. Ultimately the carpet started to smell like used kitty litter, and had to be removed. That was another two days of lost productivity as everything had to be moved. When the carpet gets replaced that will be yet another two days of lost productivity. Putting productivity aside, the cost of the restoration efforts, carpet removal, and new carpeting, repairs to dry wall and painting, will ultimately come to about \$4,000.

My first action after arranging for the water restoration service was to contact State Farm, my residential insurer. What a rude awakening. I have heard many times from people like John Sherlock, Joe Ellis and others, that the strength of your agent can make or break your coverage. While at Lesser & Kaplin, John was instrumental in resolving an ongoing issue with our malpractice carrier, and secured reimbursement of a significant amount to the firm. I was impressed at how he went to bat for us.

I never anticipated that when the agent and insurer were one and the same, there would be no one to fight my battle for me or make things easier. When I called my State Farm agent he was backpeddling from the start. No matter what, I was not going to have any coverage for anything. What really burned my butter

was when he said "Gee, if only you had purchased that \$40 endorsement I offered you, all the damage to your carpeting would be covered." He claims he made a note of telling me about it. I know he didn't. But it's my word against his, and you know how that goes. In short, with all the insurance and riders and even with a flood policy, there was absolutely not one dollar of coverage under my residential policies.

It took me a few days to figure out I should try my business policy. I left a message for John. The next day I heard from someone at his company and reviewed the events. I will never forget her reassuring words "Don't worry — we'll get it covered for you. It can go either way, but I promise we'll get it covered." When the adjuster called I could tell almost immediately that she was in a denial mode. Sure enough, she turned down my claim. I was distraught. I left a voicemail for John. Before a day had passed I got a reassuring return message from John, the woman at his office I spoke to previously, and a begrudging message from the insurance adjuster saying they had reconsidered and decided to "make an exception" in my case. Knowing that I will not have to bear more of a financial burden than my deductible made a bad situation tolerable. Knowing that I had an independent agent fighting for me, even though I'm just a little fish in the big pond, made me feel terrific. Never again will I underestimate the difference a great agent can make.

After all this is over, I will be meeting with Joe Ellis to transfer all my personal coverages. And I will have a three-way meeting with John to make sure my coverages are properly coordinated and non-duplicative, and that everything is covered somewhere. And then I will have two superb agents, both independent, who I know will work hard for me when disaster strikes.

*Ellen Freedman, CLM, is Law Practice Management Coordinator for the Pennsylvania Bar Association. She was the Founding President of the Independence Chapter for two years, Regional Council Representative for two years, and has served as Editor of the Independence Chapter Newsletter for seven years. Freedman is also the Forum Moderator for ALA's Human Resource PDN on its web site. She is a frequent lecturer and writer on law firm management issues.*

## HELPFUL TIPS

There are a number of points to be made from my experience.

- Read your policies. Know what your coverages are.
- Find out what riders and endorsements are available. Document that discussion in writing, so there is no dispute later about what you "chose" or turned down.
- Examine each policy as it arrives. The cover sheet which shows policy coverage limits will reference lots of amendments and other forms which should accompany the policy. These are called "follow forms". Very often they do NOT properly accompany the policy. I can't remember one single commercial policy which arrived with each follow form enclosed. Some of them make significant changes to the policy coverage.
- Make sure you have an agent who does more for you each year than collect the premium. Pick someone who you know will fight for you, and who works with you to ensure your coverages remain adequate and relevant to your needs.



## SOLID FOUNDATIONS

## Grant applications available ☐ Leroy Barker



The Alaska Bar Foundation oversees the use of the monies generated by the interest earned on lawyers' trust account funds (IOLTA). Until recently, the Board of Trustees of the Foundation consisted of Kenneth P. Eggers (Anchorage

attorney) The Honorable Eric T. Sanders (Anchorage Superior Court Judge), William T. Council (Juneau attorney) and Winston S. Burbank

(Fairbanks attorney). I am currently serving as President. On November 13, 1999 the Board met and added two additional Trustees to the Board.

They are Susan Beeler Queary, a Certified Public Accountant with the firm of Elgee, Rehfeld & Funk in Juneau and William Granger, Senior Vice President of National Bank of Alaska in Anchorage. We are pleased that both of these individuals have agreed to serve on our Board.

As many of you are aware, IOLTA, in addition to its primary responsibility of supporting legal services, makes modest grants to other worthwhile projects throughout the state. The purpose of the grants is to supplement a legal services program for the economically disadvantaged or a program to enhance the administration of justice.

Grant applications for 2000 must be submitted to my office no later

than April 15, 2000. The grants will commence on July 1, 2000 and expire on June 30, 2001. Grant applications must be submitted on an IOLTA Grant Application Form. The form sets forth all of the information required by the Board to award a grant. The Trustees meet in May each year to review grant applications. Any organization interested in obtaining a grant application packet should contact my office at 277-6693 and the forms will be provided to you.

If there are any questions regarding the Alaska Bar Foundation, the IOLTA Program or the grants made by the Foundation, you may contact any member of the Board of Trustees and they will provide you with any information you need.

## BAR RAG follow-up: MYSTERY SOLVED



Alaska *Bar Rag* readers will recall the call for help that went out through these pages in July, seeking information on a mystery exhibit in the Nesbitt Courthouse's vault. It was a five-inch-wide gold knuckle plate in the shape of the U.S. with diamonds mounted in various states. Anchorage Trial Courts Records Supervisor Jo Hall discovered the untagged exhibit when the courts moved to their new digs.

The mystery has been solved. The knuckle plate belonged to one Rex A. Harris, of Miami, FL, who was charged with carrying a concealed weapon in 1985, when Anchorage police detained him for "roughing up" a woman in town. Harris was convicted and given a 2-year S.I.S. for this first offense. His knuckle plate was forfeited to the state (although Harris attempted unsuccessfully to recover the

diamonds therein). "The item has been forfeited to the Anchorage Police Department as the judge ordered on April 25, 1986," said Hall. From there, APD may donate the proceeds from its sale to a charity, or dispose of the item at auction, Hall surmised.

The *Bar Rag* notice immediately yielded calls from the prosecutor in the case, Bob Linton, and defense attorney Rex Butler. "They knew the case right off," said Hall.

## Bar readers send news from overseas

The *Bar Rag* received two missives from attorneys, providing a view of the law overseas. In England, profanity lost, while an anonymous attorney saw parallels between lost court cases in Italy and the slow progress of appellate reviews in Alaska. (The appellate progress issue currently is being investigated by the court system). Ms. or Mr. Anonymous could not resist adding additional "news" commentary to the "lost cases" article in the *Guardian* in Rome.

London Times, submitted by Bob Wagstaff

The Guardian

## Judge says 'fcuk' is obscene and should be banned

A HIGH Court judge resorted to expletives yesterday to express his contempt for the advertising slogan "fcuk", used by French Connection, the fashion chain.

Mr Justice Rattee said the retailer was guilty of using an "offensive and tasteless" slogan and welcomed the charge of "old fart", which he said would inevitably rebound upon him for his stand.

The judge refused French Connection's demand for an injunction, on grounds of copyright infringement, against a website calling itself "fcuk.com". He did, however, order a full trial on the issue.

Mr Justice Rattee insisted that the letters were wilfully intended to mislead.

"Fcuk is just a euphemism for the obscene expletive f\*\*k," he thundered, to the surprise of tourists who had wandered into the courtroom yesterday.

The slogan was created in 1997 by Trevor Beattie, advertising's *enfant terrible*.

With a £3 million campaign supporting it, French Connection transformed its image into a brand "with attitude" among its target youth audience.

But French Connection's global expansion and promotion plans have been stymied by Tony Sutton, 31, from South London, who registered the letters as an Internet domain just days before the retailer secured "fcuk" as a trademark in 1997.

The site fcuk.com has already recorded 21,000 hits, even though the site contains

no information other than an advertisement for Mr Sutton's company, First Consultant.

But Mr Justice Rattee had no sympathy for the retailer. He said: "It may be you have been hoist by your own petard in using such an extraordinary advertising slogan."

Mary Vitoria, representing French Connection, said public morals had changed and quoted from an article in which Keith Vaz, the Foreign Office Minister, had described backbenchers as "an upright bunch of old farts".

"I have been described in the same way frequently," the judge said triumphantly.

Ms Vitoria said that the website was exploiting the "goodwill" generated by the successful fcuk advertising campaign, which used what was a registered trademark.

The judge asked: "How can

you talk about goodwill in connection with such a tasteless and obnoxious campaign?"

Miss Vitoria replied: "Your lordship may find it offensive, but young people who buy clothes do not find it offensive, they find it amusing."

"Like it or not, advertising relies on sexual connotations. That is a fact of life. It is not for the courts to step in and draw a line."

Jonathan Turner, representing Mr Sutton, said "fcuk" was widely used in Internet circles as an alternative to "f\*\*k" and was a way of avoiding filters and controls on websites.

He said his client had realised fcuk's value as a domain name and had wanted it as a way of attracting attention to his business.

But the judge recommended that the High Court review the

registration of the trademark, fcuk. Mr Justice Rattee said the registrar ought to have refused it on the grounds that it was contrary to public policy because of its obscene connotations.

In ordering a full trial on the issues, he concluded that: "There is no doubt that the object of the advertising campaign, if that is the right word for it, was to make use of the fact that some people seeing the letters 'fcuk' would be struck by their similarity to the obscene expletive f\*\*k."

Whatever the judge's opinion, French Connection is determined to prevent its memorable slogan from misuse.

The company is pursuing the Conservative Party for thousands of pounds of damages after its youth wing, Conservative Future, produced T-shirts with the logo CFUK. The company does not want its brand connected to young Conservatives.

The slogan created a boom in French Connection wear and in the first half of this year pre-tax profits were up 84 per cent to £6.5 million. A "fcuk" campaign was built around Lennox Lewis's successful attempt to become the world heavyweight boxing champion.

More than 100,000 "fcuk" T-shirts have been sold. The Advertising Standards Authority has received 27 complaints about the logo and ordered two advertisements to be withdrawn. Its code demands that any advert should be "legal, honest, decent and truthful".



Trevor Beattie with his creation for French Connection

## Italy finds 700,000 lost court cases

By RORY CARROLL  
The Guardian

ROME — The Italian justice system has sunk to new depths with the discovery of 700,000 court cases filed away in a Rome basement and forgotten for more than a decade.

An inquiry into the bureaucratic bungle — which has mortified officials and deepened the sense of crisis surrounding Italy's fight against crime — is expected this week. Officials said it could take years to sort out.

The files went missing in 1989 when one department, the Instruction Office, was being phased out. The transfer of files to the Preliminary Hearings Office was botched when there was a last minute decision to keep open a branch of the Instruction Office until its director, Judge Rosario Priore, returned to Rome from investigating an air crash. That left the files in limbo, and no action was ever taken on these cases.

The caseload remained undisturbed in a court basement in Piazza Adriana until last year, when Rome's Tribunal Office, acting on a tip, started sifting through the boxes. The news leaked out over the weekend, and now pressure is mounting on Justice Minister Oliviero Diliberto to investigate.

(Paragraph added anonymously by an assumed Alaska Bar member to a *Guardian* news article.)

Surprisingly, among the 700,000 cases discovered by authorities were a number of appellate matters that appeared to be from the Alaska Supreme Court. When court sources were asked to comment on this amazing finding, they responded that the court was quite upset. An unnamed source stated, "the justices are quite upset that these files were disturbed before they were ripe for decision. With the files early unearthing, it may take a bit longer to reach the appropriate resolution." When asked to comment on the fact that the court was storing files in a basement in Rome, Italy, the same source stated "Well, hell, they let us ship prisoners all over the country."



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Michaela Canterbury  
Victor Carlson  
Susan Carney  
David Case  
John Cashion  
Linda Cerro  
Teresa Chenhall  
John Chenoweth  
Dan & Rachel Cheyette  
Morgan Christen  
Matthew Claman  
James Clark  
Robert Coats  
Charles Coe  
Patrick Cole  
Stephanie Cole  
Allen Compton, Ret  
Wilson & Susan Condon  
Dennis Cook  
Joseph Cooper  
John Corso  
Jennifer Coughlin  
Bill Council  
Susan Cox  
Teresa Cramer  
Jim Crane  
James Crary  
Barbara Craver  
James Crawford  
Caroline Crenna  
David Crosby  
Judith Ann Crowell  
William Cummings  
Allen Curlee  
Mason Damrau  
Thomas & Carol Daniel  
Jody Davis

Marcia Davis  
Elliott Dennis  
Jim DeWitt  
Jeanne Dickey  
Louise Driscoll  
Edgar Duncan  
Paul Eaglin  
B. Richard Edwards  
Don Edwards  
Kenneth Eggers  
Kathleen Erb  
Gregg Erickson  
Sheila Erwin  
Joe Evans  
Robert Evans  
Sarah Felix  
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Hugh Fleischer  
Karl Forsythe  
Saul Friedman  
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William Fuld  
Deidre Ganopole  
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Alan Hooper  
Date House  
Roger Hudson  
Paul Hunter  
James Hutchins  
Campbell Jackson  
Robert Jernberg  
Stephaine Joannides  
Carol Johnson  
Phyllis Johnson  
Toni Jones  
Marc June  
Roman Kalytiak  
Pamela Keeler  
Leonard Kelley  
Jim Kentch  
Eric Keuffner  
Frances Kinkead  
Kenneth Kirk  
Cecilia Kleinkauf  
Margot Knuth  
Mark & Leslie Krolloff  
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Kathryn Kurtz  
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Steven O'Hara  
Bessie O'Rourke  
Theresa Obermeyer  
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Matthew & Rebecca Pauli  
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Red & Donna Pegues  
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M. Jane Pettigrew  
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Jack Poulson  
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John Rader  
Janine Reep  
Jim Reeves  
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Herbert Ross  
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Brock Shamberg  
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Randall Simpson  
Michael Smith  
Cynthia Smith  
Spencer Sneed  
Herbert Soll  
Bethany Spalding  
Anselm Stack  
Stan Stanfill  
Michael Stanley  
Krista Stearns  
W. Michael Stephenson  
Thomas Stewart  
David Stewart  
Ann Stokes  
Michelle Stone Bittner  
Tony Strong  
Nicole Stucki  
Richard Sullivan  
Antoinette Tadolini  
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Jim Torgerson  
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Jana Turvey  
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Paul Vos  
Tom & Anitro Waldo  
James Wanamaker  
Sidney Watson  
Dan Wayne  
Lisa Weissler  
Bruce Weyhrauch  
Donna Willard  
Stephen Williams  
Teresa Williams  
Julie Willoughby  
Lisa Wilson  
Dan Winfree  
Russ Winner  
Joan Woodward  
Larry Woolford  
Mark Worcester  
Joseph Young

### F-I-R-M D-O-N-O-R-S

Alyeska Pipeline Service Company  
ARCO Alaska Inc.  
Ashburn & Mason  
Batchelor & Associates  
Baxter Bruce Brand & Douglas  
Birch Horton Bittner & Cherot  
BP Exploration (Alaska) Inc.  
Brady & Company  
Bundy & Christianson  
Calista Corporation  
Clough & Associates, PC  
Cook Inlet Region, Inc.  
DeLisio Moran Geraghty & Zobel, PC  
Dillon & Findley, PC  
Dorsey & Whitney Foundation  
Eide & Miller  
Eric Leroy P.C., Attorney at Law  
Feldman & Orlansky  
Foley & Foley, PC  
Foster, Pepper, Rubini & Reeves, PLLC  
Groh Eggers  
Gross & Burke  
Gruenstein & Hickey  
Guess & Rudd PC  
Heller Ehrman White & McAuliffe  
Hicks Boyd Chandler & Falconer  
Hoge & Lekisch  
Holmes Weddle & Barcott  
Hughes Thorsness Powell Huddleston & Bauman  
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Just Resolutions  
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Law Office of Thom F. Janildo  
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# Ethics Opinion 99-1 and Applications for Rule 82 attorney's fees

By AMRIT KHALSA

**R**ecently the Ethics Committee addressed an issue which has generated a great deal of discussion and comment around the country: Whether an attorney is ethically permitted to send invoices for legal services to a third party auditor without the express and informed consent of the client.

In the last couple of years, a number of states have weighed in on this issue including Washington, Oregon, Florida, South Carolina, Ohio and Pennsylvania. *See generally* Mallen, *For the Defense* "Guidelines or Land Mines? Preserving the Tripartite Relationship," August 1998. Many insurance companies and institutional clients utilize outside auditors to review and approve invoices for legal services prior to payment. Typically, these companies employ guidelines which require outside counsel (e.g. assigned to represent the insured) to forward their invoices for legal services directly to the outside auditor. The auditors review the bills for, among other things, compliance with the company's approved billing guidelines.

This is the typical fact pattern which the committee was asked to address when it issued Ethics Opinion No. 99-1. The Ethics Committee determined that, without the client's express and informed consent, counsel should not send invoices for legal services to a third-party auditor because it is tantamount to waiving the attorney-client privilege and a violation of Alaska Rule of Professional Conduct 1.6.

In reaching this conclusion, the Committee was swayed by the reasoning of the other jurisdictions which have considered this issue. Namely, most insurance companies and other institutional clients require fairly detailed records of services provided. Alaska Rule of Professional Conduct 1.6 obliges a lawyer not to reveal "a confidence or secret relating to representation of a client" unless the client consents and except for disclosures that are "impliedly authorized in order to carry out the representation . . . ." That rule also cautions that "the lawyer shall resolve any uncertainty about whether such information can be revealed by not revealing the information." In other words, the lawyer should err on the side of caution.

In the Committee's view, providing legal invoices to an outside third party auditor was neither "impliedly authorized" nor "in furtherance of the rendition of professional legal services . . . ." *See* Alaska Evidence Rule 503(a)(5). Accordingly, the Committee concluded, as have the vast majority of jurisdictions to have considered this issue, that the client's express and informed consent was required.

Recently, the Committee was asked to clarify whether Opinion 99-1 prohibited counsel from submitting copies of legal invoices to support a motion under Alaska R. Civ. P. 82 for an award of attorney's fees. Because Civil Rule 82(b) provides that in cases where no money judgment is awarded, the prevailing party shall be awarded a percentage of its "reasonable actual attorney's fees which were necessarily incurred," the question of what was "reasonable" and what was "necessarily incurred" are issues in which the opposing party has a vested interest and must be able to review and address. In at least one case brought to the Committee's attention, counsel for the prevailing party refused to submit copies of his invoices in connection with his Rule 82 motion because Ethics Opinion 99-1, in counsel's view, prohibited that disclosure.

However, Opinion 99-1 does not support that conclusion. The Alaska Supreme Court has expressly addressed the question of privileged information in billing records submitted in support of a motion for attorney's fees. In *Gonzales v. Safeway Stores, Inc.*, 882 P.2d 389, 399 (Alaska 1994), the court upheld the submission of original, itemized billings which had been redacted to remove "certain names and subjects" due to attorney-client privilege concerns where "[t]he redaction of the billings does not materially interfere with the understanding of the services performed sufficient for the purposes of an award of costs and fees."

If counsel has a concern about disclosing confidences and secrets in itemized billing records, counsel can either judiciously redact the records before submitting them to the court and opposing counsel or, alternatively, Opinion 99-1 stands for the proposition that, after obtaining the client's express and informed consent, the invoices could be submitted in an unaltered state.

In either event, it is erroneous for counsel to rely on this opinion as justification for refusing to turn over itemized billings, in some format, in order to support a motion for attorney's fees under Alaska R. Civ. P. 82.



## Attorney Discipline

### Lawyer admonished for intimate relationship with client

Wife hired Attorney X to represent her in a divorce. Wife and the husband had resolved many issues, including child custody, but some issues remained. Over several weeks Attorney X met with Wife and negotiated with the husband's lawyer. During this period Attorney X and Wife began to see each other socially. Eventually Attorney X withdrew as Wife's lawyer. But before he did that, while he was still attorney of record and still working on final details of Wife's divorce, Attorney X and Wife began an intimate relationship.

Alaska Ethics Opinions 88-1 and 92-6 explain that an intimate relationship between a lawyer and client creates a conflict of interest and must be avoided if it harms the client's case, if it might cause the lawyer to be called as a witness, if the relationship is coercive or nonconsensual, or if the case is so emotionally charged that the client is presumed vulnerable. Wife's divorce placed her in the last category. Accordingly Attorney X's relationship with his client violated the ethics opinions and Alaska Rule of Professional Conduct 1.7(b), which prohibits a representation when the lawyer's own interest creates a conflict.

Bar Counsel found that Attorney X did not overreach Wife. The relationship did not prejudice the client's case. Wife herself did not file the grievance, denied harm of any sort, and opposed professional discipline. Bar Counsel requested approval to issue a written private admonition to Attorney X. An Area Discipline Division Member granted the request and the attorney accepted the discipline.

## No major Y2K glitches

*Continued from page 1*

post-date rollover litigation is not likely to reach the \$1 trillion predicted, many are taking comfort that their litigation-avoidance counseling bore fruit for many of their clients.

One of those is Anchorage attorney Michael Jungreis, who found himself frequently speaking to organizations on the perils of Y2K in 1998 and 1999. "I don't believe Y2K was a big bust," he said. "Spending the time to prepare was time well spent." He believes there will "still be some litigation fallout of who's going to pay for remediation costs; I expect a lot of loss-shifting," he said. And, he added, "we don't know for sure which losses have occurred—they're private matters and not something that comes out in the newspapers the next day."

Nor does Jungreis believe litigation costs will approach the \$1 trillion predicted before the date rollover. "I think it will be more like \$10 million—there are no mass torts, or major cases of loss of life or limb, and that's a good thing," he said. Most claims will be limited to business and data losses and be settled long before trial. "But one of the interesting things that might occur is fallout from the federal Y2K Act which provides for a whole series of defenses. You might see attorneys trying to fit (tort) cases into a Y2K claim," said Jungreis.

Eighty-seven Y2K-related lawsuits were pending in U.S. courts as of mid-January. (For an ongoing update of pending Y2K actions, see the Federation of Insurance & Corporate Counsel's website at [www.thefederation.org](http://www.thefederation.org) or [www.2000law.com](http://www.2000law.com)).

—Sally J. Suddock

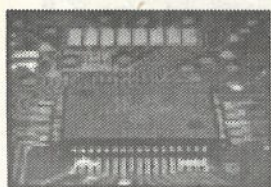
## Bar Rag Articles Welcome: Guidelines



- ▲ Ideal manuscript length: No more than 5 double-spaced pages, non-justified.
- ▲ E-mail and .txt: Use variable-width text with NO carriage returns (except between paragraphs).
- ▲ E-mail attachments & disks: Use 8.3 descriptive filenames (such as author's name). May be in Word Perfect or Word. Attachments are preferable to text in the body of the e-mail message.

- ▲ Fax: 14-point type preferred, followed by hard copy or disk.
- ▲ Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format.
- ▲ Editors reserve the option to edit copy for length, clarity, taste and libel.
- ▲ Deadlines: Friday closest to Feb. 20, April 20, June 20, Aug. 20, Oct. 20, Dec. 20.





## New, fast and light: Today's sub-notebook computers

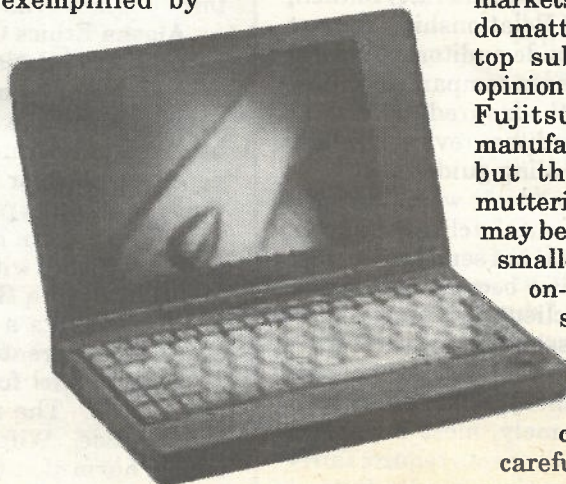
By JOSEPH L. KASHI

Full function notebook computers have always commanded a strong following among lawyers but the bulk and weight of a full-sized seven or eight pound notebook computer can be a real drag when you're on the go, especially when you throw in the carrying case and spare batteries. Enter subnotebook computer systems.

My first encounter with subnotebook systems happened in early 1994, when I saw Mark Hellman's IBM ThinkPad 500 and later replaced my bulky 486 notebook with a light, small ThinkPad 510, IBM's first color VGA subnotebook computer. The 510 weighed under 4 pounds, included a small but decent color screen and what was then a big hard disk (200 MB!) for a notebook system. It was very compact, no larger than a 8" x 10" but with a decent keyboard. Using the 510, I could easily travel to distant cities, making PowerPoint presentations at conferences like TechShow, while carrying only one carry-on overnight bag with the 510 packed inside, padded by some surrounding clothing. Avoiding that second, heavy computer and carrying case was delightful to a person like me, who refuses to carry checked baggage.

Sadly, after about four years, my 510's now inadequate hard disk capacity and lack of an easily attached CD-ROM drive became too limiting in this era of bloated Windows office

touch with the office, or do some Internet research. A system that small can be thrown in an overnight bag, surrounded by other clothes, and travel almost inconspicuously. Despite their small size, the newest generation ultra light notebooks, exemplified by



the new Fujitsu B-2130, probably have more computing horsepower than your office desktop computer.

Mid-range subnotebook computers usually have a little more capability, a larger screen, faster processor, and a bigger hard disk, and a bigger, better keyboard. They're often ultra thin but not particularly compact. Thus, they're more likely to slip into a briefcase along with your other materials rather than be thrown into an overnight bag when traveling. Only a few mid-range notebooks include integrated CD ROMs, a potential drawback if you're making presentations in court.

tend to be more fragile and easily damaged. As a result, reliability is crucial. Also critical are construction quality, good warranty policies and long-term vendor continuity. Some manufacturers such as Hitachi, are slowly exiting the portable system markets. Established brand names do matter in this market niche. The top sub-notebook brands, in my opinion, are IBM, Toshiba, Sony and Fujitsu. Compaq is now manufacturing a subnotebook system but there have been scattered mutterings about reliability and it may be too early to tell on Compaq's smaller systems. Check the latest on-line reviews and consumer satisfaction surveys before buying any such system.

When you're looking for a subnotebook system, check prices and features carefully. In most instances, there are expensive hidden extras such as port replicators, optional CD-ROM drives, and spare batteries. For example, Fujitsu's B-2130 and IBM's ThinkPad 240 ultra-small notebook computers are among the less expensive and better rated systems around, but their price does not include a CD-ROM drive. You'll need to spend an extra \$300 for that CD-ROM drive. You'll also need to buy at least one spare battery - notebook computers tend to wear out batteries over time and it might be hard to find a replacement in a year or so. Now that most small computer systems are using high capacity but shorter-lived Lithium batteries, the need to buy some spare batteries becomes even more critical.

Windows 95/98 probably requires a 266 megahertz Pentium MMX processor or 300 megahertz Celeron processor, or faster, for adequate performance, along with 64 megabytes DRAM. Portable systems using Windows NT 4.0 should have at least a 300 megahertz Pentium II, along with 128 megabytes DRAM and Microsoft's Service Pack 5 installed.

Ultra portable computer systems tend to be slower. Among the smallest subnotebook computers, older and slower Pentium MMX processors were common at the beginning of 2000. Only Fujitsu's newest B-2130, IBM's ThinkPad 240 and the Sony VAIO 505 series included high performance Pentium II and Celeron processors in their smallest systems although mid-sized notebooks typically included 300 megahertz or faster Celeron and Pentium II processors.

At least in notebook computers, the Pentium II processor is typically significantly faster than an equivalent speed Celeron, a relationship that's not true in the desktop arena where higher-end Celerons are just as fast as their Pentium II equivalents. AMD's K6-2 mobile processors tend to be slower than equivalent K6-2 desktop versions and also slower than equivalent clock speed mobile Pentium II and Celeron processors.

Sub-notebook computers tend to be pretty idiosyncratic: what works for one person may be totally useless, and even repellent, to another. Thus, a person really should consider personally examining, using and buying smaller portable computers

locally, assuming that the price is not out of line.

### FEATURES TO CONSIDER

When you're looking at a sub-notebook computer, check for these features.

#### Basic Purchasing Considerations

1. Good, usable keyboard.  
2. Strong construction. Most expensive high end system use a magnesium metal case which is both very strong and quite light.

3. Good size and weight suitable for your intended portable needs.

4. Will the vendor custom configure a system to your exact specification at a reasonable price? Most sub-notebook vendors are now touting custom configuration, at least on their web sites. Over the next several months, custom configuring portable systems should become a real trend as Intel releases its generic notebook and subnotebook hardware that other vendors can custom configure and re-brand.

5. Are the floppy and CD ROM drives included? You would be surprised at how often they're not.

#### Other Highly Desirable Features Include:

1. Internal modem and 10/100 BaseT Ethernet connections. \*

2. ATFT or active matrix display is usually faster, brighter and sharper. Passive matrix and HPA screens are not nearly as good.

3. Look for vendors that offer a good reliability record with high grade warranty and repair policies. Fujitsu and Hitachi are among the best in this regard, often turning around systems within a few days while Toshiba seems to be getting some bad press lately.

4. Long battery life is preferable. What good is a portable system if you can't use it on the run? Lithium batteries tend to run longer between charges but they tend to be about three times as expensive and more prone to failure. Older nickel metal high drive batteries tend to be less expensive and more durable. Lithium batteries tend to be lighter and thus preferred for sub-notebook computers, but over the long run, they'll probably cost about six to nine times as much when taking into account both their higher cost and their shorter life span.

5. Does the system have an internal or swappable CD ROM drive? This is really convenient in court when you're using image documents stored on several CD ROM disks. Of course, you can always copy all of the imaged documents directly to your hard disk and achieve even faster retrieval. Still, an external CD ROM connected by several data and power cables can be messy for critical or every day use.

6. Does the system include built-in I/O ports such as VGA monitor output, PS/2 keyboard and mouse, and parallel printer output?

7. Which pointing device is used, whether the IBM/Toshiba pointer stick or the more common ALPS TouchPad? I very much prefer IBM's approach but everyone has a personal preference.

8. What's the total weight and bulk of the system when traveling

You'll undoubtedly want to check the latest reviews. The best overall guide I've found is a periodically published compendium called *LapTop Buyer's Guide*.

suites. I gave it away, replacing the 510 with a full-sized 266 MHz Pentium II Hitachi LifeBook that included the CD-ROM, built-in Fast Ethernet and 56K modem, and just about everything else you could possibly want, except light weight and compact dimensions. I must say that the Hitachi is more than fast enough, with a decent screen and keyboard but, after being spoiled by IBM's ultraportable ThinkPad 510, the Hitachi seems too heavy and bulky. Again, I'm again eyeing subnotebook systems.

### SUBNOTEBOOKS AND ULTRALITES PROLIFERATE

Luckily, during the past 12 or so months, we've seen an explosion of subnotebook computers, basically those systems weighing 4 pounds or less. Recently, the subnotebook genre has further subdivided itself into the ultra light notebooks, basically computers that are about 8" x 10", weighing about 3 pounds, and the more traditional subnotebook computers weighing about 4 pounds and measuring about 9" or 10" x 12". All of these systems have their place. A ultra light notebook computer, around 3 pounds, is wonderful to carry when you're traveling and mostly need to do some word processing, run a litigation support program like CaseMap, make PowerPoint presentations, stay in

Full-sized notebook computers, on the other hand, somewhat redeem their greater weight (about 7 pounds) and their substantially greater bulk, by typically integrating the fastest possible processors, the biggest screens, and internal CD ROM drives and network connectors. These are the most suitable for courtroom presentation and general desktop computer replacement.

Over the past year, literally dozens of ultra light subnotebook computers have hit the market. Most models last about six months before being replaced by a similar but upgraded model, so the products discussed here may have changed somewhat by the time this issue reaches you.

### THE BUYING DECISION

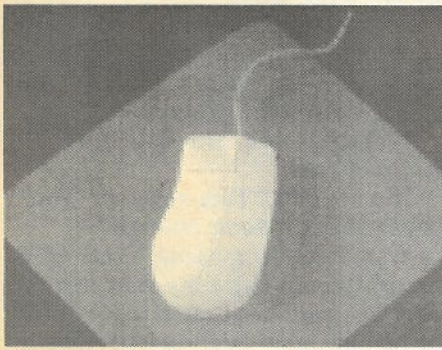
You'll undoubtedly want to check the latest reviews. The best overall guide I've found is a periodically published compendium called *LapTop Buyer's Guide*. The December 1999 issue had excellent comparisons and a wealth of tables illustrating the performance difference among various options, processors and the like. On-line, you can find subnotebook reviews at [www.about.com](http://www.about.com), [www.deja.com](http://www.deja.com), [www.cnet.com](http://www.cnet.com), and [www.zdnet.com](http://www.zdnet.com).

When you're looking for a subnotebook computer, it's important to remember that portable systems

*Continued on page 13*



## HI-TECH IN THE LAW OFFICE



### Continued from page 12

including any AC power supply/battery charger and any external drives that you'll need?

#### ODDS & ENDS

Consider bringing a spare notebook computer to court. It's not uncommon to see a system fail when you most need it, an unfortunately painful and irrefutable proof of Murphy's Law. One Superior Court Judge recently related to me how one of the best criminal defense attorneys he knew was unable to present a cogent closing argument because his notebook computer failed and he was unable to retrieve some documents

and caselaw citations necessary for closing argument. If you're depending upon a notebook computer in court, and if your client's liberty or property depends upon proper functioning, bring a good spare system.

Another nice feature, believe it or not, is a full-size mouse. Most systems include a plug in for a serial port or PS/2 mouse and it's amazing how much more convenient that full size mouse makes the portable computing experience. Except for the IBM/Toshiba pointer stick, portable computer pointing devices can be terrible.

Finally, back up your system regularly. Use a good parallel printer port tape drive such as the OnStream DP30.

## Bill allows state to investigate insurance practices

By SENATOR DAVE DONLEY

Last legislative session I introduced Senate Bill 177 "The Alaska Insurance Consumers Protection Act" to give injured Alaskans and insurance consumers a fairer playing field when dealing with insurance companies. The Alaska Division of Insurance supports SB 177.

SB 177 makes a major step toward better consumer protection by allowing the Division of Insurance to investigate individual acts of unfair or deceptive trade practices. Amazingly, under existing law, the division does not have the jurisdiction to investigate individual acts of unfair insurance claims practices. The division is powerless to investigate an individual insurer until a pattern of deceptive trade practices has developed. Such a pattern is often very difficult to prove and can require staffing the division currently does not have. This lack of jurisdiction promotes bad claims practices by insurance companies since they know that there is little enforcement to protect individual injured victims and consumers.

Senate Bill 177 also affords Alaskans more opportunity to pursue fair and equitable claims through arbitration. Many consumers and even insurance agents are sometimes intimidated from pursuing a fair settlement because of fear of retaliation from the insurer. This discourages claimants from pursuing a fair settlement and hinders the consumer protection ability of the Division of Insurance, as they are unable to gain access to information needed to effectively protect consumers. SB 177 provides immunity from liability for defamation for those persons who provide the division with information regarding an unfair act or practice. This provision will better

protect both agents and insurance consumers.

At the specific request of the Division of Insurance SB 177 also prohibits insurers from denying a claim in which multiple causes caused the loss to occur and there is a secondary cause that is not covered by the policy. SB 177 ensures that a claim is covered when a loss has more than one cause and the dominant cause is covered by the policy.

Under existing law, third party claimants are not entitled to the same protections as first party claimants. Insurers know this and often will require an injured third party to pay the costs of arbitration or mediation before the process even begins. If the amount at issue is less than the cost of arbitration the insurer can unfairly "low ball" the injured party. Additionally, insurers often use the high cost of litigation, which also may exceed the value of the claim, as leverage in coercing legitimate third party claimants to accept settlements that do not adequately compensate them for their injuries. Under current law such practices are prohibited as to first party claims but not as to third party claims.

SB 177 expands the prohibition against such bad faith actions to third party claimants and affords them a fair arbitration claims process while also curtailing unnecessary litigation. Affording and expanding insurance claims protections to both first and third party claimants is fair, equitable and good public policy.

Injured Alaskans and insurance consumers deserve better protection from insurance company unfair claims practices. We need a Division of Insurance that has the authority necessary to protect consumers. Your support and passage of Senate Bill 177 will help provide just that.

### SUBNOTEBOOK COMPUTERS THAT CAUGHT OUR ATTENTION

1. IBM's ThinkPad 240 is one of the top-rated subnotebook computer systems. It comes in two models, a 300 MHz Celeron that typically sells for about \$1,499 after rebate and an otherwise identical 366 MHz model (which includes that critical L2 on-CPU cache) that lists at \$1,899. Plan on spending another \$300 or so for the CD-ROM needed to load programs these days. The ThinkPad 240 has a good keyboard and is among the faster ultra-small notebooks with a 300 megahertz Celeron, 64 megabytes of DRAM, a 6.4 gigabyte hard disk and a 10.4" 800x600 TFT screen.

2. Sony's VAIO 505 series is highly regarded and varies from about \$1,300 to \$3,000, depending upon power and features. The Sony 505 series varies from about 2.7 to 3.5 pounds and is available with up to a 400 megahertz Intel Pentium II and 192 megabytes SDRAM. The smaller-end 505 model includes a 10.4" active matrix screen while the faster Z505 series uses a 12.1" active matrix screen.

3. Sony's C1 Picture Book is unusual in that it includes a built-in digital camera. The C1 Picture Book ranges between \$1,400 and \$1,800 street price, weighs about 2.5 pounds with a Pentium 266 megahertz MMX processor, a 4.3 gigabyte hard disk, 64 megabytes DRAM, and 8.9" 1024x480 screen. That wider screen gives us some pause, though, in terms of using the Picture Book for one the road or in court presentations. We're concerned that many data and in-court evidence projectors might not synchronize with this non-standard screen size.

4. Fujitsu's brand new B-2130 sub-notebook system has excellent features for its \$1,799 list price (plus an extra \$269 for the CD-ROM drive) and is my personal choice—in fact, I've ordered one for myself. The B-2130 is really small at 8"x 10"x 1.3". The B142 weighs 3.1 pounds, includes a 400 megahertz Celeron CPU, 64 megabytes DRAM, and 10.4" TFT screen with up to 1024 x 768 super VGA output, an internal 56K modem and internal 100 megabit Fast Ethernet. It is the least expensive system to come housed in a tough magnesium metal case.

5. Compaq's Armada M300 is a bit larger at 10.4"x 9"x 1" and 3.1 pounds. The Armada M300 costs \$1,999 but includes a relatively large 11.3" active matrix screen plus a 333 megahertz Celeron, a 56K modem, a 4.3 gigabyte hard disk, and 64 megabytes DRAM. As usual, the CD-ROM drive, which is necessary to load almost any programs, is an extra cost item.

6. Toshiba's Libretto 110 sub-notebook is something of an enigma. It's the smallest Windows 98 notebook available but it is suitable mostly for light duty work, such as some word processing and Internet use. Some people deride the Libretto 110 as a toy, but at \$1,599 (plus, of course, the cost of a CD-ROM drive), the Libretto is quite affordable for a subnotebook system. It includes a Pentium MMX 233 megahertz processor, 32 megabytes DRAM, a 4.3 gigabyte hard disk, and a 7.1" TFT screen. Realistically, that's probably faster than the office systems that many of our readers are still using.

7. Another favorite is Toshiba's Portege 3110CT system. At \$2,299, this system is also top pick. It's only 3 pounds but includes a 10.4" TFT screen, a Pentium II 300 megahertz processor, 64 megabytes DRAM, a 6.4 gigabyte hard disk, a 56K modem, Fast Ethernet already built in, all in a high strength magnesium metal case. Of course, the CD-ROM drive is extra. After the Fujitsu B-2130, the Portege 3110CT and IBM ThinkPad 240 would be our second choices.

8. Among the mid-size notebooks, those weighing upwards of 4 pounds with larger external dimensions, the IBM ThinkPad 570 is usually an editor's choice, but is rather more expensive, at \$2,499 to \$2,899 before the desktop "slice" and before adding the cost of a CD-ROM drive.

—Joseph L. Kashi

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## TALES FROM THE INTERIOR

### "Old age" □ William Satterberg



I giggled in anticipation. It was going to be another one of my famous jokes! Summoning up a healthy dose of testosterone, I disguised my voice.

"Mr. Shaen Patience? This is Officer Donovan of the Canadian Mounted Police.

We need to talk confidentially to you about your intimate relationship with your dog."

I paused, waiting for the shock wave which I knew would follow. I imagined the panic which must have already been setting into my latest victim. The response was quick.

"Billy Satterberg! How are you? I haven't heard from you in years!"

Maybe I should have been a Vienna Choir Boy after all.

That "joke" completed, we launched into an hour long discussion about the good old days, lost friends, ill-fated love affairs (his) and philosophies of life born from growing up in the turbulent sixties.

Initially, the conversation centered upon our lifestyles.

"Married?"

"Yes."

"Kids?"

"Yes."

"Teenagers?"

"Yes."

"Employed?"

"Yes."

"Retired?"

"Soon."

Eventually, we entered less trodden ground and discussed appearances.

"How much hair do you have, Bill?"

"Not a lot, Shaen, but I still think I have a bunch. I'll tell you what, I'll send you a *Bar Rag* picture of myself."

"And yourself?"

"People comment upon the reflection off of the back of my head, Bill."

"People simply comment about the reflection off of my head in general, Shaen."

"Are you gray, Bill?"

"Not really, Shaen. Like I told you, no hair."

"I mean, are you gray, *down there*, Bill?"

"Down where, Shaen?"

"Down *there*! Bill."

"Where is there? Shaen. I forgot."

"Do you wear glasses, Bill?"

"Started last year, Shaen."

"What about you?"

"Same thing, Bill."

"Blood pressure meds, Shaen?"

"Not yet, Bill, but it's coming."

"It's here, Shaen."

"Viagra, Bill?"

"Shaen, how is the hockey season coming? Just a second, I've got to go now. Call you in another ten years. Okay? Bye."

Dejected, I hobbled to the mirror. Was I really getting that old? Okay, maybe just a little bit. After all, in a rare moment of self-assessment, I could see that the jowls were becoming apparent, my Levi's were now the "relaxed fit" variety, and I was beginning to grow excessive hair in areas normally reserved for the hairless. But I chalked it up to Shaen's pessimism. I wasn't really aging that much, was I?

When I used to weigh myself, I found that I could alter my scale results, short of dieting, by two reliable methods. In fact, I still prefer the non-digital scale, which allows you to dial the setting back several pounds. The adjustment accomplished, if you squint, you can usually convince yourself that the scale is still really "zeroed." It is always good for at least three pounds. The other method is to hang from a coat hook and then lower yourself gently onto the platform, exhaling slowly in the process. The trick is to exhale slowly, since a quick exhale will cause you to bounce and regain all that you've lost. Taken together, the technique is almost always good for five to six pounds, total.

Obviously, hanging from a coat hook would do nothing to alter my appearance. (How do you get a lawyer off a coat hook? Cut the rope). Squinting, however, still did have distinct advantages, coupled with poor eyesight and a fertile imagination. Resolved to recover from my impromptu intervention session with Shaen, I would simply convince myself that I was actually young again, or more correctly, that I hadn't aged yet. It would be a classic case of denial. After all, my boyhood hero was Peter Pan. I was not yet ready to become a "Recovering Old Person."

"Hi, my name is Billy!"

"Hi, Mr. Satterberg."

Things went well for several days. I began to settle down.

About then, I received a call from

local Fairbanks attorney, Ted Hoppner, son of the retired Lloyd Hoppner, famous author of various cranky Letters to the Editor.

"Bill, do you have a minute?"

"Sure, Ted, what can I do for you?"

"Bill, I need some advice on an issue. I figured the best guy to ask is one of you old guys. You're the only one I could find."

"Why, Ted? Are the others dead?"

"Or retired or in rest homes, Bill."

"Why not try Ed Niewohner, Ted? He's older."

"Not that much, Bill. You'll do."

I was floored. Was it a conspiracy? Maybe Shaen was pulling some sort of a practical joke. But how could he have ever met Ted, who, at best, was in diapers and sucking this thumb when Shaen and I were wearing love beads? Rather than rise to the bait, however, I decided to take it in stride. I talked briefly to Ted. I then manufactured a lame excuse to terminate the call, and immediately went to the office bathroom to stare into the mirror. Perhaps I could regain at least some of my childhood.

As a kid, I used to be fascinated by mirrors. I had a little game I would often play that would drive my parents frantically in search of psychologists. It's a simple game actually - sort of like hanging from a coat hook, and you can play it by yourself. You stare into a mirror, turn your head away quickly, and then spin back again and try to catch yourself looking away in the process. It's a fun game, even if I have yet to win for some unexplained reason. Try it sometime. You may get hooked.

But this time, I didn't want to play my favorite game. Not only could I not find my necessary neck brace, but I was too stunned by Ted's attitude. This "old" stuff was starting to get personal. I thought about calling Ed Niewohner about the issue, but decided against it. After all, he was too old, no matter what Ted thought. Judge Hanson obviously was out of the question.

Eventually, squinting and meditation once again had the desired effect, and I was able to reconcile the issues. It was in the middle of my meditation, in fact, when one of my staff asked how my afternoon nap was going. This question once again threw me into a spin. It wasn't until that evening, when I fell asleep on the couch during the Lawrence Welk Hour, that I could finally let the matter go.

The next day, I received a call from another local attorney, Thomas Manniello.

"Bill," he began, "I'm really looking forward to the upcoming trial with you."

"Really?" I countered. "Why is that? Trying some of that intimidation 'in your face stuff', Tom?" I challenged.

"Not at all, Bill. It's just that I'm looking forward to learning some tricks from an old dog like you!"

My hair stood on end.

"What's this old dog stuff?" I snapped back.

"Sorry, Bill." Tom replied. "You'll forget about it soon enough."

Was I really getting that old? I thought about the time that my dad said he had been flirting with a young lady on an airline flight. It was fun, until she pointed out that he was old enough to be her father. Without thinking, he had made the fatal mistake of asking her what her mother's maiden name was.

The joke was wearing thin.

Days later, I had a deposition with local attorney, Zane Wilson. While waiting for the court reporter, we began to discuss music. Zane is from my favorite town -- Tok, Alaska. I figured that all he knew was country and western music. In Zane's hometown community, I had the opinion that most citizens still thought that WD-40 was a leading after-shave.

"Ever hear about Gordon Lightfoot?" I asked.

"Who?" said Zane.

"Gordon Lightfoot," I replied. "Famous Canadian country-folk singer."

"Not that famous," came the reply. "Never heard of him."

"What about Judy Collins?" I rejoined.

"Judy, who?" came the reply.

"Collins!" the court reporter responded.

I smiled at the court reporter. At least she knew who I was talking about. I complimented her on her memory, until she told me that she listened to her mother's records.

Zane was, by then, totally confused. I blamed his confusion on his Tok background, as opposed to his age. Not wanting to strike out a third time, however, I changed the subject.

In the past few days, I had gotten rather good at changing the subject.

I recently entered my 24th year of practice. Yes, contrary to the old days, I am now actually beginning to think about my "golden years." They say that the "forties" are the prime of life. If that is true, I am now nearing the more well done portion of life. At least, I haven't reached the "end cut" phase. Still, in one year, eyes willing, I will see my innocent, cherubic little

face published in the *Bar Rag* as it honors its 25 year veterans. Two years ago, I was laughing at just how cute Wil Schendel and Bill Bryson looked when their pictures appeared.

But, there is hope. Recently, I began to realize that, as much as there are people like Ted Hoppner, Tom Manniello, and Zane Wilson coming up behind me, I am still behind such crusty greats as Ed Niewohner, a bunch of retired Supreme Court Justices, and, of course, Judge Jim Hanson. So, as long as they are still making the circuit, I figure I am okay and that there is life after forty.

And, if you think about it, a bunch of our famous presidents have been well over sixty -- and Republicans, to boot. And who will remember, anyway? As my wise dad said, "When your memory goes... Forget it."

Note: Due to increasing age, Mr. Satterberg forgot his last *Bar Rag* deadline.



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# Environmental forum scheduled for February

The Second Annual Alaska Forum on the Environment (AFE) convenes in Anchorage at the Egan Civic and Convention Center on February 7-11, 2000. The Forum will begin at 12 noon, Monday, Feb. 7, with a report on the "Youth Watershed Congress 2000."

Elders from across Alaska will provide their perspectives on the environment in Alaska and also participate in an informal "Talking Circle" that will gather federal and state government officials, private businesses, and Alaskan elders to share traditional knowledge of the environment. Patricia Cochran, Executive Director for the Alaska Native Science Commission, will facilitate the Talking Circle.

The AFE is a cooperative conference sponsored by various professional, governmental and non-governmental organizations. Participants include everyone from rural Alaska villages to large urban centers of the state, and from the local tribal governments to the federal government. The wide-ranging agenda is organized supporting environmental topics that include natural resources, environmental health, rural issues, watershed protection, and regulatory compliance.

Featured keynote speakers include:

Alaska musher **Dee Dee Jonrowe** will speak on Tuesday morning providing "Virtual Tour of Alaska Ecosystems Along the Iditarod Trail."

The Tuesday noon keynote address will be **Jan Schlichtmann**, the attorney chronicled in the best-selling book and popular film entitled, "A Civil action." Actor John Travolta portrayed Schlichtmann in the film.

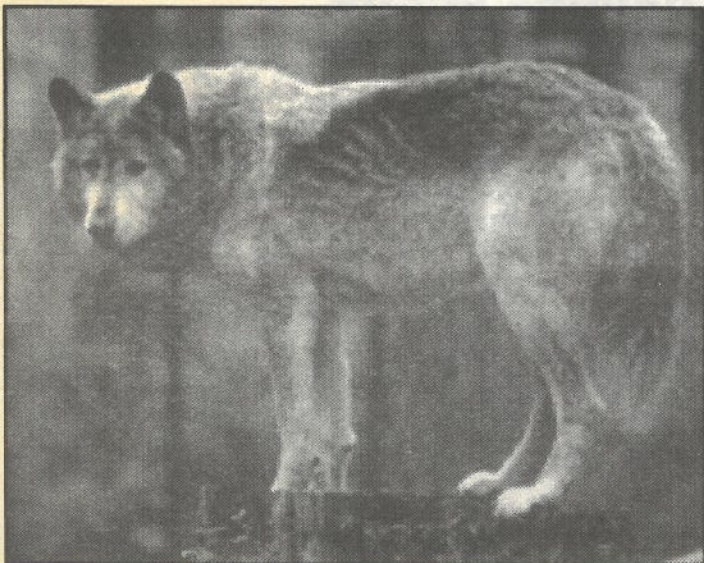
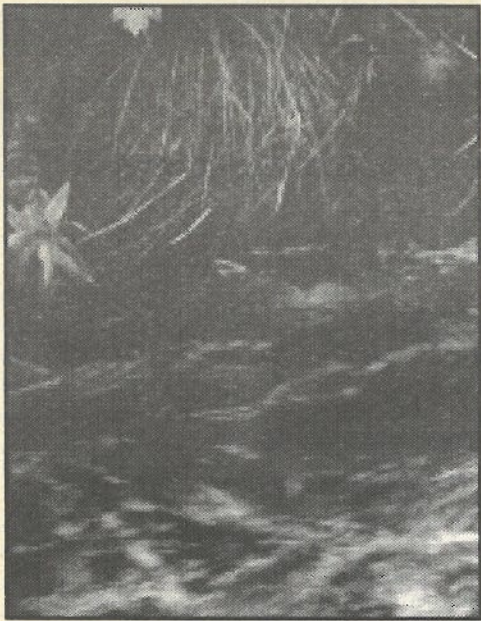
**David J. Hayes**, Acting Deputy Secretary, U.S. Department of the Interior will speak on Wednesday morning on "Environmental Negotiations; What Works and What Doesn't."

The Wednesday noon keynote will be a panel of Alaskan elders providing their Perspectives of Alaska's Environmental future."

Several events have been planned in conjunction with the AFE, including the U.S. Environmental Protection Agency Indian Grant Assistance Program (IGAP) Training. Restoration Advisory Board Roundtable, Watershed Roundtable, Introduction to Air Quality Source Review for Expanding Facilities, Introduction to the Alaska Coastal Management Program, Development and Special Area Planning. Various organizations, such as the Alaska Environmental Health Association, the Association of Alaska Wetland Scientists, the Alaska Association of Environmental Professionals, and the Alaska Chapter of the Air and Waste Association are hosting meetings that coincide with the AFE.

AFE Registration Information:

Discounted registration for the conference can be done on the Internet only through Jan. 21, at the website (<http://www.akero.org>). A draft agenda for the entire week can also be obtained through the website. While you may register at the event, the first 400 to register online or by phone will have lunch service included as part of the 3 keynote lunch events. If you wish to obtain information or register by phone or fax, please contact the AFE Registration staff at (907) 276-6060.



## Considering going solo?

By Keith McLennan

If you have that urge to go it alone, here are some financial items you should consider:

1. How much capital will you invest? Look at all of the available assets excluding retirement funds and money set aside for your children's education. Do not count credit card advances or home equity loans which typically have prohibitive interest rates.

Total \$ \_\_\_\_\_

2. Initial Investment or Start up Costs.

Business Software	\$ _____
Computer and Modem	\$ _____
Extra Telephone Lines	\$ _____
Furnishings	\$ _____
Licenses and Permits	\$ _____
Malpractice Insurance Premium	\$ _____
Marketing Materials	\$ _____
Printer	\$ _____
Professional Services (Accounting, Etc.)	\$ _____
Security on Rental Space	\$ _____
Other	\$ _____

Total Initial Investment \$ \_\_\_\_\_

3. Liquid working capital. What dollar amount will you have available during those first several months of little or no income to cover your living expenses?

Total \$ \_\_\_\_\_

Subtract 2 from 1 = \$ \_\_\_\_\_

4. Monthly expenses.

Electricity	\$ _____
Internet Provider	\$ _____
Office Rent	\$ _____
Research Materials	\$ _____
Telephone Expenses	\$ _____
Travel Expenses	\$ _____
Other	\$ _____

Total

5. Monthly cost of living (use your current costs of living as the benchmark).

Calculate the average of three months expenses and include such things as housing, utilities, food, car and health insurance (unless you are covered elsewhere).

Total \$ \_\_\_\_\_

6. Total monthly expenses (add 4 and 5) = \$ \_\_\_\_\_

7. Number of months you can operate without revenue (divide 3 by 6)

Total \$ \_\_\_\_\_

This should give you a feel for how long you can operate without consistent earnings.

The author is past chair of the Pennsylvania Bar Association Solo and Small Firm Practice Section

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# Bar People

The partnership of Farleigh & Shamburek has dissolved. **Randall Farleigh** is now with Choquette & Farleigh, and **Steve Shamburek** has opened the Law Office of Steven J. Shamburek.

**James Benedetto** has relocated to the Island of Saipan in the Commonwealth of the Northern Mariana Islands. He is an Assistant Attorney General responsible for felony criminal prosecutions. **Patrick T. Brown** is in Ellensburg, WA. **Daniel Cadra** writes that he is now employed as "Senior Judge" on the Land Court for the Republic of Palau (Micronesia). **Carlene Faithful**, formerly with the Office of the Solicitor, Dept. of the Interior, has relocated to Tacoma, WA.

**Kevin Feldis**, formerly with Dorsey & Whitney, is now with the U.S. Attorney's Office. **Christine Hess** has relocated from Barrow to Juneau. **Calvin Jones** and **John Colver**, formerly with Hoge & Lekisch, have formed the firm of Jones & Colver. **Michael Jungreis**, formerly with Heller Ehrman, et.al., is now with Hoge & Lekisch. **Ross Kopperud** has retired from the State of Alaska, Dept. of Law and is living in Palmer.

**S.J. Lee** is now with the Law Office of Kenneth Kirk. **David Landry**, formerly with Molloy & Landry in Kenai, is now the Magistrate for the Court in Kenai. **Thane Mathis**, formerly with the Anchorage Municipal Prosecutor's Office, has relocated to Santa Monica, CA. **Susan Wright Mason** and **John Treptow** have left the law firm of Keesal, Young & Logan and joined the law firm of Dorsey & Whitney. **Mary Louise Molenda** is now with Patton Boggs.

**Cheryl McKay**, former law clerk to Judge Stewart, is now with Bankston &

McCollum. **Bruce Moore**, formerly with the Law Offices of James B. Gottstein, is now with Winner & Associates. **Elizabeth O'Leary** has relocated from Anchorage to San Diego, CA. **Gregory Olson**, formerly of Barrow, is now with the District Attorney's Office in Bethel.

**Richard Pennington** has relocated to Coos Bay, Oregon. **Kenton Petit** has relocated from Anchorage to Cincinnati, OH. **Bonnie Robson** is now with the Attorney General's Office in Anchorage. **Martina Kang Ravicz** has relocated from Fairbanks to Palm Desert, CA. **Patrick Rumley**, formerly with Goerig & Associates, is now with Salomon Smith Barney brokerage firm. **Gerald Sharp** is no longer associated with Preston Gates & Ellis.

**Janna Stewart** has relocated from Anchorage to Juneau. **Michael Stahl** is now with Guess & Rudd. **Hal Tobey** has relocated from Anchorage to Loveland, CO. **Nan Thompson**, formerly with the Attorney General's Office, is now with the Regulatory Commission of Alaska. **Brent Thompson** has relocated from Anchorage to Fort Worth, TX.

**Debra Braga** writes: "Hi everyone and greetings from sunny Florida! I'd like to report that I've recently accepted a job as the Executive Director of the Orlando, FL office for Scottish Trade International. Scottish Trade seeks to increase trade and investment opportunities between businesses in both the U.S. and Scotland. I will be taking a month off before starting my new job in February."

**Warren W. Taylor** writes from Anacortes, WA that "when I was a youngster my father was an Assistant District Attorney living in

Cordova, when Valdez was the headquarters for the Third Judicial District and Anchorage was a grease spot on the map. It was the feature of the court to utilize a Coast Guard cutter to transport the court party to places reached only by boat. It was my good fortune to make one of these trips."

**Kirby Wright** has relocated from Seattle to Greenwood Village, CO. **John Wolfe**, formerly with the District Attorney's Office in Bethel, is now with the District Attorney's Office in Kenai.

**Mike Hotchkin** is back in Anchorage, and back doing law, after 10 years teaching elementary and middle school in upstate New York. He is now staff attorney for the Alaska Judicial Council. **Tom Daniel** has

been named the new office managing partner for Perkins Coie.

**Jermain, Dunnagan & Owens, P.C.**, announced the addition of **John Bioff**, to the firm. Licensed to practice in the U.S. District Courts for



John Bioff

Alaska and the state courts in Alaska, Missouri and Kansas, Bioff practices primarily in the areas of commercial and labor/employment law.

**James E. Hutchins**, formerly of Anchorage, has opened a law office in Mathews, Virginia, where he hopes to build a probate and business-related prac-



tice. Hutchins practiced law in Anchorage for nearly 20 years, working for the Alaska Legal Services Corporation and the former Faulkner Banfield firm. He and his wife, Mary Margaret, have now built a new home near Chesapeake Bay. Although an avid hockey player, Hutchins told the *Gloucester-Mathews Gazette-Journal* that the Alaska winters "lasted forever," and that he and his wife were glad to return to the East Coast to be near family and "for gardening, sailing, and fishing."



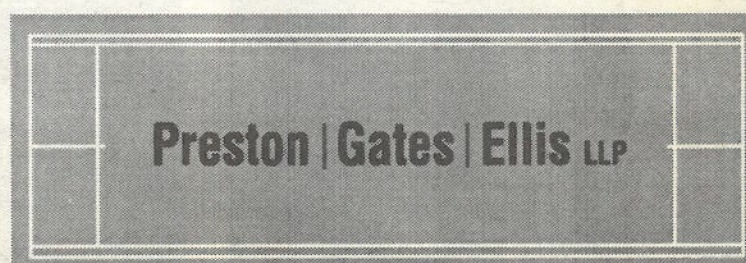
Left to right: Kim Dunn, Dave Case (seated), Bob Hume, Phil Blumstein.

## Copeland, Landye, Bennett and Wolf, LLP and Blumstein & Dunn Merge

Copeland, Landye, Bennett and Wolf LLP and Blumstein and Dunn announce the merger of their law firms, effective January 1, 2000. The combined firm's new name is Landye Bennett Blumstein LLP. The firm includes partners Dave Case, Bob Hume, Phil Blumstein, and Kim Dunn and associates Beth Phillips, Jim Webster, and David Voluck. The firm has 22 lawyers in its Anchorage and Portland offices. The Anchorage office remains at the South ARCO Tower, 701 West 8th Avenue, Suite 1200. Landye Bennett Blumstein provides legal services for individuals, businesses, and organizations in Alaska, Oregon, and Washington. The firm's areas of practice include real estate, general business, Alaska Native, municipal, and tax law and litigation.

## Preston Gates changes image

Preston Gates Ellis & LLP has adopted a new logo and corporate image. "As Preston Gates & Ellis LLP enters a new century, we are proud to unveil the firm's new corporate identity," said the firm in announcing the change to clients and others. "Like many of you, our firm is in an intensely competitive and fast-moving marketplace. We believe this new logo more accurately reflects our strength, entrepreneurial focus, and forward-looking perspective. We remain dedicated to providing all of our clients with excellent legal counsel and responsive service," said the company. The firm also redesigned its web page to reflect the new identity.



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## ESTATE PLANNING CORNER

## The cost of a simple will in the new millennium

□ Steven T. O'Hara



**T**he U.S. government recently increased the cost of a simple Will. Here "cost" means a lost opportunity to save taxes and "simple Will" means a Will giving property outright to an individual who then has exposure to taxes.

The amount that may pass free of federal estate or gift tax is known generally as the unified credit amount or, more recently, the applicable exclusion amount. From 1987 through 1998, this amount was \$600,000. This \$600,000 amount generally created the opportunity for two taxpayers, each with at least \$600,000 in assets, to save anywhere from \$235,000 to \$330,000 in estate taxes. The applicable exclusion amount increased to \$625,000 in 1998 and to \$650,000 in 1999.

Effective January 1, 2000, the

applicable exclusion amount has been increased to \$675,000. This \$675,000 amount generally creates the opportunity for two taxpayers, each with at least \$675,000 in assets, to save anywhere from \$271,000 to \$371,000 in estate taxes.

The applicable exclusion amount is not scheduled to increase again until 2002, when it is scheduled to increase to \$700,000. Then it is scheduled to increase to \$850,000 in 2004, \$950,000 in 2005, and \$1,000,000 in 2006. Each increase will result in a greater opportunity to save estate

taxes, provided taxpayers structure their asset ownership, Wills and trusts properly.

Consider a husband and wife domiciled in Alaska. Both are U.S. citizens. They have no assets outside Alaska and no material debt. Neither has ever made a taxable gift. In their estate planning, they believed they did not need to consider anything beyond simple Wills because they had heard they each may pass, at death, as much as \$675,000 to their descendants without estate taxes. They figured with combined assets of no more than \$1,350,000, or \$675,000 each, their estates would never be subject to estate taxes. So they signed simple Wills, giving all assets to the surviving spouse outright and to their descendants outright when there is no surviving spouse.

Husband has recently died. His surviving spouse now realizes that with assets of \$1,350,000 (being the total value of her assets plus the assets to which she is entitled under her husband's Will), her estate would owe \$271,000 in estate taxes if she died in 2000 (IRC Sec. 2001(c) and AS 43.31.011).

Thus the cost of husband's simple Will could be \$271,000 in estate taxes. To avoid this tax exposure, the couple could have equalized their estates by separating assets so each owns \$675,000 separately. Then husband could have signed a Will or living trust giving the applicable exclusion amount to a trust that would be available to his surviving spouse, but would not be included in her gross

estate on her subsequent death. In general, husband could have named his surviving spouse trustee of the trust without adverse tax consequences (Adams and Abendroth, *The Unexpected Consequences of Powers of Withdrawal*, 129 *Trusts & Estates* 41 (August 1990) (discussing distribution powers held by a trustee who is also a beneficiary or related to one)).

The opportunity to eliminate or reduce taxes by giving property in trust, rather than outright, is not limited to the married couple. In other words, a simple Will signed by a single individual can also be costly.

Consider a 90-year-old client with net assets of \$675,000. He is not married and has never made a taxable gift. He has a 65-year-old daughter with her own net assets of \$675,000. Both the client and his daughter are domiciled in Alaska, and their respective assets are all in Alaska. The client has a simple Will, giving all to his daughter outright.

Suppose the client dies in 2000. His daughter would then learn that with assets of \$1,350,000 (being the total value of her assets plus the assets to which she is entitled under her father's Will), her estate would owe \$271,000 in estate taxes if she then died (IRC Sec. 2001(c) and AS 43.31.011).

Clients requesting simple Wills need to consider that the simple Will could ultimately cost their families hundreds of thousands of dollars.

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## Child support guidelines website and e-mail list

By WILLIAM T. COTTON

**T**he Alaska Judicial Council has implemented an Internet Website on Alaska's child support guidelines—Civil Rule 90.3. [[www.ajc.state.ak.us/childsupport](http://www.ajc.state.ak.us/childsupport)] The website attempts to gather all of the materials necessary to understand and apply Civil Rule 90.3.

The website has the text of the child support guidelines with hyperlinks to relevant case law, the commentary and other references. Child support statutes, both Alaska and federal, as well as CSED regulations are included. A summary and hyperlink is provided for each Alaska Supreme Court opinion concerning the child support guidelines, with cases organized alphabetically, chronologically, and by subject area.

### Alaska Child Support Guidelines Website

Links are included to CSED, court and CSED forms, and both Alaska and national sites related to child support. Further, the website includes examples of how to apply Rule 90.3 and a summary of the 1999 amendments.

We hope to add "smart" court forms in a PDF format very soon

which will do calculations automatically and carryover figures from one line to another when appropriate. A link to CSED's Internet support calculator is on the website now.

The Council also is compiling an e-mail list of attorneys and others who are interested in receiving e-mail updates on child support issues. These updates will include brief summaries of new cases, notices of rule or statutory changes, a summary of any new features on the website, and other items of interest. E-mail [bill@ajc.state.ak.us](mailto:bill@ajc.state.ak.us) with your name and e-mail address if you are interested. Any comments or suggestions for the website also would be appreciated.

## Check Out What Is On the Alaska Bar Website

[www.alaskabar.org](http://www.alaskabar.org)

- General Information
- Bar Exam/Admissions
- CLE and Convention - click here for Text of the new VCLE Rule and "The Rule at a Glance"
- Trial Court Opinions Database - This database is searchable!
- Substantive Law Sections
- Links and Resources - click here for
  - Alaska Bar Rules
  - Bar Rag Info
  - Lawyer Referral List for Landlord and Tenant Cases
  - Lawyers' Assistance Committee
- Links to other helpful sites including
  - Alaska Law Review
  - Alaska Court System
  - Alaska Legal Services
  - National Association of Legal Administrators
  - National Institute for Trial Advocacy
  - U.S. District Courts:
    - District Court for Alaska, Bankruptcy Court and Probation Court for Alaska



### FINDING AND CHOOSING LAWYERS

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**Expertise and cost remain top criteria, but firm reputation plays a deciding role.**

**Corporate counsel named these factors most important in their search for law firms.**

#### At start of search

- 1 Expertise
- 2 Cost/Value
- 3 Lawyer Reputation
- 4 Innovative Thinking

#### In final selection

- 1 Expertise
- 2 Cost/Value
- 3 Personal Chemistry
- 4 Firm Reputation



# How to troubleshoot your marketing program

*Correct these problems to improve results*

By TREY RYDER

**O**ne weak link can cause your marketing chain to break. If you aren't getting the results you want, check these areas.

1. *Is your marketing message complete?* Your message must identify a problem, prove it exists, identify a solution, prove it works and build your services into the solution. Your message should answer every question your prospect might ask. And don't be concerned if your message is long. Long messages work - not because they're long, but because they're complete. The longer you keep your prospect's attention, the more likely you are to win a new client.

2. *Is your message written for your audience?* A message that attracts blue-collar workers is different from a message designed for white-collar professionals.

3. *Is your message easy to understand?* Whether your audience is young adults or executives, you should write your message in everyday language, not legalese. Prospects must clearly understand what you offer and how they benefit from hiring you.

4. *Is your message where prospects will find it?* A tax lawyer who wanted to represent doctors before the IRS ran an ad in a weekly shopper newspaper. Not surprisingly, he was disappointed with the results and wasted his \$2000 investment.

**FIRST, YOU SHOULD TEST YOUR MARKETING ON A SMALL SCALE SO YOU DISCOVER WHAT WORKS AND WHAT DOESN'T. STILL, YOU MUST COMMIT ENOUGH MONEY SO YOU CAN TAKE THE STEPS MOST LIKELY TO BRING YOU SUCCESS.**

5. *Are you attracting enough inquiries?* Marketing is a numbers game. You profit from working the percentages. If you get 10 new clients for every 100 inquiries, you must generate 200 inquiries if you want to gain 20 new clients.

6. *Can you deliver your marketing message in a way that prospects find more convenient?* Your prospects have hectic schedules. When you send materials by mail, fax or e-mail, you have an advantage over lawyers who wait for prospects to come into their offices.

7. *Do your prospects believe you have the knowledge and skill to represent them?* You should provide biographical information about your qualifications, experience and professional memberships. Also, discuss other clients you have helped in similar circumstances.

8. *Do you generate responses from prospects?* An often-over-looked marketing principle is to

tell prospects precisely what you want them to do. If your prospects aren't sure what action they should take, they often do nothing.

9. *Do you depend on in-person consultations to deliver your marketing message?* When prospects think about going to a lawyer's office, they often feel like lambs walking into a lion's den. Offer prospects non-threatening ways to get to know you, such as telephone consultations, seminars and newsletters. After prospects grow to trust you, they are more likely to respond favorably when you invite them to your office.

10. *Do you provide services that address prospects' needs?* Or do you offer cookie cutter services and try to squeeze prospects into pre-packaged programs? No one likes to be the square peg shoved into a round hole. The more you meet prospects' needs, the more new clients you'll win.

11. *Do your prospects know you sincerely want to help them?* When you build a strong personal relationship with prospects, you have a big advantage over lawyers who treat clients as "just another file." Take time to get to know your prospects and you'll win a loyal client for life.

12. *Do your prospects know how you can help them solve problems?* Lawyers often tell me, "My client went to another attorney because he didn't know I provided the services he wanted."

Your client's perception of what you do is based on what you have done for him. Often, clients do not know the range of your services. Biographies and newsletters keep clients up to date on the areas in which you practice and the services you provide.

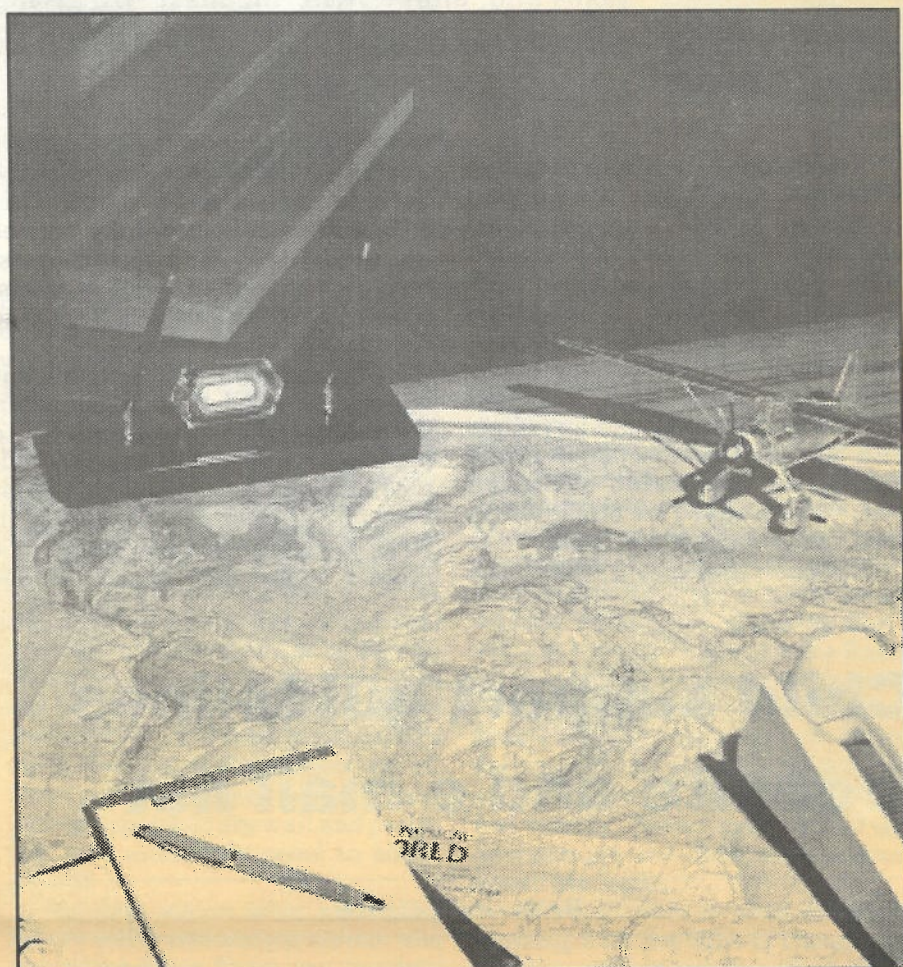
13. *Do you offer introductory services that lead to other services?* If you want to draft contracts, offer to review existing contracts. If you discover problems, offer to make changes or rewrite the agreement. Prospects like to start working with you on a small scale. As your relationship grows, the amount of work you perform grows as well.

14. *Do you offer fees that are attractive to prospects?* You should price your services in ways that appeal to your prospects. If you allow prospects to choose the fee structure they prefer, they are

more likely to hire your services than if you give them only one option.

15. *Do your prospects know the risks of waiting?* Explain the benefits of solving the problem now and the risks of allowing the problem to persist. If your prospect doesn't know better, he may decide to "think about it" - and you know what that means.

16. *Do you allow prospects to make decisions without pressure from you?* Prospects don't like



persistent efforts to close the sale. When you act like a salesperson, you undermine your credibility. Instead, offer prospects information about their problems, recommend solutions, then let them make their own decision. Any pressure prospects feel should come from their circumstances, not from you.

**SECOND, YOU SHOULD EXPECT AT LEAST SOME RESPONSES AS SOON AS YOU IMPLEMENT YOUR PROGRAM. STILL, YOU MUST ALLOW TIME TO MAKE MID-COURSE CORRECTIONS AS YOU LEARN MORE ABOUT YOUR TARGET AUDIENCE.**

17. *Does your program strengthen loyalty between you and your clients?* The best way to increase and maintain loyalty is to provide ongoing information through seminars, newsletters and other forms of education. When you keep clients informed, you cement your relationship and they refer their friends.

18. *Are you committing enough time and money to your marketing program?* Marketing takes a concerted effort. To achieve success, you must devote time and resources. What's more, you must invest in a proven program. If you simply dabble in marketing, you may never get the results you want. Here's the double marketing paradox:

First, you should test your marketing on a small scale so you discover what works and what doesn't. Still, you must commit enough money so you can take the steps most likely to bring you success.

Second, you should expect at least some responses as soon as you implement your program. Still, you must allow time to make mid-course corrections as you learn more about your target audience.

By identifying and correcting your program's weaknesses, you can dramatically improve your marketing's effectiveness.

Trey Ryder is a law-firm consultant who specializes in Education Based Marketing for attorneys.

## Court of Appeals reappoints Federal Public Defenders in Alaska and Oregon

Chief Judge Procter Hug, Jr., of the United States Court of Appeals for the Ninth Circuit has announced the reappointment of Federal Public Defenders in the Ninth Circuit, including the Alaska district. Richard Curtner III has been reappointed for a second four-year term as the Federal Public Defender for the District of Alaska beginning January 2, 2000.

Congress created the Office of the Federal Public Defender to fulfill the constitutional requirement that indigents charged with crimes in the federal justice system be provided with professional legal representation at no cost. Congress funds the Offices of the Federal Public Defender through the Defender Services Division of the Administrative Office of the United States Courts. By statute, the judges of the court of appeals select and appoint the Federal Public Defender for a renewable term of four years.

Curtner, 51, was graduated from Ohio State University and from Capital Law School. He is admitted to practice law in Ohio and Alaska and began his career in the Franklin County Public Defender's Office. He supervised a legal clinic at Ohio State University School of Law before joining the Alaska Public Defender Agency in 1987. In 1996, the United States Court of Appeals for the Ninth Circuit appointed him to his first four-year term as Federal Public Defender for the District of Alaska where he supervises a total staff of 14, including five attorneys.



## GETTING TOGETHER

## Lawyers increasingly prefer mediation ☐ Drew Peterson



An attorney friend in Anchorage recently sent me a copy of an article from the *National Law Journal* confirming what I had been suspecting in recent months. The article concludes that lawyers are increasingly using and liking

mediation, and preferring it to arbitration as an alternative dispute resolution (ADR) technique.

The article by Lisa Brennan, "What Lawyers Like: Mediation," (November 9, 1999) cites the findings of a survey of leading litigators and corporate general counsel conducted jointly by the *National Law Journal* and the American Arbitration Association (AAA). Overall the survey found that 69% of litigators and 88% of in-house counsel prefer nonbinding mediation to binding arbitration. In contrast, 25% of litigators and 9% of corporate counsel prefer arbitration as an alternative to litigation.

The reasons lawyers preferred mediation over arbitration were varied. Over 80% of all the attorneys surveyed found that mediation saved them time and money, while less than 50% found arbitration quick and cost effective. One commercial litigator noted that "arbitration is almost as costly as litigation, without the same safeguards to achieve a fair result." In contrast, "If you don't like the results of mediation, you can just walk away."

Similarly, in labor cases, the survey found that 65% of litigators and 56% of in-house counsel use mediation. Joseph Golden, a plaintiff's employment attorney, states that "I like mediation's voluntary aspect. It's always better when someone can feel it's their decision, since closure is the most important aspect of any case." In contrast, "in arbitration, I don't think I can get fair value. You're often stuck with an arbitrator who has no understanding of the case."

Mediation is also preferred over arbitration because it is a more satisfactory process, and it preserves relationships between disputing parties. James Henry, President of the National Center for Public Resources (CPR) Institute for Dispute Resolution, says that "lawyers prefer mediation for several important reasons: economy, control, preserving business relationships, and expeditious results."

One commercial litigator has created a test to determine whether cases are suitable for mediation. Those that aren't, he says, are those that require a judicial precedent, or where one side of the dispute is unwilling to mediate. Indeed, fully two thirds of the litigators and three fourths of the corporate counsel say that the chief reason for not using mediation is the unwillingness of the opposing party.

### USING MEDIATION CLAUSES IN CONTRACTS

One result of this change in law-

yers' perception of ADR is the increased use of mediation clauses in contracts in place of or in addition to arbitration clauses. Indeed, CPR's Mr. Henry states that "it is really time in the development of ADR to look hard at perfunctory arbitration clauses at the end of contracts that are carrying the volume of arbitration, when in fact mediation would be a preferable process."

### THE PROBLEM WITH ARBITRATION

Lawyers surveyed pointed to a number of problems with the use of arbitration as an alternative to litigation. A major problem is the quality of the arbitrators themselves. Indeed over half of all the lawyers surveyed stated that they did not use arbitrators because of a lack of confidence in them. Mr. King opines that "arbitrators are very inconsistent in terms of their capabilities."

Bennie M. Laughter, a corporate general counsel and vice president in Georgia states that he avoids arbitration because of its compromised outcomes. He states, "we never use arbitration. The arbitrators don't care who is right and wrong. They just come up with a compromise. We use mediation. We've had five since April, and four cases that I never would have expected to settle settled."

AAA President William K. Slate argues that while a few horror stories about arbitration are always possible, that AAA has very good quality-control standards for arbitrators. Nevertheless, he agrees that his company, which provides both arbitration and mediation, has seen a huge growth in the use of mediation. "Mediation is to the millennium what arbitration was to the 1990s," he states.

### WHY MEDIATION?

One explanation for the increased popularity of mediation is that the federal and state courts are requiring it. The survey found that fully 58% of the litigators use mediation because it was court-mandated. Congress passed legislation in 1998 requiring mandatory ADR programs in all 94 federal courts. While many leading state courts, such as in California, Florida, and Texas, also have mandatory mediation programs. In Alaska, mediation is not yet mandatory, but it is increasingly being ordered by the court pursuant to Rule 100 of the Alaska Rules of Civil Procedure.

An experienced litigator in Indianapolis is quoted in the article to the effect that "you spend much more

time exploring settlement early in a case than was possible ten years ago." Another litigator in Florida states that a "very strong mandatory mediation process" has worked very well. "It allows you to be creative and to exercise negotiation skills."

The trend towards mediation and away from arbitration includes those practice areas that traditionally have used arbitration, including labor, commercial contracts and construction disputes. Litigator Elbert J. Kram, a railroad and construction partner in Columbus, Ohio, says that litigators who handle construction cases no longer feel a stigma to avoid mediation. "Mediation is widely accepted in the courts in our area," says Mr. Kram. "Lawyers don't feel that they're suggesting weakness in their case if they suggest mediation," whereas "it used to be a real hurdle to be the first person to mention it because it was seen as a real weakness."

CPR's Mr. Henry says that it is time to review the practice of putting mandatory arbitration clauses in labor contracts. "Mediation" he says, "Would lead to much better results."

The survey noted an increase of mediation in many different areas, including environmental cases (52% of the in-house counsel used mediation in such cases) and intellectual property cases (60% of litigators and

59% of corporate counsel use mediation in such cases, compared to 31% or less using arbitration).

Finally, "Mediation is on the uptick overseas," according to CPR's Mr. Henry. He opines that "the reason is, arbitration is so costly and slow at a time when international business is growing by way of strategic alliances and joint ventures and other forms of collaborative businesses where you need a quick answer. Product life is measured in months. Arbitration is measured in years."

Interestingly, one reason not mentioned in the article for the preference for mediation over arbitration is the decrease in overall lawyer's time associated with mediation. Whereas in-house counsel would obviously see a decrease in attorney time as in the interest of their cor-

porations, it is also apparent that litigation partners have now "gotten it" about mediation, namely that better results for their clients mean happier clients who will retain them to handle their next disputes. Mediation, when successful, leads to such content clients, who are invested in the agreements made in mediation, and satisfied with the mediation process itself. Mediation leads to faster, fairer, and more cost effective results than either court decisions or arbitration.

### THE TREND TOWARDS MEDIATION AND AWAY FROM ARBITRATION INCLUDES

#### THOSE PRACTICE AREAS THAT

#### TRADITIONALLY HAVE USED

#### ARBITRATION, INCLUDING LABOR,

#### COMMERCIAL CONTRACTS AND

#### CONSTRUCTION DISPUTES.

## Western States Bar Conference



MARCH 1-4, 2000

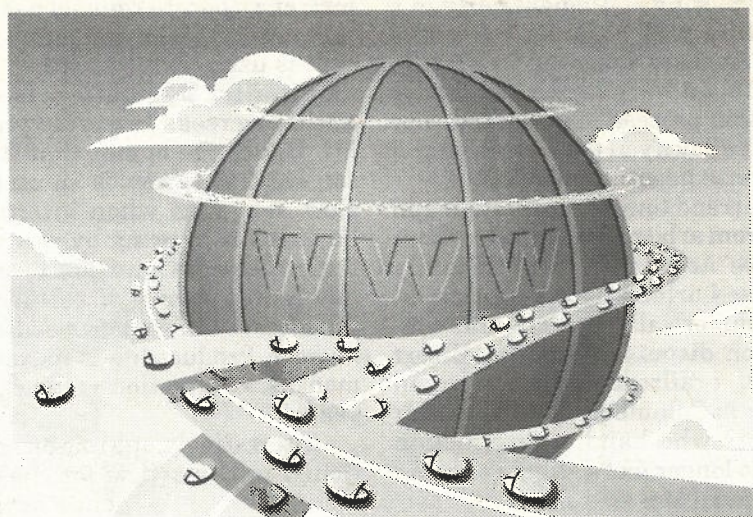
Outrigger Wailea Resort, Maui, Hawaii

The 52nd Annual Western States Bar Conference will be on the Hawaiian island of Maui, March 1-4 at the Outrigger Wailea Resort. Hawaii in March is a premier destination resort with all the amenities one expects from this paradise. Keynoting the conference will be Ward Bower of Altman Weil, Inc., who will speak on the "Future of the Legal Profession: Impact of MDPs, Technology and the Globalization of the Practice of Law." Bar leaders and volunteers from 16 western states and the ABA will gather to assess these topics and how our profession will deal with the significant challenges ahead. CLE credit is anticipated.

Social activities will include a golf tournament and traditional Hawaiian outings – a luau and dinner cruise.

For further information contact Charles Turner or Dana Vocate of the Colorado Bar Association at (303) 860-1115 or [cturner@cobar.org](mailto:cturner@cobar.org). You can also visit our website at [www.cobar.org/wsbc/index.htm](http://www.cobar.org/wsbc/index.htm) to view the hotel and to get further information about the conference.





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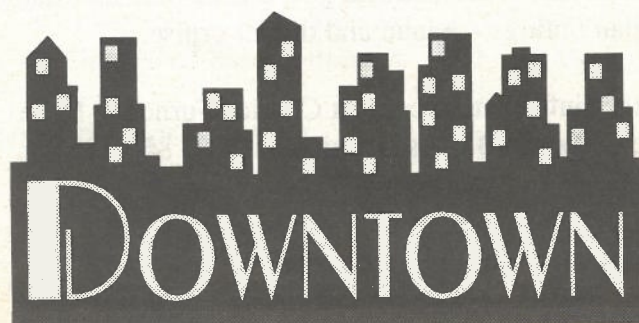
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# In Memoriam

## Dickerson Regan remembered

Longtime Juneau resident Dickerson Regan, 71, died at his Juneau home December 14, 1999, of cancer.

Mr. Regan was born March 25, 1928, in Helena, MT, to Thomas Patrick Regan and Agnes Dickerson Regan. He was a graduate of Helena public schools and the University of Montana in Missoula, where he also received his law degree. During his undergraduate years he was a member of the university track team and Phi Delta Theta fraternity.

After law school he served on the staff of the U. S. Air Force adjutant general. Mr. Regan's childhood dream had been to live in Alaska, and in 1952 he and his father drove the Alcan to Fairbanks, where he worked in the law offices of Fairbanks attorney E. P. McCarron. He moved to Juneau in 1953 to become attorney for the territorial Employment Security Commission, a position he held until statehood in 1959.

Following statehood, he became an assistant attorney general in the Office of the Attorney General in Juneau. At the end of 1966, he established the Juneau office of Alaska Legal Services. After working for Alaska Legal Services in Juneau and Fairbanks, he returned to the Office of the Attorney General's Transportation Section, and ended his legal career as the attorney for the Alaska Code Revision Commission, retiring in 1982.

Mr. Regan greatly enjoyed retirement. He traveled with the International Folk Dancers to such places as Czechoslovakia and Russia, often rode his bicycle from Juneau to the Mendenhall Valley, was active in the Juneau World Affairs Council, and took classes at the University of Alaska Southeast. Among other things, he audited the Western Civilization course three times on the entirely correct theory that he would learn something new each time. He read poetry, listened to opera, regularly attended local theater, concert, and arts shows, and discovered national book-distribution services long before the rise of the Internet in order to send atlases and encyclopedias to his nieces and nephews. He enjoyed hiking, skiing, sea-kayaking, visits to family cabins in Haines and Excursion Inlet, and travels that specifically included reunions with his brother and sisters and their children.

Mr. Regan is survived by his wife, Judith, of Juneau; two sons, Mark Regan, of Juneau, and Matthew Regan and his wife, Suzanne, and their son, Patrick, of Anchorage. He was married to Virginia Whitehead, now Virginia Breeze, from 1958 to 1969.

In addition, he is survived by three step-daughters and one step-son and step-daughter; four grandchildren; his brother and three sisters; and 12 nieces and nephews and their children.

No funeral service was held, and this next summer, the family will scatter Mr. Regan's ashes near his cabin on Paradise Cove, across Chilkat Inlet from Rainbow Glacier. Friends and family are invited.

Memorial contributions may be made in Mr. Regan's name to Doctors Without Borders, 6 East 39th St., 8th Floor, New York, N.Y., 10016; Hospice & Home Care of Juneau, 3200 Hospital Drive, Juneau, AK, 99801; or a charity of one's choice.

## Memorial to Barbara J. Miracle 1946 - 1985

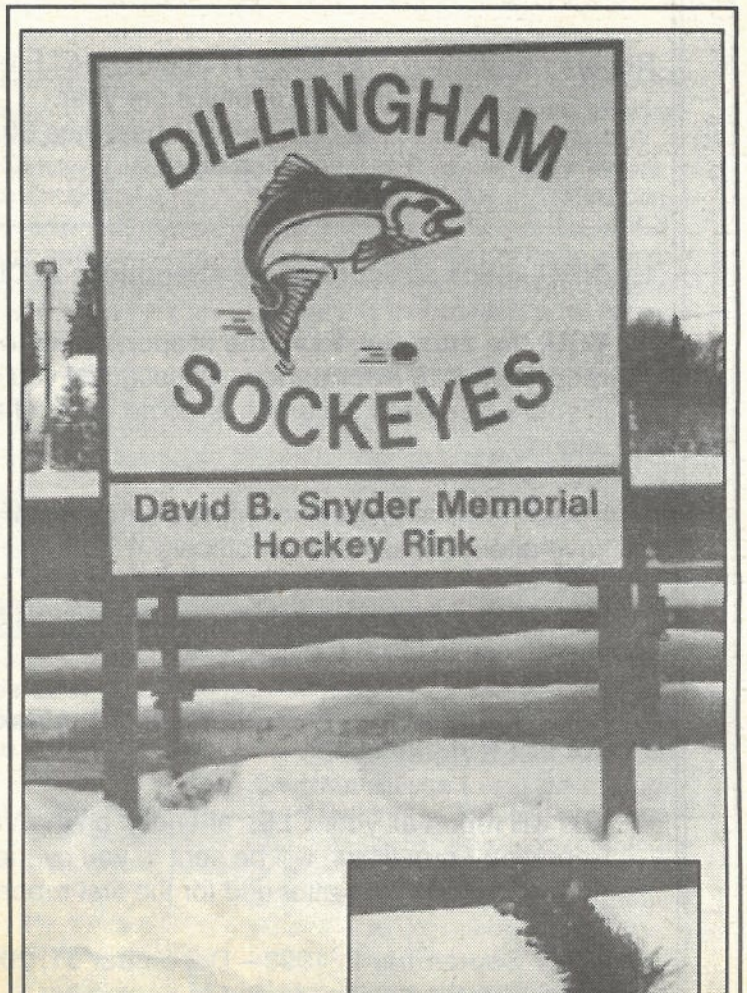
A whispering breeze gently blows hoar frost off the frozen trees, cocooned in white. What a peaceful scene. A few hardy birds check the treetops for food. Daylight comes late. People and other animals hibernate until the sun creeps above the horizon. A time to reflect on how lucky we have been.

Attorneys growing up and helping shape the future of this beautiful land. Some work behind the scene, some in the forefront, and some have committed their lives, in one way or another, to Alaska's resources.

One dedicated lawyer was Barbara J. Miracle. Her "cut right to the bone" opinions and advice to natural resources clients won her the admiration of clients, colleagues, and the community. A diminutive woman, she never minced words. Direct. Correct. Never mealy-mouthed. A wicked smile and subtle sense of humor, along with a keen mind, got her through many laborious meetings and appellate briefs.

She and her two sons now rest in a quiet place in Maryland, but her energy, skill, and legal prowess are still alive and will here in Alaska. It is always the right time to appreciate our good influences.

Sarah E. Gay  
Jan. 2, 2000



Photos by Erik Hillstrom,  
Bristol Bay Times

## David Snyder receives memorial

Long-time Dillingham attorney David Snyder received a special memorial in his community during December. From donations received from Dillingham and an August memorial service in Anchorage, Snyder was memorialized by the Dillingham Hockey Association; a plaque in his memory also was installed in the the Dillingham courthouse. Snyder died in Hawaii last August.



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Visit the NAELA website at: <http://www.naela.org>.



# Frequently Asked Questions about VCLE Reporting

**Recommended:** 12 hours of approved CLE including 1 hour of ethics per year.  
A CLE credit is based on 60 minutes of instruction time.

## 1. WHO keeps a record of my attendance at CLEs?

**YOU, the attorney, have the responsibility of keeping a record of your attendance.** We suggest you or someone in your office keep a file with a record or list of all CLEs you attend.

If you want confirmation of which *ALASKA BAR CLEs* you have attended, call the Bar office.

Please do not send your individual certificates of CLE attendance to the Bar office.

## 2. HOW do I report my attendance to the Alaska Bar for the VCLE Rule?

You will report all your CLEs attended on the VCLE Reporting Form which will be sent to you by the Bar office. You will list all CLEs attended for the first reporting period:

**September 2, 1999 – December 31, 2000**  
(this includes the banking period of September 2 – December 31, 1999).

Having a file with a copy of registration forms/certificates of attendance for the CLEs you attended will assist you in filling out the form.

## 3. WHEN do I report my CLE credits?

Send your VCLE Reporting Form to the Bar office by February 2001 along with your Bar dues statement. On your dues statement, you will be asked to check off a box:

☐ Yes, I completed 12 hours of VCLE

☐ No, I did not complete 12 hours of VCLE  
**You will receive a VCLE Reporting Form from the Bar office by 1999 year end. Keep a record on this form of ALL CLE credits earned between September 2, 1999 and December 31, 2000.**

## 4. WHAT constitutes a CLE credit?

A. Sixty minutes (60) of instructional time at an approved CLE activity equals one (1) CLE credit.

Breaks, lunch, or other social events as part of a CLE do NOT count for CLE credit.

**Divide the number of instructional minutes by 60 to get the CLE credit count.**

B. For every hour of teaching an approved CLE seminar, you can earn up to a maximum of 2 hours of preparation time per hour taught.

Keep a record of your preparation time for teaching any approved CLE. Preparation time in excess of 2 hours per hour taught cannot be counted toward fulfilling the guideline.

**Example:** You are on a CLE panel from 8:30 a.m. – 12:00 noon, with one break of 15 minutes, you earn: 195 mins. ÷ 60 = 3.25 hours  
**3.25 credits for attending/teaching the program**

If you spent 2 hours of preparation per hour taught, you would calculate 3.25 hours taught x 2 =  
**6.50 credits in preparation time**

**Total credits earned, for teaching and preparing: 9.75**

## 5. WHAT qualifies for CLE credit?

Examples of ways to earn approved CLE credit are:

- attendance at approved CLE seminars
- attendance at approved continuing judicial education seminars
- attendance at approved video replays
- attendance at approved in-house CLE seminars
- attendance at substantive section, local bar, or Inn of Court meetings
- preparing for and teaching approved CLE courses
- participating as a faculty member in Youth Court
- studying audio or videotapes or technology-delivered approved CLE courses
- writing published legal texts or articles in law reviews or specialized professional journals – legal articles in the *Bar Rag* qualify

## 6. HOW does a CLE activity get approved?

A. Any CLE activity presented by an *approved provider* is automatically approved for CLE credit.

**Approved providers include, but are not limited to:**

- state and local bars
- Alaska Academy of Trial Lawyers
- American Bar Association
- any American Bar Association accredited law school
- American College of Trial Lawyers
- government agencies, e.g. Federal Court System, Alaska Court System, Alaska Dept. of Law, Federal Defenders Office, Public Defenders Office
- American Inns of Court and their affiliates
- Defense Research Institute
- Federation of Insurance Corporate Counsel
- International Association of Defense Counsel
- any organization with an CLE Director or staff holding membership in the Association for Continuing Legal Education (ACLEA)

**Call the Bar office for a complete list of approved providers.**

**NOTE:** Any organization, including law firms, can apply to the Alaska Bar CLE Director for approved provider status.

Go to our website at [www.alaskabar.org](http://www.alaskabar.org) and click on CLE, then CLE Accreditation, and download the application form. There is no fee to apply.

B. *Individual programs* not presented by an approved provider can be reviewed for qualification for CLE credit.

The CLE Director can review the agenda, topics, and speakers and determine if and how much CLE credit can be approved for that program. Call the Bar office for submission details.

**MORE QUESTIONS?**

Call us at 907-272-7469 — Fax us at 907-272-2932

E-mail: [info@alaskabar.org](mailto:info@alaskabar.org) OR [armstrongb@alaskabar.org](mailto:armstrongb@alaskabar.org)



# Judicial Council evaluates 34 judges

By William T. Cotton

The Alaska Judicial Council is beginning its evaluation for the 34 judges who will be on the ballot this November. The survey to attorneys will be mailed out about January 25. The Council encourages all attorneys to rate the judges with whom they are familiar and to write comments to help the Council in its evaluation. The Council will send out surveys on the judges to all Alaska attorneys, all peace and probation officers, all jurors who served with the retention judges in the last two years, guardians ad litem, social workers, and court employees. Attorneys with recent cases before the judge receive an additional evaluation form. In addition, the Council collects information from numerous other sources such as the CourtWatch evaluation, peremptory challenges, public hearings, and appellate records. Alaskans have more information on their judges than citizens anywhere else in the world. The voter pamphlet mailed to all Alaskans includes a one page summary of the information collected by the Council. Much more detailed information is available by writing the Council or on its Internet site: <http://www.ajc.state.ak.us> The Council expects to make its retention recommendations in June or July. The evaluation information on the Internet should be completed within several weeks after the recommendations.

## Million dollar gift launches School of Law Alaska Program

Continued from page 1

of the School of Law as a legal education resource for Alaska, the only state without a law school. The gift provides scholarship support for law students which will commence at the beginning of the new school year in September of the year 2000. "With our Jesuit educational mission and our location, we are a great resource for students of Alaska. As an Alaskan myself, I seek as president of Seattle University to develop this educational service to Alaska in many ways. It was because of this commitment and in order to begin this broader initiative that I

WITH OUR JESUIT EDUCATIONAL MISSION AND OUR LOCATION, WE ARE A GREAT RESOURCE FOR STUDENTS OF ALASKA. AS AN ALASKAN MYSELF, I SEEK AS PRESIDENT OF SEATTLE UNIVERSITY TO DEVELOP THIS EDUCATIONAL SERVICE TO ALASKA IN MANY WAYS.

asked my own parents for the initial gift to the Alaska Fund," Sundborg said. The Sundborgs were honored at a recent dinner celebrating their gift to the School of Law and Alaska Program. The reception and dinner were held on October 30 at Sullivan Hall, the new home of the Seattle University School of Law, the largest in the Pacific Northwest with approximately 850 students. Approximately 200 guests, including friends of the Sundborg family, Seattle University, as well as several senior executives from Alaska industries and companies attended the event. In addition to the money gift, the Sundborgs donated to the School of Law various artifacts on display in its State of Alaska Reading Room, including an original Alaska State Constitution signed by all 55 delegates and an original oil painting by Alaska artist Fred Machetanz. Seattle University, founded in 1891, is one of the nation's 28 Jesuit colleges and universities. It is one of the largest independent institutions in the Northwest. Approximately 5,500 students are enrolled in 44 undergraduate programs and 34 graduate programs, including law and a doctoral program in education. *US News & World Report* ranks Seattle University among the top regional universities in the West.

## Alaska Bar Association 2000 CLE Calendar (Programs scheduled to date – 1/12/2000)

Watch for brochures about the following upcoming programs.

Date	Topic	Live in	Time
Jan 7	Appellate Rule 210 (c )	JUNEAU Centennial Hall	2:00 – 3:30 p.m.
Jan 14	Off the Record – 1 <sup>st</sup> Judicial District	JUNEAU Centennial Hall	4:30 – 6:30 p.m.
Jan 28	Off the Record – 3 <sup>rd</sup> Judicial District	Anchorage Hotel Capt Cook	7:30 – 9:30 a.m.
Feb 16	Update on Bonding: Court, Contract, & Fidelity – in cooperation with Brady & Co. and Reliance Surety Co.	Anchorage Anchorage Museum of History & Art	8:30 – 11:00 a.m.
Feb 24	Changes to Civil Rules 90.6 and 90.7 – Custody/GALs	Anchorage Hotel Capt. Cook	8:30 a.m. – 12:30 p.m.
Feb 29	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	Anchorage Hotel Capt. Cook	1:30 – 4:45 p.m.
March 1	Ethics for the Millennium	Anchorage Hotel Capt. Cook	8:30 a.m. – 12 noon
March 3	25 Common Mistakes in Dividing Governmental, Corporate and Union Pensions in Divorce	Anchorage Anchorage Hilton	8:30 – 11:45 a.m.
March 7	Immigration/Political Asylum – in cooperation with Catholic Social Services Immigration and Refugee Services	Anchorage Hotel Captain Cook	8:30 a.m.– 12:30 p.m.
March 8	Daubert Meets the EEOC: Use of Experts in Employment Law Cases	Anchorage Hotel Captain Cook	8:30 a.m.– 12:30 p.m.
March 8	Lunch with the EEOC	Anchorage Hotel Captain Cook	12:30 – 1:45 p.m.
March 16	Evaluating Medical Malpractice Cases	Anchorage Hotel Captain Cook	8:30 a.m. – 12:00 noon
Mar 20-21	Effects of Domestic Violence on Your Law Practice - ANDSVA	Anchorage Anchorage Hilton	8:00 a.m. – 5:00 p.m.
March 22	Trust Accounts – in cooperation with ALPS	Anchorage Anchorage Hilton	8:30 a.m.– 12:00 p.m.
March 22	Risk Management –in cooperation with ALPS	Anchorage Anchorage Hilton	1:30 – 4:45 p.m.
March 24	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	JUNEAU Centennial Hall	1:30 – 4:45 p.m.
March 31	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	FAIRBANKS Westmark Hotel	9:00 a.m.– 12:15 p.m.
April 6 & 7	Administrative Law Update	Anchorage Hotel Captain Cook	8:30 a.m. – 12:30 p.m. each day
April 12 (date tentative)	Using Courtroom Technology: Practical Tips for Preparing Your Case – U.S. District Court	Anchorage Federal Courthouse	8:00 a.m. – 12:00 p.m.
May 17, 18 & 19	Annual Convention	Anchorage Hotel Captain Cook & Egan Convention Ctr	Full Days
July 20 NEW	Dr. Stephanie O'Malley on Naltrexone Therapy	Anchorage Hotel Captain Cook	8:30 am- 12:30p.m.
Sep 14	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	Anchorage Hotel Capt. Cook	1:30 – 4:45 p.m.
Sep 14	Professional Responsibility – in cooperation with ALPS	Anchorage Hotel Captain Cook	9:00 a.m. – 12:15 p.m.
Sep 15	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	FAIRBANKS Westmark Hotel	9:00 a.m.– 12:15 p.m.
Sep 15	Professional Responsibility – in cooperation with ALPS	FAIRBANKS Westmark Hotel	1:30 – 4:45 p.m.
Sep 22	Mandatory Ethics for New Admittees – A Basic Program for New Lawyers	JUNEAU Centennial Hall	1:30 – 4:45 p.m.
Sep 22	Professional Responsibility – in cooperation with ALPS	JUNEAU Centennial Hall	9:00 a.m. – 12:15 p.m.,



# Letters: President's column

*Continued from page 2*

don't hold your breath. Lawyers are some of the most socially awkward people we know and love, and they often forget to introduce their own law partners or spouses to other significant people in their lives. This will probably be a long-term project, requiring many gentle, cheerful reminders from you along the way. It's worth the trouble. Your lawyers will one day thank you for it. Good luck.

**AD HOMINEM AD NAUSEUM**

**Dear Miss Civility:**

The phenomenon I am about to write about happens to me every three to five years (about every other "cycle" of cases). Although I have become thicker skinned and no longer require sedation when it occurs, I still find it infuriating. Here is the general gist: opposing counsel files a motion or memo with the court falsely accusing me of either a fraudulent or a sloppy act (such as neglecting to show up for a deposition or to timely file a notice). I have no choice but to respond (although it always peeves me to dignify it with a response - and at my client's expense) with affidavits and other proof that the accusation is false. Most often the matter itself is never heard by the court; the judge or trier-of-fact usually ignores the controversy and simply rules on the underlying motion on some other grounds (like the merits). This would be palatable if opposing counsel were to then acknowledge to me and to the court that the false allegation was an error. But that never happens. The accusation and proof of its falsehood are simply treated as though they never happened.

My question is, then what? The case moves on, but my integrity and professionalism remain besmirched on the record. I spent my client's money and my time and energy to respond to personal, unwarranted attacks by opposing counsel and

refuse to spend more in the context of the case. But the other lawyer, having won or lost on other grounds, is free to use the tactic again.

The conduct arguably does not rise to a breach of the Rules of Professional Conduct, since the other lawyer could always argue that it was simply an honest mistake, and that no harm was done to the proceedings in or merits of the case. Do I just forget it, and chalk it up to differing interpretations of "zealous advocacy?" Or do I owe myself and the profession more? And don't tell me to confront these folks personally - they are nearly always smiling "gladhanders," who act highly offended if I dare suggest that there was any problem with their conduct.

**Speechless in Spenard**

**Dear Speechless:**

I know it will be painful, but the best option is to confront the name-caller. If you can bear it, do it on the phone, but if you must, you can do it in a letter. State, simply and specifically, what the problem is, and ask for an apology. If you can, do it in the tone of someone who is trying to establish a working relationship for the future. If you resist name-calling and anger, you might (but probably won't) be surprised by the results. You may find that the lawyer did not fully understand the effects of her behavior or allegations and is willing to give a sincere (but probably curt) apology. But even if the other lawyer resorts to smarmy condescension or self-righteous indignation (which unfortunately would be fairly typical of the personality you described), you will have benefitted by having succinctly and calmly stated your complaint, and by having done your part (however ineffective, but you never know) to prevent a similar occurrence in the future.

If the suggestion above does not work, you will have to change your practice when dealing with that lawyer in the future. Make a mental note

(and tell your secretary and colleagues so that they can remind you) that should you ever deal with that lawyer again, you will take every precaution to protect yourself from similar attacks, including putting all communications with the lawyer in writing, making all agreements (however trivial) on the record or in writing, and in insisting on a quid pro quo (in writing) for every courtesy or grace period you grant to that lawyer. You will have to (when dealing with that lawyer alone) quietly and politely become the kind of anal, persnickety, paranoid attorney that you would make fun of in any other context. Good luck.

**SMELLING A BAD EGG**

**Dear Miss Civility:**

I am a plaintiff's attorney. My clients do not tend to be repeat clients (absent extreme misfortune). I get new clients from referrals by former clients and by other lawyers, and sometimes, I hope, from my general reputation as an able practitioner.

It comes to my attention—rarely, but it happens—that another lawyer who is practicing in my field is using a more direct approach to obtain clients (e.g. directly calling or contacting accident victims through their employees or contractors). I know that under Rule of Professional Conduct 7.3, a lawyer may not directly solicit clients (who are neither family members nor former clients) "when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." I have never made a formal complaint with the Bar Association, because I can see no way to prove that an illegally-motivated solicitation has occurred—or at least not in the particular instances I have heard described. And the last thing I want or need is to be accused of professional jealousy (I am, in a very indirect way, a "competitor" of these other attorneys).

But I am appalled and outraged at what I suspect is a bad practice. Critical to the success of any lawyer is his or her credibility, and I can't help but feel that the very few lawyers who insist on acting that way hurt the credibility of all plaintiff's

lawyers. Based on my general observations, these "ambulance chasers" are not lawyers who attend meetings of professional organizations or who attend CLEs, so general education and admonition would only preach to the converted. I feel that I have a responsibility here, but see no reasonable course of action. Please help me or let me off the hook.

**Perturbed in Petersburg**

**Dear Perturbed:**

No one hates the smell of a bad egg worse than the chickens roosting in the same hen house. Of course you are distressed by your apprehension that one of your kind is a stinker. But what to do? Obviously, you are free at any time to call the very able discipline counsel at your state Bar office, and to ask him or her, informally, and even hypothetically, whether you have sufficient information to justify an investigation. By doing that, you can at least rest assured that you have fulfilled your own professional duty, under Rule of Professional Conduct 8.3, to report what you fear may "be a violation of the rules of professional conduct."

I'm sorry to say this, but, in the event that there are insufficient facts to justify an investigation, you are not completely off the hook until you have confronted the lawyer yourself. You, or you and one of your colleagues, can meet with him or her to express your concerns. That would likely be

an unpleasant experience, and something that all of you would dread mightily. But after all, you are in the business of confronting wrongdoing, and are certainly capable of stating your concerns in a detached and professional manner. You should be able to keep the meeting from being a personal attack (although you cannot control how it is perceived). You will also probably not be able to avoid being thought of by the "egg" as having been a sanctimonious prig. But if your focus is not to threaten or coerce, and simply to state a concern, then your mission cannot fail. At worst, he or she will continue the practice, undaunted. At best, he or she might at least alter their practices to make them conform more fully to the Rules of Professional Conduct. Good Luck.

**... YOU CAN AT LEAST REST ASSURED THAT YOU HAVE FULFILLED YOUR OWN PROFESSIONAL DUTY, UNDER RULE OF PROFESSIONAL CONDUCT 8.3, TO REPORT WHAT YOU FEAR MAY BE A VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT.**

**ALASKA SEAFOOD INTERNATIONAL, LLC**

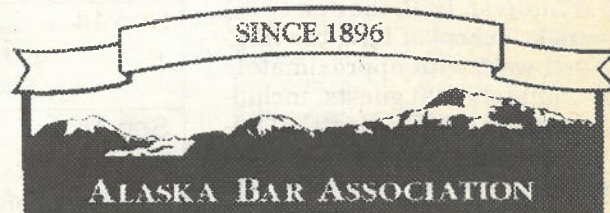
Junior Legal Counsel needed to advise company concerning its legal rights, obligations and privileges; prepare business contracts and recommend modifications; advise company concerning transactions of business involving internal affairs, stockholders, directors, officers and corporate relations with general public; advise company in labor or human resources related disputes; administer international business and immigrations related legal works; conduct legal research and examine legal data to determine advisability of legal actions; administer other legal matters and act as liaison between the company and its outside attorneys and foreign partners. Our company is located in Anchorage, Alaska and we require a minimum of 2 years combined experience in international business, human resources and/or immigration for this position. There is one opening for this position and candidates must have a JD degree and be licensed in one US jurisdiction. Work schedule: 8:00 a.m. to 5:00 p.m., Monday through Friday, 40 hours per week. Salary: \$88,000/year.

Please send resume to Alaska Department of Labor & Workforce Development, ALC/Case #1432, P.O. Box 25509, Juneau, AK 99802-5509, Fax: 907-465-5558.

**CIRCLE THESE DATES!**

**CONVENTION 2000**

Hotel Captain Cook & Egan Convention Center  
**Anchorage**  
Wednesday, Thursday, & Friday  
May 17, 18 and 19



**CONVENTION 2001**

Ted Ferry Convention Center  
**Ketchikan**  
Wednesday, Thursday & Friday  
May 9, 10 and 11