COURT NEWS

New courts complex nears completion

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Fast track suspended

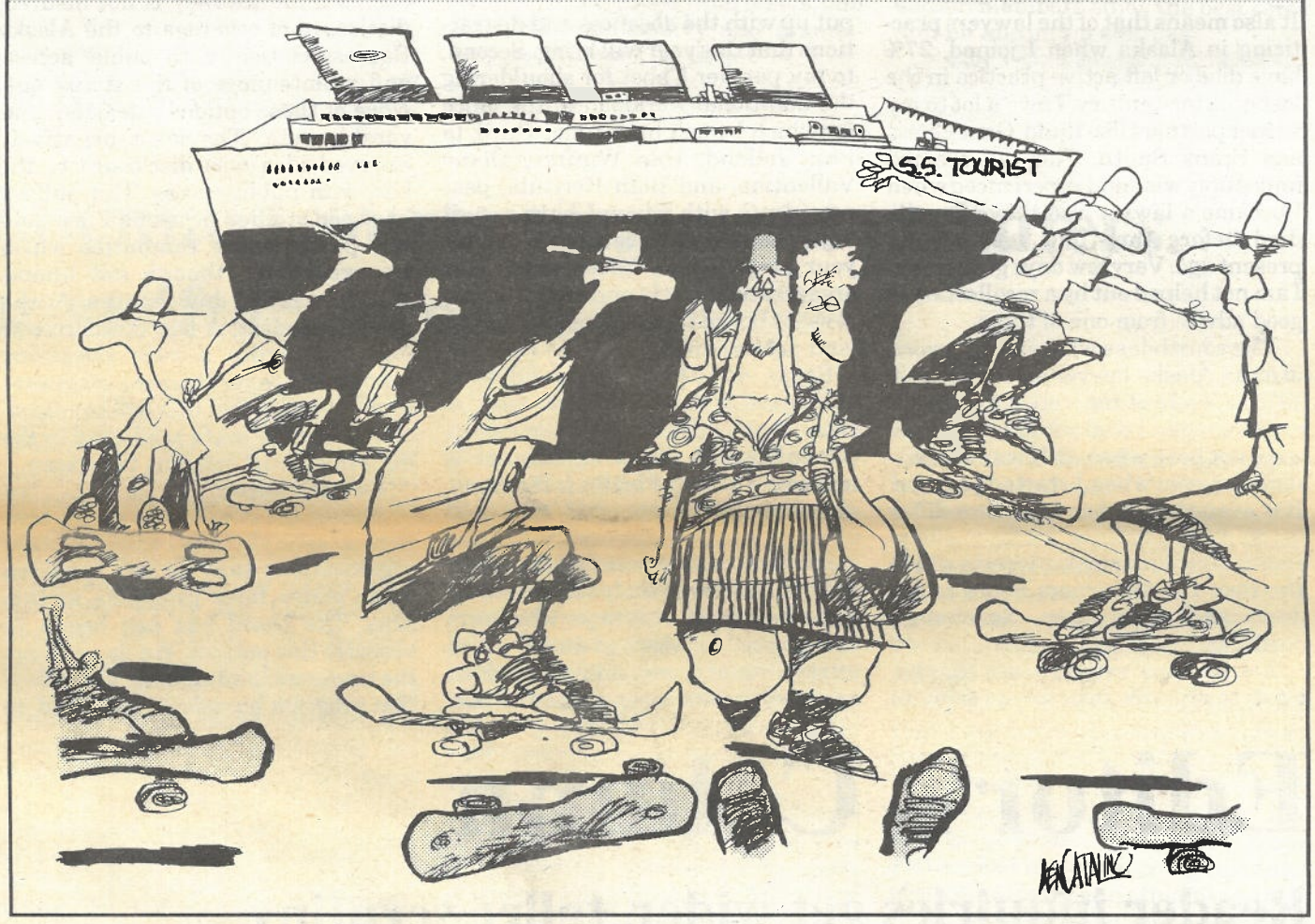
Inside:

$2.00

The Alaska BAR RAG

VOLUME 21, NO. 4 — *Dignitas, semper dignitas* — JULY-AUGUST, 1997

JUNEAU (& THE REST OF US) GREET VISITORS PAGE 7



New court building named

The Alaska Supreme Court has officially named the new court administration building in Anchorage after Arthur H. Snowden II.

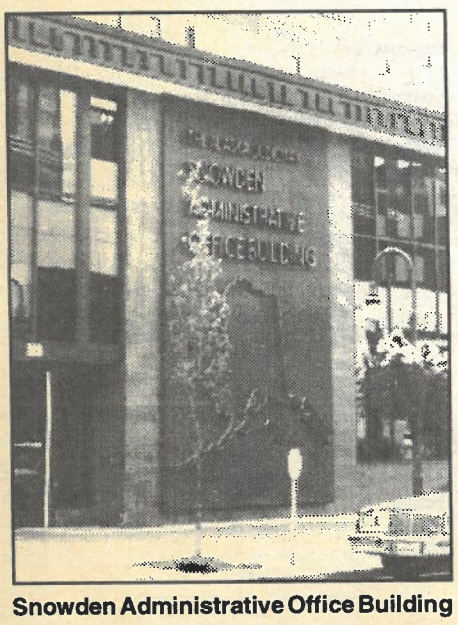
Snowden served as the administrative director for the Alaska Court System from September 10, 1973 until his retirement in May 1997.

Snowden's record of achievements with the Alaska Court System include the development of procedural rules and policies to provide a strong organizational framework for the judiciary. Over the years, Snowden has worked to protect the integrity and independence of Alaska's judiciary and justice system.

See page 6

The Snowden Administrative Office Building, formerly known as the Anchorage Times Building, houses the statewide administrative offices. Following the formation of the Court of Appeals in 1980, the majority of these statewide offices moved from the Boney Building to leased space.

A dedication ceremony, to be held on July 18 at 4:00 p.m., will include remarks by Justice Jay Rabinowitz, Senator Tim Kelly and Representative Ramona Barnes.



Snowden Administrative Office Building

Advice to attorneys and other employers

BY BARBARA HOOD

This October, the Alaska legal community will have an opportunity to learn from the experts about a topic that is generating headlines across the country: sexual harassment.

In recent months, law firms and other businesses have faced multi-million dollar judgments in sexual harassment cases, military officers have been court-martialed for fraternization and other gender-based infractions, and even the President has been sued over alleged improper advances to a female subordinate. In this climate, everyone in the legal community should become sensitive to the issues that can spark such serious repercussions, according to the committee planning the upcoming October 3, 1997, CLE tentatively entitled "Sexual Harassment: Exploring the Edges."

When it comes to sexual harassment, most in the legal community understand that "quid pro quo" harassment (for example, requiring sexual favors in exchange for privileges or promotions) is inappropriate and illegal in a work setting. But many lawyers are not as sensitive to gender-biased behaviors that may create a "hostile environment" in the workplace and subject law firms, agencies, courts and others to sexual harassment claims. According to Anchorage attorney Leroy Barker, Chair of the Program Committee of the Alaska Joint State-Federal Courts Gender Equality Task Force, "we've concluded that there are lots of people who just don't see these problems."

After several years of study involving many members of the statewide legal community, the Gender Equality Task Force concluded in its 1996 Final Report that "incidents of gender biased behaviors permeate many areas of Alaska's state and federal court systems." Behaviors include "sexist humor; ... actions based on sexual stereotypes; and the use of gender biased language." The Task Force also observed that gender bias "appeared obvious to some and nonexistent to others." Women surveyed reported experiencing gender bias directed towards them in many contexts; men surveyed perceived such bias far less frequently. The need for increased understanding and sensitivity to the issue became apparent, and the Task Force

Continued on page 20

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President's Column

Where have we been? Where are we going?

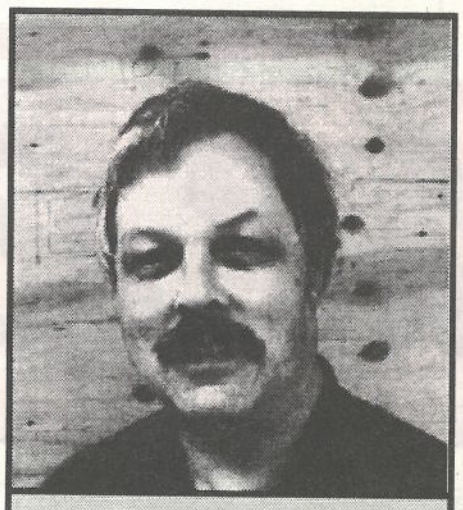
At the recent convention I received my 25 year certificate as a member of the Alaska bar.

Last February I celebrated my 50th birthday, at which time I was advised by my college graduate son (who knows everything) that another "baby boomer" becomes 50 every 8 seconds. All right, it's not such a great achievement. Still, I've now been a lawyer for more than half my life, and two milestones in one year should be an excuse for a little reminiscence.

When I joined the Alaska bar in 1972 there were 362 active members, and today there are 2,562, of which 231 were admitted in 1971 or earlier. That puts me, and my colleagues of 25 years ago, in the 9th percentile of membership, measured by seniority. It also means that of the lawyers practicing in Alaska when I joined, 27% have died or left active practice in the last quarter-century. I owe a lot to my former partners Joe Rudd, Gene Guess and Frank Smith. They all seemed impossibly wise and experienced when I became a lawyer and they all sadly died before they had reached my present age. Very few days go by when I am not helped out by a recollection of good advice from one of them.

The courthouse where I was sworn in as an Alaska lawyer on October 13, 1972 is a pile of concrete chunks and rebar and now I deal with lawyers who were not born when JFK was assassinated or even when I started practice. But even though bar members differ in age and experience, we have a lot of common concerns and interests which the Board of Governors hopes to address and draw upon. So enough nostalgia.

Let me next extend some thanks. First, to my wife Jean for agreeing to



David H. Bundy

put up with the absences and distractions that this year will bring. Second, to my partner Cabot for shouldering the additional workload in the office for which I won't have time. Third, to Phil Volland, Dan Winfree, Diane Vallentine, and Beth Kerttula, past presidents with whom I have served on the Board of Governors. You and your predecessors have guided this organization wisely and well, and the present Board can but hope to build on your achievements. Next, to Deborah O'Regan and the other 15 full-time employees of the Alaska Bar Association. Your efficient and courteous administration of this organization is admirable indeed. Finally, to the many, many members who give time and effort to bar projects and committee work. My first task was these appointments, and I was truly impressed by the number of attorneys who have volunteered for years at duties which attract little or no recognition but which are nonetheless essential to the bar. I'm sorry that we were not able to give everyone his or her first choice of committee assignment and I hope that this will not discourage you from continuing to serve.

As most of you know, much of the work of the board deals with the mandatory functions of the Association: admissions, discipline and CLE. But we also have several projects in process on which I hope we can reach some closure during the forthcoming year.

Malpractice Insurance:

A couple of years ago, the membership was required to respond to a survey which offered several options, including mandatory commercial coverage, mandatory coverage from a bar-sponsored carrier, disclosure to clients if an attorney is not insured, disclosure of coverage to the Alaska Bar association, with public access, and maintenance of the status quo. *None* of these options attracted a favorable vote. The least negatively received idea was disclosure to the bar, with public access. This subject has been studied by a small firm and solo practitioners' committee which was generally, though not unanimously, against any changes. At the board's request, a bar committee is now preparing a rule requiring uninsured lawyers to make disclosure to clients. Whether this will be recommended by the board or adopted by the Supreme Court remains to be seen.

Certification:

Should the Alaska Bar certify lawyers as specialists or recognize other organizations that do so? Eighteen other states have programs in this area. The board has just begun to consider this subject. We do not have the resources to administer a certification program ourselves, but could do what Idaho does, which is to certify programs which certify lawyers. A lawyer who is properly "certified" would be allowed to proclaim this achievement; others who were not certified, but who advertise a specialty, might have to acknowledge their lack of certification.

Mandatory CLE:

Many other states require CLE as a condition of membership renewal. Should Alaska join this majority? Based on the response to previous trial balloons, this may be an idea whose time has still not come.

Access to Justice:

The decline of funding for Alaska Legal Services Corporation calls for increased pro bono service by bar members, as well as a review of applicable statutes, rules and procedures to simplify access to the legal process in areas of interest to middle and lower income persons, such as family law, probate, landlord-tenant and consumer disputes. The board hopes to work on these issues with the Alaska Court System, the U. S. District Court, and other interested groups and agencies. Chief Justice Compton asked Superior Court Judge Reese to work with us on this subject.

Review of Bar Expenses:

Each year the annual dues notices attract a smattering of complaints about the cost of belonging to this organization, and it is clear we are one of the most expensive mandatory bars in the country. But those who wish they could pay less are invited to review the budget and tell us which line items they would like to eliminate or reduce. The budget can be obtained from the bar office. I can't promise you will get your wish, but I can state that the board will review any suggestions.

Within the Bar membership there is great depth of experience and skill. I hope that I can call on your collective talents to address these subjects. Call, write, fax or e-mail me your thoughts. But be advised: if your ideas are even slightly coherent, you might get asked to serve on a committee in order to put them into practice!

Editor's Column

Reader inquiries get wider, taller scrutiny

There are still a few members of the Alaska Bar who need the advice of an older and wiser head on matters of legal terminology and professional etiquette. Since said older and wiser head is out golfing at the moment, the Editor responds to the following inquiries. Responses are based on the information currently at hand, most of which has been gathered in fact-finding trips to tropical countries whose legal periodicals make interesting reading for visiting Editors with *Bar Rag* Visa cards.

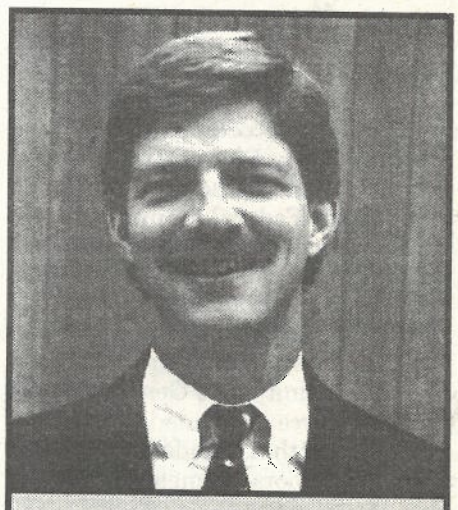
Dear Editor:

Ever since the Ninth Circuit declined to apply "heightened scrutiny" to alleged discrimination based on obesity, *U.S. v. Santiago-Martinez,* 58 F.3d 422 (1995), I've been wondering about the term "heightened scrutiny" itself. As a lawyer on the short side of average, I believe that my scrutiny is as good as anybody's, but the term "heightened scrutiny" implies that the higher the scrutiny gets, the better it is. Why should that be? Why shouldn't I be offended? Why not use the terms "deeper scrutiny" or "closer scrutiny" instead?

-- Advocate for Change

Dear Ad:

Actually, the term "heightened



Peter Maassen

scrutiny," like most phrases that make their way into regular judicial parlance, was first test-marketed among the bar in Rochester, Minnesota, home of the Mayo Clinic and a long-time leader in the nuances of psychological reaction. The term "closer scrutiny" was found to be off-putting to many respondents with social phobias, while the term "deeper scrutiny" offended two groups: the shallower members of the response pool (mainly the "rainmaker" type who don't know much law anyway) and those who couldn't swim. There is, concededly, a good argument to be made that the Minnesota bar is stacked with taller-than-thou Scandinavians to whom "height" is synonymous with "virtue," but "heightened scrutiny" has become so entrenched in our lingo that any effort to replace it is probably hopeless.

Dear Editor:

Just as I begin to think that the legal culture is getting close to stamping out the last pernicious weeds of arcane verbosity, I get a document that reads something like "Said Releasor shall earn interest on such funds until receipt of same." Wouldn't the world be a better place if we could outlaw these uses of the words "said," "such," and "same" and become reacquainted with the pronoun and the article as parts of speech?

-- Pettily Peeved

Dear P.P.:

This is another sad case of discrimination based on size: "the," "a," "it," and words of similarly brief ilk are losing out to one of the four-letter "s"—words, for no discernible reason of grammatical precision or

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The Alaska BAR RAG

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Lessons from Grand Forks: ALPS is on the scene of disaster

By Robert Ries

As we all know Grand Forks, ND sustained flooding never seen before. In fact, it has been at least 500 years since the Red River of the North crested over 50 feet above flood stage (final height 54 feet). Everyone is affected in every facet of life.

As of May 9 there was no municipal water system, no sanitation system and no electricity in the downtown area. Of the 190 lawyers affected, several firms had offices in those buildings which burned to the ground. Others who had ground floor space have near total destruction.

Amidst the restoration of Grand Forks, there are lessons for all of us. No matter where we live there is no total protection from a natural disaster. Following are some items to ponder as we think about the law firms in Grand Forks and watch them recover.

Planning

The first and most important lesson from any disaster is the need to plan ahead. Every firm needs to have up-to-date lists of staff and clients with phone numbers and addresses in the hands of the partners and the office administrator. After a disaster communication becomes very important. Evacuation and the ability to protect property should be considered before any disaster as well. Where can computers be moved and how records can be protected are among the chief planning concerns.

Office Records

Consider the most important documents in the office and make sure they are duplicated and protected. We ask during risk management visits if the firm's computer system has a recent full-data backup which is kept out of the office. If a firm has a tape or disks that constitute a full backup, reconstruction of many needed records can be done quickly.

The backup should include a list of all records that might not be duplicated elsewhere. Original wills, corporate minute books, and corporate seals, for example, ought to be listed with a comment as to whereabouts of copies if known. Customarily, we suggest that these tapes or disks be kept by the office manager or partner and brought to the office and rotated every day to assure they are reasonably current. Some firms have kept them in the safe deposit box of the local bank. That is not recommended as the hassle of changing the tape in the box is such that it usually means that the tapes or disks are not rotated frequently. The safe deposit area of banks is often located in the basement and is susceptible to flooding. This in fact happened at one bank in Grand Forks. Another bank was located in the ground floor of a building that burned.

Communications

Contingency planning ought to include some procedure for communication in an emergency. Should a fire or other disaster strike, you will want to be able to communicate with staff and clients in need as soon as possible. Cellular phones and a prearranged calling tree or other procedure are worth considering. Equip those who must be in contact with the office regularly and make sure that all office staff members have a current list of all of the cellular phone numbers.

Office Space and Equipment

Temporary quarters and equipment should also be considered. If the computers are affected, know how to repair or replace them quickly. If you practice near the ocean, replacement is probably the best plan. Salt water tends to ruin computer and other delicate equipment quickly. Back-up plans for space need to be considered to the extent possible.

In a widespread disaster no plan is likely to be sufficient as a large number of businesses will have the same need. Though our offices are on a second floor and Missoula has virtually no natural disasters, ALPS has an arrangement with a local computer vendor that would allow us to use a classroom outfitted with a number of computers should the need arise. We also have a number of employees outfitted with laptop computers and modems who could work from their homes.

Loss of Income Concerns

Protecting the income stream is a more difficult and longer term task. Our risk management concerns mandate that we caution firms in post-disaster modes not to accept new

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Readers: Rag on course for 21st century

By Peter Maassen

The *Bar Rag* staff has closely analyzed the results of the readership survey featured in the last issue, and the following conclusions emerge. Readers are most interested in bar people and discipline, and especially where the two categories intersect. Humor follows close behind and indeed appears to be the only interest of a whopping 32% of respondents. Other suggested areas of expanded coverage are current events, hard news about bar people, and national articles of local interest. Improved graphic and photo quality was also suggested. The most useful comment on the paper's length is that it is appropriate to its width, as it "fits bird cage now."

In response to the question "If you were editor of the *Bar Rag*, what would you do to improve it?", respondents suggested resignation and leaving well enough alone. No one volunteered to allocate more of their dues money to improvement of the paper. Respondents' shoe sizes, in centimeters, ranged from 27 to 37, with a mean of 32.94. Finally, when asked their names, 16% of respondents chose "Richard Foley."

In sum, no major changes to the paper were advocated by anyone. If the *Bar Rag* is not a star nonpareil in the broad galaxy of journalistic endeavor, the readership hasn't noticed.

Editor's Column

Continued from page 2

contextual sense. Fear of the ambiguous pronoun may have been a legitimate motivator in the more pedantic courts of a century ago, but anyone who uses said overused modifiers today is exhibiting an insulting distrust of judges' common sense and should be sanctioned for such by same.

One interesting historical footnote: "Said Releasor" and "Said Releasee" are the actual titles of two public officials in Port Said, Egypt, who let out and take in, respectively, the water at the Mediterranean end of the Suez Canal. Disgruntled shippers have sued them so many times for delay that their names have become virtually synonymous with the parties to any settlement. The word "Suez" itself, of course, also has a litigious derivation, coming from the words "sue youse" that were shouted belligerently over many a ship's idled bow.

Dear Editor:

Speaking of settlements, I've just received from the other side a draft settlement agreement which states that we are settling for "monies," whereas I had thought we were settling for "money," singular (comprising, however, a number of "dollars," plural). Is there a difference between "money" and "monies" in this context? Should I insist on the collective singular?

-- Show Me the Money, or Whatever

Dear Show Me:

How strongly you insist on "money" depends on how strongly you want to leave open the possibility of wiggling out of the agreement later for failure of a material term. "Money," in common American English, means the U.S. currency system. The term "monies" contemplates currencies of more than one system. When settlement "monies" are not paid in dollars *and* some other currency, *e.g.* zlotys, thalers, or shrunken heads, your settlement is materially deficient and may be set aside.

Dear Editor:

I've had occasion recently to attend a series of pretrial conferences held telephonically before a judge in another city. The conferences are on-record, and the in-court deputy duly intones "All rise" at the start. However, since I'm sitting at my desk 200 miles away staring into my speaker phone, I don't rise, especially since to do so would drop the doughnut crumbs from my lap onto the floor. I do shift uncomfortably in my seat, though, unsure whether I'm showing disrespect for the bench. What's the proper etiquette?

-- Comfy but Still Uneasy

Dear Comfy:

Remember that being disrespectful and *showing* disrespect are horses of two distinctly different colors, and it is only the latter that one needs to avoid. As long as you have given the impression of rising upon command, you've done your part to preserve the sanctity of the system. Seasoned long-distance practitioners tell me that either crumpling a crisp sheet of wax paper, or thrusting one's hand wrist-deep into a full box of Cracker Jacks, reasonably simulates the relieved creaking of certain types of upholstered desk chairs. You may also want to interject, two or three minutes into the proceeding, "May we be seated now, Judge?", unless the judge has already beaten you to the punch, which most of them forget to do when all counsel are attending telephonically. The tactical points gained by these small gestures should not be minimized.

Letters from the Bar

Likes Repeal

I am sure I speak for the great majority of the litigating bar in thanking the Supreme Court for repealing Rule 16.1. *(See Notice, page 10)* We would also thank, as well, the many trial judges who saw that this rule added burdens to the litigation process without commensurate efficiencies and undoubtedly influenced the Supreme Court more than the entreaties of a few busy practioners. It is rare indeed for a lawmaker to admit to a mistake and I am proud that we have a court that is sure enough of itself to repeal a newly adopted rule without fighting a ditch by ditch defense.

—John Havelock

CSED Liens

A recent case involving Child Support Enforcement Division liens and an attorney's interest in fees has recently come to our attention. The issue raised by this case, which has since been dismissed on stipulation, is one that is critical to all bar members.

The case involved a preexisting CSED lien against a child support obligor. The obligor went to the attorney with a personal injury claim which was resolved in a manner favorable to the obligor/client. CSED then entered the scene and asserted a priority interest in all proceeds, including the attorney's portion of the settlement proceeds.

It seems that it is CSED's position that the plaintiff's bar now has an affirmative duty to investigate each client's background as it relates to child support liens in order to insure the fruits of an attorney's labor will not be seized by CSED. Unless CSED and the legal community can come to some compromise a serious rift will develop between CSED and the bar. It is likely that CSED will ambush a few more unwitting lawyers, but eventually, attorneys will refuse to take cases in which the client is also a support obligor with recorded CSED liens.

This is bad public policy for a number of reasons. First, it allows a tortfeasor to walk away without being held responsible for an injury. Second, in the long run CSED will not collect any monies from obligor parents. It is far better for CSED (and the children to whom these funds ultimately belong) to receive a percentage of the value of an obligor's tort claim rather than nothing at all.

Our office has recently spoken with a representative of CSED, who expressed interest in opening a dialogue on this subject. Regardless of CSED's ultimate position, it is critical that all bar members be made aware of the situation so that each office can take appropriate prophylactic measures.

Please feel free to contact our office if you have any questions

—Mark P. Millen

The Bar Rag welcomes articles from its readers

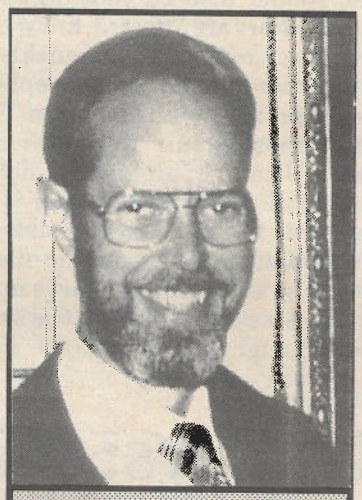
ALSC President's Report

Officers, boards, lawsuits, etc. — we continue

The national Legal Services Corporation has a new president. As mentioned in my report in the May/June 1997 *Bar Rag*, he is John McKay, a Seattle Republican who is a longtime, active legal services supporter. He assumed his duties May 16, taking over from Acting President Martha Bergmark, who served since the resignation of former President Alex Forger on February 14, 1997. McKay was not able to come to Alaska for ALSC's 30th anniversary celebration, but he hopes to get up here soon and renew his Alaska connection (he practiced here for about six months awhile back).

The Alaska Legal Services Corporation has its old president again — me. For the national corporation, the president is the chief executive officer — a staff member hired by the board of directors. For our state corporation, formed under Alaska' s nonprofit corporation statutes (AS 10.20), the president is elected by the board of directors from its membership and has the duties set out in the bylaws.

In Alaska, we also elected Nome Attorney Bryan Timbers vice-president, Juneau Attorney Vance Sanders secretary/treasurer, and Kodiak Attorney Greg Raze, Anchorage Attorney Loni Levy, Anchorage Lay Member Ada Esmailka, and Angoon Lay Member Matthew Fred to the executive committee. The president also serves on the executive committee.



Arthur H. Peterson

> *'It's hard to find someone who does not agree with the general concept of equal access to justice. Giving life to the concept is the problem.'*

Following substantial debate around the country, the national board adopted final regulations in 45 C.F.R., continuing the "regulatory reform" process implementing new federal law that imposes significant restrictions on legal services programs. The following batches are now in effect: **Part 1609** (Fee Generating Cases); **Part 1612** (Restrictions on Lobbying and Certain Other Activities); **Part 1620** (Priorities in the Use of Resources); **Part 1627** (Subgrants and Dues); **Part 1636** (Client Identity and Statement of Facts) ; **Part 1637** (Representation of Prisoners); **Part 1638** (Restriction on Solicitation); **Part 1640** (Application of Federal Law to LSC Recipients); and **Part 1642** (Attorneys' Fees). **Part 1626** (Restrictions on Legal Assistance to Aliens) is final, except for certain provisions.

The interim **45 C.F.R. Part 1610** (Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity), which was published March 14, 1997, has been amended in response to the court ruling in the *LASH* case (see my report in the March/April 1997 *Bar Rag*, on *Legal Aid Society of Hawaii, et al. v. Legal Services Corporation* and numerous other comments that the board received. The final regulations in this part took effect June 20, addressing the ruling that the LSC's policies and regulations regarding the use of *non LSC* money were too restrictive and did not provide adequate opportunities for recipients to exercise their First Amendment rights.

Speaking of the *LASH* case, after issuing its February 14, 1997 order granting in part and denying in part the plaintiffs' (including ALSC) motion for preliminary injunction, the court, on its own motion, on April 9, 1997 issued an order to show cause why the plaintiffs' motion for reconsideration should not be denied and the injunction should not be dissolved and the case dismissed in light of LSC's new (as of March) Part 1610. However, the court and parties had previously agreed to a schedule for simultaneous cross-motions for summary judgment, the court accepted plaintiffs' offer to withdraw their motion for reconsideration, and the judge withdrew the order to show cause. Oral argument on the summary judgment motions is set for July 28.

A somewhat similar case, *Velazquez, et al. v. Legal Services Corporation and Legal Services of New York City,* was filed in U.S. District Court January 14, 1997 as a class action (which the *LASH* case is not). It challenges the constitutionality of the restrictions on both non-LSC and LSC money. Argument on plaintiffs' motion for preliminary injunction was heard March 24, and a decision is still pending.

> *'We have to keep the lawmakers focused on the principle of equal access'*

Back in Alaska, we held our "facilitated" meeting on May 23. Maggie Cimino, of The Growth Company, Inc., in Anchorage, donated her time to facilitate a "strategic planning session" of approximately six hours. She skillfully led us through discussion of ALSC's strengths, philosophy, funding, organization, and service delivery, and consideration of who is responsible for providing equal access to justice. She then provided us a summary of our notes, which we will take up at the next regular board meeting -scheduled for September 27 in Anchorage.

It's hard to find someone who does not agree with the general concept of equal access to justice. Giving life to the concept is the problem. Congressional and legislative opponents of the current structure for providing that access typically cite an individual case or the action of an individual legal services attorney or program as the justification for their opposition. (You rarely hear or read that they simply don't like it when the migrant farm worker or impoverished tenant or underpaid employee beats big business in court, but that element is present too.)

We have to keep the lawmakers focused on the principle of equal access, and help them realize that the current system is excellent and the best yet devised. It merits their determined support.

SOLICITATION OF VOLUNTEER ATTORNEYS

The court system maintains lists of attorneys who volunteer to accept court appointments. The types of appointments are listed in Administrative Rule 12(d)(2)(B). Compensation for these services is made pursuant to the guidelines in Administrative Rule 12(d)(2)(E)-(I).

Attorneys may add their names to the volunteer lists by contacting the area court administrator(s) for the appropriate judicial district(s):

First District:
Kristen Carlisle
415 Main St. Rm 318
Ketchikan, AK 99901-6399
(907) 225-9875

Second District:
Tom Mize
604 Barnette St. Rm 210
Fairbanks, AK 99701-4576
(907) 451-9251

Third District:
Wendy Lyford
825 W. 4th Ave.
Anchorage, AK 99501-2004
(907) 264-0415

Fourth District:
Ron Woods
604 Barnette St. Rm 202
Fairbanks, AK 99701-4576
(907) 452-9201

Michie publishes 3 new titles

Michie, the nation's leading publisher of state codes and more than 600 professional titles, has published 3 new titles:

Representing Children in Child Protective Proceedings
Jean Koh Peters
1 VOLUME HARDBOUND, $85
©1997, MICHIE
(ISBN: 1-55834-545-0) (ITEM #66690)
SHIP DATE: 5/97

Children often become lost in the powerful adult-driven legal system. *Representing Children in Child Protective Proceedings* os a clearly-written volume for practical assistance with the difficult issues frequently raised in day-to-day practice. The author ties theory to specific, concrete advice concerning the representation of children and the different facets of the lawyer-client relationship.

Jean Koh Peters has represented abused and neglected children since 1983 and is also currently a clinical professor and supervising attorney in The Jerome N. Frank Legal Services Organization at Yale Law School. She was previously an Assistant Clinical Professor and Associate Director at the Child Advocacy Clinic of Columbia University Law School. She has also served as Staff Attorney for the Legal Aid Society, Juvenile Rights Division, of New York City.

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Reengineering Health Care Liability Litigation
Miles J. Zaremski, Frank D. Heckman
1 VOLUME, HARDBOUND, $110
©1997, MICHIE
(ISBN: 1-55834-547-7) (ITEM #61235)
SHIP DATE: 5/97

This work tells you everything you need to know to win your next medical malpractice case. It analyzes exhaustively the changes occurring in the medical profession and the consequent responses of the legal profession to those changes. The authors explore the impact of computer technology on healthcare liability litigation and argue persuasively that the lawyering process in this complex practice area must be reorganized.

Miles J. Zaremski is a litigation and trial attorney who co-chairs the health care/products liability practice group of the Chicago headquartered law firm of Rudnick & Wolfe, with offices in Baltimore, Tampa, and Washington, D.C. He is a graduate of Case Western Reserve University· Law School and the University of Illinois. Mr. Zaremski has represented physicians and health care institutions inside and outside the courtroom throughout his career.

Frank D. Heckman, is the vice president of claims for AmHS Insurance Management Services, a subsidiary company of Premier. inc., the nation's largest health care network. Prior to joining Premier. he was the senior vice president of Professional Risk Management, an international medical malpractice risk and claims management consulting firm. Mr. Heckman received an M.B.A. from Pepperdine University.

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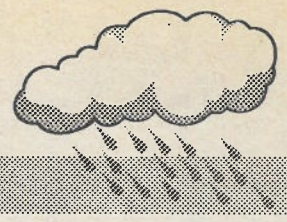
Prior Convictions in DUI Prosecutions
American Prosecutors Research Institute's Traffic Law Center 1058 PAGES, SOFTBOUND, $100 ©1997, MICHIE
(ISBN: 1-55834-489-5) (ITEM #61441)
SHIP DATE: 5/97

While proving a DUI is often hard, it is easy compared with obtaining the required documentation to prove a prior DUI conviction from another state. Prior Convictions in DUI Prosecutions will ease the burden of this difficult and time-consuming task This important new resource collects all the information a prosecutor needs to obtain a certified record of a prior out-of-state DUI conviction. This process used to be prohibitive for a prosecutor's office with limited time and resources. This book gathers in one place all the hard-to-obtain information — for every state

Assembled by the American Prosecutors Research Institute's National Traffic Law Center and published by Michie, Prior Convictions in DUI Prosecutions shows you how to obtain out-of-state driving records.

Excerpts from the JBA Minutes



May 16, 1997
Second Course Restaurant

Bruce Weyhrauch stated that there had been some discussion on the Board of Governors about future Bar Conventions. One issue discussed was the viability of the Convention itself - should we continue to have a Convention every year? The problem is that the Alaska Bar loses money on it every year. There was a discussion also on whether to limit it to Anchorage, skip a year, limit expenses, or just plain eliminate it. Also, Bruce said that they are trying to determine if there is interest in having a "new lawyer" representative on the Board of Governors.

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May 23, 1997

Maureen Crosby was present to request funds for Gary Lehnhart, a social studies teacher at J.D.H.S. Gary is one of 12 teachers in the country who was selected to attend the United States Supreme Court Summer Institute, sponsored by George Washington University. The institute is geared toward training teachers who focus their curriculum, in part, on constitutional law and issues. Gary will attend classes at Georgetown and will get a firsthand look at the workings of the Supreme Court, including a dinner with Justice Sandra Day O'Connor. The school district has agreed to pay for Gary's airfare. Maureen requested $350 from the JBA for his lodging. A motion for $350 was made, seconded and passed upon unanimous consent.

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May 30, 1997 Meeting

Apparently there is now only one lawyer, Tom Koester, practicing in the valley. Tom permitted us to hold our first in a long time valley meeting at his house on Fritz Cove Road (sunny warm weather, on his deck, on the water). After years of grumblings from Valley members about more meetings in the valley, I fully expected a large and vocal reception. BUT GUESS WHAT, Tom must be the only lawyer working in the valley, because he was the only one who showed up from the valley. Tom has graciously offered his house as the valley annex for the JBA meetings that fall on every 5th Friday. (August 29, October 31 and January 30, 1998)

The only business was the election of officers for next year. Mie Chinzi was elected president; Lach Zemp, vice president; Sherri Hazeltine, secretary; and Steve Weaver, treasurer.

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June 5th, 1997

Tom Sholte had a great idea for the JBA to have a group photograph taken. It appears that this has not been done for at least 40 years. Maybe longer. Lach suggested that we have it taken in front of the courthouse so that we'd be assured that all of those AG-types would show up to have their picture taken for posterity. It would make our group photo look bigger which is probably also important. Or, we could have our group picture taken out in the Valley, but then, of course, no one would show up.

Which comment then led to a stern remark from Judge Weeks: "I move that we consider what penalty Fred Baxter should pay for not appearing at the last Valley JBA meeting. And while Judge Carpenti is not here today, I am sure that he seconds my motion." These comments led to considerable chaos and uproar at the table. When things calmed down Mie said that the JBA should issue an Order to Show Cause to Fred. There was general agreement to this, but it was finally decided that we would table the motion until the next meeting.

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June 13, 1997

John Rice stated that yesterday he published a Web page for the Juneau Bar Association on the Internet. The address is: www.realnet.org/royalbar. All members are welcome to check it out and suggest changes. There was some discussion about the use of the name "royalbar"[1] and it was agreed that this would be changed. Thank you John and Paul for propelling the JBA into cyberspace.

Fred Baxter, Valley attorney, appeared at the JBA downtown luncheon after hearing that Judge Weeks had made a motion for an Order to Show Cause for Fred's failure to show up at the Valley Bar luncheon. Fred explained he was now here to "defend myself against Judge Weeks' motions!"

All JBA members sat quietly with rapt attention to hear Fred's defense: "I did not show up at Tom Koester's house because Tom practices in Auk Bay. He lives in the Auk Bay jurisdiction, not the Valley jurisdiction. Therefore, the meeting wasn't in the Valley."

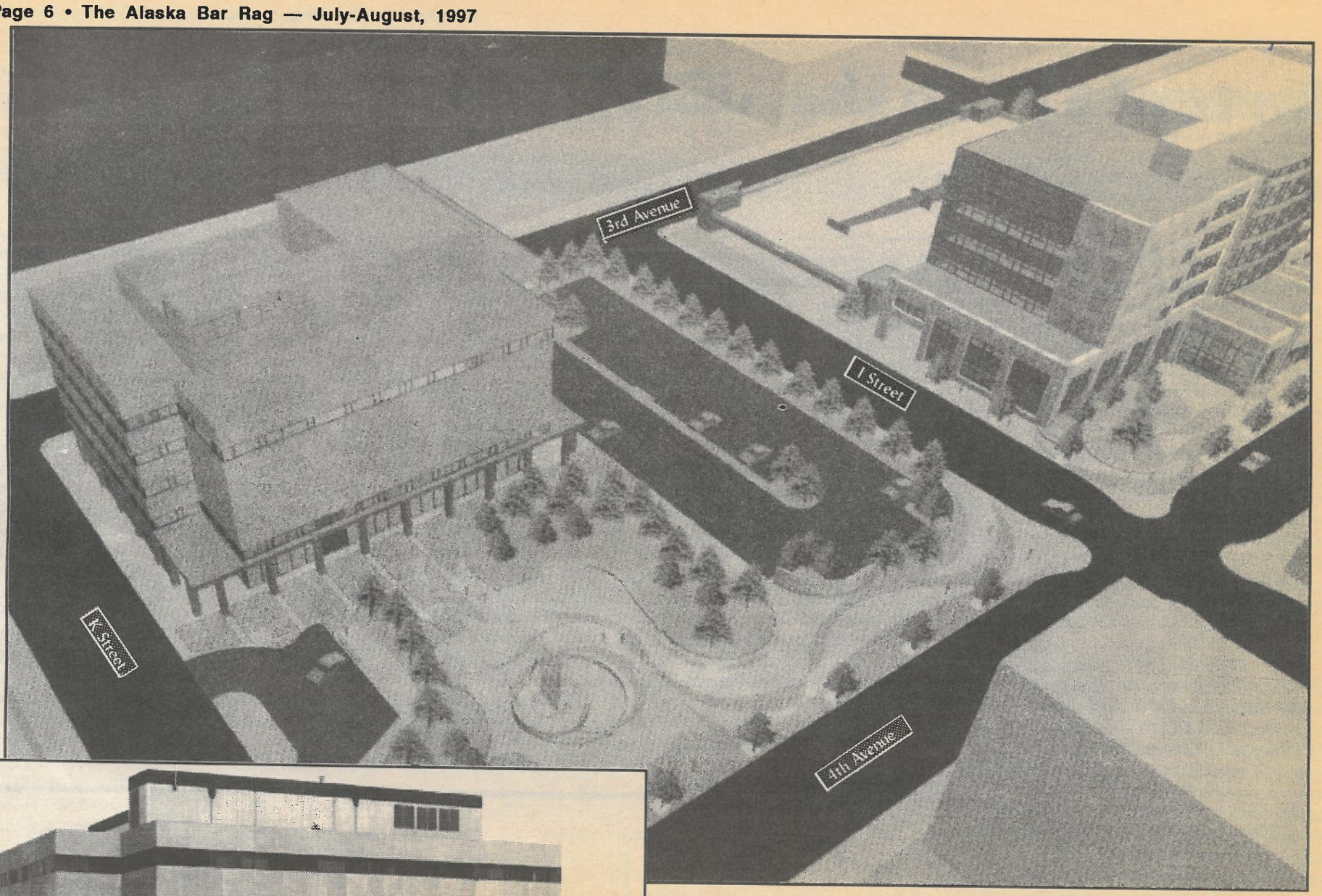
There was a long silence as JBA members attempted, somewhat skeptically, to internally process this new evidence. {Also, fortunately for Fred, Judge Weeks was not in attendance to hear this weak defense.}

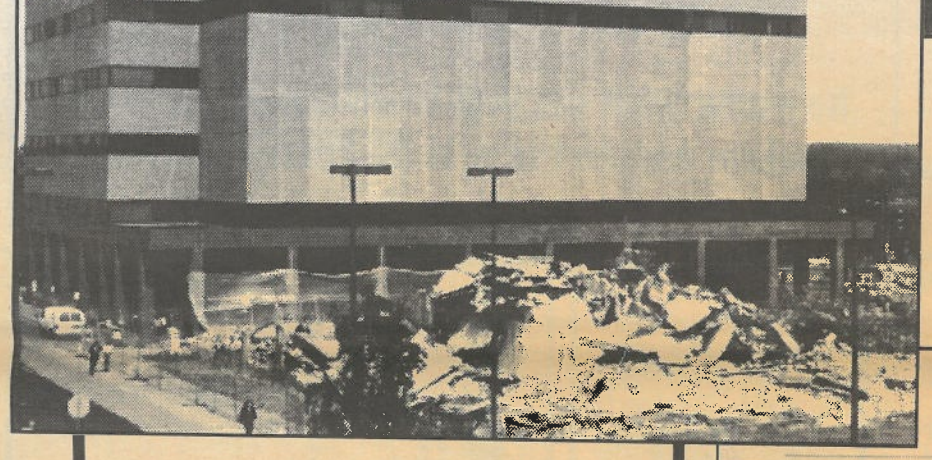
Mie Chinzi, Valley contingent, broke the silence. "Is that all you have to say?" [Silence again.] "Well. I guess we will have to re-schedule one of our meetings in the Valley AGAIN. Of course, the JBA officers will have to first test out some of the Valley restaurants ahead of time to find a good one for our meeting." Lach Zemp eagerly interjected: "Does HOOCHIES serve food?' No one responded to this comment.

After sitting in quiet meditation during the above comments, Fred unwisely decided to speak up again. "I want the record to reflect that Judge Weeks is NOT HERE." Mie then wisely stated, "We will see if Judge Weeks wants to reply to your comments, Fred. In any case, this subject is tabled until our next meeting." And without further ado or issuance of any orders to show cause, the meeting was adjourned.

—Sheri Hazeltine & Lach Zemp, (May 23, 30)

[1]While there are some in other parts of the state who would like to call us this, we are not the Juneau Royal Bar.





A Work In Progress

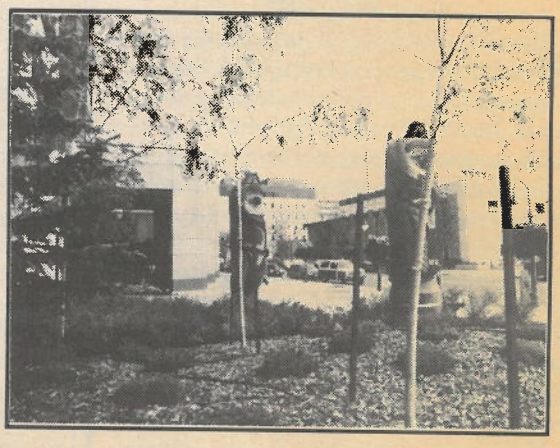
The new courthouse complex on 4th Avenue in Anchorage is near completion...

Above, concrete rubble and rebar is piled in front of the Boney Memorial Courthouse, the aftermath of the demolition of the old District Court building in June. The site is awaiting new landscaping as pictured in the architect's rendering at the top of the page.

At right, the front of the new Nesbett Courthouse faces 4th Avenue and is open for business.

New totem statues installed over the summer greet visitors to the Nesbett Courthouse (bottom left). From Fourth Avenue & I Street, totems and landscaping frame the former Anchorage Times Building across the street, newly named the Alaska Judiciary (Art) Snowden Administrative Office Building (bottom right).

The Haida totems were carved by Lee Wallace, of Ketchikan.



Eclectic Blues

Culture gap

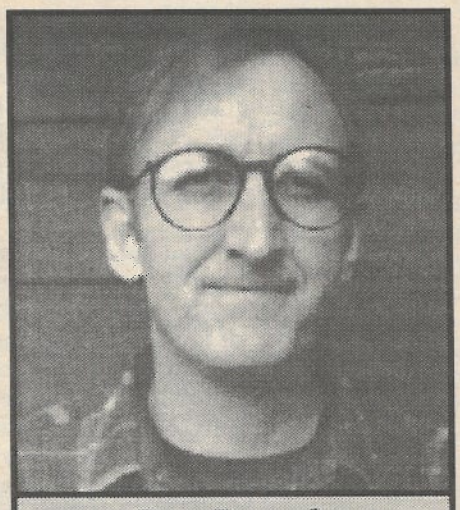
I was working my way through the tottering tourists in Juneau's Marine Park the other day. The sun was shining after a week of fine mist and clouds that had danced around Mountain Juneau like a bad ballet.

A pod of big-boy-class cruise ships was tied up to the downtown dock. Crewmen were touching up rust spots on the boats with paint brushes taped to long sticks, while the front-men for tour companies stood by signs advertising helicopter trips to the ice field, buses to salmon bakes and local hiking trails.

Finding their sea legs after the cruise up from Vancouver, sun-stunned passengers puzzled their way toward the trinket stands on South Franklin. The slowly moving visitors made perfect slalom gates for Juneau's skateboarding youth.

On four-cruiseship days, this stretch of concrete between Marine Park and the library carries the largest concentration of tourists in Juneau, and perhaps in all of Alaska. These are not ideal conditions for the sport of skateboarding, but the sidewalks and low cement rises get heavy use all summer.

The tourists, blessed with the benign confusion that comes to those on vacation, take it well. In fact they don't



Dan Branch

even take notice of the skateboarders.

How, I wondered, could anyone ignore a guy snapping off turns close enough to wrinkle the tee shirt just purchased from Artie's Trinket Emporium? How, indeed?

I invested several lunch hours down on the docks studying on it. Suddenly, while watching a young man in baggy pants fly by a guy in pastel golf togs and then will his skateboard sideways onto a bench full of grannies from Grenville, I figured it out. It's trust.

Our visitors from the lower 48 see Southeast Alaska as a giant theme park. It's a zoo without bars. Here they can watch bears snatch sockeye while they sip fancy beer on the back deck of a Princess boat. No one would let them get hurt.

They come from the land of the lawsuit where juries are willing to award damages against restaurants who serve too hot coffee. The government officials in their sun-plagued town would never allow anyone on a skateboard to create a risk of harm on public land. They expect no less from Alaska.

> *'Our visitors from the lower 48 see Southeast Alaska as a giant theme park. It's a zoo without bars.'*

Now, if you hate government regulations, Juneau is the belly of the beast in Alaska. We have government everywhere here. We also have committees—lots of them. Just this week, the City and Borough of Juneau decided to give its Tourism Committee permanent status, thereby assuring good reading all winter in the local newspaper.

Even so, the Juneau Superior Court is rarely clogged with civil lawsuits. I've worked around courts in Bethel and Ketchikan, as well. In Juneau and those towns, the courts spend most of their time give due process to defendants in criminal cases. The Marine Park skateboarders are more likely to end up in district court, contesting a ticket for practicing their art in the designated skateboard-free zone, than defending a tort suit.

There is some merit in this. Even Juneauites, with all their government, still manage to find ways to resolve conflicts without filing suit. Maybe that's why we have so many committees.

If I am half right about all this, there should be a difference between the way we act when we travel south and the innocent way our tourists act on our streets. Do we move down the avenues of San Francisco with the same caution used when fly-fishing in bear country? Are folks from Southeast Alaska the only ones looking both ways before crossing Seattle streets even when the light is green? Do we count the change we receive from pop machines before sliding it into a pocket in our chinos? I think so. Maybe it's worth looking into. Maybe we should form a committee, get a grant and go on some fact-finding trips.

Maybe - but not till monsoon season.

Bar People

Kent Autor has relocated from Anchorage to L.A....**Kevin Anderson** has moved back to Alaska and is now at DeLisio, Moran et.al....**Brad Ambarian** has relocated from the Fairbanks office of Lane, Powell, et.al. to the firm's Anchorage office....**Adrienne Bachman** is now with the Anchorage P.D.'s office.

Bob Bacon has opened his own law office in Oakland, CA....**Dan Bair** has opened his own law office in Anchorage....**Bob Bassett** is now with the firm of Dorsey & Whitney in Denver, CO....**Steven Joshua Berger** is now at the Law Office and Mediation Center in Saipan....**Gilman Burke** is now with the Anchorage office of Faulkner, Banfield, et.al.

Don Clocksin recently moved his practice to 407 Adams Street, Suite 206, Olympia, WA 98501 (1-800-319-9129)....**Ken Diemer** has joined the Office of the Staff Attorney for the U.S. Court of Appeals for the 9th Circuit in San Francisco....**Hugh Fleischer** has opened the Law Offices of Hugh W. Fleischer in the Pacific Office Center in Anchorage.

Kristin Ford has relocated from Fairbanks to Vancouver, WA....**Shawn Holliday** has relocated from Wasilla to Hale, Michigan....**Eric David Johnson**, former clerk with the Alaska Court of Appeals, is now with ALSC in Barrow....**Lawrence Kenworth** has relocated from Fairbanks to Tempe, AZ....**Keith Laufer**, formerly with the A.G.'s office, is now with AIDEA.

Susan McLean, formerly with Gray, Cole & Razo in Kodiak, is now with the Department of Law in Kenai....**Robert Maynard**, formerly with the USDA Office of the General Counsel in Juneau, has relocated to Boise, Idaho....**Lawrence Mendel**, formerly with Mendel & Huntington, has opened his own law office in Anchorage...**Jim Stanley** and **Gordon Schadt** have formed the Law Offices of Stanley and Schadt, P.C.

Nancy Nolan reports that she has joined the firm of Rice, Volland & Taylor after serving as a District Court Judge Pro Tempore. Prior to that, she spent seven years as an Assistant A.G. and four years as an Assistant P.D. Her practice will emphasize both civil and criminal litigation....**George Newsham** has relocated from Anchorage to Strongville, OR.

William Olmstead, formerly with Olmstead & Conheady, has opened the Law Office of William Olmstead....The firm of Price & Swann has changed its name to Price & Price. The members of the firm are **Michael Price** and **Susan Price** (fka Swann) and **Sabrina Fernandez**....**Nancy Bainbridge Rogers** is now with the Seattle firm of Helsell Fetterman....**John Suddock** and **Chris Schleuss** have formed the firm of Suddock & Schleuss. Their practice emphasizes plaintiffs' personal injury.

Julie Simon is the Director of Policy, Electric Power Supply Assoc. in D.C....**Stacy Steinberg**, formerly with Green Law Offices, is now with Robertson, Monagle & Eastaugh....**David Stebing** is an Administrative Hearing Officer for the Department of Commerce & Economic Development....**Kelly Vance** has now relocated to Salem, Oregon.

Jerry Wertzbaugher, formerly managing partner of Partnow, Sharrock & Tindall, writes that he has left the firm in June to embark on a 3-5 year sabbatical. Jerry, wife Nancy and daughters Rachel and Shannon are currently cruising aboard their sailboat *Escapade*. Next spring they plan to sail to Europe and from there begin an east to west circumnavigation. Jerry can be reached at his Anchorage residence or via E mail: ESCAPADE@compuserve.com. They hope their friends will stay in touch and that those with an interest in sailing (or exotic ports of call) will plan a visit.

Lane Powell et al adds 2

Paulette "Bea" Hagen has joined the law firm of Lane Powell Spears Lubersky LLP in Fairbanks as an associate where she will concentrate her practice in employment litigation, guardianship/conservatorship, and administrative law. She was formerly in private practice.

Hagen

Hagen received her J.D. from University of Arizona College of Law, her M.S.L. from the University of Washington, School of Librarianship and her B.A. from the University of Alaska Fairbanks. She resides in Fairbanks, Alaska.

Lawrence Z. Moser has joined the law firm of Lane Powell Spears Lubersky LLP in the Anchorage office as an associate and will concentrate his practice in the areas of insurance, aircraft, and product liability litigation.

Moser

Formerly with Pletcher Weinig Moser Merriner in Anchorage, Moser received his J.D. from the University of Puget Sound and his B.S. from Eastern Montana College. Moser resides in Anchorage, Alaska.

Based in the Pacific Northwest, Lane Powell Spears Lubersky LLP is a law firm with over 260 attorneys. Offices are in Fairbanks, Anchorage, Seattle, Olympia, Mount Vernon, Portland, Los Angeles, San Francisco and London.

The best laid plans . . .* (actually, a plan is good)

By James D. Cotterman &
James S. Wilber

* with apologies to Robert Burns

The best laid schemes o' mice and men
Gang aft a-gley.
To a mouse [1785]

We have all experienced the frustration of having carefully laid plans go awry. Sometimes it is just an unexpected shower which fouls a family picnic. The stakes are considerably higher, however, when the plan in question is your law firm's strategic plan. (You know, that's the plan to which your future prosperity is tied!) Planning is such a troublesome task - and so often fails anyway - it is not surprising that so many law firms opt to just "muddle through" rather than to plan.

The concept for this article sprang to mind as we wandered the halls of a business hotel prior to a client meeting. In various meeting rooms, groups of people were seated around tables; in front, the "leader" stood next to an overhead projector. On the screen was the inevitable triangle with "Vision" on the top, followed by "Mission" directly underneath and so on. The participants around the tables already had that glazed-over stare as they numbly nodded to the cadence of the speaker.

We could picture the flip charts covered with notes pasted around the room, the results of surveys depicted in numerous tables and graphs, and the final report - a weighty tome. Unfortunately, most of the best ideas will never see the light of day. Following the prompts of the "leader," significant effort is invested to create the plan. But usually little is invested in its implementation. Its beginnings are noble enough, but the marathon extracts too much effort. The bottom line is that planning all to often results in just a plan. And if that is the result of your planning efforts, then you've wasted your time.

Planning is valuable if and only if it creates a consensus on a definable future and sets forth rational action to get there. The key word is ACTION. Its not the plan that's important, its the process and the actions that result. The process is simply defining who you are, the nature of your market, who you want to be and how you will get there.

When planning fails to deliver its intended results, it is most often for one or a combination of the following reasons:

1. *The future is poorly defined.* Law firms so readily define their future to be the "top" or "leading" law firm providing "quality" services... and on it goes. The desired end result of your plan should be explicitly defined. A helpful exercise in this regard is to write the firm's biography for five years hence. Describe your firm as you might for a background statement (how big are you in terms of offices, revenues and lawyers, what kind of legal specialties you offer, what kind of clientele or industries you serve, what is notable about the firm). If you ask each partner to undertake this exercise, you will likely find as many futures as there are partners. This leads to the second most common reason for failed planning.
2. *The future is defined but not agreed to.* The evolution of a law firm is much like the making of a good stew. The primary ingredients set the basic flavor. Each additional ingredient added to the stew subtly changes its texture and flavor. When the proper herbs and spices are blended the stew is enhanced far beyond the abilities of the ingredients alone.

   When a new law firm is formed, the founders articulate the type of firm they want to have. They are the basic ingredients. As the firm continues, it adds lawyers, each lawyer altering and therefore contributing to a new firm character. Law firms are unique because they are dominated by well educated, intelligent individuals who characteristically have strong wills and egos. Blending the individuals' views into a singly held position is often a daunting task, particularly once a law firm transitions beyond its founders.

   The problem is that many law firms push through the plan, forcing it upon individuals who only grudgingly accept it. The result is disaffected partners who will not facilitate the implementation of the plan. These individuals will continue to pursue their own agenda, not the firm's "agreed" upon course.
3. *The future is defined but in terms of owner views rather than client views.* Even when a law firm is successful in defining a future, the result is all too often the partners "want-to-be" list rather than a coherent future tied to the clients. If lawyers and law firms are to service clients, then determining what kind of law firm the current or desired clients will want and need in five years must be paramount. Besides asking clients in surveys or reverse seminars as to their future needs, law firms should ask for clients' business plans. What better way to understand what the client may need than to understand what the client hopes to achieve.
4. *The planning process is a corporate exercise rather than a practice, office, industry or client group activity.* In the authors' view, planning must be pushed down to groups of individuals who can explore legal, client/industry and market developments.
5. *Implementation is a step-child.* How many times do you hear this phrase, "The plan is sitting on my bookshelf"? What good is a plan that supposedly is the guide to the future if it sits on a bookshelf?

What should a good planning process entail, how should it be memorialized and how do you improve the likelihood that a plan will result in action and successful attainment of the desired future?

The process is to ask and answer questions regarding ourselves, our clients and prospective clients, our market, our economy, legal trends and the like. The memorialization of the process is a plan document that organizes the rationale for the firm's chosen future and sets forth the accountability for getting the job done. Overall, the planning process will answer six questions:

1. Where are we today? What is our position in our marketplace?
2. Where do we want to go? What should our position be?
3. How do we get there?
4. When should we be there?
5. Who - clients, prospects,

Continued on page 9

Representing the developmentally disabled client

By Ryan R. Roley

It took six days. In six days a father from Batavia, New York, armed with steadfast hope, simple prayers and few leads, finds himself in an unfamiliar West Anchorage home, reunited with his son and daughter, now ages five and seven. He had endured four years without communication or contact since his estranged wife's secretive departure from Batavia with their children, then infants.

Clinging to family photographs of the children, relatives and the family dog, the father follows his attorney inside. Scooby Doo and ice cream distract the children, both fair-skinned red-heads, as their father enters the living room. Tentatively, the father sits beside his son Chris, hands his daughter Jamie the photographs and eyes both children pensively. His voice is gentle. Forgotten memories return as his daughter views every photo—she remembers him. By the hour's end, Jamie is calling him "daddy" and Chris soon follows his older sister's lead.

It's 9 p.m. Four hours later, bathed and toting a donated change of clothes, small toys and an Etch-a-Sketch, the children excitedly board a plane bound for a home they have not known for most of their lives.

Behind the scenes of this hopeful reunion lay the combined efforts of myself, Batavia attorney Paula Campbell, David Deberardines of Child Find of America and Alaska Judicial Services state trooper Sgt. Barry Ingalls. Working "typical" overtime, Sgt. Ingalls "turned over a few rocks" after the Anchorage Police Department had found the children's last known residence-an abandoned and empty Muldoon mobile home adjacent to Baxter Elementary. The calm of the successful reunion quietly hid the professional "scrambling" and eleventh hour micromanagement necessitated by the nature of the case and the father's personal limitations.

The father is mildly developmentally disabled with a learning disability. An adult in his forties and a baby-sitter by profession, the children's father presented special challenges to his legal advocates due to his limited ability to fully cope independently with everyday affairs, let alone recover his two pre-school children across 4,000 miles. His representation required added patience and unusual attention to "non-legal" details (correcting confused airline reservations that would have left him and the children stranded in Seattle or stuck in Anchorage, meeting him at his 1:30 a.m. arrival, and seeing him and the children through their boarding - just in case).

Jamie's diagnosed attention deficit disorder increased the need for attention beyond pleadings and orders. In the end, patient persistence with APD and judicial services avoided potential communication errors during the father's narrow, 24-hour window in Anchorage.

If represented with alertness to "non-legal" details and provided respectful direction, the developmentally disabled client returns an attorney's "hidden" efforts with unquestioned compliance during a stress-filled ordeal, and sincere gratitude at its successful conclusion. The "human face" of law found rewarding expression both during and following my representation of a client who daily copes with personal limitations and obstacles in areas I often take for granted in my own life. I also witnessed a singleness of purpose from a man perhaps too "simple" to cloud his focus with animosity toward his children's mother or frustration toward the "system" that took four years to navigate.

Classified Ads

The best laid plans . . .

Continued from page 8

attorneys and referral sources - will help us get there?

6. How do we measure and evaluate our progress?

The authors' strategic planning experience has shown that there are two keys to successful planning activities:

1. The evaluation of firm strengths and weaknesses must be candid and objective, requiring input from inside and outside the firm. Understand the business you are in. If you say that's easy, its the practice of law—you are wrong. The practice of law is what you do, its not the business you are in. YOU ARE IN THE BUSINESS OF SOLVING CLIENT PROBLEMS. Therefore analyze strengths and weaknesses consistent with your business. Utilize the best inputs available—current, past and prospective clients. Add the perspectives of your associates and staff and see how these groups view the partners and the firm.
2. In a closely held, owner-operated business such as a law firm, input must be provided by all partners. Consensus developed with the broad participation of firm members is critical in a professional firm environment.

The implementation of particular devices to accomplish these activities is often best accomplished through the use of an independent advisor or facilitator who is more likely to receive candid answers to potentially sensitive questions.

Planning Methodology

1.Information Gathering

Information gathering begins with the organized understanding of the various forces at work in the marketplace, how the market perceives the firm and how the firm's attorneys, clients and legal community function together. This involves gathering and analysis of the following:

Firm Information - Collect and evaluate information about the firm's lawyers, practice areas, client base, legal capabilities, referral sources and networks, organizational structure and orientation of management, economic performance over the past five years, and competitor information. REMEMBER, YOUR PROFESSIONAL INTELLECT, THE SKILLS OF YOUR PEOPLE—THESE ARE YOUR CORE COMPETENCIES. They define what you do best.

Partner Questionnaires and Interviews - Questionnaires organize thinking about the task at hand. They also permit a cogent snapshot of the firm and the collective perceptions held. Interviews are important to allow individuals to expand on important topics and for your independent advisor to understand the human dynamics (culture, political power, personalities) that define the organization. The authors have often conducted the interviews in focus groups to enhance discussions and to observe how the individuals interact.

Associate and Staff Questionnaires - Some firms omit this step. The authors, however, consider associate and staff input valuable as they see the world, the clients and the firm from a different and important perspective.

Client Survey - This must be done by independent advisors. You want the clients to be candid in their responses, which is less likely if the firm does this on their own. The survey questionnaire asks for client input on overall client satisfaction with service delivery, quality of work, fees, needs for legal services and firm image. Your independent advisor should be able to place client responses into context by comparing your results to how clients responded in surveys of other law firms.

2. Analysis and Processing of Information

All information should be evaluated and summarized as to the following elements:

— Summary of Firm Strengths and Weaknesses (referenced through issues identification);
— Economic Performance;
— Firm Resource Evaluation;
— Current Services Provided;
— Client Base Opportunities and Vulnerabilities;
— Client Perception and Service Evaluation;
— Business Source Analysis;
— External Market (Economic and Industry) Factors Evaluation; and
— Competitor Analysis.

This process requires several meetings of the planning task force. At these meetings the task force will discuss the issues, prioritize them and establish preliminary conclusions.

3. Development of Plan Documentation

Small Group Planning - One of the most successful ways the authors have seen law firms "jump start" the implementation of planning and business development activities is to move the effort to the groups of individuals who are best positioned to set forth a course of action. This puts planning at practice groups, client groups, industry groups, and local offices.

Training sessions for these groups are critical to build the team, establish skills in reaching decisions, implementing and monitoring actions, and then revising decisions. Often, such training is handled in tutorial fashion, with hands-on work sessions and real life problems handled.

4. Approval Process

The various group plans must then be consolidated and reconciled against firm resources. Potential conflicts or constraints should be identified for reconciliation in implementation. Presentation and discussion of the overall plan should be accomplished at a partnership retreat.

5. Post-Retreat Activities and Consultant Involvement

Now you must ACT. Information must be prepared for dissemination to associates and staff. Individual assignments and milestones must be established, along with monitoring and corrective response responsibility.

The best laid plans of law firms need not go awry. But they do need to go someplace. They need to move off the planning table or they will languish there and go for naught. Our purpose has been to suggest a simpler approach to planning and to foster the understanding that it's the ACTIONS AND RESULTS that follow the planning effort that determine if the time has been well spent.

The authors are consultants with Altman Weil Pensa, Inc.

1997 Alaska Bar Association CLE
Video Replay Locations & Schedule:

Barrow	**Courthouse** CLE Replay Coordinator: Karen Hegyi Telephone: 907/852-4800 Fax: 907/852-4804
Dillingham	**Jury Room, Courthouse** CLE Replay Coordinator: Joe Faith Telephone: 907/842-1200 Fax: 907/842-2438
Fairbanks	**Cook Schuhmann & Groseclose Conference Room** CLE Replay Coordinator: JoAnna Claxton/Barbara Schuhmann Telephone: 907/452-1855 Fax: 907/452-8154
Juneau	**Dillon & Findley Conference Room** CLE Replay Coordinator: Darcy Suss/Peter Putzier Telephone: 907/586-4000 Fax: 907/586-3777
Kenai	**Courthouse Jury Assembly Room** CLE Replay Coordinator: Allan Beiswenger/Barbara Winkler Telephone: 907/262-9164 Fax: 907/262-7034
Ketchikan	**State Office Building Law Library (2nd Floor)** CLE Replay Coordinator: Trevor Stephens Telephone: 907/225-6128, extension 304 Fax: 907/225-3917
Kodiak	**Law Office of Jamin, Ebell, Bolger & Gentry** CLE Replay Coordinator: Matt Jamin/Linda Brown Telephone: 907/486-6024 Fax: 907/486-6112
Sitka	**Pearson & Hanson** CLE Replay Coordinator: Brian Hanson Telephone: 907/747-3257 Fax: 907/747-4977
Valdez	**Law Office of William Bixby (By request only.)** CLE Replay Coordinator: Bill Bixby Telephone: 907/835-4775 Fax: 907/835-2793

4th Annual Workers' Comp Update
(#97-05)
(Anchorage: 6/5/97, 4 hours)

Barrow:	TBA
Dillingham:	No Replay
Fairbanks:	7/25/97, 9:00 a.m.
Juneau:	8/15/97, 9:00 a.m.
Kenai:	No Replay
Ketchikan:	No Replay
Kodiak:	8/2/97, 9:30 a.m.
Sitka:	8/2/97, 9:00 a.m.
Valdez:	TBA

Conflicts of Interest with Professor John Strait (#97-26)
(Anchorage: 6/13/97, 4 hours)

Barrow:	TBA
Dillingham:	8/22/97, 10:00 a.m.
Fairbanks:	7/18/97, 9:00 a.m.
Juneau:	7/18/97, 9:00 a.m.
Kenai:	9/12/97, 1:00 p.m.
Ketchikan:	TBA
Kodiak:	8/9/97, 9:30 a.m.
Sitka:	8/15/97, 9:00 a.m.
Valdez:	TBA

Alaska Bar Association 1997 CLE Calendar

Program #, Date & CLE Credits	Program Title	Program Location	In Cooperation With	Section
#29 August 7 1.5 CLES	7 Malpractice Traps in Handling Federal Divorces	Anchorage Hotel Captain Cook		Family Law
#25 September 12 Half Day	Mediation in Business Disputes: How It Works & How to Prepare	Anchorage Hotel Captain Cook		ADR
#37 September 19 6.0 CLE Credits Full Day	Medicaid Planning & Long Term Care in Alaska (NV)	Anchorage Regal Alaska Hotel		
#88 September 22 3 CLE Credits Morning	Mandatory Ethics for Applicants (NV)	Juneau Baranof Hotel		
#10 September 22 CLEs tba Afternoon	Morgantown Civic Center Collapse: A Case Study in Ethical Issues (NV)	Juneau Baranof Hotel	ALPS	
#88 September 24 3 CLE Credits Morning	Mandatory Ethics for Applicants	Anchorage Egan Convention Center		
#10 September 24 CLEs tba Afternoon	Morgantown Civic Center Collapse: A Case Study in Ethical Issues	Anchorage Egan Convention Center	ALPS	
#34 September 26 CLEs tba Half Day	National Trends in the Representation of Troubled Debtors	Anchorage Hotel Captain Cook		Bankruptcy

NEWS FROM THE BAR

Board of Governors meeting takes actions

At its meeting on May 6 & 7, 1997 in Juneau, the Board took the following action:

Reviewed the Hearing Master's report in an admissions matter and took no action on application, and took no position on findings of the Hearing Master.

Approved a Bar applicant for character.

Approved 4 Reciprocity applicants, Sarah Armstrong, Thomas Benton, Marla Greenstein and Celeste Thorne, pending the receipt of final reports.

Reviewed 4 special requests for special accommodations for the July 1997 bar exam, and granted 2 of the requests for additional time; granted another request for extra time, but denied the use of a computer; and denied the 4th request, but indicated that they would reconsider it with more information.

Formed a Board subcommittee to generate a list of acceptable specialists to evaluate applicants who request special testing accommodations, or to assist the Board in the interpretation of the test results supporting such requests.

Considered a Rule 43 extension for an ALSC lawyer (Rule 43 allows a lawyer to work for ALSC for two years without being admitted in Alaska); the Board recommended denial under the current rule but voted to publish an amendment to the rule which would eliminate the 2 year limitation as long as the person is working for ALSC.

Voted to appoint John Hedland and Bryan Timbers as the regular members to the ALSC Board, and to appoint Allison Mendel and Christine Hess to the alternate positions; and to recommend the reappointment of Jeff Feldman to the Judicial Conduct Commission.

Approved an Expanded Legal Assistance Program (ELAP) waiver to Capt. David Cluxton of Ft. Wainwright, which allows military lawyers to represent military clients in state court.

Approved the following status changes: to active status: Kenneth Powers and David Spence; to resigned status: Fern Shepard.

Discussed the low attendance at the Mandatory Ethics course in Juneau and Fairbanks and decided to continue live programs in all locations, but the Bar staff has the discretion to cancel a program if there is low enrollment.

Considered a request from the Sierra Club for discounts to attend CLE programs, since they are a nonprofit, and denied that request.

Voted to publish a draft of 16(c) (attorney fees award criteria in discipline cases); Rule 11-40 (mediation); Rule 48(a) (size of Lawyers' Fund for Client Protection committee).

Refered Rule 16(e) regarding law office audits back to the Committee.

Voted to publish Rule 28(g) & (h) (newspaper notice of public reprimands); Rule 41 (service of fee arbitration petition); Rule 61 (shortening time period for notice of suspension for failure to pay fee award).

Voted to publish Rule 7.4 which would certify organizations which certify lawyers as specialists.

Took no action on an ethics opinion entitled "Ex Parte Contact with Treating Physician."

President-elect Bundy volunteered to meet with Justice Compton about the protocol for memorials for deceased judges and Bruce Weyhrauch will talk with the Anchorage Bar regarding the protocols which they adopted.

Carried over Rule 15(b) & (c) (definition of unauthorized practice for disbarred and suspended lawyers) until the next meeting.

Approved the March minutes.

Will make a CLE video on nonprofit Boards available to the Board members.

Voted to amend the Standing Policies to pay per diem expenses for the public board members through the annual business meeting at the convention.

Discussed the continuation of the YLS Liaison program.

Formed a budget subcommittee to meet over the summer to discuss general budget issues.

Asked Board members to write to the Governor's office supporting the reappointment of public member Joe Faulhaber to the Board.

YOU CAN NOW REACH THE BAR STAFF THROUGH E-MAIL

Staff Member	Primary Duties	E-Mail-Address
Deborah O'Regan	Executive Director	oregand@alaskabar.org
Steve Van Goor	Bar Counsel	vangoors@alaskabar.org
Barbara Armstrong	CLE Director	armstrongb@alaskabar.org
Mark Woelber	Assistant Bar Counsel	woelberm@alaskabar.org
Louise Driscoll	Assistant Bar Counsel	driscolll@alaskabar.org
Gerry Downes	Controller	downesg@alaskabar.org
Deborah Ricker	Discipline investigations, intake/attorney complaints	rickerd@alaskabar.org
Ingrid Varenbrink	Fee Arbitration Assistant & CLE Librarian	varenbrink@alaskabar.org
JoAnne Baker	Fee Arbitration Assistant & CLE Librarian	bakerj@alaskabar.org
Deborah Lash	Executive Secretary: coordinator for bar exam drafting & grading, member status changes	lashd@alaskabar.org
Norma Gammons	Discipline Section Administrative Supervisor	gammonsn@alaskabar.org
Cheryl Rapp	Legal Secretary	rappc@alaskabar.org
Karen Schmidlkofer	Accounting Assistant	schmidk@alaskabar.org
Rachel Tobin	CLE Assistant: seminars, sections, convention	tobinr@alaskabar.org
Krista Scully	Admissions Secretary & Receptionist: bar exam applications, CLE registrations, legal intern permits, Rule 81	scullyk@alaskabar.org
Robyn Helvey	Lawyer Referral Service Receptionist: address changes, mailing labels, handles requests for jury instructions	helveyr@alaskabar.org

BAR OFFICE PHONE: 272-7469
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·NOTICE·

Effective July 15, 1997

Civil Rule 16,1, known as the "fast track rule", has been rescinded by Superior Court Order ("SCO") 1266.

Pretrial procedure in Anchorage Superior and District Court civil cases (with exceptions noted below) will be governed by Civil Rules 16 and 26.

Cases Filed On or After July 15, 1997:

1. Civil complaints filed in the superior or district court must be accompanied by a completed case description form. *See* Civil Rule 3(a). This form is provided by the court (CIV-125), and both Sections I and II must be completed before the complaint can be accepted for filing.
2. Civil Rule 26(b) requires a pretrial scheduling conference in all civil cases, unless all parties and the judge agree that a conference is unnecessary. The conference will be scheduled by the court after all defendants have answered or otherwise appeared. The conference should occur approximately 80 to 90 days after the last answer or appearance.
3. Prior to the conference, the parties must file the report of their planning meeting required by Civil Rule 26(f).
4. Following the conference, the court will issue a pretrial scheduling order that sets the date for trial or the trial setting conference.

Cases Filed Before July 15, 1997:

Cases filed before July 15, 1997 will be governed by the pretrial procedures set forth by CR16. Cases which have not been scheduled for a trial setting conference, or for trial, will be set for a pretrial scheduling conference as soon as practicable.

Actions exempt from Civil Rule 16(b):

Condemnation	Change of Name	Dissolutions/Divorces
Domestic Violence	Eminent Domain	Forcible Entry & Detainer
Foreign Judgments	Habeas Corpus	Minor Settlements (filed as separate action)
Paternity	Post-Conviction Relief	Small Claims

NEWS FROM THE BAR

Discipline Summaries

Martin Wolff disbarred

The Alaska Supreme Court entered an order of reciprocal disbarment against Martin Wolff (Member No. 8501001) effective May 19, 1997 based on a 1996 disbarment order by the Supreme Court of the Republic of Palau. Wolff was disbarred by the Palauan court for violating ABA Model Rule of Professional Conduct 8.4(d) (engaging in conduct prejudicial to the administration of justice) for accusing an assistant attorney general of fabricating a memorandum and inducing a false report from a witness without any support for the allegations. Reciprocal disbarment orders were subsequently entered by the Hawaii Supreme Court and the U.S. District Court for the Northern Mariana Islands.

This appears to be the first case in Alaska where reciprocal discipline has been imposed against a member of the Alaska Bar based on the action of a court in a sovereign country. However, from 1947 until October 1, 1994 when it became independent, the United States had administered Palau as a part of the United Nations Trust Territory of the Pacific Islands. As a result, Palau's judiciary article and its rules for admission and discipline of attorneys were patterned on American examples.

Finally, on a substantive note, the Model Rule provision used by the Palauan Court was not adopted by the Alaska Supreme Court when the Rules of Professional Conduct were adopted in July 1993. However, Wolff's conduct could have just as easily been categorized as violations of Alaska RPC 3.1 prohibiting frivolous claims and contentions and Alaska RPC 4.4 prohibiting the use of means that have no substantial purpose other than to embarrass, delay, or burden a third person. In any event, Wolff failed to appear and participate in the Alaska reciprocal discipline case.

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George Weiss disbarred

The Supreme Court ordered Anchorage attorney George E. Weiss (Member No. 7710181) disbarred from the practice of law, effective June 5, 1997. Earlier an area hearing committee and the Disciplinary Board of the Alaska Bar Association had recommended disbarment based on Mr. Weiss's misconduct.

In late 1993, Mr. Weiss began the pattern of accepting new clients, taking funds from those clients, performing no work or insufficient work on their cases, misapplying client funds to his own use, ignoring client requests for action or information, telling them that he was too ill to work, assuring them that he would refund their money, making no refunds, and then repeating the cycle.

The Disciplinary Board found that Mr. Weiss committed misconduct against 17 clients, and that the misconduct violated his ethical duties to the clients, the public, and the legal profession. The misconduct included failure to perform legal services competently and diligently, and misappropriation of legal fees of multiple clients. Mr. Weiss repeatedly bounced checks on the trust account, misplaced client funds, and used client funds for his personal expenses. Mr. Weiss failed to cooperate in any meaningful way with the closure of his practice by a Bar-appointed trustee counsel, and he failed to answer numerous grievances.

To be eligible to apply for reinstatement under Bar Rule 29, Mr. Weiss must comply with the conditions recommended by the Disciplinary Board: a) full restitution to all clients whose cases were included in the area hearing committee report; b) take and pass the Multistate Professional Responsibility exam; c) attend an Alaska CLE on law office management; d) obtain an examination by a psychiatrist or psychologist approved by bar counsel and follow all treatment recommendations of the examiner; and e) comply with any requests for action or information from any future hearing committee considering any future petition re reinstatement.

The public file is available for inspection at the Bar Association office in Anchorage.

Easton Suspended for failure to respond in disciplinary proceedings

The Alaska Supreme Court on May 22, 1997 issued a 60-day suspension against attorney Brian Easton, formerly of Kenai. The disciplinary proceedings started when a client filed a grievance against Easton. Bar Counsel notified Easton of the charges by certified mail. Easton did not respond to further correspondence from Bar Counsel (including reminders and "professional courtesy" extensions of time), and he did not answer telephone messages. Reached by phone on one occasion, Easton assured Bar Counsel that he would answer the grievance. He never did. Bar Counsel investigated the grievance without Easton's input and dismissed the client's original charges. However, Bar Counsel filed formal proceedings against Easton based on his failure to respond.

A disciplinary hearing committee found that Easton violated Bar Rule 15(a)(4) (which provides that failure to answer disciplinary charges or to provide information to Bar Counsel is misconduct) and Alaska Rule of Professional Conduct 3.4(c) (which prohibits the violation of court rules, including those governing the disciplinary process). The hearing committee recommended (and the Disciplinary Board and the Supreme Court approved) a sixty-day suspension, all of which would be stayed if Easton complied with the terms of a supervised probation plan. In turn, the probation plan would be tolled if Easton went on inactive status. Easton resigned from his job but did not go on inactive status, took no steps to fulfill the probation plan, and failed to respond to inquiries from Bar Counsel. Accordingly, the Court imposed the suspension.

The public file is available for inspection at the Bar Association office in Anchorage.

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Alaska Commission on Judicial Conduct Public Notice of Private Admonishment

After an extensive investigation and consideration of the nature of the conduct involved, the Alaska Commission on Judicial Conduct has issued a private admonishment to Chief Justice Allen T. Compton. The admonishment addresses two incidents of conduct by the justice in 1995 and 1996 concerning two court system employees. The Commission concluded that this conduct constituted sexual harassment in violation of the Alaska Code of Judicial Conduct.

The Commission is authorized by statute and its own rules of procedure to issue a private admonishment. Chief Justice Compton has agreed to this public notification of the private admonishment.

APPELLATE COURTS HAVE NEW TOLL FREE NUMBER

As part of the continuing effort to make the Appellate Court Clerk's Office more "user friendly," the court is experimenting with a toll free number for use by counsel within Alaska in inquiring about the status of open cases.

The toll free number that has been obtained by the clerk's office is (888) 390-0607.

Toll free service is not intended for inquiries about rules or procedures, cases for which a number has not yet been assigned, or cases which have been closed, because requests for this information tend to occupy too much case management time. If experience shows that too much time is taken in providing information for which this service is not intended, the experiment may be ended. It is hoped that this toll free number will help to make the appellate courts more accessible to counsel throughout the state.

NOTICE OF PROPOSED RULES

U.S. BANKRUPTCY COURT, DISTRICT OF ALASKA

The Advisory Committee on Bankruptcy Rules has proposed amendments to the local Bankruptcy Rules [2007.1-1; 2081-2; 3017-1; 9015-1).

Written comments on the proposed rules are due no later than August 31, 1997

Address all communications on rules to:
Clerk, U.S. Bankruptcy Court
Attention: Local Bankruptcy Rules Committee
Historic Courthouse, Room 138
605 West Fourth Avenue
Anchorage, Alaska 99501-2296

The proposed amendments to the rules may be reviewed at: State Court Libraries in Anchorage, Juneau, Fairbanks and Ketchikan; U.S. Courts Library in Anchorage; U.S. District Court Clerk's Office In Anchorage, Fairbanks, Juneau, Ketchikan, and Nome; U.S. Bankruptcy Court Clerk's office in Anchorage: or on the web at the U.S District Court Home Page http:/www.touchngo/lglcntr/usdc/usdcak.htm.

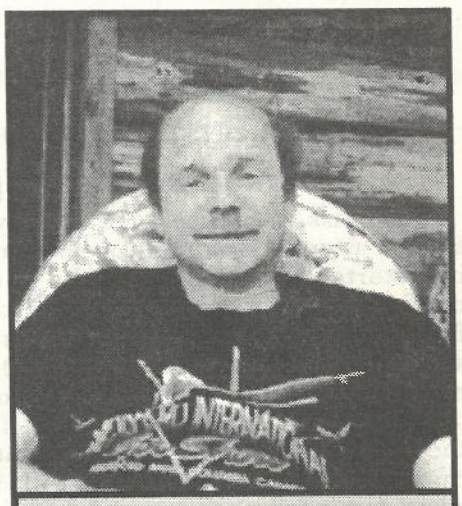
Tales from the Interior

Buyer's remorse

It has become fashionable to attend a 12-Step program. You know, where everybody sits in a circle, announces their first names when called upon, and confesses various sins.

I am no different. I have my addictions. Some people accuse me of being a work-a-holic. Others have said that food appears to be my most obvious vice. But my secret sin, the most secret of all, is a concept known as .... the auction.

It began when I was a young child. I would go with my father on Friday nights to the local auction barn in Anchorage. We would sit on cold, folding metal chairs in a quonset hut at the Anchorage Auction Company, warmed by a smelly pot-bellied oil stove, itself a prime attraction. Eventually, the night would end with everybody walking home with an armload of fishing rods, old games, and broken lamps.



William Satterburg

> *'It began when I was a young child. I would go with my father on Friday nights to the local auction barn in Anchorage.'*

The auctioneer was a unique fellow. He would berate the audience in a Southern drawl at a speed more rapid than anyone could ever imitate. I marveled at how the auctioneer's lips would flap up and down, bibbling and babbling, entreating the crowd to bid on some particular piece of valuable junk. "This guy should be lawyer!" I thought.

Surrounding the auctioneer, like the proverbial guards to the River Styx, would be two or more "callers" who would search at the crowd while dancing a jig with their arms facing outward, palms outstretched happily yelling "Yip!" and "Yes!" anytime someone would so much as nod or rub an ear. Various "shills" would bid items up to a particular level to get the crowd going.

Needless to say, I truly looked forward to Friday nights at the auction.

One night, I began to bid on a particular item, and was successful. (Everyone else had dropped out.) The auctioneer said, "SOLD!," pointed his finger at me, and asked the name of the man seated to my left, who was my father. From that date forward, I was required to sit on my hands.

Auctioneering lost a certain degree of attraction after that, until I turned 18, and could bid on my own, without fear of retribution from the old man. It was my first rite of manhood.

The only problem with that phase of my life was that I was broke, and my bidding was confined to "starter" bids. Hopefully, everybody would want the item I would bid on, and I would be able to start out a bid of, say, $1,000 on a $100,000 aircraft. I was relatively safe from winning the bid, and it only backfired once, when I ended up with a broken DOT refrigerator. On the other hand, I also ended up with a very nice dental chair on one occasion for $17. It was a fully mechanical, Ritter model, and I still own it.

Which brings me to the present. After having obtained gainful employment following law school, I would go to auctions surreptitiously. Recognizing that my wife disapproved strongly of my participation at auctions, due to our diminishing bank account, I had her convinced that I was, in fact, cheating on her with another girlfriend.

I was able to get away with more than one trip to the auction barn under the guise of some midnight tryst. Try as I would to cover my smell of WD-40 and stale cigar smoke with aftershave, my wife would still have suspicions when I returned home late at night, my orange State of Alaska pickup truck crammed with various items of junk, and the pieces of a shredded, numbered card in my shirt pocket. I'd tell her I found the stuff.

For a while, my wife indulged my habit. As a compromise, we would go to antique auctions. I found that if we sat in the middle of the audience, Brenda would always think that someone behind me was bidding on the item. In fact, I would wrap my arm lovingly around her, with the bidder's card tucked neatly away in my sleeve. At the appropriate moment, with a little flick of the wrist, I could get the auctioneer's attention, and bid on various items.

> *'Before I knew it, my right hand with number 752 shot up in the air. Try as it might, my left arm could not pull my right arm down.'*

On one particular occasion, however, my wife turned to look behind us to see who had been bidding on all the merchandise, and found that all of the other seats were empty. Turning to face me, she caught a glimpse of the auctioneer's card in my hand. All hell broke loose. Still, we have a rather nice living room full of antique furniture.

Furniture auctions are not my only outlet.

I am a sucker for Alyeska Pipeline Co. and State of Alaska equipment auctions, both of which are timed by the auction companies to take place each spring within the same week. A "Man Thing" happens at these auctions, as males strut confidently around, overwhelmed by auto control hormones. Bidders all talk about their "Iron" and some of us run across our clients. It is depressing, however, to recognize that the clients who claim they cannot pay you are bidding heavily and successfully at the auction. (They must have the same feeling when they notice that despite my protestations of bankruptcy, I am also accumulating used wealth. So much for being broke.)

Recently, my wife announced to me that her car was beginning to have problems and that it was probably time "to get another vehicle." It is a rather nice Celebrity Station Wagon which I bought at a federal vehicle auction. After numerous parking lot fender- benders, the car was beginning to see the winter of its years.

Since she'd also been lobbying for living room furniture, I immediately began watching the ads in the papers for both vehicle and antique auctions. And what should catch my eye , but the famous annual springtime Alyeska vehicle auction!!!

I clearly had open authority to attend this event, so I dressed up in my best dirty denim blue jeans and jacket, donned a worn baseball cap, and polished up my largest cowboy belt buckle. I was set to go.

I arrived early to register, in time to get bidder number 752. As usual, rumors abounded that there were "rich Arabs" everywhere and even an "Australian" who had flown into town in his Lear jet.

Everyone paced around the preview yard like a bunch of banty roosters staking out their territory. The chosen color on this particular date would be red. Orange is ordinarily reserved for highway department auctions. Yellow usually finds its place with City of Fairbanks affairs. But Alyeska is always red. I parked my pickup truck in the parking lot, along with the other two dozen orange pickup trucks.

The next day, I showed up bright and early at 10 a.m. There were no seats left in the tent; some people must have camped out from the previous evening, given the number of motorhomes in the parking lot.

I planned to bid on either a diesel Suburban or a Crewcab pickup truck. The prices, unfortunately, were atrocious. The rich Australian fellow who had shown up in a Lear jet was bidding everything out of sight! The Fairbanks locals sat moodily in their seats, grumbling about the exorbitant bids, criticizing the auctioneer, and talking Malfordian politics, the standard bill de fare of a Fairbanks auction. The auctioneers distributed 1,000 FREE red hats imprinted with the Fairbanks 1996 Alyeska auction logo.

The Suburbans and pickup trucks were selling well above the proverbial low blue book—above $8,000—and I resigned myself that I would not be able to buy Brenda either a Suburban or a pickup truck. Row after row of red Alyeska pickup trucks or Suburbans paraded in front of the auction barn. The Australian fellow kept buying them.

Eventually, the smaller vehicles were sold. The larger trucks began to parade past the viewers.

There was a lull in the bidding at one point, during which one forlorn red 2 1/2 ton truck with fender damage pitifully climbed to the stage. It reminded me so much of the little engine that could, I shed an

Continued on page 13

Buyer's remorse

Continued from page 12

emphathetic tear. No one wanted the red 2 1/2 ton flatbed because of the fender damage. It looked so sad.

Before I knew it, my right hand with number 752 shot up in the air. Try as it might, my left arm could not pull my right arm down. A greater power than I was at work. In a second, people were cheering. The auctioneer tried to bid the truck higher. No one would challenge the power which supported my bid. In a matter of seconds, which seemed like an eternity, it was over. The auctioneer announced that number 752 was the successful bidder on truck number 99. The mighty engine of truck number 99 roared loudly, as it proudly pranced to its parking place.

The all-too-familiar wave of buyers' remorse set in. I had once again done it.

I was a good boy until the end of the auction, until there were three items left: two snow machines, and a wrecked Suburban. Before I knew it, my arm once again shot up, and I became the proud owner of a Skidoo snowmachine, complete with trailer. I reasoned that it might mollify my wife, who might have misgivings about the truck.

I returned home that afternoon, to the impatient questioning which asked whether I had bought anything. I confessed to my wife that I had bought "a vehicle" for her—a tremendous buy on a 2 1/2 ton diesel flatbed truck of just under 26,000 pounds. Brenda's jaw dropped, in a move which I can only interpret as one of total appreciation for my kind generosity in providing her with a new vehicle. Seizing the moment, I explained to her that she would no longer have to worry about parking lot accidents, and I would no longer complain about any dents that the vehicle might have.

The tirade commenced. A substantial discussion of furniture ensued, during which it was made clear that my obligation was to match the expenditure on the truck with an equivalent amount of new, not antique, living room furniture. I attempted one last time to placate my bride, pointing out that I really had her best interests in mind, and had bought her own snowmachine at auction, as well. For some reason, that didn't seem to work too well, either.

Everyone has relapses. When it happens, we simply must climb back on the wagon, and do the best we can to make up the lost time. I am seriously considering aversion therapy. I figure if I attend enough auctions, eventually I will bid myself out, and will no longer be a threat to myself or to society. When auctions are announced in the papers, I will simply stay at home and watch television.

The only problem is that Kiwanis fundraiser auction which occurs once a year on television. The way I see it, they will never figure out that I'm bidding from the privacy of my bedroom telephone.

More than 100 audio and videotapes covering a wide range of topics, from management of your office, library, finances, lawyers and staff; to training, ethics, confidentiality, and much more.

Alaska Association of Legal Administrators Library

The Alaska chapter of ALA in Anchorage is part of an international organization whose mission is to promote, enhance and support law office administration. For information on checking out these materials, call Jan Joseph, 563-8844.

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18 The Administrator: Techniques for Success & Personal Development (1987)
20 Law Firm Administration: An Introduction (1987)
64 Careers in the Law Office (VIDEO 1987)

HUMAN RESOURCES

2 Human Resources Needs Assessment & Motivation: Theory & Practice (1986)
12 Value of Diversity (1994)
46 Attracting & Keeping Good People (1989)
48 Partner Evaluation & Compensation (1989)
49 Associate Evaluation & Compensation (1989)
50+ Partner Compensation, Benefits & Buyouts (1989)
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86 Honey, I Shrunk the Firm (1993)
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23 Methods of Motivation (1987)
41+ Team Building & Communication (1988)
44+ Stress Management & Your Health (1988)
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67 Stress Management for Lawyers (VIDEO 1990)
69 Professionalism in the Law Office (VIDEO 1990)
70 Law Office Confidentiality (VIDEO 1990)
71 Law Office Confidentiality II - New Concerns (VIDEO 1992)
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75 Motivating Yourself to Motivate Others in a Changing World (VIDEO 1993)
90 If IÆm in Charge Here, Why is Everyone Laughing? (1993)
117 Professional Law Office Communication: Telephones, Voicemail & Beyond (VIDEO 1997)

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7+ Managing the Career Legal Assistant & Setting Up a Profitable Program (1986)
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30 Strategy of Structure for Success (1988)
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91 Survival Skills for the Administrator (1993)
102 Facilities Managment: Myth & Reality? (1993)
103+ Disaster Preparedness

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21+ Full Financial Planning for Attorneys & Law Firms (1987)
31+ Improving Profit & Measuring Partners' Contributions (1988)
33+ Fundamentals of Budgeting (1988)
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53 Up Your Cash Flow (1989)
83+ Applying Total Quality Management in a Legal Environment (1993)
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114 Compensation & Benefits Trends - Compare Your Package with Those of Other Law Firms (1996)

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3 Marketing for Legal Support Staff: Jay Foonberg's Proven Techniques (VIDEO 1994)
6 One Client at a Time (1994)
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56 How to Plan Marketing Projects (1989)
60 Introduction to Marketing (1990)
61 Small Firm Strategic Planning (1990)
63 Teaching Lawyers to Market (1990)
66 Marketing Your Law Firm (VIDEO 1990)
73 Women Rainmakers: Strategies for Effective Rainmaking (VIDEO 1993)
81 Delivering Exceptional Service to Clients (VIDEO 1993)
92 Successful Approaches to Cross-Selling (1993)
100+ Marketing Efforts, Costs & Benefits (1993)
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Solid Foundations

Foundation approves grants of $201,000

On May 22, 1997, the Trustees of the Alaska Bar Foundation awarded IOLTA grants for the 1997-98 fiscal year. Thanks to the many firms and attorneys who participated in the IOLTA program, the Foundation allocated $201,000 to various nonprofit organizations that provide legal services to the needy. This is $8,000 more IOLTA resources than were available last year.

Five organizations received grants:

The Alaska Pro Bono Program. In granting $180,000 to this organization, the Foundation sought to further its primary mission to provide legal services to the poor. Alaska Pro Bono Program provides the needy with free legal representation and sponsors many statewide classes and clinics.

Mary Hughes

The program is one of the most successful voluntary legal services organizations in the country, closing 1,200 cases a year. More than 50% of Alaska Bar Association members participate in the pro bono program.

CASA's for Children. This organization received $3,000 to continue its mission to train over 120 CASA's (Court Appointed Special Advocates). CASA's are volunteers who work to insure children have their best interests represented in court. These volunteers research information on a child's background in order to help the court system make more informed decisions about the child's future.

Catholic Social Services. CSS was provided $7,500 for its Immigration/Refugee Program. CSS provides legalization assistance to Alaskan immigrants. The program provides several services including: immigration litigation; small claims court filings; translation services; preparation of legalization and asylum appeals; traffic court appearances; and intervention in workers' compensation cases.

Alaska Women's Resource Center. This organization received $5,000 to help further its goal of providing legal information and referrals to needy women in the Anchorage community. During 1996, the AWRC provided 324 women pro bono legal services and performed 1,556 legal referrals.

Mat-Su Youth Court. A grant of $5,500 was given to this organization for operation of its legal education program. The alternative preadjudicatory system for MatSu youth allows juveniles accused of breaking the law to be judged by their peers; it also benefits students in junior and senior high school by training them in the American justice system.

The Trustees are hopeful that increased participation in the IOLTA program by Alaskan attorneys and law firms will make more grants possible next year.

High court agrees to review IOLTA case

The U.S. Supreme Court announced today that it has agreed to review a federal appeals court decision that calls into serious question the constitutionality of IOLTA ("Interest of Lawyers' Trust Accounts") programs nationwide. (*Phillips v. Washington Legal Foundation,* No. 96-1578)

The Washington Legal Foundation ("WLF") — which has spearheaded the challenge to IOLTA — welcomed the high court's move. "We view the Supreme Court's action as an opportunity to give nationwide reach to our appeals court victory," said WLF Chief Counsel Richard Samp. The lower court decision currently is binding in only three states: Texas, Louisiana, and Mississippi.

IOLTA is a program under which attorneys may contribute interest earned by their clients' trust funds to a fund used to finance legal aid organizations. WLF claimed that IOLTA programs violate Fifth Amendment rights by taking property without just compensation, and violate First Amendment rights by forcing people to support political causes with which they disagree.

On September 12, 1996, the U.S. Court of Appeals for the Fifth Circuit in New Orleans issued a decision, *WLF v. Texas Equal Access to Justice Foundation,* that calls the constitutionality of IOLTA programs into question.

The Fifth Circuit held that those whose money is placed into IOLTA accounts have property rights in the interest generated by the accounts. The Fifth Circuit rejected rulings by two other federal appellate courts (the First and Eleventh Circuits) that had upheld IOLTA programs in Massachusetts and Florida. The Fifth Circuit did not strike down the Texas IOLTA program but rather merely remanded the case to the district court for trial.

One interesting note regarding the First Circuit's IOLTA decision: Supreme Court Justice Stephen Breyer served on the three-judge First Circuit panel that unanimously upheld the

Continued on page 15

Estate Planning Corner

The Alaska Asset Protection Trust

On April 2, 1997, legislation known by estate planners as the Alaska asset protection trust statute became effective. This statute is being widely discussed not only in Alaska, but also by estate planners in every state in the nation. The statute provides that a trust whose discretionary beneficiaries include the person who created the trust is in only limited circumstances subject to the claims of that person's creditors (AS 13.36.310 and 34.40.110).

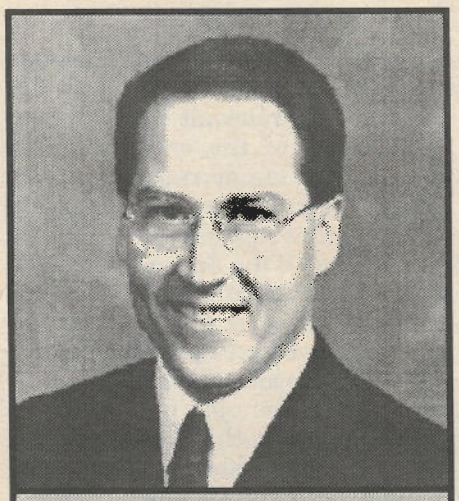
Recall that a person who creates a trust is known as a "settlor." A single trust may have more than one settlor. For example, if individual A drafts and signs a trust agreement, but both individual A and individual B make contributions to the trust, then the trust has two settlors. If individual A contributed $10,000 to the trust and individual B contributed $5,000 to the trust, then individual A would be the settlor as to two-thirds of the trust and individual B would be the settlor as to one-third of the trust.

Further recall that the trustee of a trust has numerous duties, including making investment decisions and, where called for, distributions. Distributions may be mandatory, such as where a trust provides that the trustee shall distribute all net income every three months or trust principal when a beneficiary reaches a certain age. On the other hand, distributions may be discretionary, such as where a trust provides that no distribution may be made unless the trustee determines, in his discretion, that the distribution is appropriate.

There is nothing new about an irrevocable trust that grants the trustee the discretion to make distributions among a class of beneficiaries that includes the settlor *(See* Adams, *Questions & Answers on Estate Planning,* 132 *Trusts & Estates* 54, 55-60 (July 1993)). These types of trusts have long been created within and outside the state of Alaska.

What is new is that Alaska has created, in effect, a safe harbor for these types of trusts. If the settlor stays within the new law's boundaries, then he can be sure, under Alaska law, that the trust assets will not be subject to his creditors' claims even though he is a beneficiary of the trust. These boundaries include the following:

(1) In funding the trust, the settlor must not intend in whole or in part to hinder, delay or defraud his creditors (AS 34.40.110 (b) (1)). The new law contains two statutes of limitations in this regard. First, a person who is a creditor of the settlor when a transfer to the trust is made must bring an action to claim the transfer was fraudulent within four years after the transfer is made or, if later, one year after the transfer is or reasonably could have



Steven T. O'Hara

been discovered by the creditor (AS 34.40.110 (d) (1)). Second, a person who becomes a creditor of the settlor after the transfer to the trust is made must bring an action to claim the transfer was fraudulent within four years after the transfer is made (AS 34.40.110 (d) (2)).

(2) At the time of the transfer to the trust, the settlor must not be in default by 30 or more days of making a payment due under a child support judgment or order (AS 34.40.110 (b) (4)).

(3) The settlor may not hold the power to make discretionary distributions (AS 34.40.110 (b) (2)). By the same token, the settlor may not retain the power to revoke or terminate the trust, unless he may exercise that power only with the consent of a beneficiary whose interest in the trust would be adversely affected by the exercise *(Id.)*. But the settlor may retain the power to veto the trustee's decision to make a distribution to a beneficiary (Id.). The settlor may also retain the power to name by will who (other than the settlor's estate or creditors) will receive the trust assets at the settlor's death *(Id.)*.

(4) The trust may not *require* that any part of the trust's income or principal must be distributed to the settlor (AS 34.40.110 (b) (3)). In other words, although the trustee may have the authority to make distributions to the settlor in the trustee's discretion, there can be no requirement for the trustee to make distributions to the settlor.

(5) The trust must contain a so-called "spendthrift clause" that provides that the interest of a beneficiary may not be voluntarily or involuntarily transferred (AS 34.40.110 (a) and (b)).

(6) The trust must contain a "state jurisdiction provision," which the statute defines as "a provision that the laws of [Alaska] govern the validity, construction, and administration of [the] trust and that the trust is subject to the jurisdiction of [Alaska] " (AS 13.36.035 (d), .310, and .390(2)).

(7) Some or all of the trust assets must be deposited in Alaska (AS 13.36.035 (c) (1)). The statute provides that a deposit in Alaska "includes being held in a checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account, or other similar account or deposit that is located in [Alaska]" *(Id.)*.

(8) The trust assets deposited in Alaska must be administered by a trustee who is a "qualified person," which the statute defines as an Alaska resident or an Alaska bank or trust company (*Id.* and AS 13.36.390(1)). The Alaska trustee must be designated under the trust instrument or by a court of competent jurisdiction in Alaska (AS 13.36.035 (c) (2)).

(9) The Alaska trustee must have the power to maintain trust records and prepare or arrange for the preparation of trust income tax returns, although one or more other trustees may also share these powers with the Alaska trustee (AS 13.36.035 (c) (3)). Part or all of the trust's administration must also occur in Alaska, "including physically maintaining trust records in [Alaska] " (AS 13.36.035 (c) (4)).

The statute is also significant because it provides that certain *discretionary* trusts are no longer subject to the rule against perpetuities (AS 34.27.050 (a) (3)). Although Delaware, Idaho, South Dakota and Wisconsin have abolished outright the rule against perpetuities, Alaska has chosen to leave it intact for certain *non-discretionary* trusts, as well as for all trusts created before April 2, 1997. This can be a trap for the unwary. For example, suppose a client wants to create a perpetual trust under which initially his spouse is the sole mandatory income beneficiary and under which the trustee has no discretion to make principal distributions until after the spouse's death. Here the trust would be subject to the rule against perpetuities because the trustee would not initially have any discretion over distributions.

> *"There has been much talk locally about how difficult and time-consuming long-term discretionary trusts are to form."*

There are numerous other issues that need to be considered when creating long-term trusts, not the least of which are tax considerations. Depending on the rights and powers he retains, the settlor may be considered the owner of a long-term discretionary trust for income, gift, estate and generation-skipping tax purposes, even though the trust assets are not available to his creditors.

There has been much talk locally about how difficult and time-consuming long-term discretionary trusts are to form. These trusts are difficult and time-consuming to form, primarily because of the tax considerations. But at least from a state-law perspective, the formation of long-term discretionary trusts has become easier now that Alaska has a safe harbor for these types of trusts.

High court agrees to review IOLTA case

Continued from page 14

Massachusetts IOLTA program in 1993.

Texas's petition for review in the Supreme Court was supported by more than 80 organizations and individuals, led by the American Bar Association. Those groups are expected once again to file briefs in support of Texas now that the case is being heard on its merits.

WLF and others object to many of the activities funded by IOLTA programs. WLF's clients object to having the interest generated by their funds used in that manner.

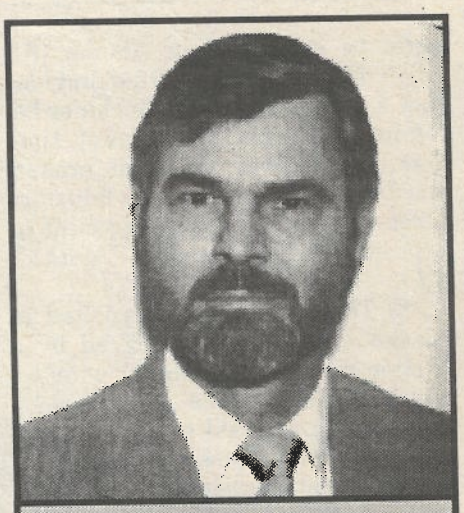
WLF is a public interest law and policy center.

—Washinton Legal Foundation press release excerpts, June 27, 1997.

Bankruptcy Briefs

Creditors get rash — wholesale or retail?

On June 19, 1997, the Supreme Court decided *Associates Commercial Corporation v. Rash,* [Docket 96-454, 1997 WL 321231] resolving the split among the circuits regarding the proper method for valuing secured claims when the property is retained by the debtor. The court rejected the foreclosure-value approach adopted by the Fifth Circuit *en banc* in the case below [90 F3d 1036], the split-the-difference approach adopted by the Seventh Circuit [*In re Hoskins*, 102 F3d 311 (CA7 1996)] and the case-by-case approach of the Second Circuit [*In re Valenti,* 105 F3d 55 (CA2 1997)] in favor of a replacement-value standard generally consistent with the fair market value standard adopted, *inter alia,* by the Ninth Circuit [*In re Taffi,* 96 F3d 1190 (CA9 1996) (*en banc*) cert. *denied* No. 96-881 (6/23/97)]. Although a chapter 13 case [concerning the application of § 1325(a)(5)(B)(ii) ("cram-down")], *Rash* turned on the court's interpretation of a secured claim under § 506(a) and, therefore, applies to chapter 7, 11, and 12 cases as well wherever the issue is the value of the creditor's secured claim, e.g., §§ 722 (redemption), 1129(b)(2) (chapter 11 "cram down") and, perhaps, to relief from stay proceedings under § 362. The substance of *Rash* is contained in the footnotes that explain the meaning and operation of the replacement-value test. It is these footnotes that dampen the impact of *Rash*.



Thomas Yerbich

First, it should be noted the effect of *Rash* will be minimal in Alaska as the Ninth Circuit had already adopted a fair market value standard in *Taffi*. The Supreme Court made clear the term replacement-value did not mean what it would cost the debtor to purchase the collateral new [*Rash*, n. 2]. Replacement-value, as used by the Supreme Court, is consistent with the Ninth Circuit's understanding of the meaning of fair market value: "the price a willing buyer in the debtor's trade, business, or situation would pay a willing seller to obtain property of like age and condition" [*id*].

The court expressed its rejection of a ruleless approach allowing use of different valuation standards based on the facts and circumstances of individual cases [*Rash*, n. 5]. But did it really, or did it play a semantical game, merely shifting the starting gate? To answer that question it is necessary to examine *Rash* beyond the "replacement value" holding. The real heart of *Rash* and the part that makes the decision considerably less than a "bright-line" test is contained in footnote 6:

> "Our recognition that the replacement-value standard, not the foreclosure-value standard, governs in cram-down cases leaves to the bankruptcy courts, as triers of fact, identification of the best way of ascertaining replacement value on the basis of the evidence presented. Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning. *Cf.* 90 F,3d, at 1051-1052. Nor should the creditor gain from modifications to the property-*e.g.*,the addition of accessories to a vehicle-to which a creditor's lien would not extend under state law."

To be sure, we now have an uniform standard, *i.e.,* replacement-value, but will there be any real change in what the bankruptcy courts have been doing in practice or uniform results? This author thinks not. Bankruptcy courts will, by necessity under the mandate of footnote 6, continue to be faced with valuation disputes. Instead of dealing with whether the court should be applying foreclosure value or replacement value, courts will be determining, under all the relevant facts and circumstances of the case, whether wholesale value or retail value, or something in between, most closely approximates replacement value. In many cases, if the Seventh Circuit's "split-the-difference" approach is not applied (either by the court or the parties in settlement), the parties will find themselves embroiled in litigation that is simply not economic; particularly for the debtor who is already in financial straits. However, it must be borne in mind that the creditor bears the ultimate burden of proof of the validity and amount of the claim [*See Matter of 183 Lorraine Street Associates*, 198 BR 16 (EDNY 1996); *In re Tash*, 80 BR 394 (Bank.NJ 1987)].

For most consumer cases there should be little, if any, change. Other than vehicles and realty, generally, there is little actual market for most consumer items outside garage sales or classified ads, consequently, the parties will probably resort to evidence of classified ads or typical garage sale prices. As to real property, the law of valuation is fairly well developed and *Rash* should have little, if any, impact. Vehicles will continue to present the same problem as before.

> *'One caveat to both debtors and creditors is to remember the effect of consistency.'*

Neither *Rash* nor *Taffi* compel the use of either wholesale or retail blue book value. As one court has noted [*In re Hobbs*, 204 BR 994 (Bank.Az. 1997)], the true market value (the price at which it sells) of a vehicle is rarely either wholesale or retail blue book. While blue book values are certainly relevant, they are no more than a starting place in the process. I suggest that in most cases where the debtor retains the vehicle, the court should start with the retail value. From the retail value (presumably what a dealer would sell the vehicle for) is then deducted those items included in the retail value that the debtor would not be receiving by retaining the vehicle, *e.g.*, reconditioning costs, warranties, the dealer's "inventory" expenses, and any items added to the article by the debtor that increase its value provided the debtor would be entitled to remove any such item if the vehicle were surrendered. Reconditioning costs could be established by using any number of industry or manufacturers' standard manuals. In most cases this approach will as accurately measure replacement value as any.

There are certainly other factors that may enter into determining the value of particular collateral. The central point of any valuation where the collateral is to retained by the debtor is what would someone in the debtor's position pay for the item (the nature or particular circumstances of the creditor is irrelevant). If the courts apply some hypothetical "reasonable buyer" test, one must assume that it would be the lowest price possible in the market, taking into consideration all factors that may influence choice and price.

Among the factors to be considered is the intended use by the debtor. *Rash* involved a situation where the debtor proposed to retain the collateral for use in his trade or business. The fact the intended use is a business use (to generate income) may cause the replacement value to be higher than if it is to be used as a consumer item (household or personal use). [*Cf. In re Mitchell,* 954 F2d 557 (CA9 1992)] The particular import of the collateral to the debtor, e.g., essential to maintain income or the feasibility of consummating the plan, may also be a factor indicative of a higher value; conversely, a non-essential or luxury item would probably have a lower value to the debtor. Actual market conditions outside the retail industry is certainly probative of the true replacement value. The existence or nonexistence of a secondary market can have a significant impact, plus or minus, on market values. For example, if there is a strong auction market or private party direct sales, that may operate to reduce the value or be indicative of fluctuations in the market for a particular item. Conversely, the lack of auctions or private party sales can result in an increase in value.

Age and condition of the collateral is an important consideration. Savvy debtors will bring to the court's attention and no doubt magnify every dent, scrape, scratch, squeak, rust spot, leak, tear, defect or deficiency in the collateral, including ordinary wear and tear. Conversely, creditors will attempt to minimize the effect of defects or deficiencies in condition, characterizing them as normal wear and tear. Courts be required to differentiate between true defects or deficiencies in condition and those that are merely part of ordinary wear and tear considered "average condition" in establishing blue book values.

One caveat to both debtors and creditors is to remember the effect of consistency. Not infrequently the first valuation is in conjunction with a relief from stay proceeding where the positions are reversed: the creditor is arguing for a lower value (lack of equity) and the debtor a higher value (equity cushion as providing adequate protection). The position taken in the relief from stay proceedings may come back to bite. While the purpose of the valuation may differ, those things that increase or decrease value and the effect on the value will probably be identical.

The bottom line is that the ultimate result will continue to be based upon a facts and circumstances, case-by-case basis. Only the nomenclature has changed. Although the benchmark may have changed, the parties, to the extent they can not agree, will still be fighting over many of the same issues as before. *Rash* will probably not prove to be nearly the victory for creditors as many may trumpet. Moreover, creditors should always bear in mind the real upper limit of value in this context: what can the debtor afford. If the court sets the value above that amount, the creditor will get the collateral back and realize nothing more than its liquidation value in any event, after having spent time, effort and money convincing the court it was worth more. Before pushing too hard, creditors must ask themselves "Do I really want it back"? Debtors on the other hand must ask themselves "Do I really want to keep it and can I really afford it"? Reality, not hypothetical values, should control. Pyrrhic victories are meaningless to all parties.

Law firm honors Alaskan legal pioneer

1896 ONE HUNDRED YEARS 1996
ALASKA BAR ASSOCIATION

By Wendy Long Gellert

This year the law firm of Faulkner, Banfield, Doogan & Holmes is honoring Judge Robert Boochever, former firm partner and Alaska Supreme Court Justice, and current Judge of the United States Court of Appeals for the Ninth Circuit, the second highest court in the nation. The year 1997 marks three extraordinary milestones in the life of this distinguished Alaskan: the 25th anniversary of his service on the bench, 50 years since his joining the firm and his forthcoming 80th birthday. This month, Faulkner, Banfield, Doogan & Holmes will celebrate Judge Boochever's life and career with a reception for the judge, his family, and many longtime friends and colleagues.

Judge Boochever was born on October 2, 1917 in Brooklyn, New York. He attended high school in Ithaca and received his bachelor's and law degrees from Cornell University, where his father worked as public relations director. Following wartime service in the United States Army, where he met and married Army nurse Colleen "Connie" Maddox, Judge Boochever arrived in Juneau in 1946 to assume the position of Assistant United States Attorney.

In the fall of 1947, Boochever joined Herbert Faulkner and Norman Banfield at the law firm that became Faulkner, Banfield & Boochever, In his 25 years of private practice, Boochever was involved in a great variety of cases, many argued before the federal appeals court. He also argued an important Alaska fishing rights issue before the United States Supreme Court. During his tenure in private practice he was also president of the Alaska and Juneau Bar Associations.

Judge Boochever is revered by his friends and neighbors as a dedicated advocate who championed causes that helped shape the Juneau community. He was chairman of the city's first planning commission and presided over Juneau's first comprehensive plan, and was instrumental in bringing the University of Alaska to Juneau. Boochever was also involved in the effort to build a road to Eaglecrest Ski Area, assisted in consolidating the area city and borough governments, and was a staunch and influential warrior in the battles to keep the capital in Juneau. In more recent years he has worked on efforts to protect Lake Florence an Admiralty Island from logging.

'1997 marks three extraordinary milestones in the life of this distinguished Alaskan: the twenty-fifth anniversary of his service on the bench, fifty years since his joining the firm and his forthcoming eightieth birthday.'

Boochever was appointed justice of the Alaska Supreme Court in March 1972. He served on the court when there were few state law precedents upon which to depend. This afforded Boochever and his colleagues on the bench the opportunity to shape the direction of Alaska common law. Boochever served as chief justice from 1975 through 1978.

In June 1980, by appointment of President Jimmy Carter, Boochever became the first Alaskan to serve on the United States Court of Appeals for the Ninth Circuit. He maintained his chambers in Juneau while he served as a full-time judge with the Ninth Circuit Court. In 1986, he moved to Pasadena, to reduce his travel obligations and shortly thereafter assumed senior status on the court. Judge Boochever continues to hear cases regularly and returns to Juneau in early summer to work and spend time with family and friends. The Boochevers' four daughters and 10 grandchildren all reside in Alaska. (His granddaughter is Juneau's Hilary Lindh, an Olympic medalist in downhill skiing).

Faulkner, Banfield, Doogan & Holmes is pleased to honor the life and career of this distinguished Alaskan. From his early years practicing frontier justice and shaping the Juneau community, to his more recent service on the Ninth Circuit Court of Appeals, Judge Robert Boochever has played an important role in the history of this state and exemplifies the spirit of Alaska.

Jolene Thornton, PLS, received the 1997 Legal Secretary of the Year award presented by the Anchorage Legal Secretaries Association (ALSA).

Thornton earned her legal secretarial degree from Kinman Business University in Spokane, in 1981. She is employed at the law firm of Clapp, Peterson & Stowers and also does contract work for sole practitioner John B. Patterson. She has over 16 years of experience as a legal secretary, received her Professional Legal Secretary Certification in 1995 and is an active member of ALSA. Her experience as a legal secretary encompasses a wide variety of law—labor, criminal, appellate, insurance defense, workers' comp, and product liability.

"I believe that education, professionalism and a positive attitude are the 'bare bones' for being a professional legal secretary," she says. With this professional achievement, Thornton is now a candidate for the National Association of Legal Secretaries' (NALS) Award of Excellence.

ALPS is on the scene of disaster

Continued from page 3

cases until they have a handle on the cases in the office. Re-creating records and securing temporary quarters and systems requires too much time to allow for the necessary time and attention that should be given to new clients without fear that a deadline will be missed or an issue will be overlooked. In my view the only way to do this is to set aside several months operating expenses in a savings account that exists just for a rainy, windy or smoke-filled day.

Helping Those in Need in Grand Forks

We have been working closely with The State Bar Association of North Dakota which has mounted a significant effort to help the affected attorneys in the Grand Forks area resume normal operations. You can assist this effort by sending a contribution to The North Dakota Bar Foundation (Flood Relief) at P.O. Box 2136, Bismarck, ND 58502-2138. Next time it may be a flood, hurricane, tornado or other disaster in your town.

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HI-TECH IN THE LAW OFFICE

Home Office Equipment: The bare essentials and a few extras

By Joseph L. Kashi

More attorneys are exploring the possibility of doing serious legal work at home, either as an adjunct to their regular office or as the primary working environment. Here are some thoughts about cost-effective office and computer equipment along with news about recent advances in high speed, low cost systems.

Pentium class computer

Get a system using either an Intel Pentium MMX, AMD K6 or Cyrix 6x86MX processor running at least 166 megahertz. A 200 MHz system would be somewhat more expensive but provides a little extra benefit. Systems with faster CPU speeds really don't give you much more performance but do cost a lot more. A good system is now so inexpensive that it's really not worth upgrading an older computer if much work is needed.

I prefer computers built with Intel brand main system boards or at least systems using the newest Intel TX chipset or the slightly older, slightly slower Intel HX chipset. Chipsets have a very significant effect upon system performance and capabilities, so it's worth getting systems that use the most recent chipsets; they typically add only about $10-$20 to overall system cost. Newer Intel system boards have proven to be very reliable for me as have Tyan, ASUS, and Gigabyte system boards.

There's a lot of competition in the new computer market and the best deals are usually found in systems using AMD K6 or the newest Cyrix/IBM 6x86MX processing chips, both of which include MMX multimedia instructions. These CPU chips compete directly with Intel's newest Pentium II processor, which itself is a derivative of Intel's earlier high end Pentium Pro CPU. The Pentium II, AMD K6 and Cyrix/IBM 6x86MX processors provide roughly equivalent performance and features; all of them perform significantly better than the fastest 200 MHz Pentium MMX processor. Intel's Pentium II is by far the most expensive. AMD's K6 is about 25% less expensive, and Cyrix's 6x86MX costs about one-half the price of an equivalent Intel CPU even though the 233 MHz Cyrix performs nearly as well as Intel's 266 MHz Pentium II. Overall, my choice is a Cyrix 200 MHz 6x86MX CPU although these are still in short supply.

If you are very price-sensitive, then my recommendation for a new system is a 166 MHz system using the older Cyrix 6x86 CPU without the MMX instructions. This processor is very quick but will not be able to use the multimedia processing software that needs MMX instructions for such applications as continuous speech voice dictation or videoconferencing. The 166 MHz 6x86 performs within 1% as fast as a standard 200 MHz Intel Pentium and is very inexpensive at this time.

A new computer system should have at least 512K cache RAM and 32 MB of EDO or SDRAM main memory for Windows 95 or OS/2. 64MB is nice for systems that use voice dictation and Windows NT. Memory is very inexpensive and one of the best ways to improve performance with any Windows operating system.

Operating Systems

Windows 95 is the best choice for the average user and is significantly better than earlier versions of Windows. It doesn't crash as often, for example. Windows 95 includes some rudimentary built-in networking that is adequate for connecting a two or three attorneys and some staff, but requires careful configuration so that it's easily usable.

I also personally like OS/2 because of its good support for voice dictation but users unfamiliar with OS/2 WARP version 4 will need some assistance to install and configure the operating system. WARP 4.0 runs DOS and Windows 3.1x programs but not Windows 95 applications. Windows NT has some difficulties with backward compatibility and requires even more hardware resources than OS/2 or Windows 95 for acceptable performance.

There's no good reason at this time to buy a system that uses only Windows 3.11 but if you already have such a system and it works reliably for you, there's no good reason to upgrade to Windows 95 unless you want to use program that work only with Windows 95.

Hard Disks

Your hard disk should be either an Ultra DMA or Enhanced IDE drive or, for more advanced computers, an Ultra-Wide SCSI hard drive. It should have a capacity of at least 2.0 gigabytes or larger. Standard EIDE is good enough for most desktop uses but is the slowest. Ultra-Wide SCSI drives are the fastest drives in common use but are more expensive because you'll also need to buy an expensive controller card. I prefer the IBM Ultra-Wide SCSI drives for low price, excellent reliability and warranty, and dynamite speed.

Ultra DMA IDE hard disks are the newest high performance hard disk standard and almost equal Ultra-Wide SCSI's performance in Windows 95 although advanced multithreaded operating systems like Netware, OS/2, and Windows NT will use SCSI to better advantage than any Ultra DMA or EIDE hard disk.

Hard disk reliability should be a paramount factor in deciding which brand to buy. Among the EIDE drives, those made by IBM, Western Digital and Quantum seem to be among the most reliable. Western Digital's new Ultra DME IDE drives will provide hard disk performance that may rival Ultra Wide SCSI.

Only the newest system boards using Intel's new TX chipset will incorporate Ultra DMA hard disk controllers and thus only these TX system boards will provide any performance gain with Ultra DMA drives. As a result, Ultra DMA drives provide benefits only when acquired as part of a new computer purchase. If you choose an Ultra-Wide SCSI drive, then you'll need to buy an SCSI controller. I like the Adaptec AHA2940UW, which will also run an SCSI tape drive and SCSI CD-ROM.

CD-ROM

There are many good EIDE (Fast-ATA) CD-ROMs on the market. The market seems to have stabilized upon 12X speed drives and they are a good choice, particularly if they use a constant velocity drive mechanism. For best stability and performance, the EIDE CD-ROM should run from a secondary IDE controller built directly into the main system board. For older 486 computers, an SCSI CD-ROM will be easier to install. Use an ISA Adaptec controller like the AHA1505 and an SCSI CD-ROM drive like those made by NEC, Toshiba or Sony.

Fax-modem

US Robotics, Cardinal and Hayes are generally reliable. Get a 28.8 or 33.6 K modem. The faster 56K models are not yet standardized or debugged, so you'll probably not be able to realize any speed improvement in any event. I like the US Robotics 33.6, which you should be able to purchase for about $100.

Printer

An inkjet printer is usable, particularly where you need occasional color output for exhibits. The Hewlett Packard (HP) Deskjet 693 and 870 series produce excellent color output as well as black type. However, laser printers are faster, neater and sharper for regular pleadings and documents. Your choice will depend upon your expected volume. For low volumes, the HP 5L works well while and HP Series 6 or 6P will handle heavier volumes. I prefer the HP printers because of their excellent reliability and support. In addition, the HP printers have the best support by various word processing and graphics programs. HP is generally judged to be the preferred printer brand.

Scanners

If you want to use OCR optical character recognition, then you'll need a scanner. For low to medium document volume, the HP Scanjet series works well and is supported by many software programs, but be sure that you get the sheet feeder option. For higher volumes, such as with optical imaging systems, the Fujitsu Scan Partner 10 is a good but somewhat expensive choice, particularly for the home office. For basic scanning, the Visioneer Paperport, which includes usable OCR and imaging software, is the best choice. For about $300, you'll have everything you need right at your keyboard and can avoid a great deal of retyping.

Tape drive

You absolutely need a tape drive to back up your data. Assuming that you are using the Windows 95 operating system, then the Exabyte Eagle TR-3 tape drive is the best that I've seen for the price and the included software is quite good. The Iomega Ditto drives and the Colorado Travan series drive seem to work well in Windows 95. If you are using DOS/Windows 3.1x, then I would probably choose the Colorado tape drive as my first choice. The backup software included with most tape drives is generally usable but be very sure that you verify each backup tape after performing the backup and test the ability of the software to correctly restore files! You'd be surprised at

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Hi-Tech in the Law Office

Home Office Equipment: The bare essentials and a few extras

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how often these critical functions don't work properly. For best performance, though, SCSI based tape drives are clearly superior. Among SCSI tape drives, I prefer those made by Conner.

Uninterruptible Power Supply

Even a small uninterruptible power supply is nice to help you cope with Alaska's power blips. Get at least a 400 watt unit. You'll particularly need a UPS if you're working with easily damaged, important databases like the Timeslips time and billing program. Avoiding one data loss can pay for the UPS.

A few extras for the home office

Desktop copier

Although a $5,000 copier in the Xerox 5000 series works very well, you don't need it for the volumes you'll likely see in a home office. Get a good quality desktop system in the $400 to $800 range. Canon and Sharp make good systems in this market niche and they're often available at large discount stores like Costco. However, if your entire practice is run out of your home, you'll probably need a faster copier and sheet feeder in time, so be sure that your office space is large enough. Alternatively, you can get a combination copier, plain paper fax, printer and scanner like the HP Office Jet but such systems, although costing only about $550, are suitable only in situations where the copy function is secondary and copy volumes are very low. The Office Jet works well, though, for scanning, faxing and printing, so it is worth considering.

Answering machine

AT&T makes many good combination phone/answering machine combinations. Consider getting a second phone line so that you can use the phone while on Westlaw or the Internet.

Typewriter

You'll use a typewriter mostly for addressing envelopes and labels, and for typing multiparty and mandatory government forms.

Fax machine

Get a plain paper fax. There are many good ones on the market and the price has dropped markedly. HP and Brother make good ones. An HP Office Jet, above, includes many other useful features.

Postage scale and meter

These are convenient. You really don't need an expensive system here. The basics do just fine although the vendors will constantly try to sell you upgrades that you probably don't need.

ELECTRONIC LEASHES

Cell phone - Anchorage Bar Association members enjoy the best rates and no minimum charges.

Pager - Unless you deal in criminal law, you may not want one. Business and civil lawyers have less real

New Environmental Courts single out polluters, developers for swifter compliance

BY PAUL KARR

There was a time when a litterer or an unscrupulous developer here in Fulton County, GA could bend the county's environmental ordinances with little risk of swift or serious penalty. It often took years of prodding and legal action to catch up with violators. Sometimes a case would never be brought at all.

That's just what might have happened late last year after an 89-year-old south Fulton resident had let junk and old cars pile high on his property for years. Pleading age and poverty, the violator had avoided fines for the cumulative eyesore and environmental hazard.

But the junk was finally hauled away, by another recalcitrant polluter who used his truck to work off a $1,500 fine in a deal hammered out by judge and prosecutor of the county's newest innovation — a special court that focuses on environmental and health ordinances.

In other parts of Fulton County, junked automobiles and garbage dumping were creating more health and environmental hazards. The Chattahoochee River that circles greater Atlanta had become so polluted by sewage, runoff and silt that the city was eventually fined millions of dollars by the state.

"We needed to do something," said Richard Hicks, a former prosecutor who sits as the county's environmental court judge six times a month in three locations.

Casting about for solutions, Fulton prosecutors and officials traveled to Memphis, Tenn., to visit an environmental court that has been adjudicating these sorts of cases since 1983.

There, Memphis/Shelby County Judge Larry Potter has been widely credited with presiding over the nation's model eco-court: a combination of tough courtroom scrutiny, team supervision of polluted neighborhoods and environmental fines with enough teeth to set grassroots cleanups in motion.

Hauling environmental wrong doers into court is nothing new. The most spectacular cases have involved big oil spills and other environmental disasters that have triggered cries for justice.

Courts like Potter's are different. They handle smaller cases that normally would fall beneath the radars of state or federal environmental enforcers.

A common feature of environmental courts around the country is their emphasis on compliance — cleaning up the mess — rather than immediate punishment. Though the new breed of eco-judge usually has the authority to dole out the jail time and hefty fines, so far judges have been surprisingly successful at getting swift compliance.

"Just this morning," Potter recounted recently, "a gentleman who had been very reluctant to take action got himself moving. I chewed him out and told him that I would personally be visiting his property at noon, and that we would be taking him into custody if I didn't see some results. When I got there, he had the entire neighborhood at work cleaning up his property."

In Atlanta, Judge Hicks often holds over a developer or polluter's head the threat of community service — at the county dump, which conveniently sits across the street from the northern county courthouse annex.

"The big developers didn't care. They were just building our fines right into their contracts," Hicks says. "But if the developer himself has to come down here and work 120 hours at our recycling facility, well, that changes his mind about doing it again another time."

Among the more frequent violations at building sites is failure to use proper fencing to head off soil erosion.

Kenneth Horton, a major developer in Fulton County, said he acknowledges the need for an environmental court but also sees flaws in how it works.

"The environmental laws are very ambiguous, and everything is at the interpretation of the (county) inspector," said Horton. "When you go before the judge, he's going to side with the inspector. And that's unfair to the developer."

At the same time, he said, "I've watched Judge Hicks operate. I think he's a fair judge." Horton said he has never been threatened with community service at the town dump but did pay a $750 fine in a disputed case involving the question of erosion control.

In Memphis, Potter said the court's broad authority — in 1991 he was given stronger powers to order jail time and larger fines — has been a key to its changing the way Shelby County's environmental laws are observed and enforced.

The judge has used his new mandate to order, in several cases, more than $10,000 worth of pollution cleanup by lawbreakers. As a result the county, formerly home to thousands of illegal dumps, has cleaned up its act significantly.

Inspired by the examples of Memphis and Atlanta, increasing numbers of communities have been testing their own versions of the eco-court. The south Atlanta suburb of Forest Park recently created such a court, for instance, and the city of New Orleans is also developing one.

They join two dozen existing courts in cities such as Nashville, Knoxville, and Chattanooga — all descendants from the original court established in Indianapolis in 1978 after a model created by the environmental group Keep America Beautiful, based in Washington, D.C.

It's a trend environmental judges hope will continue.

"Developers complain that we're making it so hard to build in these communities that they won't develop anymore," sums up Hicks. "Well, I don't know whether to take that as threat or as a sign that we're doing a good job.

"I mean, if you're not building according to the law, we don't want you building."

Judges and prosecutors working the environmental courts say the courts prevent such cases from getting lost in a burgeoning calendar of criminal cases and other litigation.

"A regular judge and prosecutor don't have that much time (for environmental issues) when they're dealing with more serious cases," said Hicks.

Environmental Judge Potter in Memphis agrees.

"When a judge hears a case of murder or rape, and then the next case is criminal littering — well, it's just not treated the same way," said Potter. "And that's not fair, because these (environmental crimes) are issues of a very serious and sensitive nature. They deserve to be dealt with in a firm manner."

Like other environmental courts, Potter's in Memphis patches together a budget from existing local, state and federal funding, as well as fines exacted on violators.

Advice to attorneys and other employers

Continued from page 1

concluded, "education is one of the key factors in eliminating gender bias."

The October 3 CLE is the outcome of efforts by the Task Force, the Alaska Bar Association, and the Employment Law Section to raise the level of awareness about these issues. The CLE program, presented in cooperation with the Alaska Association of Legal Administrators, will present practical, hands-on advice to attorneys and other employers about how to ensure that workplaces under their supervision remain free of the types of gender bias that can lead to claims of "hostile environment" harassment. The agenda will focus on how to define, respond to, and prevent "hostile environment" harassment in the workplace, rather than how to litigate and defend harassment cases in court. The faculty will include Justice Dana Fabe, Alaska Supreme Court, who Co-Chairs the Gender Equality Task Force with U. S. District Court Chief Judge James Singleton; Presiding Judge Elaine M. Andrews, Third Judicial District; and Anne M. Gulyassy, Employment Discrimination Litigation Section, U.S. Department of Justice, Washington, D.C.

Members of the planning committee for the upcoming October CLE on sexual harassment recently met at the Alaska Bar Association office to discuss the agenda. *L, to R (Back row):* Barbara Jones, Lee Holen Law Office, Employment Law Section Co-Chair; Leroy Barker, Robertson, Monagle & Eastaugh; Doug Parker, Managing Attorney, Bogle & Gates, and Justice Dana Fabe, Alaska Supreme Court. *L to R (Front row):* Barbara Armstrong, Alaska Bar Association CLE Director; Presiding Judge Elaine Andrews, Third Judicial District. *Not pictured:* Tom Daniel, Perkins Cole, Employment Law Section Co-Chair; Lee Holen, Lee Holen Law Office; and Gender Equality Task Force members Robert Bundy, U.S. Attorney; Judge Patricia Collins, Alaska District Court, Ketchikan; & Susan Reeves, Rubini & Reeves

Anne Gulyassy, of the Employment Discrimination Litigation Section of the Department of Justice in Washington, D.C., will be featured on the faculty of the upcoming CLE on sexual harassment.

Learning to define "hostile environment" harassment promises to be the most educational part of the program. Using actual case studies, panelists will be asked to evaluate particular conduct, and their assessments may be surprising. Often, whether a behavior is perceived as offensive may depend on the gender of the person committing it; the same behavior may be viewed as hostile in one context and benign in the other. According to the CLE planning committee, there are often differences of opinion—sometimes very significant—over what is acceptable conduct.

The goal of the CLE is not simply to provide a laundry list of behaviors that could constitute "hostile environment" harassment. Instead, committee members aim to provide insight that will foster dialogue. Only through open and honest discussion of situations that arise in the workplace can potentially harassing behaviors be understood and resolved fairly.

Responding responsibly if an employee alleges harassment is the second major topic on the CLE agenda. Employment Law Section Co-Chair Barbara Jones of Lee Holen Law Office says that it is not enough for law firms and other employers to establish policies against sexual harassment; to meet their legal duties, they must also follow up reports of harassment with thorough investigations.

"If there is an inadequate investigation, you can still have liability," says Jones.

Ensuring a fair internal investigation and response can be difficult given the hierarchy of power in the legal community.

Preventing hostile environment harassment will be the third major topic of the CLE. According to Doug Parker, Managing Attorney of Bogle & Gates in Anchorage and a member of the CLE faculty, one goal of the program is to encourage managing partners and supervising attorneys of law firms, both private and public, to build gender equality into their corporate cultures. For example, law firms that fail to promote qualified women attorneys risk creating work environments that are hostile to women because they offer advancement based on gender, not merit.

"I believe there's a complete interrelation between hostile workplaces and the glass ceiling," Parker says.

Parker also sees a need to explore ways that a woman's career can be affected by the demands of family. For example, a woman's chances of achieving a partnership or other advancement could be affected if she takes time off from work for the birth of children or childcare. According to Parker, a law firm stands to lose valuable women attorneys if women see that "they can't get ahead with careers and family at the same time."

According to Leroy Barker, understanding and avoiding sexual harassment in the workplace isn't just a way to prevent lawsuits; it's a way to create a more harmonious and productive work environment for all concerned.

"It's an opportunity to improve your business performance," Barker says.

The CLE "Sexual Harassment" will be held on Friday, October 3, 1997, from 8:00 AM-10:30 AM at the Hotel Captain Cook in Anchorage. In addition to Justice Fabe, Presiding Judge Andrews, Anne M. Gulyassy and Doug Parker, presenters include Tom Daniel, Perkins Coie, Co-Chair of the Employment Law Section, Moderator; Lee Holen, Lee Holen Law Office, and Jerry Smith, Manager, Human Resources, BP Exploration-Alaska. Watch for a formal CLE announcement from the Alaska Bar Association in late July. Proceeds from the CLE will support the work of the Joint State Federal Courts Gender Equality Task Force.